


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 657/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.09.2023	<p>The implementation petition of Mr. Farid Ullah Shah submitted today by Syed Abdul Haq Advocate. It is fixed for implementation report before touring Single Bench at Swat on _____. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL CAMP COURT AT PESHAWAR**

C.M. Execution petition No. 657/2023  
2023

Khyber Pakhtunkhwa  
Service Tribunal

IN

Service Appeal No. 9623/2020

Diary No. \_\_\_\_\_

Dated \_\_\_\_\_

Farid Ullah..... **Applicant/Appellant**


**VERSUS**

Govt of KP & others ..... **Respondents**

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Applicant/appellant through Counsel

  
**SYED ABDUL HAQ**  
**(ASC)**  
HIGH COURT  
DARULQAZA  
BAR ROOM SWAT  
Cell No 03110950959

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL CAMP COURT AT PESHAWAR**

C.M

IN

Service Appeal No. 9623/2020

*2023*  
*Execution Petition No. 657/2023*

Khyber Pakhtunkhwa  
Tribunal

*7761*

*Dated 22/09/23*

Farid Ullah Shah S/o Rahim Ullah R/o Peran Tehsil  
Batkhela, District Malakand.

.....Applicant/Appellant

**VERSUS**

1. Govt of Khyber Pakhtunkhwa through secretary Excise  
Taxation and Narcotic Control, Khyber Pakhtunkhwa at  
Peshawar
2. Director General Excise Taxation and Narcotic Control  
Khyber Pakhtunkhwa at Peshawar
3. Director Excise Taxation and Narcotic Control at Saidu  
Sharif Swat.
4. Deputy Director Excise Taxation and Narcotic Control  
Malakand Region at Saidu Sharif Swat

..... Respondents

**APPLICATION FOR EXECUTION/IMPLEMENTATION**

**OF THE JUDGMENT PASSED BY THIS HONORABLE**

**TRIBUNAL IN SERVICE APPEAL NO. 9623/2020,**

**DECIDED ON 07.07.2023**

**PRAYER:**

**On acceptance of this execution petition the judgment passed by the honorable tribunal may kindly be implemented in letter in spirit.**

Respectfully Sheweth;

That the short and snappy facts of the instant application are, as under.

1. That the applicant/appellant filed an appeal before this honorable tribunal with a prayer that the impugned retirement order dated 28.02.2017 passed by the official respondents may kindly be declared illegal, unlawful, infective upon the rights of the appellant/applicant and be re-instated in service.
2. That the respondents were summoned, they appeared and submitted their comments and after hearing this honorable tribunal allowed the appeal vide judgment dated 07.07.2023. (Copy of the judgment dated 07.07.2023 is annexure "A").
3. That after as and when the applicant got the attested copy of the judgment mentioned above i.e. on 16.08.2023 he approached the office respondent

No.1 through application for re-instatement of service as per judgment of this honorable tribunal. (Copy of the application dated 22.08.2023 as annexure "B")

4. That applicant/appellant visited the office/authority concerned and requested him for the compliance of the judgment, but they refused to honor the judgment passed by this honorable tribunal, so the applicant/appellant having left no other efficacious remedy except to file the instant petition for compliance of the judgment dated 07.07.2023 inter alia on the following grounds.

**GROUND:**

- A. That the act of respondent as not complying the judgment of this honorable tribunal in its true spirit is highly discriminatory, biased, unlawful, lack backing of law and liable to be set at naught.
- B. That this Hon'ble tribunal clearly directed the official respondents to re-instated the applicant/appellant in service and also hold that

the intervening period w.e.f the date of his retirement shall be treated as leave of kind due, but the respondents are not obeying the judgment of this honorable tribunal and are using delay tactics, so such act of the respondents are baseless, lack backing of law and this honorable tribunal has ample power to issue direction to the official respondents to re-instate the applicant/appellant as per spirit of the judgment without any delay.

C. That the act of respondent is against the norms of justice, against the public interest and if such practice is allowed to continued then the confidence of the citizen of country would be lost on judiciary so, no one is above the law hence the respondents be directed to redress the grievances of applicant forthwith.

D. That the petitioner seeks leave of this honourable Court to raise/argue any additional points at the time of arguments.

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*It is, therefore, humbly  
prayed that on acceptance of this  
execution petition the judgment  
passed by the honorable tribunal  
may kindly be implemented in  
letter in spirit forthwith.*

Applicant/Appellant

Through Counsel

  
**SYED ABDUL HAQ,**

Advocate, Supreme Court

03110950959

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL CAMP COURT AT PESHAWAR**

C.M \_\_\_\_\_ 2023

IN

Service Appeal No. 9623/2020

Farid Ullah.....**Applicant/Appellant**

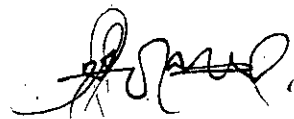
**VERSUS**

Govt of KP & others ..... **Respondents**

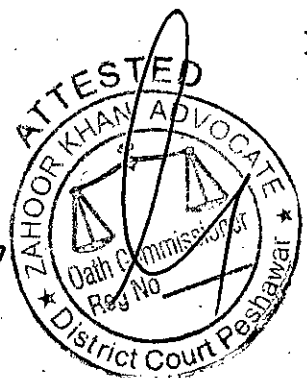
**AFFIDAVIT**

*I, Farid Ullah Shah S/o Rahim Ullah R/o Peran Tehsil Batkhela, District Malakand, do hereby solemnly affirm and declare on oath that as per instruction of my client the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable tribunal.*

**DEPONENT**



**FARID ULLAH**

22/9/23  




(7)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR,**  
**AT CAMP COURT SWAT**

Service Appeal No. 9623/2020

Date of Institution... 24.08.2020

Date of Decision... 07.07.2023



Farid Ullah Shah S/O Rahim Ullah, R/O Peran Tehsil Batkhela, Malakand.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Excise, Taxation and Narcotic Control, Khyber Pakhtunkhwa Peshawar and 03 others.

... (Respondents)

SYED ABDUL HAQ,  
Advocate

--- For appellant

MR. MUHAMMAD JAN,  
District Attorney

--- For respondents

MR. SALAH-UD-DIN  
MS. FAREEHA PAUL

--- MEMBER (JUDICIAL)  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-** Precise facts giving rise to filing of the instant service appeal are that the appellant was appointed as Junior Clerk in the Department of Excise, Taxation and Narcotics Control, at Timergara vide order dated 16.01.1984; that he was promoted to the post of Senior Clerk in 1988 and was further promoted as Inspector (BPS-14) in 1997; that he, on the strength of his unblemished service record, was promoted to the post of Assistant (BPS-16) in his cadre in 2009; that due to some domestic problems, he submitted application dated 16.08.2016 for retirement but when he got stable, he immediately approached the concerned office and took back his application for retirement on

**ATTESTED**


**EXAMINER**

**Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar**

22.08.2016; that the appellant joined his duty but in the meanwhile a letter bearing No. 553-54/E&T dated 09.11.2016 was issued by the concerned office regarding alleged absence of the appellant with effect from 01.11.2016 to 09.11.2016; that the respondents without following any legal procedure, retired the appellant from service with effect from 01.03.2017 vide order bearing No. 2010/Estab/P.File dated 28.02.2017; that on the strength of retirement order, the respondents stopped the salary of the appellant with effect from 01.03.2017 vide order bearing No. 240/ET&NC dated 02.04.2017; that the appellant approached respondent No. 1 and pointed out the illegality committed by the subordinate officers through application dated 15.06.2017. On the application of appellant the respondent No. 2 submitted his alleged report to the respondent No. 1 on 04.07.2017; that there-after the respondents remained silent, therefore, the appellant filed another application/appeal and challenged the retirement order dated 28.02.2017; that respondent No. 1 sought detailed report, and in response of which the respondent No. 3 submitted a report bearing No. 732/D/MKD dated 01.04.2018; that the appellant then repeatedly visited the concerned office but they did not respond; that the appellant has no alternate remedy except to file the instant appeal for redressal of his grievance.

2. The appellant had called in question order of his retirement dated 28.02.2017 before the Hon'ble Peshawar High Court, Mingora Bench through Writ Petition No. 870-M/2018. Vide order 10.03.2020, the Writ Petition was converted into an appeal

**ATTESTED**

  
EXAMINER  
Khyber Pakhtukhwa  
Service Tribunal  
Peshawar

and sent to this Tribunal for disposal according to law. On admission of the appeal to full hearing, the respondents were summoned who appeared through their representatives and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections. The defence set-up was a total denial of the claim of the appellant.

3. Learned counsel for the appellant has argued that the appellant had though submitted an application for voluntary retirement, however the application was taken back by the appellant before its acceptance, therefore, the impugned order of retirement of the appellant is wrong and illegal. He next argued that the appellant had submitted application for retirement on 16.08.2016 and on one hand, explanation was called from him on 09.11.2016 regarding his alleged absence from duty with effect from 01.11.2016 to 09.11.2016 but on the other hand, he was wrongly and illegal retired through the impugned order dated 28.02.2017. He further argued that the impugned order of retirement of the appellant was not communicated to him and he kept on performing his duty, however on gaining knowledge regarding impugned order of his retirement, the appellant preferred departmental appeal, however the same was not responded. He next contended that it is an admitted fact that the appellant was handed over his original application for retirement on 22.08.2016, therefore, this fact made the impugned order wrong and illegal. In the last he requested that the impugned order may be set-aside and the appeal

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

may be allowed as prayed for. Reliance was placed on 2007 SCMR 792.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had himself submitted an application for voluntary retirement, which was allowed by the competent Authority and the appellant stood retired vide order dated 28.02.2017 with effect from 01.03.2017. He next argued that as the appellant had himself submitted application for voluntary retirement, therefore, he cannot be allowed to turn around and seek the setting-aside his retirement order. He further argued that after acceptance of his application for retirement, the retirement order of the appellant was issued on 28.02.2017, while he filed departmental appeal on 15.06.2017, which was badly time barred and the service appeal is thus liable to be dismissed being incompetent. Reliance was placed on 2008 SCMR 1078 and 2012 SCMR 745.

5. Arguments have already been heard and record perused.

6. The appellant has impugned the order dated 28.02.2017 passed by Director General, Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa Peshawar, whereby he was retired from service with effect from 01.03.2017. The appellant had admittedly submitted application for voluntary retirement, which was though processed vide letter No. 389/E&T dated Batkhela 16.08.2016. The retirement order of the appellant was issued on 28.02.2017 by the competent Authority, however it is the stance of the appellant that well before passing of the afore-mentioned order, he had changed his intention of voluntary retirement and upon his request, the original

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

application was handed over to him. Copy of letter No. 389/E&T dated 16.08.2016 is available on the record, which bears an endorsement supporting the stance of the appellant that his original application was received back by him on 22.08.2016. Similarly, the copy of letter No. 389/E&T dated 16.08.2016 as annexed by the respondents alongwith their comments filed by them in Writ Petition also bears an endorsement dated 22.08.2016 regarding return of original application to the appellant. Moreover, upon departmental appeal of the appellant, Director Excise, Taxation & Narcotics Control Malakand Region Swat submitted report to Director General Excise, Taxation and Narcotics Control Khyber Pakhtunkhwa Peshawar vide letter No. 732/D/Mkd dated 01.04.2018, wherein too this fact has been admitted that original application submitted by the appellant for his retirement was not available in the record. All this led us to the conclusion that the original application was taken back by the appellant on 22.08.2016, however copy of his application was processed and the impugned retirement order was passed on the basis of photocopy of application submitted by the appellant for his retirement. The course so adopted by the competent Authority thus could not be found as legal as he was required to have ensured the original application of the appellant for retirement before issuing the impugned order. The impugned order of retirement of the appellant is thus not sustainable in the eye of law and is liable to be set-aside.

7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the appellant is reinstated.

**ATTESTED**

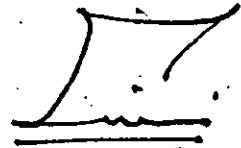
**EXAMINER**

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

in service. The intervening period with effect from the date of his retirement till his reinstatement shall be treated as leave of kind due. Parties are left to bear their own costs. File be consigned to the record room.

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ANNOUNCED  
07.07.2023

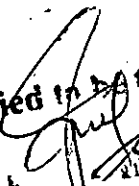


(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT SWAT



(FAREEHA PAUL)  
MEMBER (EXECUTIVE)  
CAMP COURT SWAT

\*Naeem Amin\*

**Certified to be true copy**  
  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application	14/07/2023
Number of Voucher	6/-
Copying Fee	30/-
Urgent	5/-
Total	65/-
Date of Delivery of Copy	16/08/2023

AMR B

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To,

The Secretary,  
Excise, Taxation & Narcotics Control Department,  
Govt: of Khyber Pakhtunkhwa  
Peshawar.

Subject: APPLICATION FOR RE-INSTatement OF SERVICE AS PER COURT'S JUDGMENT/DECISION/ORDER

Respected Sir,

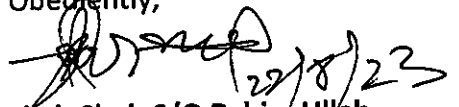
With great veneration and profound, that the Honorable Service Tribunal, Khyber Pakhtunkhwa Peshawar, Camp Court at Swat has decided the service appeal bearing No.9623/2020 in favour of applicant on dated: 07/07/2023 under the Title of Farid Ullah Shah V/S Government of Khyber Pakhtunkhwa through Secretary, Excise, Taxation & Narcotics Control Department Khyber Pakhtunkhwa at Peshawar and 03 others. (The attested photo copy of the judgment/decision is enclosed herewith to your good office for ready reference.)

Therefore, it is requested to kindly re-instate my service as per the above Court's Judgment/Order, decision and enable me to assume my legitimate duty in the best interest of Department/ state's work at earliest please.

D/A (06 Attested Pages)

Dated: 22/08/2023

Yours Obediently,



Farid Ullah Shah S/O Rahim Ullah  
Village & P.O Piran, Tehsil Batkhela,  
District Malakand  
Mobile/Contact No. 0313-4560666

Copy to:-

1. The Director General, Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa at Peshawar.
2. The Deputy Director, Excise, Taxation & Narcotics Control Department, Malakand Region at Swat.
3. The Excise, Taxation & Narcotics Control Officer, Malakand at Batkhela.

The Photocopies of the Court's Decision are enclosed herewith to their each office for information with the request for necessary action as per Court's Order/Decision, please.

D/A (06 Pages of each)





POWER OF ATTORNEY

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

Farid ullah shah

Versus  
Govt of kp and others

I, petitioner do hereby appoint Syed Abdul Haq advocate supreme Court in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above-mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct prosecution or defence of the said case at all its stages.
3. To receive payment of and issue receipts for, all money that may be or become due and payable to us during the course of proceedings.

And hereby agree: -

- a) That the advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this,

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_.

Attested & Accepted by:  
(Subject to the term regarding payment of fee)

Signature of Executant

syedabdulhaqadvocate@gmail.com

Swat Shopping Mall Opp: Peshawar High Court Mingora Bench, Swat