


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 584/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.08.2023	<p>The implementation petition of Mr. Muhammad Haroon is submitted today by Mr. Muhammad Arshad Khan Tanoli Advocate. It is fixed for implementation report before Single Bench at Abbottabad on _____ . Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

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

Execution Petition # 584/2023

C.M No. _____/2023

IN

Service Appeal No. 572/2019

Muhammad Haroon PST GPS Phulra District Mansehra.

...APPELLANT

VERSUS

DEO Male District Mansehra & others.

...RESPONDENTS

APPLICATION FOR IMPLEMENTATION

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3.	Copy of judgment dated 18.03.2021	12-17	B

M H
...APPELLANT

Dated: _____/2022

Through

(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
at Abbottabad

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

Execution Petition # 584/2023

C.M No. _____/2023

IN

Service Appeal No. 572/2019

Muhammad Haroon PST GPS Phulra District Mansehra.

...APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Mansehra.

...RESPONDENTS

SERVICE APPEAL

IMPLEMENTATION PETITION FOR
IMPLEMENTATION OF JUDGMENT DATED
08/03/2021 IN SERVICE APPEAL NO.572/2019. THE
HONOURABLE TRIBUNAL WHEREIN THE
APPELLANT WAS ALLOWED COUNTING OF HIS
PREVIOUS SERVICE FROM THE DATE OF
PROMULGATION OF THE KP SACKED
EMPLOYEES (APPOINTMENT) ACT 2012 ONLY
FOR PAYMENT OF PENSIONARY PLAINTIFFS,
BUT RESPONDENT DID NOT IMPLEMENT THE
JUDGMENT 08.03.2021 OF THE HONOURABLE
TRIBUNAL.

Respectfully Sheweth:-

1. That the applicant/appellant filed a service appeal No.572/2019 before this Honourable Tribunal regarding the counting of service towards the payment of pensionary benefits from the date of promulgation of the KP sacked Employees (Appointment) Act 2012. Copy of service appeal No572/2019 is attached as Annexure "A".
2. That this Honourable tribunal allowed the service appeal of the applicant/appellant and directed the respondents to count his service for payment of pensionary benefits from the date of promulgation of KP sacked Employees (Appointment) Act 2012 vide judgment dated 18/03/2021. Copy of judgment dated 18/03/2021 is attached as Annexure "B".
3. That, the applicant/appellant provided judgment dated 18/03/2021 of this Honourable Tribunal to the respondent, but the said respondent did not count service of the appellant as directed by the Honourable Tribunal so far.

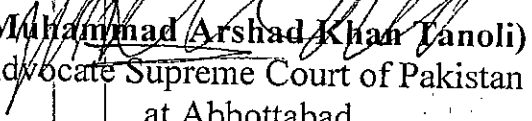
4. That willfull non-implementation of the judgment of this Honourable Tribunal amounts to the contempt of court.

In view of above, it is prayed that respondents may be directed to count service of the petitioner from the date of promulgation of KP sacked Employees (Appointment) Act 2012 forthwith failing which contempt of court proceedings may be initiated against the respondents.


...APPELLANT

Dated: _____/2022

Through


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
at Abbottabad

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

C.M No. _____/2023

IN

Service Appeal No. 572/2019

Muhammad Haroon PST GPS Phulra District Mansehra.

...APPELLANT

VERSUS

DEO Male District Mansehra & others.

...RESPONDENTS

APPLICATION FOR IMPLEMENTATION

AFFIDAVIT

I, *Muhammad Haroon PST GPS Phulra District Mansehra*, do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Tribunal.

M. Haroon

DEPONENT

Annex - A

P-5

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHUWA, PESHAWAR

Service Appeal No. _____/2019

Muhammad Haroon son of Khalil ur Rehman, GPS Phulra District Mansehra.

...APPELLANT

VERSUS

1. Government of KPK through Secretary Elementary and Secondary Education, Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Mansehra.

...RESPONDENTS

Attested

[Signature]

SERVICE APPEAL UNDER SECTION 4 OF
SERVICE TRIBUNAL ACT 1974 FOR
DECLARATION TO THE EFFECT THAT THE
APPELLANT WAS REINSTATED IN SERVICE
WITH EFFECT FROM 04/12/2017 VIDE
APPOINTMENT ORDER ENDST NO. 20672-702
DATED 04/12/2017 UNDER THE KHYBER
PAKHTUNKHWA SACKED EMPLOYEES
APPOINTMENT ACT 2012, AS WELL AS IN THE
LIGHT OF JUDGEMENT OF PESHAWAR HIGH

COURT BENCH ABBOTTABAD IN WRIT PETITION
NO. 516-A/2013 DECIDED ON 24/05/2016 THE
APPELLANT WAS TO BE REINSTATED IN
SERVICE I.E. HIS DATE OF TERMINATION FROM
SERVICE I.E. 06/03/1996 OR FROM THE DATE OF
PROMULGATION OF THE ACT, 2012 WITH ALL
SERVICE BACK BENEFITS BUT RESPONDENT
NON.3 APPOINTED / REINSTATED THE
APPELLANT IN SERVICE ON 04/12/2017 WHICH
IS DISCRIMINATORY, PERVERSE AGAINST THE
LAW.

=====

PRAYER: ON ACCEPTANCE OF THE INSTANT
SERVICE APPEAL, RESPONDENTS MAY
GRACIOUSLY BE DIRECTED TO REINSTATE THE
APPELLANT EITHER 06/03/1996 OR FROM THE
DATE OF PROMULGATION OF SACKED
EMPLOYEES APPOINTMENT ACT, 2012 WITH ALL
SERVICE BACK BENEFITS AND THE SAID
PERIOD MAY ALSO BE COUNTED TOWARDS
PENSIONARY BENEFITS. ANY OTHER RELIEF
WHICH THIS HONOURABLE TRIBUNAL DEEMS
APPROPRIATE MAY ALSO BE GRANTED TO THE
APPELLANT.

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Attested

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Respectfully Sheweth;-

Brief Facts of the case are as under:-

1. That the appellant was appointed as CT in the year 1993-94 and was terminated from service in the year 1997-98. Copies of appointment order and termination order are annexed as Annexure "A" & "B".
2. That Govt. of Khyber Pakhtunkhwa announced KPK Sacked Employees Appointment Act, 2012 wherein all the sacked employees who were appointed in the year 1993-1996 and terminated from service in the year 1997-1998 are to be reinstated in service. Copy of Khyber Pakhtunkhwa Sacked Employment Act, 2012 is attached as Annexure "C".
3. That the respondent No. 3 did not appoint the petitioner as per KPK Sacked Employees Act, 2012 in time. Hence, the appellant filed writ petition 516-A/2013 before Honourable High Court, Bench Abbottabad for his appointment under the said Act. Copy of Writ Petition is attached as Annexure "D".

Attested

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4. That during the pendency of the writ petition, respondent No 3 issued appointment order vide No 20672-702 dated 04/12/2017. Copy of appointment order dated 04/12/2017 of the appellant is attached as Annexure "E".
5. That the respondent No.3 also appointed some similar employees under the said Act in the year 2012-13 but appointed the appellant on 04/12/2017 which is discriminatory, perverse, against the law and the appointment order of the appellant should have been issued either from the date of termination from service in the year 1997-98 or from the dated Promulgation Sacked Employees Appointment Act 2012. The appellant filed departmental appeal to respondent No.2 for redressal of his grievance in December 2017 but respondent No.2 did not bother to reply the appellant so far. Copy of departmental appeal is attached as Annexure "F".
6. That feeling aggrieved, the instant appeal is filed inter-alia, on the following grounds:-

Attested



GROUNDS:

- a) That respondent No.3 was supposed to appoint the appellant under KPK Sacked Employees Appointment Act 2012, as and when the said Act was promulgated in the Year 2012 but respondent No.3 finally issued appointment order of the appellant 04/12/2017 which is against the law and discriminatory. Hence the appellant is entitled to have all the service back benefits w.e.f the date of termination of service in the Year 1997-98 as has been granted by the Federal Govt. to its employees in the Year 2010.
- b) That respondent No.3 appointed some similar employees who are juniors in age from the appellant, whereas the appellant has been appointed/reinstated in service on 04/12/2017 which is against the principle of equality and natural justice as well as principle of good governance.
- c) That District Education Officer under the control of respondents No.1 & 2 issued

Attested

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appointment orders of similar employees in other districts under the said Act in the year 2013. Copies of similar employees who were appointed in other districts are attached as Annexure "G".

d) That the appellant is to be given all service back benefits i.e salary either the date of termination and period of service i.e. in the year 1997-98 to 04/12/2017 is to be counted towards length of qualifying service for pensionary benefits.

e) That respondents-department has led the appellant to the place which is utterly unknown to the principle of jurisprudence and natural justice. The appellant is to be treated at par with other employees under the control of the respondents-department.

f) That when the law prescribe something which is to be done in a particular manner that must be done in that manner and not otherwise.

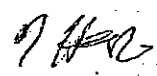
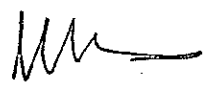
Attested

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- g) That there is no other efficacious and adequate remedy available to the appellant, except the present appeal.
- h) That other points shall be raised before the Honourable Tribunal at the time of arguments.

It is, therefore, humbly prayed that, on acceptance of the instant service appeal, respondents may graciously be directed to reinstate the appellant either from the year 1997-98 or from the date of promulgation of Sacked Employees Appointment Act, 2012 with all service back benefits and the said period may also be counted towards pensionary benefits. Any other relief which this Honourable Tribunal deems appropriate may also be granted to the appellant.

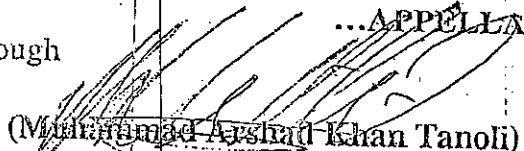
Attested



...APPELLANT

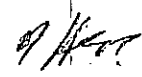
Dated: _____/2019

Through


 (Muhammad Arshad Khan Tanoli)
 Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



...APPELLANT

Annex- B

P-15



BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 572/2019

Muhammad Haroon son of Khalil ur Rehman, GPS Phulra District Mansehra.

...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Salary No. 641

Dated 22/4/2019

1. Government of KPK through Secretary Elementary and Secondary Education, Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Male) District Mansehra.

...RESPONDENTS

By the appellant

[Signature]
3/5/19

SERVICE APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974 FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS REINSTATED IN SERVICE WITH EFFECT FROM 04/12/2017 VIDE APPOINTMENT ORDER ENDST NO. 20672-702 DATED 04/12/2017 UNDER THE KHYBER PAKHTUNKHWA SACKED EMPLOYEES APPOINTMENT ACT 2012, AS WELL AS IN THE LIGHT OF JUDGEMENT OF PESHAWAR HIGH

Re-submitted to stay and filed.

Registrar
3/5/19

ATTENDED

[Signature]
Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]

[Signature]

P-13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 572/2019



Date of Institution 22.04.2019
Date of Decision 18.03.2021

Muhammad Haroon son of Khalil ur Rehman, G.P.S. Phulra
District Mansehra.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary
Elementary & Secondary Education Peshawar and two others.

(Respondents)

Muhammad Arshad Khan Tanoli,
Advocate

... For appellant.

Riaz Khan Paindakheil,
Assistant Advocate General

... For respondents.

ROZINA REHMAN
ATIQU UR REHMAN WAZIR

... MEMBER (J)


... MEMBER (E)

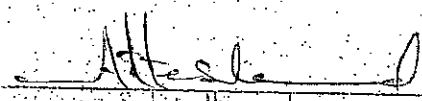
JUDGMENT

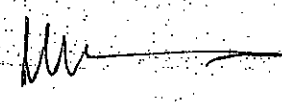
ROZINA REHMAN, MEMBER : This judgment is intended to dispose of
04 connected service appeals which are:

1. Service Appeal No. 572/2019
2. Service Appeal No. 573/2019
3. Service Appeal No. 574/2019
4. Service Appeal No. 575/2019

ATTESTED


Secretary
Khyber Pakhtunkhwa
Service Tribunal
Peshawar





In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

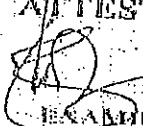
2. The relevant facts leading to filing of instant appeals are that appellants were appointed as C.Ts in the year 1993-94 and were terminated from service in the year 1997-98. After the announcement of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012, they were required to be reinstated in service but the appellants were not appointed accordingly, therefore, they filed Writ Petition before the Hon'ble High Court for their appointment under the said Act and it was during the pendency of the Writ Petition when appointment orders were accordingly issued on 04.12.2017. Some of the employees under the said Act were appointed in 2012-13 but the appellants were appointed on 04.12.2017, therefore, they filed departmental appeal which was not responded to, hence the present service appeal.

3. We have heard Muhammad Arshad Khan Tanoli Advocate for appellants and Riaz Khan Paindakheil learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Arshad Khan Tanoli Advocate learned counsel appearing on behalf of appellants, inter-alia, argued that the respondent No.3 was supposed to appoint appellants under the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 when the said Act was promulgated in the year 2012 but their appointment order was issued on 04.12.2017 which is against law and discriminatory.

Attended

Mu

ATTESTED

 THE ATTORNEY GENERAL
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 PESHAWAR

Learned counsel further argued that some of the employees who were juniors to appellants were appointed, whereas, appellants were reinstated later on which act is against the principle of equality and natural justice. He submitted that appellants are to be treated at par with other employees in the said Department and lastly, he submitted that similar employees were given benefit by the Apex Court by counting of their service for the protected period for payment of pensionary benefits, therefore, request was made for the stated relief.

5. As against that, learned A.A.G submitted that appellants were appointed as P.S.Ts but later on, their appointments were declared illegal and they were terminated. The Government of Khyber Pakhtunkhwa promulgated Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and the appellants were appointed as P.S.Ts under Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 as well as upon the direction of august High Court Abbottabad Bench. He submitted that as per Section-5 of the Sacked Employees (Appointment) Act, 2012, sacked employees shall not be entitled to seniority and other back benefits and that such nature cases were dismissed by the Service Tribunal. He, therefore, requested for dismissal of instant service appeals.

6. From the record, it is evident that appellants and others who were appointed back in 1994-95 were terminated in 1996-97. Sacked Employees (Appointment) Act, 2012 was specifically promulgated to extend relief to such sacked employees. Appellants were not

Attested

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ATTESTED

 DEPUTY COMMISSIONER
 SERVICE TRIBUNAL
 PESHAWAR

considered for the reason best known to the respondents. The respondents however, considered other similar cases just after promulgation of the Act ^{ibid} which was discriminatory on the part of respondents. It was upon the intervention of the Hon'ble Peshawar High Court that appellants were reinstated at a belated stage in 2017 but with immediate effect. The main concern of the appellants is that such employees would reach the age of superannuation before earning qualifying service for pensionary benefits. We have observed that appellants had possessed all the qualifications as prescribed in the Act like others. It is also on record that co-employees tried their level best for back benefits and their cases were dismissed by this Tribunal as their earlier stance ^{was} to get all service benefits. Feeling aggrieved from the judgment of this Tribunal CPLAs were filed in the Apex Court and relief of back benefits to co-employees was refused by the Apex Court too. However, Apex Court allowed counting of their service for the protected period for payment of pensionary benefits. The present appellants have a strong case as they had every right to be reinstated just after promulgation of the Act as they were having requisite qualification as prescribed in the Act. Their claim was accepted by the august High Court and reinstatement was ordered.

8/10/17

7. The present appellants have also prayed for all service back benefits with a request for counting of their service for the protected period in the light of judgment of the Apex Court which was passed in the case of co-employees. So, from the record, it is crystal clear that

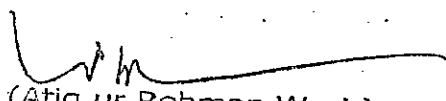
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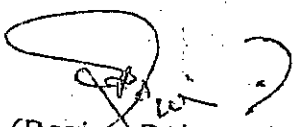
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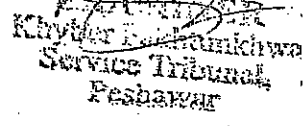
ATTESTED
 MEMBER
 Peshawar High Court
 Service Tribunal
 Peshawar

despite promulgation of an Act in the year 2012, appointment order of the appellants were issued in the year 2017 and that too, on the directions of the august High Court. No doubt, similar appeals of the sacked employees were dismissed regarding the back benefits but the Apex Court allowed the co-employees counting of their service for the protected period for payment of pensionary benefits only. Case of the present appellants is at par with those sacked employees who were granted this benefit by the Apex Court, therefore, these appeals are accepted to the extent that appellants are allowed counting of their services from the date of promulgation of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 only for payment of pensionary benefits. No order as to costs. File be consigned to the record room.

ANNOUNCED.
18.03.2021

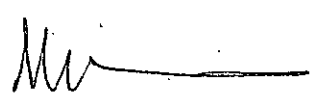

(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Abbottabad


(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	06/4/21
Number of Words	2000
Copying Fee	22/-
Urgent	
Total	22/-
Name of Copyist	
Date of Completion of Copy	06/4/21
Date of Delivery of Copy	06/4/21

Attested



کورٹ فیس

وکالت نامہ

Service Tribunal Dept Peshawar

M. Haroon

نام DEO etc

بعدالت

عنوان:

Appellant

منجانب:

Application

نوعیت مقدمہ:

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب وہی کل کاروائی متعلقہ آن مقام

Attd. M. Arshad Khan Tanoli Asc of Peshawar

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پر داختمہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت ناش بیضہ مفلسی کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

المرقوم:

Abbottabad

بمقام:

M. Arshad Khan Tanoli
Advocate
High Court
قاسم ٹی ویٹ پیجری (ایبٹ آباد)

Accepted
M. Arshad Khan Tanoli
Asc of Peshawar Attd