Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 273/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.05.2023	The execution petition of Mr. Muhammad Younas submitted today by Mr. Rizwan Ullah Advocate. It is fixed for implementation report before Single Bench at Peshawar on 8-05-2023. Original file be requisitioned. AAG has noted the next date. By the order of Chairman REGISTRAR

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 273 /2023
In
Service Appeal No. 1430/2018

1. Muhammad Younas son of Mir Hussain, Ex-E.D.O Agriculture/DD, Agriculture Abbottabad.

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

I N D E X

S.No	Particulars of documents	Annexure	Pages #
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2.	Affidavit	_	3
3.	Copy of judgment dated 26-01-2023	"A"	4-9
4.	Application for hearing at Peshawar instead of Abbottabad		10-11
5.	Wakalatnama		12

Petitioner

Through:

Dated: 03-05-2023

RIZWANULLAH
M.A. LL.B
Advocate High Court,
Peshawar
Cell No. 0300-596-5843
Email ID: advocaterizwanullah@gmail.com

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 273 /2023
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1. Muhammad Younas son of Mir Hussain, Ex-E.D.O Agriculture/DD Agriculture Abbottabad.

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperation Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Agriculture (Extension) Peshawar.
4. District Director Agriculture Mandian.Abbottabad.
5. District Accounts Officer, Abbottabad.

RESPONDENTS

APPLICATION UNDER SECTION 7 (2) (D) OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXECUTION OF JUDGMENT DATED 26-01-2023 PASSED IN SERVICE APPEAL NO. 1430/2018.

RESPECTFULLY SHEWITH,

Short facts giving rise to the present execution petition are as under:-

1. That the petitioner was promoted from the post of Agriculture officer (BPS-17) to the post of Agriculture officer (supervisory) BPS-17 with special pay of Rs. 150/per month vide Notification dated 18-06-2004 and he was entitled for grant of one advance/pre-mature increment on promotion into same scale but the respondents did not allow him the said increment. However, one Ishtiaq Ahmad, Agriculture officer (B-17), who was also

promoted in the same capacity, was granted one advance/pre-mature increment in the light of judgment dated 23-01-2017 passed by this Hon'ble Tribunal. Therefore, the petitioner after exhausting departmental remedy also invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No. 1430/2018 for the grant of same relief.

2. That this Hon'ble Tribunal vide judgment dated 26-01-2023 accepted the appeal filed by the petitioner and granted him the above relief as prayed for. It would be advantageous to reproduce herein the relevant potion of the judgment for facility of reference:-

> **"In the light of above discussion, we are confident that the appellant is entitled to the same relief that has been extended to the other similarly placed employees of the provincial government. Hence, the present appeal is allowed as prayed for. Parties are left to bear their own costs. Consign.**

(Copy of Judgment is appended as Annex-A.)

3. That the respondents were under statutory obligation to have complied with the said judgment in letter and spirit but they did not bother for the same and hence the instant execution.

In view of the above narrated facts, it is, therefore, humbly prayed that coercive measures may kindly be adopted against the respondents for implementation of the judgment passed by this Hon'ble Tribunal in service appeal No. 1430/2018 so as to meet the ends of justice.

Petitioner

Through:

Dated: 03-05-2023

RIZWANULLAH
M.A. LL.B
Advocate High Court,
Peshawar

(3)

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 273 /2023
In
Service Appeal No. 1430/2018

1. Muhammad Younas son of Mir Hussain, Ex-E.D.O Agriculture/DD Agriculture Abbottabad.

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

AFFIDAVIT

I, Muhammad Younas son of Mir Hussain, Ex-E.D.O Agriculture/DD Agriculture Abbottabad, do hereby solemnly affirm and declare that the contents of the accompanied application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Deponent

ATTESTED

Notary Public
Judicial Complex Peshawar

04-05-2023

Annex-A (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT, ABBOTTABAD.

Service Appeal No.1430/2018

BEFORE: **MRS. ROZINA REHMAN** ... **MEMBER(J)**
MISS FAREEHA PAUL ... **MEMBER(E)**

Muhammad Younas son of Mir Hussain, Ex-E.D.O Agriculture/DD Agriculture Abbottabad. ..... *(Appellant)*

Versus

1. **Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar.**
2. **Secretary Agriculture, Livestock & Cooperation Department, Khyber Pakhtunkhwa, Peshawar.**
3. **Director General Agriculture (Extension) Peshawar.**
4. **District Director Agriculture Mandian Abbottabad.**
5. **District Accounts Officer, Abbottabad.** .....*(Respondents)*

Mr. Rizwanullah,
Advocate ... For appellant

Mr. Muhammad Jan, ... For respondents
District Attorney

Date of Institution.....27.11.1918
Date of Hearing.....26.01.2023
Date of Decision..... 26.01.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for declaration to the effect that the appellant was promoted from the post of Agriculture Officer BPS-17 to the post of Agriculture Officer

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Supervisory) BPS-17 with special pay of Rs. 150/- P.M vide promotion order No.SOE(AD)V-8/2003/KC, dated 18.06.2004 and he was entitled for grant of one advance/premature increment on promotion in-to same scale but respondent department did not allow one advance/premature increment to him. It has been prayed that on acceptance of the appeal, the impugned order of Finance Department Khyber Pakhtunkhwa No. FD(SOSR-1)2-123/2018 dated 18.10.2018 might be set aside and the respondents be directed to allow one advance/premature increment on account of promotion in same scale i.e from Agriculture Officer BPS-17 to Agriculture Officer (Supervisory) BPS-17 w.e.f. 01.07.2005 to 02.04.2013 and pension case of the appellant be revised after taking into account the said increment and any other relief which this Tribunal deems appropriate under the circumstance might also be allowed to him.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was promoted from the post of Agriculture Officer BPS-17 to the post of Agriculture Officer (Supervisory) BPS-17 with special Pay of Rs. 150/- P.M on 18.06.2004. As per amendment dated 29.04.1984 made in the Civil Servants Pay Revision Rules, 1978, if a civil servant was promoted to a post in the same scale in his own line with the only difference that the higher post carried a special pay, he should be allowed one advance increment in that scale with effect from the date of his promotion. The appellant approached the concerned office for grant of increment/premature increment on account of promotion in the same scale. At the time of promotion, the appellant was at the ceiling of his pay scale. In that regard,

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

procedure for grant of increment/premature increment at the ceiling stage was mentioned in Finance Department's notification dated 09.07.2005, but despite clear notification, the pay of the appellant was not fixed after taking into account the subject increment. Another officer, namely Ishtiaq Ahmad, Agriculture Officer Kohat was promoted from Agriculture Officer BPS-17 to the post of Agriculture Officer (Supervisory) BPS-17 with special pay of Rs. 150/- P.M on 16.02.2005, just like the appellant, and he filed service appeal before the Service Tribunal for grant of one advance/premature increment on promotion in the same scale which was decided on 23.01.2017 and directions were given to the respondents to allow advance increment to him. The respondent department allowed one advance/premature increment to him vide notification dated 05.03.2018. As per final seniority list of BPS-17 of Supervisory Officers, the appellant was at Serial No. 6 while Ishtiaq Ahmad was at Serial No. 14. The appellant filed departmental appeal to the respondent department for grant of one advance/premature increment on the analogy of Ishtiaq Ahmad who was similarly placed employee in the light of various judgments of August Supreme Court of Pakistan wherein it was held that once a point of law was decided by the Apex Court or Service Tribunal in a particular case, that must be made applicable to all the employees who were similarly paced. Departmental appeal of the appellant was regretted by respondent No. 1 on 18.10.2018 which was communicated to the appellant on 29.10.2018. Feeling aggrieved, the instant service appeal was filed.

3. Respondents were put on notice. They submitted written reply/comments. We have heard the learned counsel for the appellant, the

learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the details of the case and contended that the appellant was entitled for grant of one advance/premature increment as per notification dated 18.10.2018 of the Finance Department and judgment dated 23.01.2017 of the Service Tribunal. He further contended that the parent department of the appellant fully supported the case of increment of the appellant. According to him, the appellant was entitled for grant of advance increments from the date of his promotion to the Supervisory post of BPS-17 in terms of notification dated 29.04.1984. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney admitted that the appellant, alongwith other Agriculture Officers in BS-17, was promoted in 2004 to the post of Supervisory Officer (BS-17) with Special Pay of R. 150/- per month. He further admitted that one Mr. Ishtiaq Ahmad was promoted in 2005 with Special Pay of Rs. 150/- per month and in pursuance of judgment of Khyber Pakhtunkhwa Service Tribunal dated 23.01.2017, Finance Department sanctioned one advance increment vide its notification dated 05.03.2018 with Special Pay of Rs. 150/- per month for the purpose of pay and pensionary benefits with effect from 01.07.2005. As far as the appellant was concerned, the learned District Attorney contended that his appeal was forwarded to Finance Department seeking its concurrence for the grant of one premature increment for the purpose of pay and pensionary benefits w.e.f. 01.07.2005 but the Finance Department showed its inability to accede

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

to the request on the ground that the facility of Personal Pay was not available prior to introduction of Pay Revision 2005. He further argued that the appellant had retired from government service on attaining the age of superannuation on 02.04.2013 and that he had already been treated according to the law and policy of the government and hence his appeal was liable to be dismissed.

6. From the record and arguments presented before us, it transpires that the appellant was promoted from the post of Agriculture Officer (BS-17) to the post of Agriculture Officer (Supervisory) BS-17, with special pay, in the year 2004. The N.W.F.P Civil Services Pay Revision Rules 1978, amended vide notification dated 29.04.1984 clearly mention in Rule 10(2)(iii) that if a civil servant is promoted to a post in the same scale in his own line with the only difference that the higher post carries a special pay, he shall be allowed one advance increment in that pay scale with effect from the date of his promotion. The appellant at the time of his promotion was at the maximum of his scale also. He had to be treated in the light of relevant notifications of the government, which was not done. A similarly placed employee of the same department, Ishtiaq Ahmad, who was junior to the appellant, after being promoted, requested for the benefit of advance increment, which was denied to him and he filed a service appeal before this Tribunal which was allowed on 23.01.2017 with the directions to the respondents to consider the case of appellant for the purpose of fixation of pay and attached benefits including pensionary benefits w.e.f 01.07.2005 on the strength of

notification dated 09.07.2005. The august Supreme Court of Pakistan upheld the judgment of this Tribunal vide its judgment dated 13.11.2017.

7. In the light of the above mentioned case, and keeping in view the plea of the appellant, attention is invited to 1996-SCMR-1185 according to which, "where a Tribunal or court decides a point of law relating to terms and conditions of service of civil servants which governs not only those who litigated but also those who have not resorted to any legal proceedings, then irrespective of this they too become entitled to the same benefit." In this regard Article 25 of the Constitution of Islamic Republic of Pakistan also needs mention where it states that all citizens are equal before law.

8. In the light of above discussion, we are confident that the appellant is entitled to the same relief that has been extended to the other similarly placed employees of the provincial government. Hence, the present appeal is allowed as prayed for. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court at camp court, Abbottabad and given under our hands and seal of the Tribunal this 26th day of January, 2023.*

(FAREEHA PAUL)
Member (E)
(Camp Court, A/Abad)

(ROZINA REHMAN)
Member (J)
(Camp Court, A/Abad)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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(10)

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 273 /2023
In
Service Appeal No. 1430/2018

1. Muhammad Younas son of Mir Hussain, Ex-E.D.O Agriculture/DD Agriculture Abbottabad.

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Finance Khyber Pakhtunkhwa, Peshawar and others.

RESPONDENTS

APPLICATION FOR HEARING OF ABOVE CAPTIONED APPEAL AT PESHAWAR INSTEAD OF ABBOTTABAD.

RESPECTFULLY SHEWITH,

1. That the petitioner has filed the instant execution petition alongwith this application in which no date is fixed so far.

2. That the petitioner has engaged me as counsel to file and conduct the said petition before this Hon'ble Tribunal.

3. That the undersigned was seriously ill in the past and confined to bed for a longtime. After recovery of health, I have resumed my legal practice however, the doctor has advised me not to take long journey.

4. That appellant belongs to District Abbottabad who has also instructed me to make a request before this Hon'ble Tribunal for hearing of the instant execution petition at Peshawar instead of Abbottabad.

(11)

5. That whenever I undertake long journey thereafter, I feel severe ach in my body for many days on account of my previous illness.

In view of the above narrated facts, it is, therefore, humbly requested that the above captioned execution petition may graciously be heard at Peshawar instead of Abbottabad on humanitarian grounds.

Petitioner

Through:

Dated: 03-05-2023

RIZWANULLAH
M.A. LL.B
Advocate High Court,
Peshawar

قیمت 50 روپے

71684

ایڈوکیٹ: Rizwanullah

بارکونسل/ایسوسی ایشن نمبر: bc-09-0050

رابطہ نمبر: 03005965843

PESHAWAR BAR ASSOCIATION PBA

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب The Hon'ble Chairman, KPK Service Tribunal Peshawar

منجانب: Petitioner

Muhammad Younas

بنام

Govt of KPK Through Secretary Finance etc

دعویٰ: Execution Petition

علت نمبر: ______

مورخہ ______

جرم: ______

تھانہ ______

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام Peshawar کیلئے Rizwanullah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم: 3-5-2023

PESHAWAR BAR ASSOCIATION KHYBER PAKHTOONKHWA گواہ شد

العبد ______ العبد ______

Attested & accepted

Petitioner.

مقام Peshawar کے لیے منظور ہے۔

advocaterizwanullah@gmail.com

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔