


FORM OF ORDER SHEET

Court of _____

Restoration Application No. 339/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.05.2023	<p>The application for restoration of appeal 2413/2021 submitted today by Mr. Babar Khan Yousafzai Advocate. It is fixed for hearing before Division Bench at Peshawar on <u>31-05-23</u> Original file be requisitioned.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Restoration Appli. no. 339/2023
Syed Hussain Ali Shah

...Applicant

VERSUS

District Judge Shangla & Others

...Respondent

**APPLICATION FOR ADMITTING
THE INSTANT CASE BEFORE THE
PRINCIPAL SEAT KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Respectfully Sheweth;

The applicant submits as under:-

1. That the above noted case is pending at jurisdiction before this Hon'ble Court.
2. That an application for restoration is submitted in the instant case.
3. That the counsel for the applicant is practicing here in district court Peshawar.
4. That it would be convenient for the counsel that this instant case is admitted before the principal seat Khyber Pakhtunkhwa Service Tribunal

It is, therefore, humbly prayed that on acceptance of this application, the captioned case may graciously be admitted before the principal seat that is Khyber Pakhtunkhwa Service Tribunal Peshawar.

Dated: 29/05/2023

Applicant

Through

[Signature]
Counsel
Babar Khan Yousafzai
Advocate, High Court
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Restoration Appli. no. 339/2023

In Re

C. M No. ____/2023

In

Service Appeal No.2413/2021

Syed Hussain Ali Shah **APPLICANT**

V E R S U S

District Judge Shangla & others **RESPONDENTS**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for restoration		1-3
2.	Application for Condonation of Delay		4-5
3.	Copies of the Appeal & Order Sheet dated 03.04.2023		6-9
4.	Copy of order sheet dated: 07.03.2023		10

Applicant/ Appellant

Through

BK
BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Restoration Application no 339/2023

In Re

C. M No. _____/2023

In

Service Appeal No.2413/2021

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No.

5657

Dated

29/5/2023

Syed Hussain Ali Shah, Bailiff Establishment of of Senior Civil Judge,
Shangla. Applicant

VERSUS

1. District and Sessions Judge Shangla.
2. Senior Civil Judge (Admin), Shangal.
3. Sartaj S/o Farooq, Bailiff, Establishment of Senior Civil Judge, Shangla.
..... Respondents

**APPLICATION FOR RESTORATION OF THE ABOVE
TITLED APPEAL WHICH WAS DISMISSED IN
DEFAULT BY THIS HONOURABLE TRIBUNAL ON
03.04.2023.**

Respectfully Sheweth:

- 1) That the above-noted case was pending adjudication before this honourable Tribunal and was dismissed for non-representation vide order 03.04.2023. (Copies of appeal and order dated 03.04.2023 are attached herewith).
- 2) That the above titled appeal was submitted and pending before the principal bench of this honourable court here in Peshawar but on the basis of territorial jurisdiction the same was transferred to Camp Court Swat of this honourable Tribunal.(Copy of the order sheet dated 07.03.2023 is attached herewith)

- 3) That the above mentioned appeal was fixed for arguments on 03.04.2023 but neither the appellant nor his counsel was aware about the date fixed, therefore, was dismissed in default.
- 4) That the appellant being aggrieved from the order dated 03.04.2023 pray for restoration of the above titled appeal and its decision on merits on the following grounds inter alia:

Grounds:

- a. That the absence of the appellant was not willful nor intentional rather the same was result of no knowledge of date fixed at Camp Court at Swat.
- b. That as stated above in the facts that the appellant had appeared in person before this honourable Tribunal on 07.03.2023, then the case was fixed for arguments and the appellant was not in default because he was not aware of date fixed at Camp Court Swat.
- c. That keeping in view that the appellant is resident of Shangal and Counsel for the appellant is practicing lawyer here at Peshawar so, the notice for arguments was essential for decision on merits.
- d. That the above captioned case was submitted before this honourable Tribunal in 2021 and had been admitted for full hearing, moreover, valuable rights of the appellant is involved in the said appeal and there is no legal bar if the captioned appeal may be restored.
- e. That it is premature rejection actually throws away the entire case of the appellant to wind, an option neither contemplated by law nor falling within remit of "right to fair trial" such exercise transcends beyond barriers of natural justice, as law always favour adjudication on merits and not on hyper technical knockouts moreover, essence of law is that, a thing should be done as it ought to be done and not by any anomalous mean.

f. That now the appellant seeks restoration of the above mentioned case on the ground that, the absences of the appellant was not deliberately and intentionally but due to above circumstances, moreover, the instant application is well within time and there is no legal bar if the above mentioned case is restored.

It is, therefore, most humbly requested that on acceptance of this application, the above noted case may kindly be restored on its original position.

Appellant

Through

[Signature]
(BABAR KHAN YOUSAFZAI)
Advocate Supreme Court.

AFFIDAVIT

I, Babar Khan Yousafzai Counsel for appellant, as per instructions of my client, do here by affirmed and declared on Oath that all the contents of this **application** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.

[Signature]
Deponent

ATTESTED
Gul Daraz Khan
Oath
Commissioner
Advocate High Court
[Signature]

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re
C. M No. ____/2023
In
Service Appeal No.2413/2021

Syed Hussain Ali Shah **APPLICANT**

V E R S U S

District Judge Shangla & others **RESPONDENTS**

APPLICATION FOR CONDONATION OF DELAY


1. That the above-noted case was pending adjudication before this honourable Tribunal and was dismissed for non-representation vide order 03.04.2023.
2. That the facts & grounds of the accompanying restoration application may please be read as an integral part & parcel of the instant application.
3. That the above mentioned case was fixed for arguments on 03.04.2023 but neither the appellant/applicant nor his counsel was aware about the date fixed, therefore, was dismissed in default.
4. That law of limitation is always attract subject to the factual as well as circumstantial oppressed, therefore in the current scenario, the appellant/ appellant when became late, the same belated stage is required to consider on such basis.
5. That the delay in filing the instant application is neither intentional nor willful but due to the reason mentioned above.

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It is therefore, most humbly prayed that on acceptance of this application, the delay accrued in the filing of the restoration application may very kindly be condoned in the best interest of justice.

Applicant/ Appellant

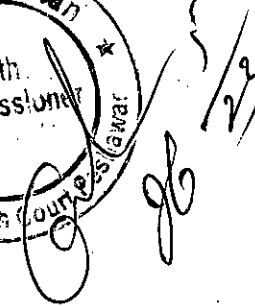
Through


BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

AFFIDAVIT

I, do here by affirmed and declared on Oath that all the contents of this **application** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honourable Court.


DEPONENT

ATTESTED
Gul Daraz Khan
Oath
Commissioner
Advocate High Court Rawalpindi

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BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No 2413 /2021

Syed Hussain Ali Shah, Bailiff Establishment of Senior Civil Judge (Admin)
Shangla..... Appellant.

VERSUS .

1. District and Sessions Judge (Admin) Shangal.
2. Senior Civil Judge (Admin) Shangla.
3. Sartaj S/o Farooq, Bailiff (BPS-6) establishment of Senior Civil Judge, presently posted in the court of Civil Judge, at Puran District Shangla..... Respondents.

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SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974, AGAINST THE JUDGMENT DATED 10.12.2020 PASSED BY THE LEARNED DISTRICT AND SESSIONS JUDGE, SHANGLA (RESPONDENT NO.1) BY VIRTUE OF WHICH THE DEPARTMENTAL APPEAL OF THE RESPONDENT NO.3 WAS ACCEPTED AND THE SENIORITY LIST PREPARED ON 31.12.2019 WAS SET ASIDE.

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Respectfully Sheweth:

- 1) That the appellant is working as bailiff is performing his duties with zeal and devotion and to the full satisfaction of his superiors.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 2) That a Seniority list of Bailiffs in establishment of Senior Civil Judge (Admin) was prepared on 31.12.2019 in which the appellant was placed senior to respondent No.3 (Sartaj). (Copy of seniority list is attached as annexure "A").
- 3) That the respondent No.3 was not satisfied from the above mentioned seniority list filed objection petition before the learned Senior Civil Judge (Admin) Shangla (Respondent No.2) but the same was declared devoid of force and dismissed by the said court vide order dated 04.09.2020. (Copies of the objection petition and order dated 04.09.2020 are attached as annexure "A/1" & "B" respectively).
- 4) That being aggrieved from the order dated 04.09.2020 the respondent No.3 filed Departmental appeal against the said order before the District and Sessions Judge, (Admin) Shangla (Respondent No.1) which was accepted vide judgment/order dated 10.12.2020.(Copies of the grounds of appeal and judgment dated 10.12.2020 are attached as annexure "C" & "D" respectively).
- 5) That the appellant extremely aggrieved from the impugned judgment dated 10.12.2020 of respondent No.1 having no other adequate remedy available to him but to approaches this Hon'ble Tribunal for the redressal of his grievances, inter alia, on the following grounds:

GROUND

- A. That the impugned judgment dated 10.12.2020 is illegal, without jurisdiction, without lawful authority, of no legal effect and liable to be set aside.
- B. That the Departmental appeal submitted before the respondent No.1 was barred by time and the impugned judgment dated 10.12.2020 is completely silent regarding this material fact on this score alone the impugned judgment is liable to be set aside.

ATTESTED

[Signature]
Service Tribunal
District & Sessions Judge
Shangla

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
- C. That the respondent No.3 had not come to appellate forum with clean hands and concealed a material fact from Departmental appellate authority.
- D. That the criteria set in Serial No.19 of Judicial Esta Code 2011 has also been neglected by the respondent No.3
- E. That it is pertinent to mentioned here that, the appellant had passed has passed his matriculation in the year 1990 while respondent No.3 had attained his matriculation in 1992 hence, it crystal cleared that the appellant is senior to respondent No.3.
- F. That the appellant has dedicated a long span of his life in the department and it is a high time that he should be given reward for the same.
- G. That the appellant craves permission of this Honourable Tribunal to advance any other ground at the time of hearing and to submit any other arguments/documents if necessary, in support of this service appeal.

It is, therefore, most humbly prayed that, on acceptance of this Service Appeal, the impugned judgment dated 10.12.2020 may kindly be set aside and the seniority list prepared on 31.12.2019 may be restored for the ends of justice.


Any other relief, with this Honourable Tribunal deemed just and proper may also be granted to the appellant not specifically prayed for herein.


Appellant

Through:


(BABAR KHAN YOUSAFZAI)
Advocate, High Court
Peshawar

Dated: 05.01.2021


Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Appeal No. 2413/2021
S. Hussain A.S. Sheh

(9)

03rd April, 2023



1. None present on behalf of the appellant. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Today nobody put appearance on behalf of the appellant despite repeated calls at different intervals till rising of the court, therefore, the instant appeal is dismissed in default. Consign.
3. *Pronounced in open court in Swat and given under our hands and seal of the Tribunal on this 03rd day of April, 2023.*

(Salah-ud-Din)
Member (J)
Camp Court Swat

(Kalim Arshad Khan)
Chairman
Camp Court Swat

Certified to be true copy

OWNER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Date of Presentation of Application 18/5/2023
Number of Words Page 10
Copying Fee 50/-
Urgent 50/-
Total 50/-
Name of _____
Date of Completion of Copy 18/5/2023
Date of Delivery of Copy 18/5/2023


10

15.12.2022

Due to general strike of the Bar, case is adjourned to 07.03.2023 before D.B. Office is directed to notify the next date on notice board as well as the website of the Tribunal.

SCANNED
KPST
Peshawar

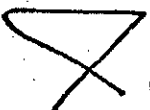

(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

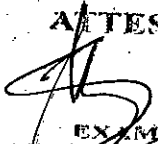
07th March, 2023

Appellant in person present. Mr. Naseer-ud-Din Shah,
Assistant Advocate General for the respondents present.

Appellant stated that the appeal in hand pertains to Camp Court Swat, therefore, the same may be fixed at Camp Court Swat. To come up for arguments on 03.04.2023 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

ATTESTED

EXAMINER
Nawaz Akhtukhwa
Service Tribunal
Peshawar