

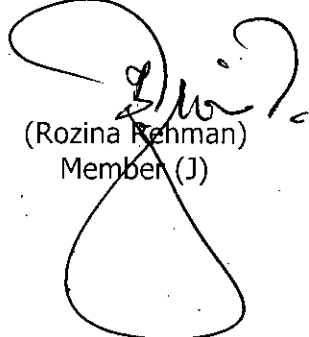
07.12.2020

Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Zar Muhammad Assistant for respondents present.

At the very outset order of the Apex Court in Civil Petition No.131-P of 2018 was produced before the Tribunal vide which operation of impugned judgment was suspended. Office order dated 07.10.2020 was produced vide which competent authority upgraded overall grading of the petitioner from average to good recorded in his P.E.R for the period from 11.05.2011 to 31.12.2011 subject to the final court orders of the August Supreme Court of Pakistan.

In view of above, the present execution proceedings stand adjourned sine die till the decision by the Apex Court. Petitioner would be at liberty to seek restoration after decision by the Apex Court. File be consigned to the record room.

  
(Rozina Rehman)  
Member (J)

EP 384/18

10.09.2020

Petitioner in person and Addl. AG alongwith Ihsanullah, S.O (Secret) for the respondents present.

Representative of respondent No. 1 states that a request to the learned Advocate General Khyber Pakhtunkhwa has been sent for submission of application for early hearing of CPLA. No date of hearing has, however, been conveyed to the respondents.

It is pertinent to mention that early hearing application/request was submitted in the month of April, 2019 but without any result. The respondents are, therefore, required to comply with the judgment under implementation in letter & spirit and submit requisite report on next date of hearing, in case the judgment of Tribunal is not set aside by the Apex Court or the operation thereof is not suspended till then.

Adjourned to 26.10.2020 before S.B.



Chairman

26.10.2020

Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Implementation report has not been submitted till today. Last chance is given to the respondents to comply with the judgment under implementation and submit requisite report on 07.12.2020 before S.B.



(Rozina Rehman)  
Member (J)

19.03.2020

Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sultan Shah, Superintendent for the respondents present. Implementation report not submitted. Last chance is given to the respondents with strict direction to submit implementation report on the next date positively. To come up for implementation report on 20.04.2020 before S.B.

*MA*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

20.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 14.07.2020 for the same. To come up for the same as before S.B.

*Q*  
Reader

14.07.2020

Petitioner in person and Addl: AG alongwith Mr. Sultan Shah, Supdt for respondents present.

Implementation report not submitted. Representative of the respondents is directed to produce the same on the next date of hearing otherwise the law will take its own course.

Adjourned to 10.09.2020 before S.B.

*Q*  
(Mian Muhammad)  
Member(E)

EP 384/2018

19.12.2019

Petitioner in person and Addl. AG for the respondents present.

Learned AAG states that the representative of respondents deputed to attend the proceedings today was not conversant with the matter, therefore, he is not produced before the Tribunal. A request for adjournment is made in order to ensure the availability of more responsible official on behalf of the respondents.

Adjourned to 28.01.2020 before S.B.



Chairman

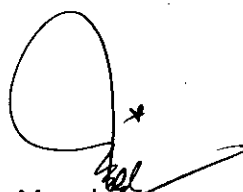
28.01.2020 Muhammad Bilal (Training Officer) present on behalf of appellant. Naqib Ullah Stenographer representative of the respondent department present and seeks time to furnish implementation report. Granted. To come up for further proceedings/implementation report on 04.03.2020 before S.B.



Member

04.03.2020

Petitioner in person present. Addl: AG alongwith Mr. Sultan Shah, Assistant for respondents present. Implementation report not submitted. Representative of the respondents states that the implementation report is in process and will be submitted on the next date of hearing. Respondents are strictly directed to submit proper implementation report positively on the next date of hearing. Adjourned. To come up for further proceedings on 19.03.2020 before S.B.



Member

07.10.2019

Petitioner in person and Addl. AG alongwith Naheed Gul, Assistant for the respondents present.

On 16.07.2019 the execution proceedings No. 384/2018 were consigned to the record due to absence of petitioner on different dates. The petitioner on 24.07.2019 submitted instant application for restoration of the proceedings.

As the judgment of this Tribunal passed in Appeal No. 683/2016 is not implemented/executed as yet, hence the application is allowed. Consequently, the execution petition No. 384/2018 is restored to its original number. The matter shall come up on 06.11.2019 for submission of implementation report.

  
Chairman

06.11.2019

Petitioner in person and Addl. AG alongwith Naqibullah, Stenographer for the respondents present.

The representative of respondents states that a CPLA has been preferred before the Apex Court questioning the judgment under implementation. Besides, an application for early hearing of CPLA has also been preferred in which no date of hearing is fixed as yet.

The respondents are required to produce any order of August Supreme Court of Pakistan suspending or setting aside judgment under implementation on next date of hearing. Else, the implementation report shall be produced before the Tribunal.

Adjourned to 19.12.2019 before S.B.

  
Chairman

Form- A

FORM OF ORDER SHEET

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

Restoration application No. 283 /2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	<p>24/07/2019</p> <p>20/08/19</p> <p>13.09.2019</p>	<p>The application for restoration of Execution Petition No. 384/2018 submitted by Muhammad Arshad, may be entered in the relevant register and put up to the Court for further order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p> <p>This Restoration application be put up before S.B on <u>13/09/19</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> <p>Petitioner in person.</p> <p>Notices be issued to the respondents for hearing on 07.10.2019 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>

16.07.2019

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

On the last date the petitioner was absent and, therefore, fresh notice was ordered by the Tribunal. The office has issued requisite notice to the petitioner through registered post for hearing today. Despite, he is not available even today. It appears that petitioner is no more interested in instant execution proceedings. The same are, therefore, consigned. The petitioner may apply for restoration of the proceedings if need be.

  
Chairman

23.04.2019

Petitioner absent. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Naqeebullah Stenographer for the respondents present. Implementation report not submitted. Adjourned. To come up for implementation report on 17.06.2019 before S.B.



Member

17.06.2019

None present on behalf of the petitioner. Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned to 16.07.2019 for implementation report before S.B. Notice be also issued to petitioner for attendance for the date fixed.



(Muhammad Amin Khan Kundi)  
Member



07.1.2019

Petitioner in person and Addl. AG alongwith Mr. Muhammad Anwar, S.O (Litigation) for the respondents present.

Representative of the respondents present in court in some other cases take notice of instant Execution Petition. To come up for implementation report on 12.02.2019 before S.B.

  
Chairman

12.02.2019

Petitioner in person present. Sultan Shah Assistant representative of the respondent department present. Implementation report not submitted. Representative of the respondent department requested for time to furnish implementation report. Granted. To come up for further proceedings/implementation report on 06.03.2019 before S.B.

  
Member

06.03.2019

Petitioner in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Naqeebullah, Stenographer for the respondents present. Implementation report not submitted. Learned Additional AG seeks adjournment. Adjourned to 20.03.2019 for implementation report before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

20.03.2019


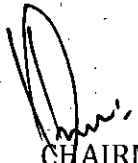
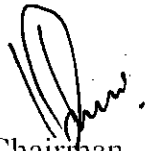
Petitioner in person and Mr. Kabirullah Khattak learned Addl; AG alongwith Mr. Naqeebullah Stenographer for the respondents present. Implementation report not submitted. Representative of the respondents seeks time to file implementation report. Last opportunity is granted. Adjourned. To come up for implementation report on 23.04.2019 before S.B

  
(Hussain Shah)  
Member

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. \_ 384/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2018	<p>The execution petition of Mr. Muhammad Arshad submitted by him may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-	<del>17-11-2018</del> 22-11-18	<p>This execution petition be put up before S. Bench on</p> <p> CHAIRMAN</p>
	22.11.2018	<p>Notice to all concerned. Adjourned to 07.01.2019 for implementation report before S.B.</p> <p> Chairman</p>

Original

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL, PESHAWAR.**

*Petition/*  
Execution Application No. 384 of 2018.

Mohammad Arshad, Director (A/F), Provincial Services Academy,  
Khyber Pakhtunkhwa at House No. 170, Street No. 15, Sector-G-3, Phase-  
II, Hayatabad, Peshawar.-----*Petitioner* Applicant.

Versus

1. The Government of Khyber Pakhtunkhwa through its Chief Secretary,  
Civil Secretariat, Peshawar.----- Respondents.

2. *Mr. Ahmad Haseem, the then Secretary Aogof Deptt, now*

*Khyber Services  
Tribunal KP,  
Peshawar.*

**APPLICATION FOR IMPLEMENTATION OF TRIBUNAL  
DECISION/JUDGMENT DATED 02.11.2017, PASSED IN  
SERVIC APPEAL NO. 683 OF 2016.**

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3.	Applicant Letter Dated 15.02.2018.	Annex-II	10
4.	Establishment Department Letter Dated 03.04.2018.	Annex-III	11-12
5.	Applicant Letter Dated 09.04.2018.	Annex-IV	13

Dated 16.10.2018

Applicant

*Mohammad Arshad*  
16.10.2018  
(MOHAMMAD ARSHAD)  
In Person  
0348-9745323

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES  
TRIBUNAL, PESHAWAR.**

Diary No. 2033

Dated 18.10.2018

<sup>Petition</sup>  
Execution Application No. 384 of 2018.

Mohammad Arshad, Director (A/F), Provincial Services Academy,  
Khyber Pakhtunkhwa at House No. 170, Street No. 15, Sector-G-3, Phase-  
II, Hayatabad, Peshawar.----- Applicant.

**Versus**

1. The Government of Khyber Pakhtunkhwa through its Chief Secretary,  
Civil Secretariat, Peshawar.----- Respondents

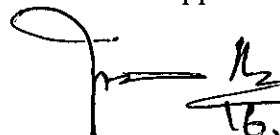
2. <sup>Mr. Ahmad Hamid - the Secy. A&F Dept. now Member S. Service Tribunal KP, Peshawar</sup>  
**APPLICATION FOR IMPLEMENTATION OF TRIBUNAL  
DECISION/JUDGMENT DATED 02.11.2017, PASSED IN  
SERVIC APPEAL NO. 683 OF 2016.**

Respectfully sheweth that:-

- i. The decision dated 02.11.2017, passed by the honourable Khyber Pakhtunkhwa Services Tribunal, Peshawar in Appeal No. 683/2016-titled-Mohammad Arshad-Vs.-Government of Khyber Pakhtunkhwa through its Chief Secretary, has converted the overall grading from "Average" into "Good" in the Performance Evaluation Report of the Applicant for the period from 11.05.2011 to 31.12.2011 (**Copy of Decision is at Annex-I**).
  - ii. The Public Body/Establishment Department was requested vide letter No. D(A&F)/PSA/1-10/PF/M.Arshad/2018/60 dated 15.02.2018 to provide a duly attested and stamped copy of office record under the provisions of RTI Act, 2013 wherein the requisite effect of the decision has been taken (**Copy of Letter is at Annex-II**).
  - iii. The Public Body/Establishment Department has informed vide its letter No. SO(HRD-II)/ED/1-10/2014(RTI)/M Arshad dated 03.04.2018 that the case is subjudiced in the Court as the Government of Khyber Pakhtunkhwa has filed CPLA in the august Supreme Court of Pakistan, therefore, the requisite information will be provided after final court orders (**Copy of Letter is at Annex-III**).
  - iv. The Applicant has responded vide letter No. D(A&F)/PSA/1-10/PF/M.Arshad/2018/137-38 dated 09.04.2018 to provide a copy of the relevant section/rule of law, wherein it has been provided that implementation/execution of the Tribunal Order will be automatically stayed because the Government has filed CPLA in the august Supreme Court of Pakistan (**Copy of Letter is at Annex-IV**).
2. Keeping in view the above submissions, it is therefore, respectfully prayed that the Respondent may be directed to implement the decision dated 02.11.2017, passed by this honourable Tribunal in Appeal No. 683/2016-titled-Mohammad Arshad-Vs.-Government of Khyber Pakhtunkhwa through its Chief Secretary, regarding conversion of overall grading from "Average" into "Good" in the Performance Evaluation Report of the Applicant for the period from 11.05.2011 to 31.12.2011.
3. Any other relief which this honourable Tribunal may deem proper may also be granted.

Dated 16.10.2018

Applicant

  
16.10.2018  
(MOHAMMAD ARSHAD)

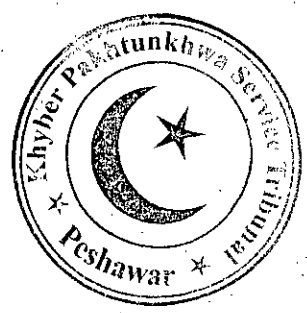
In Person

Annex - I  
Pages 2-9 of 13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 683/2016

Date of Institution ... 24.06.2016  
Date of Decision ... 02.11.2017



Mr. Muhammad Arshad, Additional Secretary, Housing Department, Peshawar.  
... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Peshawar  
and another. ... (Respondents)

APPELLANT

... Pro se

MR. ZIAULLAH,  
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,  
MR. GUL ZEB KHAN,

CHAIRMAN ATTESTED  
MEMBER

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

JUDGMENT

Arguments of the

NIAZ MUHAMMAD KHAN, CHAIRMAN.-

learned counsel for the parties heard and record perused.

FACTS

2. The appellant was given average overall grading in his P.E.R for the period from 11.05.2011 to 31.12.2011. The same was not communicated to him. The appellant came to know about the average report on his own. He filed a

*Arshad*  
*[Signature]*

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representation under Section 22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 on 09.07.2015 which was rejected on 14.09.2015. Thereafter he filed the present service appeal on 24.06.2016.

**ARGUMENTS.**

3. The appellant *Pro se* argued that no limitation shall be attracted in this appeal for the reason that his departmental appeal was rejected not on the basis of limitation. Secondly that no communication of average report was ever made to him officially. That he on his own made efforts to get copy of the report. That on merits, the entries are liable to be expunged and his overall grading is also liable to be upgraded for the reason that the Reporting Officer inked the P.E.R in violation of the instructions on the subject. He argued that the overall grading is not reflective of his performance as given in parts II and III of the P.E.R. That the Countersigning Officer has also blindly endorsed the report of the Reporting Officer. He further argued that the very order of rejecting his representation is void being decided by an incompetent authority and limitation is not attracted on this score as well. He added that the Reporting Officer has not supplemented his assessment on plausible reasons or any data. In this regard he replied on many judgments of the august Superior Courts. Some of which are 2007-SCMR-73 (On limitation), PLD 2002-Supreme Court-630 (void order attracts no limitation).

4. On the other hand, the learned Deputy District Attorney argued that the present appeal is not maintainable for the reason that the departmental appeal was also not maintainable as average entries are not communicated and there is no right of filing of departmental appeal/representation against such entries and hence no service appeal shall lie. He further argued that if at all the departmental appeal/

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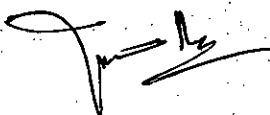
EX-100  
Khyber Pakhtunkhwa  
Service Tribunal  
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representation is permissible then that is time barred for the reason that the appellant came to know about average report in the year, 2014 and he represented against the same in the year, 2016. Secondly that after the rejection of the representation on 14.09.2015 communicated to him on 16.09.2015, he filed the present appeal on 24.06.2016 which is time barred. The learned Deputy District Attorney relied upon certain judgments on limitation including 2006-SCMR-453, 2009-SMR-1435. He further added that when the service appeal is time barred then merits cannot be touched by this Tribunal.

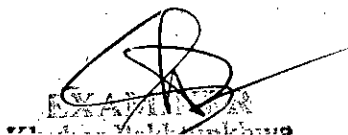
### CONCLUSION.

5. This Tribunal is first to decide the issue of limitation and if the appeal is time barred then, of course, merits are not be touched. Admittedly the average reports are not communicated under the existing instructions and no representation can be filed against the average reports under the Instructions on P.E.Rs of the Government of Khyber Pakhtunkhwa. Now the question would be that if the instructions on P.E.Rs have got no provision for representation against average reports then whether the aggrieved person can file any appeal/representation under other available rules or law? In this regard Section 22 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 is very much relevant which says that if any law or rules has no provision for appeal or review in respect of any order or class of orders a civil servant aggrieved by any such order may, within 30 days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order. This section protects a civil servant by providing one right of approaching the higher authority regardless of non provision of such remedy by relevant special rules. This section in fact fulfills the principles of natural justice coupled with right

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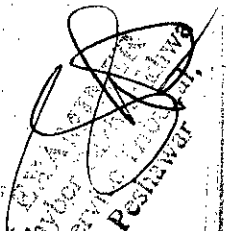


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to fair trial in which one right of appeal/representation must be provided to the aggrieved civil servant. The present appellant did file a representation under Section 22 of the Act because under the Instructions on P.E.Rs no provision existed for representation.

6. The next question would be that what is *terminus a quo* for such order. Sub section 2 of Section 22 of the Act says that *terminus a quo* is the day when the order is communicated to him. This communication undoubtedly is a formal communication and not informal communication. But since the Instructions on P.E.Rs clearly lay down that average reports are not to be communicated to the civil servant then how *terminus a quo* under sub section 2 of Section 22 of the Act shall be determined. There is no mention of knowledge of the aggrieved person. So in such situation the jurisprudential principles of interpretation is that the beneficial construction should be placed which should be in favour of the advancement of remedy and not the extinction of the remedy. Being no *terminus a quo* the appellant was at liberty to challenge the same when he felt aggrieved from the average entry. This Tribunal is of the view that the representation of the appellant was therefore, within time. The decision was also not taken on the representation by the competent authority who was the Chief Minister of the Khyber Pakhtunkhwa and it was decided by an authority not competent to decide the same on the ground that representation of the appellant could not be processed under para-3.7 of the Instructions on P.E.Rs. for the period from 11.05.2011 to 31.12.2011 being average and not adverse. Firstly this decision was made by an authority who was not competent to make it and secondly this very opinion of this incompetent authority is also not correct because the representation was made by the appellant not under the Instructions on P.E.Rs but under Section 22 of the Khyber Pakhtunkhwa Civil



Servants Act, 1973. As observed above that this sub section 2 of Section 22 of the Act provides remedy to civil servants in all those cases where rules and instructions have not provided for such remedy. This decision on his representation made by incompetent authority is void in the eyes of law and no limitation at all attracts for approaching this Tribunal as has been held in many judgments that void order does not attract limitation.

7. Now this Tribunal shall discuss the merits of the appeal. The learned Deputy District Attorney argued that in so many judgments of the superior courts, it has been held that the Tribunal has no jurisdiction to decide on the average reports as they are not communicated to the concerned civil servant. Though this Tribunal on the last date through a detailed order referred to a judgment of the august Supreme Court of Pakistan entitled "*S.T Rehman Vs. Government of Pakistan and 3 others*" reported as 1998-SCMR 103 in which the august Supreme Court of Pakistan framed four propositions as follows (i) *whether or not representation of an aggrieved person against supersession includes challenge to quantification, propriety of Annual Confidential Reports and criteria for selection?* (ii) *Whether or not Annual Confidential Reports which are obviously concealed from incumbent, though may not be adverse, yet directly affect the future career and his right of further promotion, can be challenged by way of appeal before Federal Service Tribunal?* (iii) *Whether writ petition challenging propriety of undisclosed Annual Confidential Reports, can, constitute notice to competent Authority and be substituted for representation to approach Federal Service Tribunal?* and (iv) *Whether or not question of limitation for challenging Annual Confidential Reports would be relatable to period when aggrieved person becomes aware about it?* After framing

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these propositions the august Supreme Court of Pakistan granted leave to appeal but despite adjournments, neither the appellant nor the learned Deputy District Attorney have been able to trace the final decision of the august Supreme Court of Pakistan on these propositions. These issues need detailed discussion but this Tribunal restrains itself from commenting and elaborating those propositions lest the august Supreme Court would have delivered the final judgment.

8. The case of the appellant can be disposed of without touching those propositions. It is true that the average reports cannot be challenged before the departmental authority or this Tribunal under the existing instructions but in the present case we are to see whether the disputed P.E.R is average and if it is so then, of course, we do not have the jurisdiction. If we go through all parts of the concerned P.E.R we would see that overall grading does not co-relate or consistent with other parts of the PER. In part-II the appellant has mentioned the job description and then brief account of his achievements. The learned Reporting Officer while commenting upon part-II has opined that "I partially agree" but has not given any data with reason for not agreeing fully with the performance of the appellant. Then in para-3 of part-III, he rated the appellant "An honest officer" and then in part-III para-4 "May be posted in the Law Department, in view of his inclination towards legal matters" and then in para-5 of the same part "Does not require any training". It means that the appellant was an efficient officer. Then in para 7 of the same part the appellant was considered "Fit for promotion"; whereas para-3.7 of the Instructions of 2006 dealing with the average report says that an officer who is superseded or whose promotion is deferred comes to know about it automatically when his juniors are promoted to higher scales/posts. It means that under these Instructions an average officer cannot be promoted but declaring the

ATTESTED

*[Handwritten Signature]*

appellant fit for promotion itself proved that the overall grading has been erroneously written as average. The instruction on the subject is 0.7(iii) which clearly says that in some cases the assessment of an officer in part II and Part III of the PER are not co-related. It has been further mentioned that to remove this inconsistency, the assessment of an officer in part-III should, as far as possible be based on the assessment made about his personal traits and on the job performance in part-II. If the major number of entries in Part-II are 'good' and in Part-III the officer is classified 'average' the Reporting Officer should give detailed reasons for his average assessment. The reporting officer has given no reasons for this. It means that the PER of the appellant is not average but is good. No Reporting Officer/Countersigning Officer is allowed to deviate from the instructions and give grading of his choice which does not co-relate with the overall impact of the PER. The reason for such report can be a mistake even as in the present case. So this Tribunal is of the view that the overall grading of the report of the appellant is not average and the jurisdiction of this Tribunal is not hit.

9. Under the instructions it is not the report of the Reporting Officer but of the final authority who is the Countersigning Officer. The instructions on the PERs enjoin upon the Countersigning Officer to correct the mistakes of the Reporting Officer but in the present case, the Countersigning Officer had mechanically endorsed the PER written by the Reporting Officer. However, he has added at S. No. 1 of Part-IV that he has seen the work of officer rarely and in para-2 of Part IV the Countersigning Officer agreed to the assessment of the Reporting Officer. But at least the Countersigning Officer was required to have looked into this matter whether the overall grading of the appellant given by the Reporting Officer co-

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa

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related with the overall impact of assessment but the Countersigning Officer has failed to do that.

10. In view of the above this appeal is accepted and his overall grading is corrected as "good". Parties are left to bear their own costs. File be consigned to the record room.

Announced SD/- Niaz Muhammad Khan,  
02-11-2017 Chairman

SD/- Gulzaib Khan,  
Member

Certified to be true copy  
FCAD  
Khuzdar  
Service Tribunal,  
Peshawar

Date of Presentation of Application 06-11-2017  
Number of Words 3200  
Copying Fee 18-0  
Urgent \_\_\_\_\_  
Total 18-0  
Name of Copyies [Signature]  
Date of Completion of Copy 20-11-2017  
Date of Delivery of Copy 20-11-2017

[Signature]



Annex - II  
Page 10 of 13

**PROVINCIAL SERVICES ACADEMY**  
Khyber Pakhtunkhwa at House No. 170, Street No. 15,  
Sector-G-3, Phase-II, Hayatabad, Peshawar.

No. D(A&F)/PSA/1-10/ PF/M.Arshad/2018  
Dated Peshawar the 15<sup>th</sup> February, 2018

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To,

The Public Information Officer, Government of Khyber  
Pakhtunkhwa, Establishment Department, Civil Secretariat,  
Peshawar.

Subject: - **DECISION DATED 02.11.2017 OF SERVICES  
TRIBUNAL IN APPEAL NO. 683/2016 - TITLED -  
MOHAMMAD ARSHAD - VS - GOVT. OF KHYBER  
PAKHTUNKHWA.**


Dear Sir,

I am to refer to the subject noted above and to enclose herewith  
a copy of decision dated 02.11.2017, passed by the honourable Khyber  
Pakhtunkhwa Services Tribunal, Peshawar in Appeal No. 683/2016-titled-  
Mohammad Arshad-Vs.-Government of Khyber Pakhtunkhwa through its  
Chief Secretary and Others. The tribunal has converted the "Average" overall  
grading in Performance Evaluation Report of the undersigned for the period  
from 11.05.2011 to 31.12.2011 into "Good".


It is requested to provide duly attested and stamped copy of  
office record under the provisions of RTI Act, 2013 wherein the requisite  
effect has been taken.

Encl. As Above.

Requester

  
(MOHAMMAD ARSHAD)  
Director (A&F)

Received  
etc

  
15/2/18



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GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(HRD WING)

Annex-III  
Page 11-12 of 13

No. SO (HRD-II)/ED/1-10/2014 (RTI)/M Arshad  
Dated Peshawar the 3<sup>rd</sup> April, 2018

To

Muhammad Arshad,  
Director (A&F) Provincial Services Academy Khyberpakhtunkhwa,  
House NO-170 Street NO-15 Sector-G-3 Phase-II Hayatabad,  
Peshawar.

Diary No. 87  
Dated 03-04-2018  
PSA (Khyber Pakhtunkhwa)  
Peshawar

Subject: - DECISION DATED 02-11-2017 OF SERVICE TRIBUNAL IN APPEAL NO 683/2016-  
TITLED MOHAMMAD ARSHAD-VS -GOVT OF KHYBERPAKHTUNKHWA.

Kindly refer to your letter No. D(A&F)PSA/1-10/PF/M ARSHAD/2018/126 dated 21-03-2018 on the subject noted above and to forward herewith a copy of letter No. SOS(ED)CR1(16)/2017 dated 03-04-2018 under Right to Information Act 2013.

Encl: As above:

  
Public Information Officer (P.I.O)  
Establishment Department


Endst: No & date even.

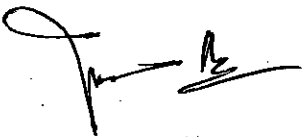
Copy forwarded to:

1. The Chief Information Commissioner, Government of Khyber Pakhtunkhwa, Right to Information Commission, 7<sup>th</sup> Floor, Tasneem Plaza, Near Benevolent Fund Building, 6<sup>th</sup> Saddar Road, Peshawar
2. The Section Officer (Secret), Establishment Department.
3. PA to Deputy Secretary (HRD) Establishment Department.

SECTION OFFICER (HRD-II)

Received on 05/04/2018.

  
05/04/2018



11 of 13



**RESTRICTED**  
**Government of Khyber Pakhtunkhwa**  
**Establishment Department**  
(SECRET SECTION)

No.SOS(ED)CR1(16) /2017  
Dated Peshawar the 03.04.2018

To

The Section Officer (HRD-II),  
Establishment Department,  
Govt. of Khyber Pakhtunkhwa.

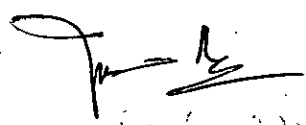
P-16

Subject: - **DECISION DATED 02-11-2017 OF SERVICE TRIBUNAL IN APPEAL NO 683/2016- TITLED MOHAMMAD ARSHAD -VS- GOVT OF KHYBER PAKHTUNKHWA.**

I am directed to refer to your letter No.SG(HRD-II)/ED/1-10/2014 (RTI)/M Arshad dated 29<sup>th</sup> March, 2018 on the subject noted above and to state that the case is subjudice in the Court as the Government of Khyber Pakhtunkhwa has filed CPLA in the august Supreme Court of Pakistan, therefore, the requisite information will be provided after final court orders.

  
~~Section Officer (Secret)~~

**Secret Section**



12 of 13



PROVINCIAL SERVICES ACADEMY  
Khyber Pakhtunkhwa at House No. 170, Street No. 15,  
Sector-G-3, Phase-II, Hayatabad, Peshawar.

Annex IV  
Pg 13 of 13

No. D(A&F)/PSA/1-10/ PF/M.Arshad/2018  
Dated Peshawar the 09<sup>th</sup> April, 2018

137-38

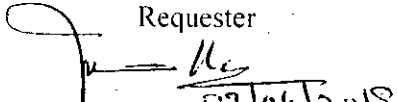
To,

The Public Information Officer, Government of Khyber  
Pakhtunkhwa, Establishment Department, Civil Secretariat,  
Peshawar.

Subject: - DECISION DATED 02.11.2017 OF SERVICES  
TRIBUNAL IN APPEAL NO. 683/2016 - TITLED -  
MOHAMMAD ARSHAD - VS - GOVT. OF KHYBER  
PAKHTUNKHWA.

I am to refer to your letter No. SO(HRD-II)/ED/1-10/2014(RTI)/M. Arshad dated 03.04.2018, received by the undersigned on 05.04.2018, on the subject noted above and to request to provide duly attested and stamped copy of information/record of the relevant section/rule of law, under the provisions of RTI Act, 2013 wherein it has been provided that implementation/execution of the Tribunal Order will be automatically stayed because the Government has filed CPLA in the august Supreme <sup>Court</sup> of Pakistan.

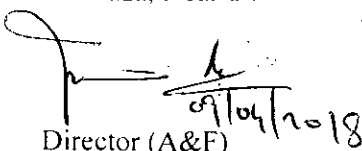
Requester

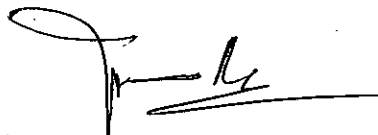
  
(MOHAMMAD ARSHAD)  
Director (A&F)

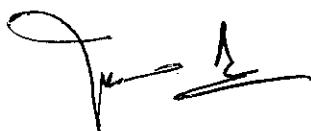
Fax No. 091-9330002, Mob. No. 03489745323

Copy to:-

The Chief Information Commissioner, Govt. of Khyber Pakhtunkhwa, Right to Information Commission, 7<sup>th</sup> Floor, Tasneem Plaza, Near Benevolent Fund Building, 6<sup>th</sup> Saddar Road, Peshawar.

  
Director (A&F)





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Government of Khyber Pakhtunkhwa  
Establishment Department  
(SECRET SECTION)

No No.SOS(ED)CR-1(13)/2020  
Dated Peshawar the 07.10.2020

To

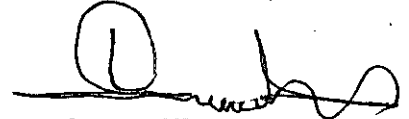
Mr.Muhammad Arshad (PCS SG/BS-20),  
OSD, Establishment Department.  
C/O Section Officer (E-I)

Subject: - UPGRADATION OF "AVERAGE" GRADING TO "GOOD" IN THE PER FOR THE PERIOD FROM 11.05.2011 TO 31.12.2011 IN RESPECT OF MR.MUHAMAMD ARSHAD (PCS SG/BS-20).

Dear Sir,

Reference your representation dated 9<sup>th</sup> July, 2015 and Judgment of the Khyber Pakhtunkhwa, Services Tribunal Peshawar dated 02.11.2017 the Competent Authority has been pleased to upgrade the overall grading from "Average" to "Good" recorded in your PER for the period from 11.05.2011 to 31.12.2011, subject to the final Court Orders of the Supreme Court of Pakistan.

Yours faithfully,

  
Section Officer (Secret)

SECRET SECTION

64

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, CJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CIVIL PETITION NO.131-P OF 2018**

[Against the judgment dated 02.11.2017, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeal No.683 of 2016]

**Government of KPK through Chief Secretary  
Establishment & Administration Department,  
Peshawar** ...Petitioner(s)

**Mohammad Arshad** ...Respondent(s)

For the Petitioner(s) : Barrister Qasim Wadood, Additional Advocate General, KP

For the Respondent(s) : N.R.

Date of Hearing : 16.11.2020

**ORDER**

**GULZAR AHMED, C.J.-** The respondent was given overall grading as "average" in Performance Evaluation Report (PER) for the period from 11.05.2011 to 31.12.2011. In terms of the Rules, such "average" grading in PER was not required to be communicated to the respondent. The respondent filed a service appeal in Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal), which by the impugned judgment dated 02.11.2017 came to be allowed and the Tribunal substituted its own assessment and gave the respondent overall grading as "good" in PER for the period mentioned above.

2. It is contended by the learned Additional Advocate General, KP that the very service appeal filed by the respondent was time-bared and in any case, no appeal could have been filed against the "average"

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Ialamehad

grading in the PER and further that the assessment being subjective, the Tribunal could not have allowed the appeal against such assessment and substituted its own assessment for which there was no basis available with the Tribunal.

3. The submissions made by the learned Additional Advocate, KP require consideration. Leave to appeal is granted to consider, *inter alia*, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to fix the same, expeditiously, preferably, after three months.

C.M.A.No.249-P of 2018

4. The operation of the impugned judgment is suspended.

Sd/HCI

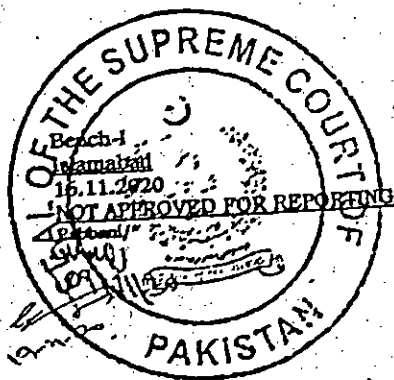
Sd/J

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Sd-J

Certified to be True Copy

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



Crt No: 17563/20  
Date of Presentation: 16/11/20  
No of Words: 10  
No of Pages: 6  
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Copy Fee In: 300  
Court Fee Stamp: 800  
Date of Completion of Copy: 27/11/20  
Date of Delivery of Copy: 23/11/2020  
Compared by: Prepared by: B.A.S  
Received by: B.A.S

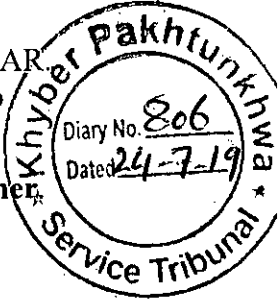
BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Execution Petition No. 384 of 2018.

*Restoration Application 283/19*

Mohammad Arshad -----

Petitioner.



Versus

The Government of Khyber Pakhtunkhwa (Establishment Department) & Others -----

Respondents.

**APPLICATION FOR RESTORATION OF EXECUTION PROCEEDINGS.**

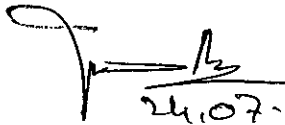
Respectfully submitted that:-

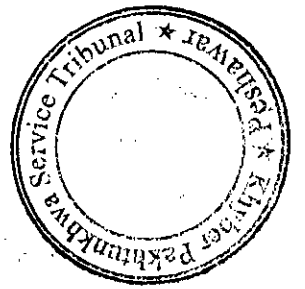
1. The above-titled execution petition No. 384 of 2018 was fixed for hearing on 16.07.2018.
2. I have inadvertently attended the tribunal on 17.07.2019 and it was learnt that the honourable Tribunal has consigned the case vide its order dated 16.07.2019 (**copy attached**).
3. I have not received the notice through registered post.
4. The honourable tribunal has given last opportunity to the respondents on 20.03.2019 to file implementation report but I have not received any implementation report as yet.
5. I may please be contacted on my new postal address as follows:- "**Mohammad Arshad, Additional Secretary, Inter-Provincial Coordination Department at Mian Rashid Hussain Shaheed Memorial Block, Civil Secretariat, Peshawar**".

Keeping in view the above-mentioned facts, it is, therefore, prayed that the execution proceedings in Execution Petition No. 384 of 2018 may please be restored as the applicant has not received implementation report.

Applicant

Dated 24.07.2019

  
24.07.2019  
(MOHAMMAD ARSHAD)  
In Person  
0348-9745323



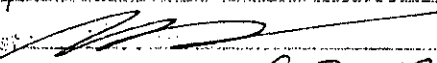
16.07.2019 Nemo for the petitioner. Asstt. AG for the respondents present.

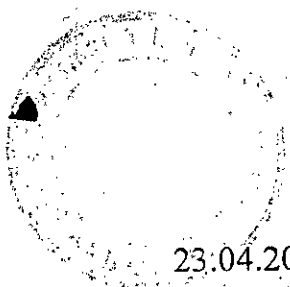
On the last date the petitioner was absent and, therefore, fresh notice was ordered by the Tribunal. The office has issued requisite notice to the petitioner through registered post for hearing today. Despite, he is not available even today. It appears that petitioner is no more interested in instant execution proceedings. The same are, therefore, consigned. The petitioner may apply for restoration of the proceedings if need be.

  
Chairman

**Certified to be true copy**

**Chairman**  
**Khyber Pakhtunkhwa**  
**Service Tribunal,**  
**Peshawar**

Date of Presentation of Copy	19-7-19
Number of Words	2000
Copying Fee	20-00
Urgent	4-00
Total	24-00
Name of Copyist	
Date of Completion of Copy	19-7-19
Date of Delivery of Copy	19-7-19



23.04.2019

Petitioner absent. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Naqeebullah Stenographer for the respondents present. Implementation report not submitted. Adjourned. To come up for implementation report on 17.06.2019 before S.B.

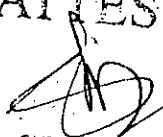
  
Member

17.06.2019

None present on behalf of the petitioner. Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned to 16.07.2019 for implementation report before S.B. Notice be also issued to petitioner for attendance for the date fixed.

  
(Muhammad Afan Khan Kundi)  
Member

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

07.1.2019

Petitioner in person and Addl. AG alongwith Mr. Muhammad Anwar, S.O (Litigation) for the respondents present.

Representative of the respondents present in court in some other cases take notice of instant Execution Petition. To come up for implementation report on 12.02.2019 before S.B.

  
Chairman

12.02.2019

Petitioner in person present. Sultan Shah Assistant representative of the respondent department present. Implementation report not submitted. Representative of the respondent department requested for time to furnish implementation report. Granted. To come up for further proceedings/implementation report on 06.03.2019 before S.B.

  
Member

06.03.2019

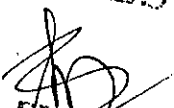
Petitioner in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Naqeebullah, Stenographer for the respondents present. Implementation report not submitted. Learned Additional AG seeks adjournment. Adjourned to 20.03.2019 for implementation report before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

20.03.2019

Petitioner in person and Mr. Kabirullah Khattak learned Addl; AG alongwith Mr. Naqeebullah Stenographer for the respondents present. Implementation report not submitted. Representative of the respondents seeks time to file implementation report. Last opportunity is granted. Adjourned. To come up for implementation report on 23.04.2019 before S.B

**ATTESTED**


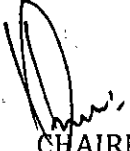
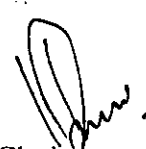

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

  
(Hussain Shah)  
Member

FORM OF ORDER SHEET

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

Execution Petition No. \_ 384/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2018	<p>The execution petition of Mr. Muhammad Arshad submitted 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	17-11-2018	<p>This execution petition be put up before S. Bench on <u>22-11-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	22.11.2018	<p>Notice to all concerned. Adjourned to 07.01.2019 for implementation report before S.B.</p> <p style="text-align: right;"> Chairman</p> <p style="text-align: center;"><b>ATTESTED</b></p> <p style="text-align: center;"> EXAMINER Khyber Pakhtunkhwa Service Tribunal, Peshawar</p>



**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.**

Case No. 2033

Execution Application No. 384 of 2018.

Dated 18.10.2018

Mohammad Arshad, Director (A/F), Provincial Services Academy, Khyber Pakhtunkhwa at House No. 170, Street No. 15, Sector-G-3, Phase-II, Hayatabad, Peshawar.----- Applicant.

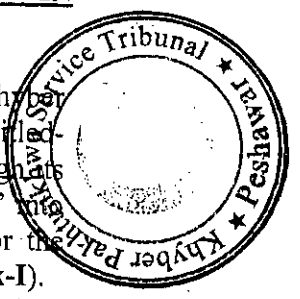
**Versus**

- 1. The Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar.----- Respondents.
- 2. *Mr. Ahmad Hanif - the Secy. Ansd Dept. now Member Service Tribunal KP, Peshawar*

**APPLICATION FOR IMPLEMENTATION OF TRIBUNAL DECISION/JUDGMENT DATED 02.11.2017, PASSED IN SERVIC APPEAL NO. 683 OF 2016.**

Respectfully sheweth that:-

- i. The decision dated 02.11.2017, passed by the honourable Khyber Pakhtunkhwa Services Tribunal, Peshawar in Appeal No. 683/2016-titled-Mohammad Arshad-Vs.-Government of Khyber Pakhtunkhwa through its Chief Secretary, has converted the overall grading from "Average" into "Good" in the Performance Evaluation Report of the Applicant for the period from 11.05.2011 to 31.12.2011 (Copy of Decision is at Annex-I).
  - ii. The Public Body/Establishment Department was requested vide letter No. D(A&F)/PSA/1-10/PF/M.Arshad/2018/60 dated 15.02.2018 to provide a duly attested and stamped copy of office record under the provisions of RTI Act, 2013 wherein the requisite effect of the decision has been taken (Copy of Letter is at Annex-II).
  - iii. The Public Body/Establishment Department has informed vide its letter No. SO(HRD-II)/ED/1-10/2014(RTI)/M Arshad dated 03.04.2018 that the case is subjudiced in the Court as the Government of Khyber Pakhtunkhwa has filed CPLA in the august Supreme Court of Pakistan, therefore, the requisite information will be provided after final court orders (Copy of Letter is at Annex-III).
  - iv. The Applicant has responded vide letter No. D(A&F)/PSA/1-10/PF/M.Arshad/2018/137-38 dated 09.04.2018 to provide a copy of the relevant section/rule of law, wherein it has been provided that implementation/execution of the Tribunal Order will be automatically stayed because the Government has filed CPLA in the august Supreme Court of Pakistan (Copy of Letter is at Annex-IV).
2. Keeping in view the above submissions, it is therefore, respectfully prayed that the Respondent may be directed to implement the decision dated 02.11.2017, passed by this honourable Tribunal in Appeal No. 683/2016-titled-Mohammad Arshad-Vs.-Government of Khyber Pakhtunkhwa through its Chief Secretary, regarding conversion of overall grading from "Average" into "Good" in the Performance Evaluation Report of the Applicant for the period from 11.05.2011 to 31.12.2011.
3. Any other relief which this honourable Tribunal may deem proper may also be granted.



Dated 16.10.2018

Applicant

*[Signature]*  
16.10.2018  
(MOHAMMAD ARSHAD)  
In Person

ATTESTED

*[Signature]*  
EX. CLERK  
Khyber Pakhtunkhwa  
Services Tribunal,  
Peshawar

1713