FORM OF ORDER SHEET

Court of _____

C.O.C application No. 747/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22/12/2022	The C.O.C application of Mr. Khalid Saleem submitted today by Mr. Javed Ali Ghani Advocate. Original file be requisitioned. It is fixed for hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel. By the order of Chairman REGISTRAR

1)

MOB # 0302-8180920

BC # 10-5608

CNIC # 16102-7879836-3

IN THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Khalid Salim **Versus** Secretary Industry

..... Appellant .....Respondents

CONTENTS	YES	NO
This petition has been presented by: Advocate / Court	√	
Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
Whether appeal is within time?	√	
Whether the enactment under which the appeal is filed mentioned?	√	
Whether the enactment under which the appeal is filed is correct?	√	
Whether affidavit is appended?	√	
Whether affidavit is duly attested by competent Oath Commissioner?	√	
Whether appeal/annexures are properly paged?	√	
Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
Whether annexures are legible?		
Whether annexures are attested?	√	
Whether copies of annexures are readable/clear?	√	
Whether copy of appeal is delivered to AG/DAG?	√	
Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
Whether numbers of referred cases given are correct?	×	
Whether appeal contains cutting/overwriting?	√	
Whether list of books has been provided at the end of the appeal?	√	
Whether case relate to this court?	√	
Whether requisite number of spare copies attached?	√	
Whether complete spare copy is filed in separate file cover?	√	
Whether addresses of parties given are complete?	√	
Whether index filed?	√	
Whether index is correct?		
Whether Security and Process Fee deposited? On _____	√	
Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____		
Whether copies of comments/reply/rejoinder submitted? On _____		
Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Jawad Ali Khan

Signature:-

Dated:- 21-12-2022

PSIC Pvt Computing Center, Peshawar High Court, Peshawar
Pioneer of legal drafting & composing
Cell No:- +923028838600/+923119143544/+923159757151
Email:- pscpvtcomputing@gmail.com

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Coc Application No :- 747/2022

Appeal No.427/2019

Khalid Saleem ..... Appellant

Versus

Secretary Industry Commerce and Technical Education Department and others..... Respondents

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3	Attested copy of order/ judgment dated 03.11.2022	10-12
4	Copy of Notification	13
5	Wakalatnama.	14

Petitioner/ Appellant

Through

Javed Ali Ghani

&

Aman Ullah Khan
Advocates High Court
Peshawar.
0302-8120920

Dated: 14.12.2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Coc Application No :- 747/2022

Appeal No.427/2019

Khalid Saleem s/o Sahib Noor
Director Physical Education
Govt. Polytechnic Institute, Haripur..... Appellant

Versus

1) Secretary Industry Commerce and Technical Education Department, Civil Secretariat, Peshawar. (Mr.Saqib Raza Aslam).
2) Govt. of KP through Secretary Finance, KP, Civil Secretariat, Peshawar. (Mr.Ikram Ullah)
3) Govt. of KP through Secretary Establishment Department, Civil Secretariat, Peshawar. (Mr.Zulfiqar Ali Shah)
4) Managing Director Khyber Pakhtunkhwa TEVETA Headquarters, Peshawar. (Engr. Abdul Ghaffar Khan).

..... Respondents

APPLICATION FOR INITIATION OF CONTEMPT OF COURT PROCEEDINGS IN REGARD TO VIOLATION AND DISOBEDIENCE OF ORDER OF THIS HON'BLE TRIBUNAL DATED 03.11.2022 AND NOT HONOURING THE SAME ORDER IBID ORDER IN ITS TRUE LETTER AND SPIRIT UNDER THE LAW.

Respectfully Sheweth;

1) That this Hon'ble Tribunal vide order dated 31.01.2022 accepted appeal of applicant/ petitioner. (Attested copy of judgment/ order dated 31.01.2022 is attached).

2) That petitioner approached the concerned authorities/ respondent No.1 for the implementation of judgment/ order dated 31.01.2022 but he paid no heed.

3) That the petitioner approached this Hon'ble Tribunal through an application for implementation/ execution petition No.219/2022 and the same was decided vide order dated 03.11.2022.

4) That in order dated 03.11.2022 this hon'ble Tribunal while in the presence of the learned and worthy Advocate General and legal advisor along with representative take and assure this Hon'ble Tribunal that the same will be forwarded to for implementation to concerned authorities.

5) That the concerned authorities while assuring this Hon'ble Tribunal that on 18.11.2022 Provincial Selection Board is going to held its meeting and the implementation of the order dated 31.01.2022 will be honoured accordingly.

6) That on 18.11.2022 the PSB held its meeting and the said PSB was concluded while the names and the order of this Tribunal was not forwarded for further proceedings.

7) That this Hon'ble Tribunal while issuing the order dated 03.11.2022 directed the respondents that the order dated 31.01.2022 along with order dated 03.11.2011 will be implemented and executed, however, the same was not obeyed and honoured as per direction of this hon'ble Tribunal.

8) That as the respondents was again approached by the petitioner and the instant ibid orders were duly communicated prior to 18.11.2022

and after 18.11.2022 however, no proceedings or initiative was taken by the respondents for implementation and execution of the same.

9) That as the respondents have violated, disobeyed and dishonour the directives, specific orders dated 30.01.2022 and 03.11.2022 and forwarding lame excused, hence the instant petition.

10) That justice demands that order of this Hon'ble Tribunal may please be implemented in true letter and spirit.

It is, therefore, humbly prayed that contempt proceedings may kindly be initiated against the respondents and be punished and executed according to law on the subject.

It is further prayed that respondents may also be directed to implement the order dated 30.01.2022 and 03.11.2022 of this Hon'ble Tribunal without any further delay or any other relief deems fit in the circumstances of the case may also be granted.

Petitioner/ Appellant

Through

Javed Ali Ghani

&

Aman Ullah Khan
Advocates High Court
Peshawar.

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent
CNIC 11201-5464909-7

ATTESTED
Gul Daraz Khan
Oath Commissioner
Advocate High Court Peshawar
19/12/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 412/2019

Syed Jamal Shah Librarian Govt College of Technology, Tangi, District Charsadda.

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Secretary Industry Commerce and Technical Education Department Peshawar.
2. Govt of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar
3. Govt of Khyber Pakhtunkhwa through Secretary Establishment Department Peshawar.
4. Managing Director Khyber Pakhtunkhwa TEVETA Head quarters Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for allowing / antedating Seniority / Promotion to BPS-18, against which his Departmental Appeal dated 05.12.2018 was not responded despite the lapse of 90 days.

Prayed in Appeal:

On acceptance of this Appeal the respondents may kindly be directed to allow the appellant seniority / promotion to BPS-18 on the basis of 25 % promotion Quota of sanctioned posts from BPS 17 to BPS 18 in the light of Notification date 27.02.2006 as similar relief has been granted to the colleagues of the appellant with all arrears and benefits.

ATTESTED

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 412/2019

Date of Institution ... 01.04.2019
Date of Decision ... 31.01.2022

Syed Jamal Shah, Librarian Government College of Technology, Tangi, District Charsadda. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Industry Commerce and Technical Education Department, Peshawar & Others. ... (Respondents)

Mr. Zartaj Anwar, Advocate ... For Appellant

Mr. Muhammad Adeel Butt, Additional Advocate General ... For respondents No. 1 to 3.

Mr. Ali Gohar Durrani, Legal Advisor, ... For respondent No. 4.

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of instant service appeal as well as the following connected service appeals, as common questions of law and facts are involved therein:-

1. Service Appeal No. 410/2019 titled Javed Iqbal,
2. Service Appeal No. 411/2019 titled Alamgir Shah,
3. Service Appeal No. 424/2019 titled Sultan Muhammad
4. Service Appeal No. 425/2019 titled Muhammad Akram
5. Service Appeal No. 426/2019 titled Abdul Aziz
6. Service Appeal No. 427/2019 titled Khalid Saleem

02. The appellants in the instant service appeal and the connected service appeals are Librarians-BPS-17 and Director Physical Education (DPE) BPS-17. Both are employees of respondent No. 1 and both the cadres are sailing in the same boat with respect to the issue in hand. Briefly stated facts of the case are that the appellants were initially appointed as Librarian/DPEs BPS-16 on regular basis. The posts in respect of both the cadres were up-graded to BPS-17 vide order dated 15-08-2008 only for those holding the requisite qualification, but later on such posts were up-graded on regular basis to BPS-17 vide notification dated 23.02.2011 but with immediate effect, which however was required to be affected from the date of acquiring the prescribed degree. Feeling aggrieved, the appellants filed departmental appeals followed by Service Appeal No. 1342/2011 by Librarians and Writ Petition No. 4137-P/2016 by DPEs. The Service Tribunal as well as the High Court accepted their appeals vide judgment dated 08-06-2015 by the service tribunal and vide judgment dated 05-09-2017 by the High Court. The respondents challenged the judgment of Service Tribunal before the august Supreme court in Civil Petition Nos. 415 to 424, 426 to 438, 511 to 514-P of 2015, which were dismissed vide judgment dated 06.05.2016, hence the respondents did not prefer to contest the judgment of High, hence the respondents allowed up-gradation from the date of acquiring the requisite qualification vide order dated 28.09.2016. The episode went well to the extent of up-gradation from the date of acquiring the prescribed qualification, but on the other hand, the Government Of Khyber Pakhtunkhwa vide notification dated 27.02.2006 had approved placement of 25 % of the sanctioned posts of Librarians/DPEs BPS-16 in BPS 17 and 25% from BPS-17 to Senior Scale BPS 18. Other colleagues of the appellants were allowed senior scale BPS-18 and the appellants on the same analogy, submitted appeals before the respondents, which was worked out by the respondent department and out of sanctioned posts, five posts falling to the share of BPS-18 @ of 25% of sanctioned posts, but as a result of afterthought, the same was refused to the appellants. Feeling

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

aggrieved, the appellants filed departmental appeal dated 05.12.2018, which was not responded within statutory period, hence the present appeals with prayers to allow the appellants seniority/promotion to BPS-18 from the date of entitlement alongwith all consequential benefits on the basis of 25% promotion quota of sanctioned posts from BPS-17 to 18 on the strength of notification dated 27-02-2006 as similar relief has already been granted to the colleagues of the appellants.

03. Learned counsel for the appellants has contended that the respondent department extended the benefit of BPS-18 on regular basis against the existing vacancies to other Librarians, namely Sarwar Ullah and Ali Akbar while the appellants has been discriminated; that the appellants were holding the requisite qualification, hence after serving for more than five years as such, they were entitled to Senior Scale BPS-18 as per notification dated 27-02-2006; that even in a judgment reported as PLD 2013(SC)-195 the august Supreme Court has held that the statutory provisions, rules regulation which govern the matter of appointment of Civil Servants must be followed honestly and scrupulously; that respondent have discriminated the appellants by allowing promotion to their other colleagues and refusing the same to the appellants.

04. Learned Additional Advocate General appearing on behalf of the respondents has contended that previously the posts of Librarians/DPEs were in BPS-16. There was no further structure available for their promotion and keeping in view this hardship, the Government of Khyber Pakhtunkhwa Industries, Commerce & Technical Education Department vide its notification dated 27.02.2006 devised a structure for them whereby 25% of the total sanctioned posts of Librarians/DPEs BPS-16 were placed in BPS-17 while 25% of BPS-17 of the same cadres were placed in BPS-18. However, later on, all the posts of Librarians/DPEs BPS-16 were upgraded to BPS-17 vide Notification dated 15.08.2008 and 23-02-2011 and now none of these posts exists in BPS-16. Now

(8)

due to changed positions of the posts, a question arises that in the absence of BPS-16, how 25% of the posts in BPS-17 is to be allocated for further 25% allocation in BPS-18; that in pursuance of the judgment of this Tribunal the appellants were allowed BPS-17 from the date of appointment with all benefits for having acquired Master Degree in Library Science; that so far as promotion to the post of Senior Scale BPS-18 is concerned, the department has no justification for creation of posts in BPS-18; that the appeal being devoid of merit may be dismissed. Learned counsel for respondent No.4 relied upon the arguments of learned Additional Advocate General.

05. We have heard learned counsel for the parties and have perused the record.

06. Crux of the issue is that the appellants being Librarians/DPEs in BPS 17 against regular sanctioned posts, has invoked jurisdiction of notification dated 27.02.2006, which allows placement of 25% of the sanctioned posts of Librarians/DPEs BPS-16 in BPS-17 and 25% of BPS-17 posts of the same cadres in BPS-18. The respondents had already exercised the formula by granting promotions against posts falling in the share of 25% and vide notification dated 28-04-2014 had promoted other colleagues of the appellants. Record would suggest that the respondents had also processed case of promotion of appellants at some length, which would show that 5 posts are falling to the share of the appellants and the appellants are otherwise fit for promotion in respect of seniority and qualification, but the respondents at a belated stage realized that since the notification dated 27-02-2006 was a hardship incentive at the time, when the post of librarian was in BPS-16 and now the post is upgraded to BPS-17, in a situation, the incentive falling in the share @ 25% of BPS-16 vanished away, but the respondents deliberately avoiding the share @ 25% of BPS-17 to BPS-18, which is still intact, as the said notification is neither rescind nor superseded and is still in field and it would be interesting to note that

ATTESTED

(9)

respondents had already made promotions in pursuance of the notification dated 27-02-2006, even after up-gradation of post to BPS-17, hence contention of the respondents does not hold ground. In a situation, denial of right of promotion would be discriminatory to the effect, that similar relief had already been granted to similarly placed employees against their existing vacancies, which does not require creation of posts, hence concern of the respondents regarding creation of posts is not tenable. Equity and fair play demands that the appellants also deserve the same treatment being the senior most and otherwise eligible.

07. In view of the above, instant appeal as well connected appeals are accepted as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
31.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 23/2/22
Number of Words 240
Copying Fee 26/-
Urgent -
Total 26/-
Name of Copyist -
Date of Completion of Copy 01/3/22
Date of Delivery of Copy 01/3/22

(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 219/2022

Appeal No.427/2019

Khalid Saleem s/o Sahib Noor
Director Physical Education
Govt. Polytechnic Institute, Haripur... ..... Appellant

Versus

1) Secretary Industry Commerce and Technical Education Department, Civil Secretariat, Peshawar.
2) Govt. of KP through Secretary Finance, KP, Civil Secretariat, Peshawar.
3) Govt. of KP through Secretary Establishment Department, Civil Secretariat, Peshawar.
4) Managing Director Khyber Pakhtunkhwa TEVETA Headquarters, Peshawar.

..... Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT/ ORDER OF SERVICE TRIBUNAL DATED 31.01.2022

Respectfully Sheweth;

1) That this Hon'ble Tribunal vide order dated 31.01.2022 accepted appeal of applicant/ petitioner. (Attested copy of judgment/ order dated 31.01.2022 is attached).

2) That petitioner approached the concerned authorities/ respondent No.1 for the implementation of judgment/ order dated 31.01.2022 but he paid no heed. (Copy of application is attached

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

3) That respondent are not implementing the order/ judgment dated 31.01.2022 of this hon'ble Tribunal and have committed clear contempt.

4) That justice demands that judgment of this Hon'ble Tribunal may please be implemented in true letter and spirit.

It is, therefore, humbly prayed that respondents may please be directed to implement the order/ judgment dated 31.01.2022 in true letter and spirit and all the benefits be awarded after the decision of the Hon'ble Tribunal.

Petitioner/ Appellant

Through

Javed Ali Ghani

&

Aman Ullah Khan
Advocates High Court
Peshawar.

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent
CNIC 11201-5464909-7

ATTESTED

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(12)

27.09.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Ali Gohar Durrani, Legal Advisor for the respondents present.

File to come up alongwith connected execution petition No. 2016/2022 titled Syed Jamal Shah Versus Government before the S.B on 03.11.2022.

(Mian Muhammad)
Member(E)

3rd Nov, 2022

1. Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Shahab Khattak, Legal Advisor for respondents present.

02. Representative of respondents produced copy of letter No. TEVTA/PER:/Pro/9466 dated 27.10.2022 addressed to the Section Officer-III, Government of Khyber Pakhtunkhwa Industries, Commerce & Technical Education Department, Peshawar with the request that promotion case of the petitioner be placed before the Provincial Selection Board for consideration. Learned counsel for the petitioner submits that the department may delay placement of the case before the PSB so a direction might be given that the case of promotion of the petitioner might be placed before the first convened PSB for consideration of his promotion. This petition is filed accordingly and incase the case of the petitioner is not placed before the first convened/scheduled PSB, he may submit an application for initiating contempt against the respondents. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 3rd day of November, 2022.*

(Kalim Arshad Khan)
Chairman

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[redacted] of Presentation of Application 08/12/22

Num[redacted] 12000

[redacted] 1/-

[redacted] 4/-

[redacted] 8/-

[redacted] 08/12/22

[redacted] of Delivery of Copy 08/12/22

(13)

COURT MATTER

GOVERNMENT OF KHYBER PAKHTUNKHWA
INDUSTRIES, COMMERCE & TECHNICAL
EDUCATION DEPARTMENT

No.SOIII(IND)1-1/2022/Librarian/ 1038-41
Dated Peshawar the, 30th November, 2022

To

The Section Officer (PSB),
Establishment Department,
Khyber Pakhtunkhwa, Peshawar. (4) 1.12.2022

Subject: - **WORKING PAPER FOR PROMOTION OF LIBRARIAN BPS-17 TO THE POST OF LIBRARIAN (SENIOR SCALE) BPS-18**

I am directed to refer to the subject noted above and to forward herewith seven (07) sets of Working Paper along-with its relevant documents in favour of Librarian BPS-17 for promotion to the post of Senior Librarian (BPS-18) for placing before the Provincial Selection Board for consideration. In case, the PSB could not be scheduled in the month of December 2022, the same may be finalized through circulation so as to avoid contempt of court proceedings as mentioned in the execution petition (copy enclosed), please.

Encl: As Above

SECTION OFFICER-III

Endstt: No. & Date even:

Copy forwarded for information to the: -

1. Managing Director KP-TEVTA with reference to letter No. KP-TEVTA/PER/Pro:/9466 dated 27.10.2022
2. PS to Secretary IC&TE Department
3. PS to Special Secretary IC&TE Department

SECTION OFFICER-III
O/C

بعدالت

حسب مخبو نمبر ۱ه سرورس ٹریبونل

۲ منجانب

بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آں مقام ______ کیلئے ______

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ازعرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

المرقوم ______ ماہ ______ 20

العبد ______ گواہ ______ العبد

بمقام ______ کے لئے منظور ہے۔