Form- A

FORM OF ORDER SHEET

Court of

Implementation Petition No. 555/2023

S.No	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.08.2023	The implementation petition of Mr. Mumtaz Ahmad submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on _ Original file be requisitioned. AAG has noted the next date. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 555 /2023
In
Appeal No. 1506/2022

MUMTAZ AHMED VS GOVT OF KPK

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation Petition with Affidavit	.....	1 - 2
2.	judgment dated 28.03.2023	"A"	3 - 8
3.	Vakalatnama		9

APPELLANT

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPEREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 555 /2023
In
Appeal No. 1506/2022

Mr. Mumtaz Ahmad, PMS Officer (BPS-17) (Retired),
Establishment Department, Khyber Pakhtunkhwa Peshawar.

.....PETITIONER

VERSUS

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

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 28.03.2023 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 1506/2022 before this august Service Tribunal against the minutes dated 25.09.2017 and for his national promotion to the post of BPS-18 w.e.f 30.11.2015.

2- That the appeal of the petitioner was finally heard and decided on 28.03.2023 and as such the ibid appeal was allowed in favour of the petitioner with the following relief by this august Service Tribunal:

"In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Provincial Selection Board For consideration for proforma/notional promotion to BPS-18 from due

date within a period of 03 months of receipt of this judgment".

Copy of the judgment dated 30.05.2022 is attached as annexure..... **A**

3- That after the judgment dated 28.03.2023 the Registrar of this Honorable Tribunal forward the same to the respondents department vide latter dated 05/06/2023 for implementation but the respondents are reluctant to implement the Judgment dated 28.03.2023 in letter and spirit. Copy of the latter dated 05/06/2023 is attached as annexure .....**B.**

4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 28.03.2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated. 11/9/23

APPELLANT
MUTAZ AHMAD

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Mumtaz Ahmad, PMS Officer (BPS-17) (Retired), Establishment Department, Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm 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 Honorable Court.

DEPONENT

ADVOCATE High Court Peshawar NOOR MOHAMMAD KHATTAK

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

"A"
-3-

Service Appeal No. 1506/2022

Date of Institution ... 19.10.2022

Date of Decision... 28.03.2023

Mumtaz Ahmad, PMS Officer (BPS-17) (Retired), Establishment Department Khyber Pakhtunkhwa Peshawar.

... (Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. NOOR MUHAMMAD KHATTAK, Advocate --- For appellant.

MR. FAZAL SHAH MOHMAND, Additional Advocate General --- For respondents.

MR. KALIM ARSHAD KHAN --- CHAIRMAN
MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"that on acceptance of this appeal the impugned minutes dated 25.09.2017 may very kindly be set aside and the appellant may be considered for notional promotion to the post of BPS-18 w.e.f 30.11.2015 or before his retirement i.e 09.01.2016 with all back benefits. Any other remedy which this august Tribunal deems fit, may also be awarded in favour of the appellant."

2. Precise averments as raised by the appellant in his appeal are that the appellant was a PMS Officer (BPS-17) and while serving as Deputy Secretary Labour Department, he was retired from service

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with effect from 09.01.2016 on attaining the age of superannuation; that before retirement of the appellant, 06 clear vacancies for promotion to the post of BPS-18 were available, which is evident from the working paper prepared for meeting of the PSB scheduled on 18.02.2016; that according to minutes of the PSB held on 18.02.2016, the working paper for promotion to the post of BPS-18 could not be considered due to paucity of time; that had the PSB considered the working paper for promotion to the post of BPS-18 on the given date, the appellant was eligible for promotion; that the inaction of the respondents constrained the appellant to file departmental appeal followed by filing of Service Appeal No. 342/2016, before this Tribunal, which was decided vide judgment dated 24.04.2017, whereby directions were issued to the respondents that the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion; that it was during the execution proceedings of the aforementioned judgment that the respondents produced minutes of meeting of PSB dated 25.09.2017, whereby the appellant was not found eligible for promotion; that vide order dated 20.06.2022 passed by this Tribunal, the execution petition was filed with the observation that the appellant may avail remedy against the decision of PSB taken in its meeting dated 25.09.2017; that the appellant then filed

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departmental appeal, however of no avail, hence the instant service appeal.

3. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of para-wise comments, wherein they refuted the assertion raised by the appellant in his appeal..

4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Additional Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that previously the appellant had approached this Tribunal by way of filing Service Appeal No. 342/2016 for seeking the relief in question. It was during the proceedings in the aforementioned service appeal on 24.04.2017 that the Tribunal was informed that the name of the appellant had already been sent to PSB for notional promotion and that result thereof was awaited. The service appeal of the appellant was thus disposed of by this Tribunal vide order dated 24.04.2017 in the terms reproduced as below:-

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

"2. During the course of arguments the Tribunal was informed that the name of the

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appellant has already been sent to PSB for notional promotion and that result thereof is awaited.

3. In view of the above we dispose of the instant appeal with the directions that the case of the appellant be considered with reference to availability of vacancy and eligibility of the appellant for promotion on or before his date of retirement i.e 10.01.2016 and if a vacancy entitling the appellant to promotion is found available on or before his date of retirement then the appellant shall be considered against such vacancy for presumptive promotion. No order as to costs. File be consigned to the record room.

7. In light of the above reproduced order of this Tribunal dated 24.04.2017 passed in previous service appeal of the appellant, his case of notional promotion was placed before Provincial Selection Board in its meeting held on 25.09.2017, however the board observed that he was not eligible for proforma promotion to BS-18 on the ground that at the time of meeting of Provincial Selection Board, scheduled on 18.02.2016, there were only 08 vacancies, while the name of the appellant was falling at serial No. 15 of the officers, whose names were placed before Provincial Selection Board for promotion to BS-18. It is thus an admitted fact that panel of officers sent for consideration of Provincial Selection Board for its meeting scheduled on 18.02.2016 was consisting the name of the appellant at serial No. 15 of the list. Working paper of officers for their promotion to the post of BS-18 was not considered by the Provincial Selection Board in its meeting on 18.02.2016 on the ground of paucity of time. Subsequently, meeting of Provincial

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Selection Board was held and Notification dated 17.06.2016, regarding promotion of officers of BS-17 to BS-18 was issued in light of the recommendations of the same. The aforementioned Notification dated 17.06.2016 would show that only 04 officers of BS-17 against those, who were senior to the appellant at the time of previous meeting of Provincial Selection Board held on 18.02.2016 stood promoted, while there were 06 vacancies available at the relevant time i.e 18.02.2016. All this would led us to the conclusion that had the meeting of the Provincial Selection Board was held on 18.02.2016, vacancy for promotion of the appellant would have been available. It is evident from the record that 06 vacancies for promotion to the post of BS-18 were available prior to the retirement of the appellant but the board did not consider the working paper on the ground of paucity of time. August Supreme Court of Pakistan in its judgment reported as 2022 PLC (C.S) 104 has graciously observed as below:-

> *"9. In the present case the DPC has not considered the case for promotion of respondent and the reason assigned is that he has retired. This reason given by the DPC, apparently, is no reason in law, in that, once the Model Working Paper for promotion of respondent was placed before the DPC, it was incumbent upon it to have considered and decided the same, for that, though the law does not confer any vested right to a government servant to grant of promotion but the government servant surely has a right in law to be considered for grant of promotion. It is because of the department's own non-vigilance and the DPC being insensitive to the*

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

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employees who were on the verge of retirement of which the employees could not be made responsible, cannot simply brush aside the case of an employee by merely saying that he has retired. Once the case of respondent has matured for promotion while in service and placed before the DPC before retirement, it was incumbent upon the DPC to fairly, justly and honestly consider his case and then pass an order of granting promotion and in case it does not grant promotion, to give reasons for the same. This was not done by the DPC and in our view such was a miscarriage of justice of respondent."

8. In view of the above discussion, the appeal in hand is allowed and it is directed that the case of the appellant be placed before the Provincial Selection Board for consideration for proforma/notional promotion to BS-18 from the due date within a period of 03 months of receipt of copy of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.03.2023

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(KALIM ARSHAD KHAN)
CHAIRMAN

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 28/3/2023
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Urgent
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Date of Completion of Copy 01/06/23
Date of Delivery of Copy 01/06/23

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-9-

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Execution..
~~Appeal~~ No ____/2023

Mumtaz Ahmed (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt (RESPONDENT) (DEFENDANT)

I/We Appellant

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated.____/____/202

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

KAMRAN KHAN

UMAR FAROOQ MOHMAND

MUHAMMAD AYUB

&

MAHMOOD JAN
ADVOCATES

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