


04.07.2019

Counsel for the petitioner and Addl. AG for the respondents present. .

Learned counsel for the petitioner stated at the bar that grievance of the petitioner has been redressed at departmental level and he is under instructions from his client not to further pursue the execution petition in hand. He made a request for withdrawal of the above execution petition. His signatures were also obtained on the margin of order sheet.

Therefore, the present execution petition is dismissed as withdrawn. File be consigned to the record room.

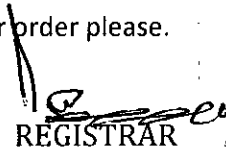

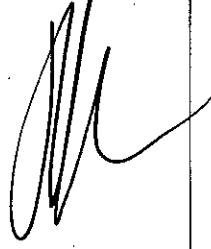

  
Member

Announced:  
04.07.2019

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 213/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.5.2019	<p>The execution petition of Mr. Javed Sultan submitted today by Mr. Hassan U.K Afridi Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	15/05/19	<p>This execution petition be put up before S. Bench on <u>29/05/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	<p>29.05.2019</p> <p>I hereby withdraw my instant Petition</p> <p style="text-align: center;"></p>	<p>Notices be issued to the respondents for submission of implementation report on 04.07.2019 before S.B. The petitioner shall also be given notice for next date of hearing.</p> <p style="text-align: right;">Chairman </p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

C.M. Implementation No. 213 /2019

In

Service Appeal No.340/2017

Javed Sultan.....Appellant

**V E R S U S**

Government of Khyber Pakhtunkhwa through  
Chief Secretary, & others.....Respondents

**I N D E X**

S#	Description of Documents	Annex	Pages
1.	Application		1-2
2.	Affidavit		3
3.	Order /judgment dated 23.11.2018	<b>A</b>	4-8
4.	Covering letter with application	<b>B</b>	9
5.	Departmental Appeal <i>with letter</i>	<b>C</b>	10
6.	Wakalatnama		11

Petitioner /Appellant  
Through

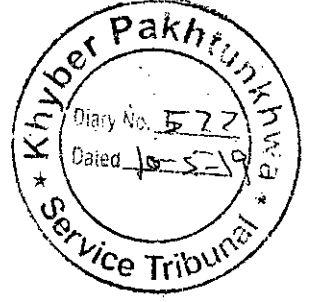
  
**Hassan U.K Afridi**  
Advocate  
Supreme Court of Pakistan

Dated 10.05.2019

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

C.M. Implementation No. 213 /2019  
In  
Service Appeal No.340/2017



Javed Sultan S/o Sultan Ahmad Shah,  
R/o Mohallah Sangerh, District Hangu  
Presently Inspector  
Excise & Taxation Office, Kohat.....**Appellant**

**V E R S U S**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar
3. Director General Excise & Taxation Department, Khyber Pakhtunkhwa Shami Road, Peshawar
4. Standing Service Rules Committee through its Chairman, Secretary E&T Department, Khyber Pakhtunkhwa, Peshawar .....**Respondents**

**Application for implementation of the  
order/judgment passed by this Hon'ble  
Tribunal on 23.11.2018**

**Respectfully Sheweth:**

1. That the petitioner/appellant field service appeal No.340/2017, which has been disposed

off with the direction to the respondents to decide the departmental appeal pending before the respondents, within 90 days on 23.11.2018.

- 2. That the petitioner/appellant delivered to the respondents through covering letter on 21.01.2019.
- 3. That more than 90 days have been elapsed but no order has been announced by the respondents.

It is, therefore humbly prayed that on acceptance of this application, the respondents may kindly be directed to decide the departmental Appeal of petitioner/appellant pending before than since 2017.

Petitioner /Appellant

Through

**Hassan U.K Afridi**  
Advocate

Supreme Court of Pakistan

Dated 10.05.2019

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

C.M. Implementation No. \_\_\_\_\_/2019

In

Service Appeal No.340/2017

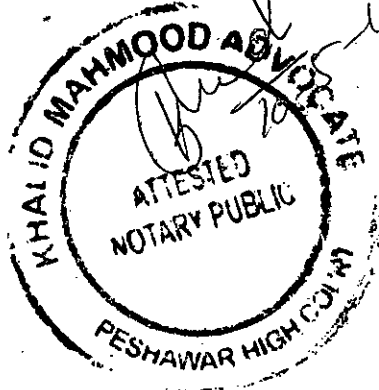
Javed Sultan.....**Appellant**

**V E R S U S**

Government of Khyber Pakhtunkhwa through  
Chief Secretary, & others.....**Respondents**

**A F F I D A V I T**

I, Javed Sultan S/o Sultan Ahmad Shah, R/o Mohallah Sangerh, District Hangu, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



*[Handwritten Signature]*  
**DERONENT**

339 4



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Service Appeal No: 340 /2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 340

Date: 06-4-2017

Javed Sultan S/o Sultan Ahmad Shah,  
R/o Mohallah Sangerh, District Hangu  
Presently Inspector  
Excise & Taxation Office, Kohat.....Appellant

**V E R S U S**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar
3. Director General Excise & Taxation Department, Khyber Pakhtunkhwa Shami Road, Peshawar
4. Standing Service Rules Committee through its Chairman, Secretary E&T Department, Khyber Pakhtunkhwa, Peshawar .....Respondents

**APPEAL Under section 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT,**

**1974**

Filed to-day

Registrar

06/04/2017

**Prayer in Appeal:-**

On acceptance of this appeal, the respondents may kindly be directed

submitted to -day  
filed.

Registrar

06-4-17

**ATTESTED**

*[Signature]*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

1

(48) (5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 340/2017

Date of Institution ... 06.04.2017

Date of Decision ... 23.11.2018



Javed Sultan S/O Sultan Ahmad Shah,  
R/o Mohallah Sangerh, District Hangu Presently Inspector Excise and Taxation  
Office, Kohat. ... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Civil  
Secretariat, Peshawar and three others. ... (Respondents)

MR. HASSAN U.K AFRIDI,  
Advocate

--- For appellant.

MR. MUHAMMAD JAN,  
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,  
MR. HAMID FAROOQ DURANI

--- MEMBER (Executive)  
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected  
service appeal no. 737/2017 titled Javed ur Rehman as similar question of law and  
facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.


FACTS

3. The short facts of the case are that the appellant has prayed for promotion from the  
post of Inspector to Assistant Excise and Taxation Officer (AETO) in relaxation of Rule  
7(3) of the Departmental Examination Rules, 1950. He preferred an undated departmental

**ATTESTED**

MEMBER  
Khyber Pakhtunkhwa Service Tribunal



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appeal, which was not responded within the stipulated period, hence, the instant service appeal on 06.04.2017.


### ARGUMENTS

4. Learned counsel for the appellant argued that he appeared in the departmental promotion examination for the post of Assistant Excise and Taxation Officer in 2006 and passed all the papers in higher grade, except Excise Law Paper-II in lower grade (50% marks). He made another attempt in 2009 but could not improve his previous position. That Mr. Muhammad Qamar, Nizakat Ali and Falak Naz, Inspectors serving in the said department filed service appeal for promotion from the rank of inspector to Assistant Excise and Taxation Officer, as per Rule 7(3) of the Departmental Examination Rules 1950. This Tribunal vide judgment dated 08.12.2015 this Tribunal remitted the case to the respondents for examination on the analogy of previous precedent and grant of relaxation contained in the said rules provided the case was otherwise fit for the same. The respondents' vide order dated 10.11.2016 waived off the condition of higher grade in favour of the above appellants. The appellant through his departmental appeal also sought similar relief but was not responded within the stipulated period, hence, the instant service appeal. Reliance was placed on case law reported as 2018 SCMR 330, 2009 SCMR 1 and judgment of this Tribunal dated 14.09.2017 passed in service appeal no. 293/2017.

5. On the other hand learned Deputy District Attorney argued that according to the Excise and Taxation Service Rules, 2010 passing departmental examination in higher grade was mandatory for promotion to the post of Assistant Excise and Taxation officer.

The appellant did not fulfill this condition, hence, was not eligible for promotion. An undated departmental appeal was forwarded by the Excise and Taxation Officer, Kohat

**TESTED**

  
 Deputy District Attorney  
 Excise and Taxation Service Tribunal  
 Peshawar

on 17.12.2016, which was badly time barred. No application for condonation of delay had been submitted by the appellant. On this score alone the present appeal was not maintainable.

### CONCLUSION


6. Having gone through the record, it transpired that though the appellant was aggrieved of notification dated 30.03.2010 but did not challenge it in time. Even his departmental appeal was silent on this account. His departmental appeal was badly barred by time so strictly speaking, present service appeal was not maintainable. Learned counsel for the appellant failed to justify the delay caused in preferring the departmental appeal.

7. On the other hand, learned counsel for the appellant relied on judgment of this Tribunal dated 08.12.2015 and 14.09.2017 in which relief was granted to the appellants by the respondents. The principle of consistency and parity demanded identical treatment should have been extended to the appellant by the respondents to meet the ends of justice. Our viewpoint is further augmented by 1996 SCMR 1185 in which the august Supreme Court of Pakistan held that:-

*"If the Service Tribunal or Supreme Court decides a point of law relating to the terms of civil servant which covers not only the case of civil servant who litigated, but also of other civil servant, who may not taken any legal proceedings, in such a case, the dictates and rule of good governance demands that the benefits of such judgment by Service Tribunal/Supreme Court be extended to other civil servant, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum".*

As departmental appeal preferred by the appellant was not decided by the respondents within the stipulated period, so we deem it appropriate to remit this case back to them for

ATTESTED

  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

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decision within a period of ninety days from the date of receipt of this judgment through a speaking order. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

*(Signature)*

(HAMID FAROOQ DURANI)  
CHAIRMAN

*(Signature)*

(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
23.11.2018

*Certified to be true copy*

*(Signature)*  
Service Tribunal,  
Peshawar

Date of Presentation of Application 27-11-18  
 Number of Words 2000  
 Copying Fee 12-00  
 Urgent \_\_\_\_\_  
 Total 12-00  
 Name of Copyist *(Signature)*  
 Date of Completion of Copy 19-12-18  
 Date of Delivery of Copy 19-12-18

**OFFICE OF THE EXCISE, TAXATION & NARCOTICS CONTROL OFFICER, KOHAT.**

No. 176 /E&T Dated Kohat the 17/1 /2019

To,

The Director (Peshawar Region),  
Excise, Taxation & Narcotics Control Department,  
Khyber Pakhtunkhwa, Peshawar.

**Subject: REQUEST FOR RELAXATION/WAIVING OFF IN RESPECT OF  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL JUDGEMENT  
DATED 23-11-2018**


Enclosed please find here with the application of Mr. Javed Sultan  
(Inspector) of this office, which is self explanatory for further necessary action please.

  
EXCISE, TAXATION & NARCOTICS  
CONTROL OFFICER KOHAT.

No. 177-08 /E&T Dated Kohat the 17/1 /2019

Copy forwarded to:

1. The Director General Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.
2. P.S to Secretary Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.

  
EXCISE, TAXATION & NARCOTICS  
CONTROL OFFICER KOHAT.

To,

The Secretary to Government of Khyber Pakhtunkhwa,  
Excise, Taxation & Narcotics Control Department,  
Khyber Pakhtunkhwa, Peshawar.

Through Proper Channel

**Subject: REQUEST FOR EXEMPTION/ WAIVING OFF IN RESPECT OF  
KHYBER PAKHTUNKHWA SERVICES TRIBUNAL JUDGMENT  
DATED 23-11-2018**

Respected Sir,

Most humbly requested that I have submitted an application on 27/12/2016 for waiving off the condition of higher standard for Paper-II ( Excise Law) which I have passed in lower standard on the basis of the same relief as was given to Mr. Muhammad Qamar ( Inspector), Mr. Nazakat Ali ( Inspector) and Mr. Falak Naz (Inspector) by your good office vide Notification No SO (ESTT)/E&T/1-19/2010/6476-79 dated 10<sup>th</sup> November, 2016 in compliance of the Khyber Pakhtunkhwa services Tribunal Judgement dated 08-12-2015.

But, my appeal was not decided. Hence, I was compelled to appeal in the Khyber Pakhtunkhwa services Tribunal for relief.

The judgment of services Tribunal is enclosed herewith for ready reference, which refers to the Judgment of Supreme Court, which says that the law of parity in identical cases may be extended to the Civil Servant who may not be the parties to the litigation.

Therefore, it is requested that my appeal may please be decided in the light of the said judgment.

Yours sincerely,

Javed Sultan, (Inspector)  
Excise & Taxation Office,  
Kohat

Dated: 17-01-2019



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ایڈویکٹ ادھتلا:

بار کونسل ابار ایسوسی ایشن نمبر: be-10

رابطہ نمبر: 0300-9151963



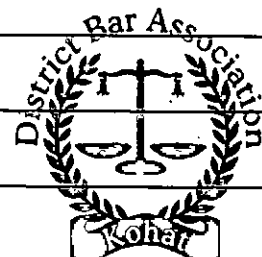
کوہاٹ بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

Petra / Mallet

منجانب:

ICPIC جاوید سلیمان بنام کوہاٹ بار ایسوسی ایشن



دعویٰ:

علت نمبر:

مورثہ:

تھانہ:

## باعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام نشہ کے لیے کوہاٹ بار ایسوسی ایشن کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کو کام کمال تک پہنچایا ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے پر تیار ہوگا، نیز صاحب بر حلف دینے جواب دعویٰ اقبال دعویٰ اور داخل شدہ اسٹا از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف سے اپیل کی درخواست اور منسوخی، نیز دائر کرنے اور اپیل کی نظر میں و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل کا مختار قانونی کو اپنے ہمراہ لیا جائے۔ بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ ذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر واضح منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے لیے اس سے ہوگا وہ وکیل موصوف وصول کرنے کا مختار ہوگا کوئی تاریخ پیشی مقام مذکورہ یا حد سے باہر ہو تو وکیل صاحب یا مقدمہ کے لیے اس سے پیروی نہ کرے گا اور اس کا نام لکھ دیا تاکہ سند رہے۔

Kohat

مقام

گواہ شد

کیلیے منظور ہے۔

مقام

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔