


Form- A  
FORM OF ORDER SHEET

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

Implementation Petition No. 229/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.04.2023	<p>The execution petition of Mr. Shabir Ahmad submitted today by Mr. Yasir Saleem 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**

In the matter of  
Appeal No: 857/2019  
Decided on 02.02.2022.

*Execution petition No. 229/23*

Shabir Ahmad S/o Naseer Ahmad Laboratory Assistant, Government Degree  
College Akora Khattak, District Nowshera.

*(Applicant)*

**VERSUS**

Secretary Higher Education Department, KPK, Peshawar & Others.

*(Respondents)*

**INDEX**

<b>S. No</b>	<b>Description of documents</b>	<b>Annexure</b>	<b>Page No</b>
1.	Memo of Appeal & Affidavit		1 - 2
2.	Copy of the Judgment and Order dated 02.02.2022	A	3 - 6
3.	Copy of Office Order dated 17-08-2022	B	7
5.	Vakalatnama		8

*Applicant.*

**Through**

*Yasir Saleem*  
**YASIR SALEEM**  
Advocate High Court  
Peshawar

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

In the matter of  
Appeal No. 857/2019  
Decided on 02.02.2022.

*Execution Petition NO. 229/23*  
4767  
6/4/2023

Shabir Ahmad S/o Naseer Ahmad Laboratory Assistant, Government Degree College Akora Khattak, District Nowshera.

(Applicant)

VERSUS

1. Secretary Higher Education Department, KPK, Peshawar.
2. Director Higher Education Department, KPK Peshawar.
3. Deputy Director (Establishment) Directorate of Higher Education Department, Peshawar.

(Respondents)

*Application for the implementation of the Judgment and Order dated 02.02.2022 in captioned service appeal of this Honourable Tribunal.*

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 02.02.2022.
2. That vide judgment and order dated 02.02.2022, this Honorable Tribunal allowed the appeal and reinstated the appellant with all back benefits. The operating Para of the Judgment and order, is reproduced below:

*“We are considered opinion that the appellant has not been treated in accordance with law, as the adverse remarks were communicated without adhering to the method prescribed in law and his departmental appeal was decided by the reporting officer instead of the appellant authority. In view of the above foregoing discussion, the instant appeal is accepted. Impugned orders are set aside and the adverse remarks for the period from 01-01-2014 to 31-07-2014 are hereby expunged. Parties are left to bear their own costs.”*

(Copy of the Judgment and Order dated 02.02.2022, is attached as annexure “A”).

3. That the judgment and order of this Honourable Tribunal, was duly communicated to the respondent by the applicant vide various applications for implementation. Thereafter the applicant is continuously approaching the respondents for the implementation of the judgment dated 22.06.2012, however the order of this Hon'ble Tribunal has been partially accepted i.e. the adverse remarks has been expunged while his plea for the back benefits has not yet been extended/allowed to the appellant vide office order dated 17-08-2022. **(Copy of Office Order dated 17-08-2022 is attached as annexure "B").**
4. It is pertinent to mention here the appellant in his appeal specifically requested that his adverse remarks may be expunged will all back and the consequential benefits and this Hon'ble Tribunal vide order dated "accepted" the appeal. So, the appellant is entitled for back and consequential benefits after having his adverse remarks being expunged.
5. That the respondents are legally bound to implement the judgment of this Honourable Tribunal dated 22.06.2012 in its true letter and spirit without any further delay which has already been delayed due to the malafide intention of the Respondents

*It is, therefore, prayed that on acceptance of this application the judgment and order dated 02.02.2022 of this Honourable Tribunal be implemented in its true letter and spirit.*

*Applicant*

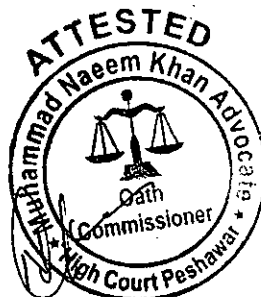
Through

*Yasir Saleem*  
**YASIR SALEEM**  
 Advocate High Court  
 Peshawar

**AFFIDAVIT**

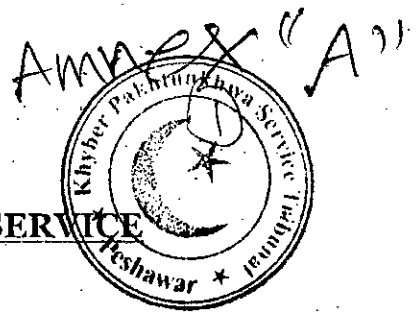
It is solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

*Shaukat*  
**DEPONENT**



**06 APR 2023**

3



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

Service Appeal No. 857 /2019

Khyber Pakhtunkhwa Service Tribunal

Diary No. 803

Dated 24/5/2019

Shabir Ahmad S/o Naseer Ahmad  
Laboratory Assistant, Government Degree College Akora Khattak,  
District Nowshera.

..... Appellant

**VERSUS**

1. Secretary Higher Education Department, KPK, Peshawar.
2. Director Higher Education Department, KPK, Peshawar.
3. Deputy Director (Establishment) Directorate of Higher Education Department, Peshawar.
4. Sharif Gul, Principal Government Degree College, Pabbi, District Nowshera.

..... Respondents

**SERVICE APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST LETTER NO. 34049 DATED 17.12.2015 OF RESPONDENT NO. 3.**

**WHEREBY ADVERSE REMARKS WERE RECORDED IN PERFORMANCE EVALUATION REPORT PER) OF THE APPELLANT FOR THE PERIOD 01.01.2014 TO 31.07.2014 AGAINST WHICH HIS DEPARTMENTAL APPEAL DATED 23.12.2015 OF THE APPELLANT IN POST REMAND PROCEEDING, HAS BEEN REGRETTED VIDE OFFICE ORDER DATED 23.04.2019, COMMUNICATED TO THE APPELLANT ON 26.04.2019**

Filed to-day Registrar 24/5/19.

Re-submitted to-day and filed.

REGISTRAR 24/5/19

**ATTESTED**

**EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar**

(4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 857/2019

Date of Institution ... 24.05.2019

Date of Decision ... 02.02.2022



Shabir Ahmad S/o Naseer Ahmad Laboratory Assistant, Government Degree College Akora Khattak, District Nowshera. ... (Appellant)

**VERSUS**

Secretary Higher Education Department, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Yasir Saleem  
Advocate ... For Appellant

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

**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQU-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are that the appellant while serving as Laboratory Assistant in Higher Education Department was communicated adverse remarks in his PER for the period from 01-01-2014 to 31-07-2014, against which the appellant filed departmental appeal followed by Service Appeal No. 421/2016, which was decided vide judgment dated 19-10-2018 and his appeal was treated as departmental appeal and remanded to the respondents to decide his departmental appeal within a period of 90 days. departmental appeal of the appellant was rejected vide order dated 23-04-2019, hence the instant service appeal with prayers that the impugned orders dated 17-12-2015 and 23-04-2019 may be set aside and adverse remarks may be expunged from the PER of the appellant with all consequential benefits.

**ATTESTED**  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(5)

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the vague and ambiguous remarks in PER for the period in question are un-founded and are based on personal grudge of respondent No. 4, who violated the settled instructions relating to writing of PER and thus exercised his authority unlawfully, without any cogent reason and material evidence; that the appellant earned good ACR throughout his long career and the instant adverse entry in his PER is the outcome of personal grudge of respondent No. 4, hence the adverse remarks are liable to be set at naught; that adverse remarks were communicated to the appellant after a year time, which are not to be considered at all, as such remarks communicated with delay are unlawful; that the appellate authority instead of applying his own prudent mind, sent back the departmental appeal to respondent No. 4 and in light of his recommendations, regretted his departmental appeal vide order dated 23-04-2019; that no counseling was made with the appellant before giving adverse remarks in his PER, which is against the rules of writing of PER; that the impugned appellate order is not a speaking order and is liable to be set aside.

03. Learned Additional Advocate General for the respondents has contended that as far as the adverse remarks in PER for the period from 01-01-2014 to 31-07-2014 of the appellant is concerned, the same was given due to the appellant poor performance and his conduct in official duty and as a reporting officer, respondent No. 4 was in a better position to form an opinion about the appellant; that in compliance of the judgment dated 19-10-2019 passed by this tribunal, the PER was sent to the reporting officer for re-examination but the request was regretted by the reporting officer vide letter dated 07-02-2019, which was communicated to the appellant vide order dated 23-04-2019.

04. We have heard learned counsel for the parties and have perused the record.

**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

62

05. Record reveals that the appellant was communicated adverse remarks for the period from 01-01-2014 to 31-07-2014 vide order dated 21-11-2015, which was not correct as the adverse remarks are required to be communicated within the same year. Record would suggest that no counseling was made with the appellant before giving adverse remarks to the appellant, which is also violation of the rules containing instructions regarding writing of PER. Departmental appeal of the appellant was required to be examined by the appellate authority, instead he referred it to the reporting officer and upon opinion of the reporting officer, his departmental appeal was rejected, which however was not warranted. We have also observed that there was a tussle between the appellant and the reporting officer, which is evident from record, hence the adverse remarks were based on personal grudge of the reporting officer, which smacks malafide on part of the respondents.

06. We are of the considered opinion that the appellant has not been treated in accordance with law, as the adverse remarks were communicated without adhering to the method prescribed in law and his departmental appeal was decided by the reporting officer instead of the appellate authority. In view of the foregoing discussion, the instant appeal is accepted. Impugned orders are set aside and the adverse remarks for the period from 01-01-2014 to 31-07-2014 is hereby expunged. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
02.02.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

  
(ATTIQ-UR-REHMAN WAZIR)  
MEMBER (E)

**Certified to be true copy**  
**EXAMINER**  
Khushal Pakhtunkhwa  
Service Tribunal  
Peshawar





7

**DIRECTORATE OF HIGHER EDUCATION  
KHYBER PAKHTUNKHWA  
RANO GHARI NEAR CHAMKANI MOR, PESHAWAR**

E-mail:- [dhekpkesht@gmail.com](mailto:dhekpkesht@gmail.com) Facebook.com/dhekpkesht Twitter.com/dhekpkesht1

Dated Peshawar the 17/8/2022

**OFFICE ORDER:**

In pursuance of the Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment in service appeal no. 857/2019, announced on 02-02-2022, the Competent Authority (Director, Higher Education) is pleased to expunge the adverse remarks for the period from 01-01-2014 to 31-07-2014 in r/o Mr. Shabir Ahmad, Lab Assistant Govt: Degree College, Akorra Khattak, Nowshera.

**DIRECTOR, HIGHER EDUCATION**

**Endst: No. 15014-18** /CA-VII/Estb: Section/Mr. Shabir Ahmad SA# 857/2019

Copy of the above is forwarded to the: -

1. Principal, Govt: Degree College, Akorra Khattak (Nowshera)
2. District Account Officer, Nowshera.
3. Assistant Director (ACR), Local Directorate.
4. Superintendent (Promotion Cell), Local Directorate.
5. Official concerned.

  
17/08/2022  
**DEPUTY DIRECTOR (Estt.)**

  
Attested

8

POWER OF ATTORNEY

In the Court of KP Service Tribunal Peshawar

Shabir Ahmad

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Govt of KPK

} Defendant  
} Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned/ \_\_\_\_\_ do hereby nominate and appoint **YASIR SALEEM ADVOCATE HIGH COURT**, my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions, An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at \_\_\_\_\_ the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

**YASIR SALEEM**

Advocate High Court

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt