

03.09.2020

Nemo for petitioner. Addl. AG for the respondents present.


On the last date notice was ordered to be issued to the petitioner for today. The record shows that the requisite notice has duly been issued, despite, no one is in attendance on behalf of the petitioner. The matter is, therefore, consigned to record. The petitioner may, however, apply for its restoration as and when required but in accordance with law.



Chairman

10.03.2020

Petitioner in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Qazi Ayaz, Litigation Officer for the respondents present. Representative of the department stated that the implementation report is under process and requested for adjournment. Adjourned to 14.04.2020 for implementation report before S.B.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

14.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 08.07.2020 for the same. To come up for the same as before S.B.



Reader

08.07.2020

Nemo for the petitioner.

Mr. Usman Ghani learned District Attorney for the respondents present.

Notice be issued to petitioner and his counsel as well as to the respondents for submission of implementation report, for 03.09.2020 before S.B.


Member (J)

16.12.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Israr, Assistant (Litigation) for the respondents present.

The representative of respondents states that a CPLA has been preferred before the Apex Court against judgment under implementation wherein a date of hearing is yet to be fixed.

The respondents are required to produce on the next date of hearing any order of Apex court suspending or setting aside judgment under implementation. Else, the implementation report shall positively be furnished.

Adjourned to 28.01.2020 before S.B.

~~28.01.2020~~ ~~Petitioner in person present. Mr. Kabir Ullah Khattak learned~~
~~Additional Advocate General along with Kazi Ayaz Litigation~~
~~Officer for the respondents present and seeks time to furnish~~
~~reply/implementation report. Granted. To come up for~~
~~reply/implementation report on 10.03.2020 before S.B.~~

~~Member~~

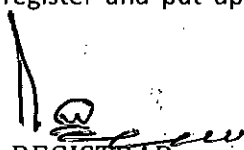

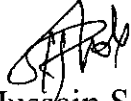
28.01.2020

Petitioner in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Kazi Ayaz Litigation Officer for the respondents present and seeks time to furnish reply/implementation report. Granted. To come up for reply/implementation report on 10.03.2020 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 379/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.10.2019	<p>The execution petition of Mr. Kashif Noman submitted today by him, 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-	14/10/19	<p>This execution petition be put up before S. Bench on <u>08/11/19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	08.11.2019	<p>Petitioner in person present.</p> <p>Notice be issued to the respondents for submission of implementation report on 16.12.2019 before S.B</p> <p style="text-align: right;"> (Hussain Shah) Member</p>

COURT CASE/MOST URGENT



GOVERNMENT OF KHYBER PAKHTUNKHWA
HIGHER EDUCATION, ARCHIVES & LIBRARIES DEPARTMENT

Subject: - EP NO. 379/2019 IN SERVICE APPEAL NO. 487/2018 KASHIF NOMAN VS SECRETARY, HED & OTHERS.

Will the Section Officer (C-II) Govt. of Khyber Pakhtunkhwa Higher Education, Archives & Libraries Department kindly refer to the subject noted above?

2. Enclosed please find herewith approval of the Competent Authority on Note Sheet vide Paras..17-18/N (copy of relevant Paras..13..to..21/N is enclosed) in instant case for further necessary action, under intimation to all stakeholders at the earliest, please.

3. Being Court matter, therefore, this may be treated as "Most Urgent".

Section Officer (C-II)
Higher Education Department

Section Officer (Litigation)
PH # 091-92132501 Fax # 091-9230102

U.O. No. SO (Lit) HED/ EP-30/EP#379/2019/ Kashif Noman

Dated 24-01-2020

Enclst: No. & date even.

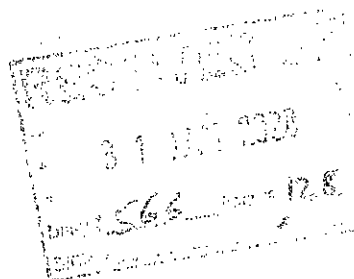
Copy forwarded to the: -

1. The Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Secretary (Colleges) Higher Education Department a/w copy of the above.
3. PS to Secretary Higher Education, Archives & Libraries Deptt Khyber Pakhtunkhwa.
4. PS to Special Secretary Higher Education, Archives & Libraries Deptt Khyber Pakhtunkhwa.
5. PA to Deputy Secretary (Lit) Higher Education Department.
6. Master file.

Section Officer (Litigation)

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3/3

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31/1/2020



BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No. 379/2019

C.M No _____/2019

In Re:

Service Appeal No 487/2018

Kashif Noman.....(Petitioner)

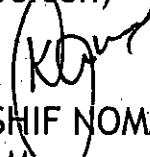
VERSUS

Secretary Higher Education and others.....(Respondents)

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Application for impleadment with affidavit	-	01 - 03
2.	Copy of the order dated 10-07-2019	-	04 - 07

Applicant/Appellant
(In person)



(KASHIF NOMAN)

S/O Munawar Saeed

R/O Asia Gate, Peshawar

Dated: -11-10-2019

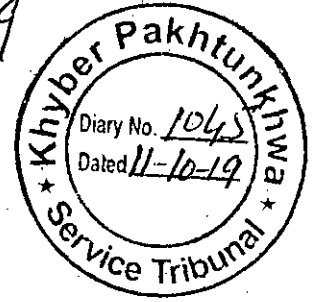
BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution Petition No. 379/2019

C.M No _____/2019

In Re:

Service Appeal No 487/2018



Kashif Noman.....(Petitioner)

VERSUS

Secretary Higher Education and others.....(Respondents)

Application for implementation of the
judgment and order dated 10th
July, 2019 of this Honourable Tribunal

Respectfully Sheweth:-


The Applicant humbly submits as under:-

- 1) That the Applicant/Appellant was serving in the Respondent Department.
- 2) That the Applicant/Appellant filed department appeal against the Respondents, which was not responded by the Respondent department.
- 3) That the Petitioner filed service appeal No 487/2018 before this Honourable Tribunal vide diary No 507 on 06-04-2018.
- 4) That the service appeal No 487/2018 of the Applicant/Appellant was accepted/allowed on 10-07-2019.
- 5) That after accepting/allowing the service appeal, the Petitioner approached to the Respondents/department for implementation of the order of this Honourable Tribunal,

but the Respondents/department are using delaying tactics to implement the order of this Honourable Tribunal, hence the instant application.

- 6) That there is no legal bar in allowing the instant application; rather the same shall secure the ends of justice.
- 7) That this Honourable Tribunal has got ample power to entertain the instant application.
- 8) That any other ground will be raised at the time of arguments with the prior permission of this Honourable Tribunal.

It is, therefore, respectfully prayed that on acceptance of this *Application*, the direction may kindly be issued to Respondents/department to implement the order dated 10-07-2019 of this Honourable Tribunal


Applicant/Appellant
(In person)

(KASHIF NOMAN)
S/O Munawar Saeed
R/O Asia Gate, Peshawar

Dated: -11-10-2019

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

C.M No _____/2019
In Re:
Service Appeal No 487/2018

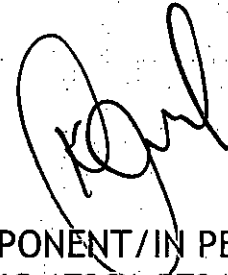
Kashif Noman.....(Petitioner)

VERSUS

Secretary Higher Education and others.....(Respondents)

AFFIDAVIT

I, Kashif Noman S/O Munawar Saeed R/O Asia Gate,
Peshawar City, do hereby solemnly affirm and declare on oath
that all the contents of accompanied Application are true and
correct to the best of my knowledge and belief and nothing has
been concealed OR withheld from this Honourable Court.



DEPONENT / IN PERSON
CNIC 17301-5721594-3
Cell # 0332-9212908

ATTESTED



04

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 487 /2018



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 507

Dated 6-4-2018

Kashif Noman
S/o Munawar Saeed
R/o Assya Gate Peshawar City

.....Appellant

VERSUS

1. Secretary Higher Education Department KP, Civil Secretariat
• Peshawar.
2. Director Higher Education Department, Khyber Pakhtunkhwa,
Peshawar.
3. Gul Rehman (Ex-Principal Govt: Abul Ali Khan Degree college
Utmanzai, Charsadda) Presently working as Professor of
Chemistry in Govt Post Graduate College Timergara (Dir
Lower).

.....Respondents

Filed to-day

Saeed,
Registrar

6/4/18

Service appeal u/s 4 of the K.P Service
Tribunal Act, 1974 for expunging the
adverse remarks of PER for Calendar
Year 2016 of Appellant.

PRAYER:

**On Accepting the instant appeal, the adverse remarks of
appellant for his PER 2016 may kindly be expunged with
benefits and obliged.**

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 487/2018

Date of Institution ... 06.04.2018

Date of Decision ... 10.07.2019



Kashif Noman, S/o Munawar Saeed, R/o Assya Gatyeh Peshawar City.
... (Appellant)

VERSUS

Secretary High Education Department Khyber Pakhtunkhwa, Civil Secretariat
Peshawar and two others.
... (Respondents)

MR. NASEEM ULLAH KHAN,
Advocate

--- For appellant.

MR. ZIAULLAH,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER (Executive)
--- MEMBER (Judicial)

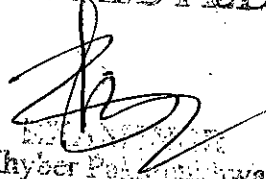
JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

02. Learned counsel for the appellant argued that he was appointed as Lecturer in Law (BPS-17) in the Higher Education Department through notification dated 15.10.2009 and performed duty to the entire satisfaction of the superiors. His previous PERs were graded as very good. That in the PERs for the year 2016 some adverse remarks were recorded by the reporting officer and endorsed by the countersigning officer were conveyed to him on 09.05.2017. He filed departmental appeal on 05.06.2017, which was regretted through letter dated 29.01.2018 followed by the present service appeal.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

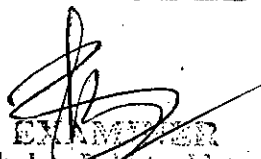
Respondents failed to observe procedure laid down in the Instruction for writing of PER. Attention is invited to para 3.6 of the afore mentioned Instructions whereby, prior counseling is mandatory before writing PER of a civil servant. In the case in hand adverse remarks were recorded in his PERs without prior counseling. Moreover, they were not communicated to him within the time span prescribed in the Instruction referred to above. Resultantly action on the part of respondent was nullity in the eyes of law and deserved to be struck down.

03. Learned Deputy District Attorney argued that he was not punctual in performing official duties and this fact was brought into the notice of the appellant but failed to reform himself. Adverse remarks were recorded in his PER after observance of all codal formalities

CONCLUSION

04. In the present case adverse remarks in the PERs for the year 2016 were recorded by the respondents without proper counseling. During the course of arguments though learned DDA, vehemently opposed the appeal on one pretext or the other but could not produce documentary evidence through which it could be established that he was properly counseled before recording adverse remarks in his PER. Action on the part of respondents goes against para 3.6 of instructions ^{to} ^{of} for writing PER circulated by the Provincial Government, as such the same is illegal and unlawful and cannot be sustained. Moreover, no speaking order was passed on his departmental appeal. As per 24-A of the General Clauses Act, 1897, respondents were bound to record

ATTESTED


 Attesting Officer
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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reasons for rejecting his departmental appeal. Even on this score they committed illegality/irregularity.

05. As a sequel to the above, the instant appeal is accepted and the impugned order dated 09.05.2017 and 09.01.2018 are set aside. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
MEMBER

(AHMAD HASSAN)
MEMBER

ANNOUNCED
10.07.2019

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	11-10-18
Number of Words	1600
Copying Fee	20-00
Urgent	4-00
Total	24-00
Name of Copyist	
Date of Completion of Copy	11-10-18
Date of Delivery of Copy	11-10-18