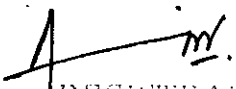


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 377/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.06.2023	<p>The execution petition of Mr. Muhammad Raza Shah submitted today by Mr. Amanullah Pirzada Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>15-06-2023</u>. Original file be requisitioned. AAG has noted the next date</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Execution Petition No. 377/2023

CM No. _____/2023

In the matter of

Service Appeal No. 267/2023

Decided on 03.05.2023

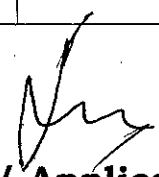
Muhammad Raza Shah.....Appellant

V E R S U S

Govt of KPK & others.....Respondents

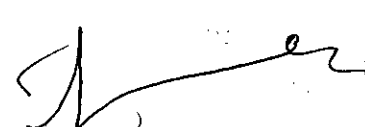
I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for implementation		1-3
2.	Affidavit		4
3.	Copy of the Judgment and Order dated 03.05.2023	A	5-8
4.	Wakalat Nama		9


Appellant / Applicant

Through

Dated: 06.06.2023


AMAN ULLAH PIRZADA
Advocate, High Court
Peshawar

0300-5818228

①

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA PESHAWAR

Execution Petition no. 377/2023

CM No. _____/2023

In the matter of

Service Appeal No. 267/2023

Decided on 03.05.2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5961

Dated 13/6/2023

Muhammad Raza Shah S/O Muhammad Hanif R/O
Ouch, Tehsil Adenzai, District Dir Lower. SDEO(M), MC,
Adenzai, Dir Lower.

.....**Appellant**

V E R S U S

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. Director ESED, KP Peshawar.
4. DEO (M), Dirbat Timergara/ Khar Bajour.
5. DAO, Dir Lower
6. Zaheer ud Din SDEO (M) Khar Bajour.

.....**Respondents**

**APPLICATION FOR THE IMPLEMENTATION OF
THE JUDGMENT AND ORDER DATED
03.05.2023 IN THE CAPTIONED SERVICE
APPEAL OF THIS HON'BLE TRIBUNAL.**

Respectfully Sheweth:

1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 03.05.2023.
2. That vide judgment and order dated 03.05.2023 this Hon'ble Tribunal while dismissing the Appeal of the Appellant, issued directions to the Appellant to make an Application before the Competent Authority for giving an option in line with the Transfer / Posting Policy vide Order dated 03.05.2023. **(Copy of the Judgment and Order dated 03.05.2023 is attached as Annexure A)**
3. That the Judgment and Order of this Hon'ble tribunal was duly communicated to the Respondents by the Petitioner and Application for giving the choice / option in line with the transfer / posting policy to the applicant / appellant was also filed for implementation of order dated 03.05.2023. Thereafter the Petitioner is continuously approaching the Respondents for the implementation of the Judgment and Order dated 03.05.2023, however they are reluctant to implement the same.
4. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 03.05.2023 in its true letter and spirit without any further delay, which has already been delayed due to the malafide intention of the Respondents.

4

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

CM No. _____/2023

In the matter of

Service Appeal No. 267/2023

Decided on 03.05.2023

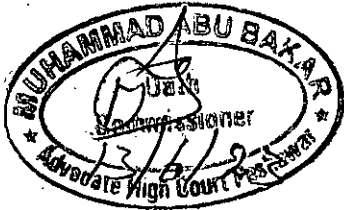
Muhammad Raza Shah.....Appellant

V E R S U S

Govt of KPK & others.....Respondents

AFFIDAVIT

I, Muhammad Raza Shah S/O Muhammad Hanif R/O Ouch, Tehsil Adenzai, District Dir Lower. SDEO(M), MC, Adenzai, Dir Lower, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT

Annex "A" (5)

Service Appeal No.267/2023 titled "Muhammad Raza Shah-vs- Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" decided on 03.05.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH UD DIN ... MEMBER (Judicial)



Service Appeal No.267/2023

Date of presentation of appeal05.12.2022

Dates of Hearing.....03.05.2023

Date of Decision.....03.05.2023

Muhammad Raza Shah S/O Muhammad Hanif R/O Ouch, Tehsil Adenzai, District Dir Lower. SDEO(M), MC, Adenzai, Dir Lower.
.....(*Appellant*)

Versus

1. **Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.**
 2. **Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.**
 3. **Director (E&SE) Department, Khyber Pakhtunkhwa Peshawar.**
 4. **District Education Officer (M), Dirbat Timergara/Khar Bajour.**
 5. **District Accounts Officer, Dir Lower.**
 6. **Zaheer Ud Din, SDO(M) Khar Bajour.**
-(*Respondent*)

Present:

Mr. Aman Ullah, Advocate.....For appellant.

Mr. Asif Masood Ali Shah,
Deputy District Attorney.....For official respondents.

Mr. Muhammad Ayub Khan Shinwari,
Advocate.....For private respondent No.6.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE TRANSFER ORDER NO. SO (MC) E&SED /4-16/2022/ POSTING/TRANSFER/MC/DATED 31.10.2022, VIDE WHICH THE APPELLANT WAS TRANSFERRED FROM SDEO (M) KHAR BAJOUR, AGAINST WHICH THE DEPARTMENTAL APPEAL ALSO FILED AND THE SAME WAS DISMISSED BY THE RESPONDENTS.

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

Service Appeal No.267/2023 titled "Muhammad Raza Shah-vs- Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" decided on 03.05.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record the appellant was appointed in the respondent department and is presently serving as Sub-Divisional Education Officer (Male) (BPS-17) Management Cadre at Adenzai, District Dir Lower; that despite good performance and full satisfaction of the high-ups, the respondent No.2 had illegally and unlawfully issued the impugned transfer order dated 31.10.2022; that the appellant, feeling aggrieved, filed departmental appeal to respondent No.2, which was rejected No.2, and then he filed the instant service appeal.

2. On receipt of the appeal and admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant, learned Deputy District Attorney for the official respondents and learned counsel for private respondent No.6.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that the said transfer order is pre-mature and against the posting, transfer policy. He requested that the appeal might be accepted and the appellant might be restored to his prior position as SDEO(M)

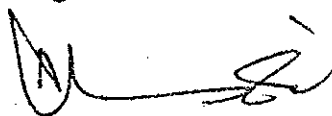
ATTESTED
KALIM ARSHAD KHAN
Chairman
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(7)


Service Appeal No 267/2023 titled "Muhammad Raza Shah-vs- Chief Secretary, Government of Khyber Pakhtunkhwa, Civil-Secretariat, Peshawar and others" decided on 03.05.2023 by Division Bench comprising Fahir Arshad Khan, Chairman, and Solah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

5. Learned counsel for private respondent No. 6 argued that the instant appeal is premature and against the mandatory provision of Khyber Pakhtunkhwa Service Tribunal Act, 1974 i.e. Section-4 of the ibid Act, as no final order has been passed yet on the departmental appeal of the appellant. He further argued that as per Section-10 of the Khyber Pakhtunkhwa Civil Servant Act, 1973, a civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local Authority or a corporation or body set up or established by any such government, thus posting and transfer cannot be claimed as a matter of right. He requested that the instant appeal might be dismissed.

6. The only ground taken in the appeal, which is worth consideration, is that the appellant was going to retire in 2023 and that his family are also residing in District Dir (Lower), therefore, transfer order was made on political basis. This ground is not sustainable because in the posting/transfer policy it is provided that the officers except DCs and DPOs, who were due to retire within one year may be posted on their option on the posts in the district of their domicile and be allowed to serve there till their retirement. As against that there was more than a year left in retirement of the appellant at the time of transfer of the appellant. Similarly there is no application whereby it could be assessed that the appellant had given any option for his posting in the district of his domicile during the last year of his service. Besides the appellant had spent more than the normal tenure at the place from where he was transferred. Therefore, this appeal is groundless and is dismissed. However, the appellant



ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


8

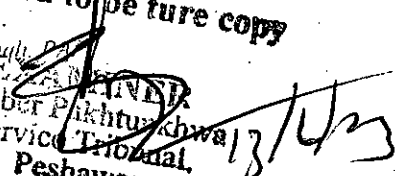
Service Appeal No.267/2023, titled "Muhammad Raza Shah-vs- Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" decided on 03.05.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

may make an application to the competent authority giving an option in line with the transfer/posting policy, which, if moved, may be considered sympathetically and in accordance with policy of the government. Costs shall follow the event. Consign.

7. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of May, 2023.


KALIM ARSHAD KHAN
Chairman


SALAH UD DIN
Member (Judicial)

Certified to be true copy
Adnan Shabbir, PA

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 13/6/23
Number of ~~Words~~ page 4
Copying Fee 20/-
Urgent 5/7
Total 25/-
Name of Copyist 8/10/23
Date of Completion of Copy 13/6/23
Date of Delivery of Copy 13/6/23

جناب سرسول ٹر بسونل لیسٹاور

سہ 2 منجانب
محرم رضوانستہ نام
حکومت

مورخہ
مقدمہ
دعوئی
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آن مقام لیسٹاور کیلئے اصالح اللہ سسزادہ اطیو کیلئے

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 قی تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سند رہے۔

محرم رضوانستہ وکل محمد لطیف سکن اوج تحصیل ادینی دیر لور

2023ء

ماہ جموں

المرقوم 13

العبد ذوالالعبد

مقام لیسٹاور کے لئے منظور ہے۔