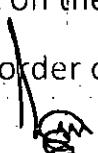


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 145/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.03.2023	<p>The execution petition Mr. Sarfraz Khan submitted today by Mr. Hamad Hussain Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No 145/2023

In

Service Appeal No 11880/20

Date of decision 23/12/2022

Sarfraz Khan EX SDEO (Male) Peshawar r/o Village and P/o Azakhel
District Peshawar. ...Petitioner

Versus

The Secretary to Govt of Khyber Pakhtunkhwa Elementary and Secondary
Education Department Peshawar and another.

..... Respondents

INDEX

S.No.	Description of Documents	Annex	Pages
1.	Memo of execution petitioner		1-5
2.	Judgment of this Tribunal dated 23-12-2022	"A"	6-10/10-A
3.	Application for implementation submitted to respondent dated 08-02-2023	"B"	11
4.	Power of Attorney		12 ✓
5.			
6.			

Petitioner

Through



(HAMAD HUSSAIN)

Advocate High Court Peshawar

03120952763

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No _____/2023

In

Service Appeal No 11880/2020

Date of Decision 23-12-2022

Sarfaraz Khan EX SDEO (Male) Peshawar r/o Village and P/o
Azakhel District Peshawar. ...Petitioner

Versus

1. The Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar.
 2. The Secretary to Govt of Khyber Pakhtunkhwa Elementary and
Secondary Education Department Peshawar.
- Respondents

**EXECUTION PETITION FOR IMPLEMENTATION OF JUDGMENT DATED
23-12-2022 OF THIS HONORABLE TRIBUNAL IN SERVICE APPEAL NO.
11880/2020 TITLED SARFARAZ KHAN EX SDEO MALE PESHAWAR VS
THE CHIEF SECRETARY KHYBER PAKHTUKHWA AND OTHERS.**

RESPECTFULLY SHEWETH:-

EXECUTION

23-12-2022

1. That the petitioner was serving as SDEO (BPS-17) Male Peshawar whereas upon him was imposed major penalty of Compulsorily Retirement from service on 26-08-2020 as one day before from the date of superannuation on the age of 60 years by the respondent department Secretary Elementary and Secondary Education.

2. That against the impugned order dated 26-08-2020 the petitioner filed Service Appeal No. 11880/2020 before this Honourable Tribunal which was allowed vide judgment dated 23-12-2022 [copy of judgment dated 23-12-2022 is attached as Annexure - A].

3. That the petitioner submitted judgment of this Honourable Tribunal dated 23-12-2022 to the respondents No. 2 i.e. Secretary, Elementary and Secondary Education on 08-02-2023 for implementation but no implementation has been made and still pending (copy of application for implementation as Annexure-B).

4. That the petitioner visited to the office of respondent No. 2 time and again for the purpose of implementation of judgment dated 23-12-2022 of the this Honourable Tribunal, but no positive response has been made by the respondent for implementation of the judgment dated 23-12-2022 and the respondents have decided to file CPLA against the said judgment before the apex Court.

5. That now the petitioner has got no other adequate remedy except to file this execution petition for immediate proceedings in accordance with law, equity and justice on with following grounds:-

Grounds:-

A. That as per judgment of the august Supreme Court of Pakistan reported as 2022 SCMR-1765 that once any judgment in favour of Civil Servant / employee is announced it should be implemented from date of decision and the department if delayed implementation of the said judgment benefit of that judgment shall be extended to the employee/ civil servant.

B. That the respondents are wilfully reluctant not to implement judgment dated 23-12-2022 of this Honourable Tribunal and the respondents are wilfully delaying the matters for ulterior motives, which amount to abuse of authority.

C. That judgment of this Honourable Tribunal dated 23-12-2022 is in field and no stay or suspension order has been granted by the august Supreme Court of Pakistan against the judgment dated 23-12-2022 of this Honourable Tribunal.

D. That as per Law of Civil Procedure code (CPC) the respondents should have implemented conditionally judgment dated 23-12-2022 of this Tribunal on priority basis prior to file CPLA in the apex Court, but the respondents have failed to implement judgment of this Honourable Tribunal as mentioned above.

E. That the respondents have floated judgment of this Honourable Tribunal and no appropriate action has been taken in spite of directions of this Honourable Tribunal, which amounts to contempt of this Tribunal.

F. That there is no scope of prima facia of the respondents CPLA to be succeeded in the apex Court against the judgment dated 23-12-2022 as judgment of this Honourable Tribunal is very balanced and according to law.

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G. That the respondents / contemnors are duty bound to implement the judgment of this Honourable Tribunal dated 23-12-2022 and if the respondents not implement judgment of this Honourable Tribunal contempt of Court proceeding under Art. 204 (2) (a) section 3 and 4 of the contempt act of the contempt of court for proceeding of the Constitution may kindly be initiated against the respondents.

H. Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to petitioners.

It is therefore, most humbly prayed that on acceptance this execution petition the respondents may very kindly be directed to implement judgment of this Honourable Tribunal dated 13/02/2020 in letter and spirit and the intervening period already treated Leave without pay may kindly also be treated into service and the petitioner may be reinstated into service with all back benefits as per judgment of this Honourable Tribunal.

Petitioner

Through Counsel

(HAMAD HUSSAIN)

Advocate High Court Peshawar
03120952763

(J)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. _____/2023

In

Service Appeal No 11880/2020

Date of Decision 23-12-2022

Sarfraz Khan EX SDEO (Male) Peshawar r/o Village and P/o Azakhel
District Peshawar. ...Petitioner

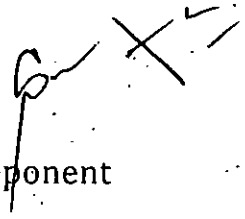
Versus

The Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar and
others. Respondents

AFFIDAVIT

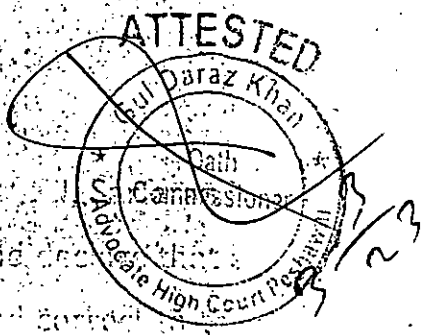
Sarfraz Khan EX SDEO (Male) Peshawar, hereby solemnly affirm
and declare that all the contents of the instant Execution Petition are true
and correct to the best and belief of my knowledge and nothing has been
concealed from this Honourable Tribunal.

The Chief Secretary
others.


Deponent

CNIC No. 17301-3485762-1

Mobile 0308-3387264

ATTESTED

Sarfraz Khan
District Peshawar
23

Annexure - A

6

A-



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 11880/2020

Sarfaraz Khan, Ex Sub-Divisional Education Officer (Male), Peshawar.

.....Appellant Khyber Pakhtunkhwa Service Tribunal

V E R S U S

Diary No. 11326

Dated 08/10/2020

1. Govt. of Khyber Pkhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Secretary, Elementary & Secondary Education, Govt. of Khyber Pakhtunkhwa, Peshawar.
3. Director, Elementary & Secondary Education, Govt. of Khyber Pakhtunkhwa Peshawar.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER COMMUNICATED TO THE APPELLANT VIDE LETTER DATED 30-09-2020 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE NOTIFICATION DATED 26-08-2020 HAS BEEN REGRETTE/FILED.

PRAYER:-

On acceptance of this appeal the impugned Order Communicated to the appellant vide letter dated 30-09-2020 & Notification dated 26-08-2020 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

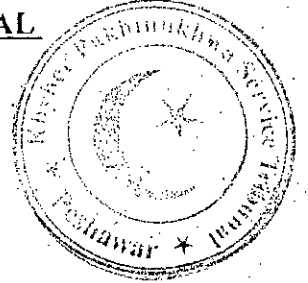
TESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

filed to-day
8/10/2020

1. That the appellant while serving as Sub-Divisional Education Officer (Male), Peshawar (herein after referred to as SDEO), was removed from service on the allegations of appointments of Class-IV employees sane Departmental Selection Committee meeting on 09-10-2018, the appellant after exhausting departmental remedy, approached this honorable Tribunal by filing Service Appeal No 136/2019 which was partially accepted, thereby reinstating the appellant into service with directions to the respondents to conduct and complete the denovo proceedings against the appellant within sixty days and that the issue of back benefits will be subject to the outcome of denovo inquiry vide Judgment dated 13-02-2020. **(Copy of Judgment dated 13-02-2020 is enclosed as Annexure A).**
2. That accordingly the appellant obtained copy of said Judgment on 11-03-2020 and reported arrival on 13-03-2020, however

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 11880/2020

Date of Institution ... 08.10.2020
Date of Decision ... 23.12.2022

Sarfraz Khan, Ex Sub-Divisional Education Officer (Male), Peshawar.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil
Secretariat, Peshawar and two others.
... (Respondents)

Fazal Shah Mohmand
Advocate ... For appellant.

Muhammad Riaz Khan Paindakhel
Assistant Advocate General ... For respondents.

Mrs. Rozina Rehman ... Member (J)
Miss. Fareeha Paul ... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

“That on acceptance of this appeal the impugned order
communicated to the appellant vide letter dated 30.09.2020
and notification dated 26.08.2020 may kindly be set aside
and the appellant may kindly be reinstated in service with
all back benefits.”

2. Brief facts of the case are that appellant while serving Sub-
Divisional Educational Officer (Male), Peshawar was removed from

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

service on the allegation of appointment of Class-IV employees through Departmental Selection Committee meeting on 09.10.2018. The appellant after exhausting departmental remedy, approached this Tribunal by filing service appeal No. 136/2019 which was partially accepted, thereby reinstating the appellant into service with direction to the respondents to conduct denovo proceedings against him within 60 days and that the issue of back benefits would be subject to the outcome of departmental inquiry vide judgment dated 13.02.2020. The appellant reported arrival on 13.03.2020 after getting copy of the judgment, however, he was reinstated into service vide notification dated 27.07.2020 and on the same very day inquiry committee was constituted. The denovo proceedings were initiated by serving charge sheet to the appellant upon which the appellant requested for the withdrawal of departmental proceedings being violative of the judgment and also raised objections. After inquiry show cause notice was issued to the appellant which was properly replied and lastly he was awarded major penalty of compulsory retirement from service and the period he remained out of service was treated as leave without pay. He filed departmental appeal which was regretted; hence the present service appeal.

3. We have heard Fazal Shah Mohmand Advocate learned counsel for the appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. learned counsel for the appellant contended that the impugned letter dated 30.09.2020 and notification dated 26.08.2020 are illegal

ATTESTED
 [Signature]
 MEMBER
 SERVICE TRIBUNAL

against law and facts as the mandatory provisions of law and rules were badly violated by the respondents. He contended that the appellant was not treated according to law as proper inquiry was not conducted and no one was examined in the presence of the appellant. He was also not afforded any opportunity of cross examination. Lastly, it was argued that the entire proceedings being based on malafide were liable to be set aside.

5. Conversely, the learned AAG submitted that departmental inquiry was conducted in view of the directions of the Service Tribunal and in pursuance to that major penalty of compulsory retirement was imposed upon the appellant. He contended that he was treated as per law, rules and procedure and after compliance of all legal formalities he was awarded punishment of compulsory retirement from service.

6. We have heard learned counsel for the parties and perused the record. From the record it is evident that appellant was serving as SDEO (M) Peshawar. A charge sheet was made out on the allegations of appointment of 20 Class-IV employees without calling DSC meeting. After exhausting departmental remedies, he filed service appeal No. 136/2019 which was partially accepted and case was remitted back to department for denovo inquiry vide judgment dated 13.02.2020. He submitted his arrival report on 13.03.2020 after getting copy of the judgment of this Tribunal but he was reinstated into service with immediate effect vide notification dated 27.07.2020. This delay in the reinstatement in the appellant was not explained by the learned AAG. He had to be reinstated right from the date of judgment of this Tribunal i.e 13.02.2020. Thereafter, competent authority constituted inquiry committee comprising of Mr. Kashif Iqbal Jilani and Gohar Ali Khan

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

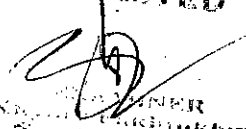
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to conduct denovo inquiry against the appellant vide notification dated 27.07.2020. Charge sheet alongwith statement of allegations were served upon the appellant and reply was also submitted by the present appellant. The inquiry committee recommended as follows:

"(1). The Elementary & Secondary Education Department may initiate disciplinary proceedings against Mr. Atta Ullah AD, Directorate of E&SE, Mr. Javid Abbas, Superintendent SDEO Office Peshawar, Mr. Muhammad Ishtiaq ASDEO Peshawar, Mr. Irfan Ali Deputy DEO Peshawar, Mr. Jaddi Khan Ex- DEO Peshawar and Mr. Sharif Khan Ex- DEO Peshawar for the irregularities committed by them.

(2). Attached formations may be directed to avoid attending DSCs and DPC meeting without written invitation and proper nomination by the competent authority. Moreover, direction may be issued regarding circulation of working paper seven days prior to the meeting scheduled date."

As per findings regarding appellant, the committee was of the opinion that 49 chowkidars were appointed in two phases. In phase 1, 28 chowkidars were appointed on the recommendations of DSC in its meeting held on 20.12.2013 and in phase 2, 21 chowkidars were appointed however, all the other members did not own minutes of the DSCs meeting. Show cause notice was then served on 18.08.2020 which was properly replied by the appellant on 25.08.2020 and on the next date i.e 26.08.2020, he was compulsory retired. It merits to mention here that the date of actual retirement of the appellant was 27.08.2020 but he was compulsory retired on 26.08.2020 which shows mala fide on the part of respondents. No opportunity of personal hearing


ATTESTED

 CHIEF CLERK
 Khuzdar District Council
 Service Tribunal
 Khuzdar


10-A

was ever afforded to the appellant. It is, however, a well-settled legal proposition, duly supported by numerous judgments of Apex Court, that for imposition of major penalty, regular inquiry is a must. The appellant was not given any chance of personal hearing and cross examining any witness. Members of DSC were never examined in the presence of the appellant and he was not given opportunity of cross examination.

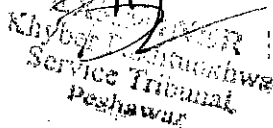
7. The long and short of the above discussion is that, this appeal is allowed. Appellant stands reinstated into service from the date when he was removed from service on 09.10.2018. He is also entitled to all back benefits right from the date i.e 09.10.2018 till his retirement on 27.08.2020. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
23.12.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 08-02-23
Number of Page 5
Copying fee 25/-
Urgent 5/-
Total 30/-
Name _____
Date of Copy 08-2-23
Date of Delivery of Copy 08-2-23

Annexure B

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To,

✓ The Secretary to Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department
Peshawar.

8/2/2023

D. No. 1766

Subject: **APPLICATION FOR IMPLEMENTATION OF JUDGMENT OF THE HONORABLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL DATED 23-12-2022 IN SERVICE APPEAL NO. 11880/2020 SARFARAZ KHAN EX SDEO MALE PESHAWAR VS GOVERNMENT OF KHYBER PAKHTUNKHWA AND OHTERS.**

Respected Sir,

With due respect it is submitted and enclosed herewith judgment of the Honorable Khyber Pakhtunkhwa Services Tribunal dated 23-12-2022 in S A No. 11880/20 Sarfaraz khan vs Government of the Khyber Pakhtunkhwa and others for implementation and further necessary action please (copy of judgment dated 23-12-2022 attached).

Dated 08/02/2023

Sarfraz Khan Ex SDEO Male
Peshawar

0308-3387264

