

**IMPLEMENTATION REPORT IN EXECUTION PETITION NO. 601/2022
IN SERVICE APPEAL NO. 763/2018 TITLED MUHAMMAD BASHIR
KHAN VS GOVT: OF KHYBER PAKHTUNKHWA & OTHERS**

- i. Judgment dated 12.07.2021 of the Khyber Pakhtunkhwa Service Tribunal was received in this department on 25.08.2021 and after recommendations of the Scrutiny Committee, CPLA was filed on 21.09.2021 (**Annex-I&II**).
- ii. Execution Petition No. 601/2022 alongwith order sheet dated 11.10.2022 of the Khyber Pakhtunkhwa Service Tribunal was received on 18.10.2022. Accordingly Establishment Department was requested vide letter dated 28.10.2022 (**Annex-III**) to tender its advice as to whether the case of promotion of the appellant to BS-20 will be required to be placed before the PSB or a summary will be required to be submitted before the Chief Minister, Khyber Pakhtunkhwa without recommendations of the PSB.
- iii. Establishment Department vide letter dated 14.11.2022 (**Annex-IV**) advised P&D Department to submit 09 sets of working paper complete in all respects with copies of judgments/orders for placement before the PSB.
- iv. P&D Department forwarded 09 sets of working paper complete in all respects vide letter dated 24.11.2022 (**Annex-V**).
- v. Establishment Department returned the working papers with some observations vide letter dated 16.12.2022 (**Annex-VI**).
- vi. After fulfilling the observations, working papers were again submitted to Establishment Department vide letter dated 20.12.2022 (**Annex-VII**).
- vii. Order sheet dated 20.01.2023 of the Khyber Pakhtunkhwa Service Tribunal was also forwarded to Establishment Department vide letter dated 06.02.2023 (**Annex-VIII**).
- viii. Establishment Department was also requested to place the instant case before the PSB through circulation vide letter dated 16.02.2023 (**Annex-IX**).
- ix. Order Sheet dated 20.01.2023 of the Khyber Pakhtunkhwa Service Tribunal was again forwarded to Establishment Department vide letter dated 09.02.2023 (**Annex-X**).
- x. Order Sheet dated 27.02.2023 of the Khyber Pakhtunkhwa Service Tribunal was forwarded to Establishment Department vide letter dated 09.03.2023 (**Annex-XI**).
- xi. Clarifications made above shows that P&D Department has acted in light of the judgment of Service Tribunal and now the case is in Establishment Department. As when the case is considered by PSB, the judgment will be implemented in toto.



ADDITIONAL CHIEF SECRETARY,
P&D DEPARTMENT
(Respondent No. 3)

Annex - I

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 763/2018

Date of Institution ... 31.05.2018
Date of Decision ... 12.07.2021



Muhammad Bashir Khan S/O Muhammad Mamor Khan R/O Flat No.33, Deans Complex, University Road, Peshawar.
... (Appellant)

VERSUS

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

Naveed Akhtar,
Advocate ... For appellant.

Muhammad Adeel Butt,
Additional Advocate General ... For respondents.

AHMAD SULTAN TAREEN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (J)

JUDGMENT

AHMAD SULTAN TAREEN CHAIRMAN: The question for determination in this judgment is whether deferment of promotion of the appellant by Provincial Selection Board (PSB) for want of Mandatory Senior Management Course (SMC) was justified when he was unable to overcome this barrier because of time factor linked with his soon reaching retirement by superannuation?

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

02. Nutshell of the factual account given in the memorandum of appeal is that the appellant after his appointment as Research Officer (BPS-17) in Planning & Development (P&D) Department was promoted in BPS-18 in due course of time and then on Acting Charge Basis in BPS-19 followed by regularization of his promotion in the said scale on 18.10.2016 with condition of probation period for one year. The promotion of the appellant after termination of probation period on 11.12.2017 was due in BPS-20 as the post was vacant and the appellant in terms of his seniority position was entitled to be considered for promotion to the said post. However, his promotion for technical reason of lacking of SMC was deferred when his name was included in the Working Paper with other officers for promotion against 03 vacant posts of Senior Chief of Sections (BPS-20). The appellant on grievance from deferment of his promotion on recommendation of P.S.B, preferred departmental appeal and after its presumptive rejection on expiry of 90 days waiting period, he approached this Tribunal by the Service Appeal at hand. The respondents were put on notice who joined the proceedings and have contested the appeal by refuting the claim of appellant in their written statement as well as at the bar, as far as relief is concerned.

03. We have heard the arguments and have perused record.

04. Learned counsel for appellant argued that the impugned deferment order is against law and facts. He submitted that the

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

probation period of the appellant was terminated on 11.12.2017 while the appellant was to be retired on 01.02.2018 so it was humanly impossible to undergo the found months training in 51 days. Further submitted that the respondents never offered the training to appellant nor was ever nominated for the same and they denied the due right to the appellant illegally and against the promotion policy; and that the competent authority promoted many officers by exempting from the training who were beyond the age of 58 years, thus, the appellant has been dealt with discrimination by the competent authority and requested for notional promotion from the date when the seat of Senior Chief of Sections fell vacant.

05. As against that learned A.A.G argued that appellant has rightly been deferred from promotion as the mandatory training i.e. Senior Management Course (SMC) is necessary for promotion to the post of Senior Chief of Section (BPS-20) and the appellant himself admitted that he had not undergone through the said training. Further submitted that appellant was on probation when the exemption in SMC mandatory training was waived off and on expiry of probation period, there was less time left to his retirement, therefore, appellant could not offered/recommended for SMC mandatory training. Lastly, he submitted that appellant was treated under the prescribed rules and policies of the Government and no right of the appellant has been violated.

06. Coming to the question for determination as indicated in beginning of this judgment, needless to say that the appellant has

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 MEMBER
 STATE OF PUNJAB
 SERVICE TRIBUNAL

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impugned the deferment of his promotion on grounds among others that his period of probation was terminated on 11.12.2017 while his retirement from service was due on 01.02.2018. So, it was humanly impossible for him to undergo the four months training in 51 days. It was added that he was never offered the training nor was ever nominated for the same. Parawise comments were submitted only on behalf of respondent No.3 i.e. Additional Chief Secretary, P&D Department. According to comments of the said respondent, facts narrated in the memorandum of appeal from Para-01 to 13 were not refuted with admission of their correctness. Ground-C of the memorandum of appeal relates to the point that appellant was never offered training nor was ever nominated for the same. Thus, denying the due right to him is against law and promotion policy. Ground-D relates to the exemption granted by the competent authority and P.S.B from the training to those whose age was about 58 years. The Ground-C was admitted as correct with the clarification that officer concerned was on probation when exemption in SMC mandatory training was waived off and after expiry of probation period, there was less time left to his retirement. Therefore, he could not be offered/recommended for SMC mandatory training. Ground-D was not commented upon by respondent No.3 because of its pertinence to the Establishment Department. However, the said Department being respondent No.2 in the memorandum of appeal did not file reply/comments despite last opportunity given as reflected in order dated 27.09.2019 of the proceedings of this appeal. Thus, in absence of rebuttal of the said

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Khyber Pakhtunkhwa
Services Commission

ground by the respondents, presumption in favor of the appellant becomes absolute that he was discriminated in the matter of exemption from mandatory training due to his closeness to superannuation on account of age factor and it is an admitted position that he was unable to undergo the mandatory training because of his soon reaching retirement from service.

07. According to final seniority list of Chief of Sections (BPS-19) as stood on 30.11.2017, copy whereof is available on file as Annexure-F, the appellant is shown at Serial No.3. The Minutes of Meeting of P.S.B held on 28.12.2017 relating Item No.7, as available on file, would reveal that the P.S.B in the said Meeting was apprised about the availability of three posts of Senior Chief of Sections (BPS-20) lying vacant. It was noted in the said Minutes that the post was required to be filled by promotion on the basis of seniority-cum-fitness from amongst Chief of Sections fulfilling the conditions enumerated for said promotion. Accordingly, the appellant was not lacking in any of the conditions. One of his seniors Mr. Ali Raza Khan was recommended for promotion while the promotion of his other senior was deferred on two counts i.e. due to pendency of an inquiry against him and his having not undergone mandatory training. The promotion of appellant was deferred simply for the reason of his having not undergone the training.

08. If we take into account the admitted and un-rebutted facts and grounds as discussed before, the appellant has suffered because of denial of promotion to him firstly for the reason beyond his control as

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Service Tribunal
Peshawar

human being and secondly, because of the discrimination in his case that he was not granted exemption because of his age factor when he was bound to retire from service on 01.02.2016 hardly after 34 days from the date of the Meeting of P.S.B i.e. 28.12.2017, wherein, the Board recommended to defer his promotion for want of Training. Thus, no room was left for the training. The factual account and grounds advanced by the appellant having remained un-rebutted by the respondents very safely attract the doctrine of impossibility. Accordingly, where the law creates a duty or charge and the party is disabled to perform it, without any fault in him, and has no remedy over, the law will in general excuse him. The said doctrine finds its place in the Latin Maxim: "*Lex non cogit ad impossibilia*" meaning that the law does not compel the doing of impossibilities:

09. Though applied in different context of the law and facts but there are reported judgments which make scope for application of this principle in the administration of justice. The august Supreme Court of Pakistan applied this maxim in the case of "Muhammad Yar through Legal Heirs Vs. Muhammad" (2003 SCMR 1772). It was held: "In the case in hand the provisions as contained in section 4 of the Limitation Act, 1908 which revolves around two maxims i.e. "*Lex non cogit ad impossibilia*" (the law does not compel a man to do that which he cannot possibly perform) and "*Actus curiae neminem gravabit*" (an act of the Court shall prejudice no man) can safely be made applicable as no fault could be attributed to the respondent."


ATTESTED

W. NAWAZ
 Member Panchajanya
 Public Tribunal
 Peshawar

10. The Lahore High Court in the case "Messrs Akhtar Brothers & Co. Lahore. Vs. Commissioner Income Tax, Lahore (1973 PTD 527) while applying the doctrine of impossibility held as follows: "Reference may in this connection be made to the maxim-"*Lex non cogit ad impossibilia*" which when rendered into English means "the law does not compel a man to do that which he cannot possibly perform". Sir W. Scott has been quoted by Broom to his classic book "The Legal Maxims", 10th Edn., p. 162, as having said- "the law itself and the administration of it, with reference to an alleged Infraction of the revenue laws, must yield to them to which everything must bend, to necessity, the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling to impossibilities, and the administration of laws must adopt that general exception for the consideration of all particular cases."

11. What emerges from the foregoing discussion, the appellant has got a fit case where principle of "*Lex non cogit ad impossibilia*" would apply. Since the appellant could not surmount the obstacle of SMC in the way of his promotion simply for the reason that it was not possible for him in span of his service left to his retirement after appearance of the said necessity of SMC on his part. Therefore, we hold him entitled for ~~notional promotion~~ with all accruable benefits from the date when his promotion was recommended to be deferred for want of SMC. The appeal stands disposed of accordingly in favor

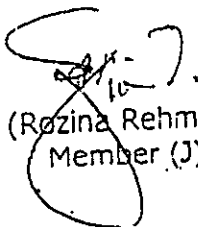
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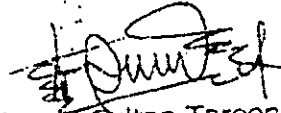

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 Revenue Department
 Service Department
 P.O. Lahore


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of the appellant and against the respondents. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
12.07.2021


(Rozina Rehman)
Member (J)


(Ahmad Sultan Tareen)
Chairman


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

Date of Presentation of Application 13/7/2021
Number of Words 3600
Copying Fee 38
Urgent no
Total 38
Name of JK
Date of Completion of Copy 25/8/21
Date of Delivery of Copy 25/8/21

Annex - II

POWER OF ATTORNEY
IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

CPLA. No. 475-P /2021

Govt. of KPK and others

PETITIONER(S)

VERSUS

MURAMBIAD BASHIR


RESPONDENT(S)

I/we Petitioner/Govt. of KPK in the above suit/Appeal/Petition/Reference, do hereby appoint and constitute Moin-ud-Din Humayun, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid appellant [or plaintiff(s) or Petitioner(s) or Respondent (s) or defendant (s) or opposite party] to commence and prosecute (or to appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the process of the Court, to appoint and instruct counsel, to represent the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] in the above matter and to do all things incidental to such acting for the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party]. The aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] agree (s) to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority

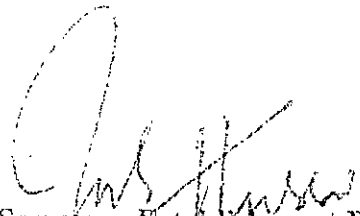
In witness whereof I/we do hereunto set my/our hand (s) this day of

Accepted

Signed with Official seal stamp


(Moin-ud-Din Humayun)
Advocate-on-Record
Supreme Court of Pakistan
(for KPK) Advocate-General's
Office KPK, High Court Building, Peshawar.
Office T.N. # 091-9210312, 9210119

1- Chief Secretary Govt. of Khyber Pakhtunkhwa, Peshawar


2-4 Secretary Establishment Department Govt. of Khyber Pakhtunkhwa, Peshawar

3- Additional Chief Secretary Planning & Development Department Khyber Pakhtunkhwa, Peshawar


 No. SO(E)P&D/067/1-139/2022.
 Dated Peshawar, October 28, 2022.

To

 The Secretary to Govt: of Khyber Pakhtunkhwa,
 Establishment Department.

 Subject: **EXECUTION APPLICATION NO. 601/2022 IN SERVICE APPEAL
 NO. 763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT
 OF KHYBER PAKHTUNKHWA .**

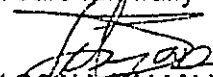
Dear Sir,

I am directed to refer to the subject cited above and to state that Muhammad Bashir Khan, ex-PPS BS-19 Officer, had filed a Service Appeal in Khyber Pakhtunkhwa Service Tribunal and requested to set aside impugned order/recommendation of Provincial Selection Board and he may be granted notional promotion from the date of occurrence of the post of Senior Chief of Section (BS-20). The Hon'able Service Tribunal vide its judgment dated 12.07.2021 (copy enclosed) accepted his appeal and declared that the appellant is entitled for notional promotion with all accruable benefits from the date when his promotion was recommended to be deferred for want of SMC.

I am also directed to inform that this department has filed CPLA in the August Supreme Court of Pakistan, however, so far, neither any date of hearing has been fixed nor stay has been granted. Furthermore, the appellant has filed an Execution Application before the Service Tribunal and the Tribunal has directed to produce compliance report on the next date of hearing (copy enclosed).

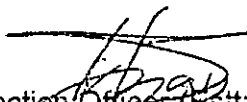
I am, therefore, directed to request to tender advice as to whether the case of promotion of the appellant to BS-20 is required to be placed before the Provincial Selection Board OR a summary is required to be submitted for approval of Chief Minister, Khyber Pakhtunkhwa without recommendations of PSB?

Yours faithfully


 (SONA KHAN) 28/10/22
 Section Officer (Estt:)
Encls: No. & Date even.

Copy forwarded to the:

1. Section Officer (Litigation), P&D Department with the request to approach Advocate General, Khyber Pakhtunkhwa for filing of an application for early hearing and for grant of status quo in the CPLA already filed in the instant case.
2. PS to Secretary, P&D Department.


 Section Officer (Estt.)
 28/10/22

299

No. 202-14



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSE)ED/1-17/2021/Kc-425
Dated Peshawar, the November 14, 2022

To

The Secretary to the Govt. of Khyber Pakhtunkhwa,
Planning & Development Department.

SUBJECT: EXECUTION APPLICATION NO. 601/2022 IN SERVICE APPEAL NO. 769/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVERNMENT OF KHYBER PAKHTUNKHWA.

Dear Sir,

I am directed to refer to P&D department letter No. SO(E)P&D/087/1-139/2022, dated 28.10.2022 on the subject noted above and to say that nine sets of working paper complete in all respects with Court judgements/orders may be forwarded to this department at the earliest being a Court matter for placement before the PSB.

Yours faithfully,

[Signature]
SECTION OFFICER (PSB) 14/22

Secretary
P&D Department
Diary No. 1303
Dated 14-11-22

Asst
S of Estt
[Signature] 14/11
PS

Part...
LA
[Signature]
15/11/22

Auth: Secretary
Diary No. 1303
Dated 14/11/22

SO (E) P&D
087/1-139/2022
Dated 28.10.2022

MOST IMMEDIATE:
COURT MATTER.



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

No. SO(E)P&D/087/1-139/2022.
Dated Peshawar, November 24, 2022.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department.

Attention: Section Officer (PSB):

Subject: **EXECUTION APPLICATION NO. 601/2022 IN SERVICE APPEAL
NO. 763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT
OF KHYBER PAKHTUNKHWA .**

Dear Sir,

I am directed to refer to Establishment Department letter No. SO(PSB)ED/1-17/2021/Kc-425, dated 14.11.2022 on the subject cited above and to submit herewith nine (09) sets of working paper regarding promotion of Muhammad Bashir Khan, ex-BS-19 Officer to the post of Senior Chief of Section (BS-20), for placement before the PSB for its consideration, please.


Yours faithfully


(SONA KHAN) 24/11/22
Section Officer (Estt.)

Endst. No. & Date even.

Copy forwarded to the:

1. Section Officer (Litigation), P&D Department.
2. PS to Additional Chief Secretary, P&D Department.
3. PS to Secretary, P&D Department.
4. PS to Additional Secretary-II, P&D Department.


Section Officer (Estt.)
24/11/22



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-17/2021/P-56
Dated Peshawar, the 16.12.2022

Add: Secretary-I
Diary No. 369
Dated 16/12/2022

To

The Secretary to the Govt. of Khyber Pakhtunkhwa,
Planning & Development Department.

SUBJECT:

EXECUTION APPLICATION NO.601/2022 IN SERVICE APPEAL
NO.763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT OF
KHYBER PAKHTUNKHWA.

Dear Sir,

I am directed to refer to Planning & Development Department letter No. SO(E)P&D/087/1-139/2022 dated 30.11.2022 on the subject and to say that the case has been examined in Regulation Wing and observed that: -

- i. Quantification score of the officer has not been worked out correctly. The same has been corrected with pencil in one set of working paper.
- ii. Documents regarding filing of CPLA is not attached with the working paper.
- iii. Promotion notification of his colleagues i.e panelists dated 29.01.2018 is not attached with the working paper.

2. The working paper and other documents received with the letter quoted above are returned herewith in original for doing the needful.

Yours faithfully,

[Signature]
SECTION OFFICER (PSB)
16/12/22

[Signature]
AS-II
SO(E)
16/12/22

Encl: As above.

ENDST. OF EVEN NO. & DATE.

A copy is forwarded to the Section Officer (R-III), Establishment Department

[Signature]
SECTION OFFICER (PSB)

[Signature]
16/12/22

SECRETARY (R-III) P&D
Diary No. 2251
Dated 16.12.2022

COURT MATTERS.



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

No. SO(E)P&D/087/1-139/2022.
Dated Peshawar, December 20, 2022.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department.

Attention:

Section Officer (PSB):

Subject:

**EXECUTION APPLICATION NO. 681/2022 IN SERVICE APPEAL
NO. 763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT
OF KHYBER PAKHTUNKHWA.**

Dear Sir,

I am directed to refer to Establishment Department letter No. SO(PSB)ED/1-17/2021/P-56, dated 16.12.2022 on the subject cited above and to re-submit eight (08) sets of working paper after doing the needful for placement before, the PSB for its consideration, please.

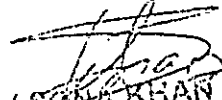
Encl: (As above).

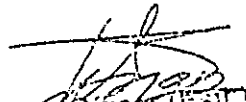
Encls: No. & Date even.

Copy forwarded to the:

1. Section Officer (Litigation), P&D Department.
2. PS to Additional Chief Secretary, P&D Department.
3. PS to Secretary, P&D Department.
4. PS to Additional Secretary-II, P&D Department.

Yours faithfully


(SONA KHAN)
Section Officer (Estt.) 17/12/22


Section Officer (Estt.) 20/12/22

IMMEDIATE/
COURT MATTERSGOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEV: DEPARTMENTNo. SO (LIT) P&DD/3-33/E.P NO.601/2022
Dated Peshawar the, 06th February, 2023.Annex-VIII
3/10

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Establishment Department.

Subject:

EXECUTION PETITION NO.601/2022 IN SERVICE APPEAL
NO.763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT: OF
KHYBER PAKHTUNKHWA & OTHERS.

Dear Sir,

I am directed to enclose herewith a self-explanatory copy of order sheet dated 20-01-2023 received from Khyber Pakhtunkhwa Service Tribunal, Peshawar for proper implementation report before 27-02-2023, please.

The matter may be treated as most immediate being a court case.

Yours faithfully,

SECTION OFFICER (Lit:)

Encls: As Above
END OF EVEN NO & DATE.

Copy forwarded to the:

1. Section Officer (Estt), P&DD for similar necessary action (copy enclosed).
2. P.S to Secretary, P&D Department.
3. P.A to Additional Secretary-II, P&D Department.
4. P.A to Deputy Secretary-I, P&D Department.

SECTION OFFICER (Lit:)

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Annex-VIII
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IMMEDIATE/
COURT MATTERS



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEV: DEPARTMENT

No. SO (LIT) P&DD/3-33/EP No.601/2022
Dated Peshawar the, 06th February, 2023

To

The Secretary to Govt: of Khyber Pakhtunkhwa,
Establishment Department.

Subject:

EXECUTION PETITION NO.601/2022 IN SERVICE APPEAL
NO.763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT: OF
KHYBER PAKHTUNKHWA & OTHERS.

Dear Sir,

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The matter may be treated as most immediate being a court case.

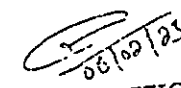
Yours faithfully,

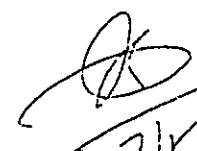
SECTION OFFICER (Lit:)

Ends: As Above
ENDST OF EVEN NO & DATE.

Copy forwarded to the:

1. Section Officer (Estt), P&DD for similar necessary action (copy enclosed).
2. P.S to Secretary, P&D Department.
3. P.A to Additional Secretary-II, P&D Department.
4. P.A to Deputy Secretary-I, P&D Department.


SECTION OFFICER (Lit:)

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7/1/23



E.P. No. 601/2022
M. Baghri vs Govt

Junior to counsel for the petitioner present. Naseer
Ud Din Shah learned Assistant Advocate General along with
Asad Ullah S.O for respondents present.

Perusal of order sheet dated 19.12.2020 would reveal
that working paper regarding promotion of the petitioner
had been submitted to the Establishment Department, till
today no progress was shown therefore, the representative
present before the bench is strictly directed to show
correspondents in between respondent No. 2 and 3. Notice
be issued to respondent No. 2 with direction to depute
officer of Grade-17 for attendance along with progress
report in the matter failing which salaries of all the 4
respondents would be attached till further orders. To come
up proper implementation report on 27.02.2023 before S.B.

Certified to be true copy

(Rozina Rehman)
Member (J)

Khy. Pakhtunkhwa
Service Tribunal
Peshawar

[Handwritten signature]

06/2/23
06/2/23



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

No. SO(E)P&D/087/1-139/2015/Vol-II.
Dated Peshawar, February 16, 2023.

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Establishment Department.

Subject: **EXECUTION PETITION NO. 601/2022 IN SERVICE APPEAL NO. 763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVERNMENT OF KHYBER PAKHTUNKHWA.**

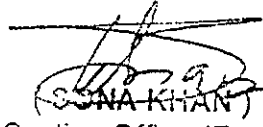
Dear Sir,

I am directed to refer to this department letter No. SO(LIT)P&DD/3-33/E.P No.601/2022, dated 06.02.2023 (copy enclosed) on the subject cited above and to state that the Khyber Pakhtunkhwa Service Tribunal has directed to implement the decision otherwise adverse orders will be issued against the respondents.

I am further directed to inform that as no PSB is scheduled till the next date of hearing, therefore, it would be appropriate to place the case before the PSB through circulation.

I am therefore, directed to request to place the instant case before the PSB through circulation, please.

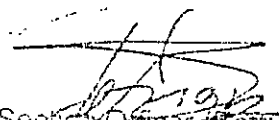
Yours faithfully,


(SANA KHAN) 16/2/2023
Section Officer(Estt.)

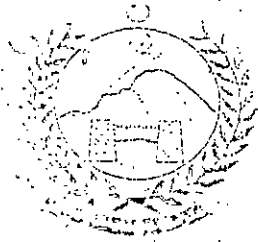
Enclat. Of even Number & Date.

Copy forwarded to the:

1. Section Officer (Litigation), P&D Department.
2. PS to Additional Chief Secretary, P&D Department.
3. PS to Secretary, P&D Department.


Section Officer (Estt.)
16/2/2023

IMMEDIATE /
COURT MATTERS



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEV: DEPARTMENT

No. SO (LIT) P&DD/3-33/E.P No.601/2022

Dated Peshawar the, 9th February, 2023

To

The Section Officer (PSB)
Establishment Department.

Subject: EXECUTION PETITION NO.601/2022 IN SERVICE APPEAL
NO.763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT: OF
KHYBER PAKHTUNKHWA & OTHERS.

I am directed to enclose herewith a self-explanatory copy of order sheet dated 20-01-2023 received from Khyber Pakhtunkhwa Service Tribunal, Peshawar for proper implementation report before the next date of hearing dated 27-02-2023, please.

The matter may be treated as most immediate being a court case.

Encl. (As Above)

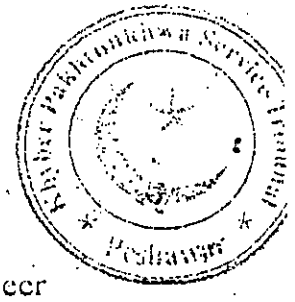
Encl. No & date even.

Copy forwarded to the:

1. Section Officer (Estt) P&DD for further necessary action (copy enclosed).
2. P.S to Secretary P&D Department.
3. P.A to Additional Secretary-II, P&D Department.
4. P.A to Deputy Secretary-I, P&D Department.

SECTION OFFICER (Lit)

SECTION OFFICER (Lit)



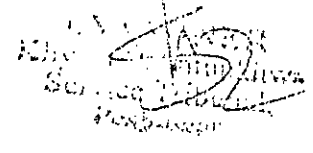
E.P. No. 601/2022
M. Beglar vs Govt

20.01.2023

Junior to counsel for the petitioner present. Naseer Ud Din Shah learned Assistant Advocate General alongwith Asad Ullah S.O for respondents present.

Perusal of order sheet dated 19.12.2020 would reveal that working paper regarding promotion of the petitioner had been submitted to the Establishment Department, till today no progress was shown therefore, the representative present before the bench is strictly directed to show correspondents in between respondent No. 2 and 3. Notice be issued to respondent No. 2 with direction to depute officer of Grade-17 for attendance alongwith progress report in the matter failing which salaries of all the 4 respondents would be attached till further orders. To come up proper implementation report on 27.02.2023 before S.B.

Certified to be true copy



(Rozina Rehman)
Member (J)

Date of Presentation of application 25-1-23
Number of Page 1
Copying Fee 5/-
Urgent 5/-
Total 5/-
Date of this order 06/2/23
Date of Discharge to 06/2/23

LA [Signature]
9/2/23

Amended

2/2/23

GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

No. SO (LIT) P&DD/3-33/E.P No.601/2022
Dated Peshawar the, 09th March, 2023

To
The Section Officer (Estt),
P&D Department.

Subject: EXECUTION PETITION NO.601/2022 IN SERVICE APPEAL NO.763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT. OF KHYBER PAKHTUNKHWA & OTHERS.

I am directed to enclose herewith a self-explanatory copy of order sheet dated: 27-02-2023 received from Khyber Pakhtunkhwa Service Tribunal, Peshawar for proper implementation report before the next date of hearing dated: 27-03-2023, please.

The matter may be treated as most immediate being a court case.

SECTION OFFICER (Lit)

Encl. (As Above)

Encl. No & date even.

Copy forwarded to the:

- 1. P.S to Secretary P&D Department.
- 2. P.A to Chief (RoL), P&D Department.
- 3. P.A to Deputy Secretary-I P&D Department.

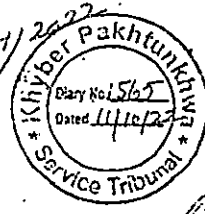
SECTION OFFICER (Lit)

2/2/23

2/2/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Execution Petition no. 601/2022



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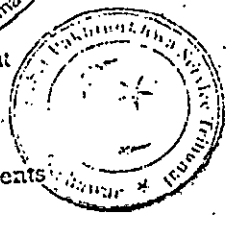
IN Re:

S. Appeal No. 263/2018

Muhammad Bashir Khan Appellant

Versus

Govt. of Khyber Pakhtunkhwa through
Chief Secretary & others Respondents



APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 12.07.2021 OF THIS
HON'BLE TRIBUNAL

Respectfully Sheweth:

Appellant humbly submits as under:-

1. That the appellant filed titled appeal before this hon'ble Tribunal, which was disposed-off / allowed on 12.07.2021. (Copy of judgment is enclosed as Annex "A")

2. That the Hon'ble Tribunal observed as under:-

"the appellant has got a fit case where principle of "Le non cogit and impossibilia" would apply. Since the appellant could not surmount the obstacle of SMC in the way of his promotion simply for the reason that it was not possible for him in span of his service left to his retirement after appearance of the said necessity of SMC on his part. Therefore, we hold him entitled for notional promotion with all accruable benefits from the date when his promotion was recommended to be deferred for

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Khyber Pakhtunkhwa
Service Tribunal



27th Feb, 2023

Learned counsel for the petitioner present. Mr. Umar Addl: AG alongwith Mr. Mohsin Mushtaq; SO for respondents present.

Mr. Mohsin Mushtaq, SO is present but he has no explanation nor is he found well conversant with the facts of the case even he, could not answer any reply as to why the judgment was not being implemented. The attitude of the respondents is deplorable. Copies of this order sheet be sent to the Secretary Establishment and Secretary P&D with the direction to comply with the judgment and submit implementation report on 27.03.2023 before S.B.

9

(Kalim Arshad Khan)
Chairman

Certified to be true copy

[Signature]
Secretary
Peshawar

Date of Presentation of Application 08/3/23
 Number of Pages 2
 Copying fee 10/-
5/-
15/-
 Date of 08/3/23
 Date of Delivery of copy 08/3/23

10714