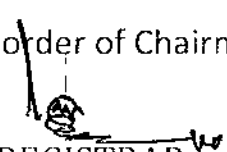


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 102/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.02.2023	<p>The execution petition of Mr. Khush Muhammad Khan submitted by him. 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 style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

(1)

BEFORE THE SERVICE KPK SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 102 /2023

Khyber Pakhtunkhwa
Service Tribunal

In

Entry No. 3802

Service Appeal No. 1036/2019

Dated 24-2-2023

Khush Muhammad Khan Section Officer (litigation) Higher Education Department
.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa.
2. Secretary Finance Department, Khyber Pakhtunkhwa Peshawar.
3. Secretary Establishment Department, Khyber Pakhtunkhwa

.....Respondent

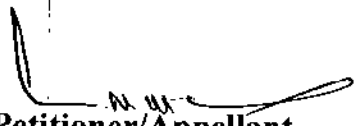
EXECUTION PETITION UNDER SECTION 7 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR THE EXECUTION OF ORDER DATED 01.09.2021 PASSED BY THE HONORABLE TRIBUNAL IN THE ABOVE TITLE SERVICE APPEAL NO. 1036/2019.

Respected Shewith,

1. The petitioner/Appellant filed Service Appeal No. 1036/2019 before this Hon'able Tribunal with regard to grant the fringe and privilege of BPS-17 w.e.f.23.05.2009 till 13.06.2016 with all consequential benefits which come up for hearing on 07.08.2019 and after hearing preliminary arguments, the appeal was admitted for full hearing and accepted the prayers of the appellant as prayed for, vide judgment 01.09.2021 of this Tribunal (copy of judgment Dated 01.09.2021 is enclosed as Annex-I).
2. That petitioner/Appellant after obtaining attested copy of the stated order on this Hon'able Tribunal approached respondent by conveying the same through written application dated 17.05.2022 (Annex-II) which was duly forwarded but even then respondents are not granting all the fringe and prevailing w.e.f 23.05.2009 till 13.06.2016 which all consequential benefits of BPS-17.
3. The respondent are not ready to implement the order/judgment of this Hon'able Tribunal in its true spirit for no legal and valid reason, this act of the respondents is unlawful, unconstitutional and is against the judgment dated 01.09.2021 of this Hon'able Tribunal.
4. That non compliance of the order of this hon'able speaks malafide on part of the respondents and they are bent upon to lower the position of the judiciary in the eyes of the public at large.

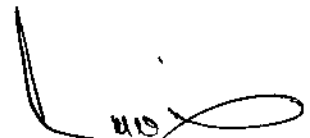
It is therefore, most humbly prayed that on acceptance of this application/petition, respondents may kindly be directed to implement the order of this Hon'able Tribunal dated 01.09.2021 passed in service appeal No. 1036/2019.


Dated 24.02.2023


Petitioner/Appellant
Khush Muhammad Khan
In Person

AFFIDAVIT

I, Khush Muhammad Khan, Section Officer (Budget) Health Department do here by solemnly affirm and declare on oath that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Tribunal.

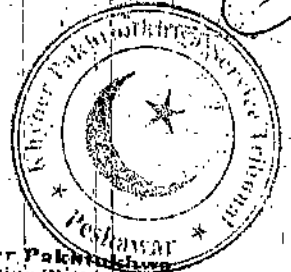

DEPONENT

ATTESTED
LAL GUL SAFI
DISTRICT COURTS
OATH
COMMISSIONER

24/02/2023

1

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**



Appeal No. 1036/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1159

Dated 07-08-2019

Khush Muhammad Khan Section Officer (Litigation) Higher
Education Department

(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary
2. Secretary Finance department Khyber Pakhtunkhwa
Peshawar
3. Secretary Establishment Department Khyber Pakhtunkhwa
Peshawar

(Respondent)

Appeal under Section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act
1974, whereby the departmental
appeal dated 08/04/2019 has not been
decided within the statutory period of
three months.

Filed to-day

Registrar

21/8/2019

PRAYER IN APPEAL:

On acceptance of this appeal the
appellant may kindly be granted all the
fringe and privileges w.e.f. 23/05/2009
till 13/06/2016 with all consequential
benefits.

Any other relief which has not been
specifically asked May also be granted
to the appellant.

ATTESTED

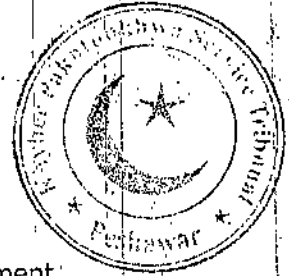

Registrar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1036/2019

Date of Institution ... 07.08.2019

Date of Decision ... 01.09.2021



Khush Muhammad Khan Section Officer (Litigation) Higher Education Department
(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary, and two others.

... (Respondents)

ZARTAJ ANWAR
Advocate

For Appellant.

MUHAMMAD RASHEED
Deputy District Attorney

For Respondents

SALAH-UD-DIN
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as assistant BPS-14, was posted as Section Officer (BPS-17) in his own pay and scale vide order dated 23-05-2009 with an additional charge of another section as well. The appellant remained posted against various higher posts until 13-06-2016, when he was regularly promoted to BPS-17 vide order dated 30-06-2016. The appellant filed departmental appeal dated 08-04-2019 for grant of all fringe benefits attached to such posts, which was not responded, hence the instant service appeal with prayers that the appellant may be granted all the fringe and privileges w.e.f 23-05-2009 until 13-06-2016 with all consequential benefits.

ATTESTED


Atiq-ur-Rehman Wazir
Member (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

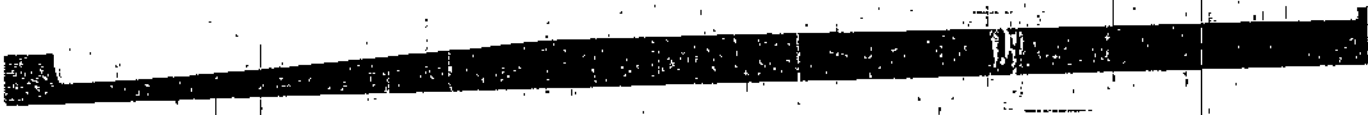
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02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law and rule, hence his rights secured and guaranteed under the law were badly violated; that the competent authority is bound under the law to pay all the fringe and privileges attached to the post, but the respondents totally ignored this fact; that section 17 of Civil Servant Act, 1973 provides for fixation of pay in a prescribed manner, when a posting is made on current charge or additional charge basis; that the apex court in various judgments have held that if a civil servant is appointed to perform the function of a higher post involving higher responsibilities, he must be held to be entitled to the pay of that higher post. Reliance was placed on 1984 PLC (CS) 1606, 1986 SCMR 1206 and 1992 SCMR 1869. The learned counsel referred to a plethora of judgments to clarify that the competent authority is bound by law to pay such benefits to the appellant.

03. Learned Deputy District Attorney appearing on behalf of respondents has contended that Home Department internally authorized the appellant to hold the post of section officer in his own pay and scale without getting concurrence of Establishment department being custodian of scheduled posts; that as per instructions contained in circular dated 01-01-2013 issued by Finance Department, only officers appointed to a higher post by the competent authority are entitled for such benefit, whereas the appellant was posted against such post in his own pay and scale by Home Department; that in light of such instructions, the appellant is not entitled for the remunerations which he is seeking through instant appeal.

04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant remained posted against higher posts for the mentioned period in own pay and scale, but were denied perks and privileges as are admissible to him. In light of Finance Department Instructions contained in Circular dated 01-01-2013 under the pretext that he was not posted by the competent authority, which however was not in control of the appellant nor the appellant shall suffer for any fault of the respondents. The apex court in its various

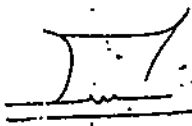
ATTESTED

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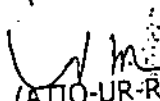



judgments have held that a civil servant shall not suffer for the wrongdoings committed by the department, rather the department should be taken to task for any wrong or unlawful order. Besides that the supreme court of Pakistan. In its various judgments have held that even if without formal promotion, a civil servant is appointed to perform the function of a higher post involving higher responsibilities, he must be held entitled to the pay of that higher post. Reliance is placed on 1984 PLC (CS) 1606, 1986 SCMR 1206, 1992 SCMR 1869, 1984 PLC (CS) 398, 1993 PLC (CS) 1057, PLD 1994 SC 233, 1993 PLC 9(CS)1257 and 2018 SCRM 349.

05. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
01.09.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 02/9/21
Number of Words 1500
Copying Fee 18/-
Regent -
Total 18/-
Name of Applicant -
Date of Completion of Copy 16/8/21
Date of Delivery of Copy 16/9/21

7

To,

The Chief Secretary,
Government of Khyber Pakhtunkhwa,

The Secretary,
Government of Khyber Pakhtunkhwa,
Establishment Department

The Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department.

Handwritten signature/initials

Subject:- IMPLEMENTATION OF KPST JUDGMENT IN SA-1036/2019-KHUSH MUHAMMAD KHAN
Respected Sir.

With great reverence I yearn to submit that learned Khyber Pakhtunkhwa Service Tribunal vide Judgment dated 01/09/2021 in Service Appeal No. 1036/2019-Khush Muhammad Khan has granted the requested relief in favour of the undersigned. Though copies of the said judgment duly shared with your good self yet its implementation not been done so far despite of lapse of long period of 08 months.

2- It is, therefore, requested to kindly issue necessary notification in this regard. enabling me to process my case in light of the said judgment for early re-fixation of ^{pay} and allowances with arrear claims thereto please.

(Copy of the quoted judgment is enclosed)

Yours Obediently,

Handwritten signature
(Khush Muhammad Khan)
Section Officer (Litigation-II)
Home & TAs Department
0333-9131463 091-9210032

Dated 17/05/2022

Handwritten signature/initials

Respectfully submitted