


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 735/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.10.2023	<p>The implementation petition of Mr. Khaled Saleem Marwat submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____</p> <p>Original file be requisitioned. AAG has noted the next date. Parcha peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution petition no. 735/2023

Misc Pett: No. _____ /2023

IN

S.A. No. 1280 / 2013

Khalid Saleem Marwat

versus

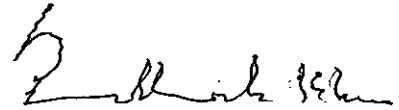
Chief Secretary & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-2
2.	Copy of Appeal dated 02-09-2013	"A"	3-6
3.	Copy of Judgment dated 14-09-2022	"B"	7-14
4.	Compliance letter dated 07-12-2022	"C"	15

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 04-10-2023

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR*Execution Petition No. 735/2023*

Misc Pett: No. _____ /2023

IN

S.A. No. 1280 / 2013

Khyber Pakhtunkhwa
Service TribunalDiary No. 8160Dated 06-10-23

Khalid Saleem Marwat S/O Amir Sardar Khan,

R/O House No. 75, St. No. 04, Sector E-I,

Phase-1 Hayatabad, Peshawar

Ex-Deputy Secretary Home & Tribal Affairs

Department, Peshawar Applicant

VERSUS

1. Chief Secretary, Govt. of KP,
Peshawar.2. Secretary, Government of
KP, Establishment

Department, Peshawar. Respondents

APPLICATION FOR IMPLEMENTATION OF THE**JUDGMENT DATED 14-09-2022 OF THE HON'BLE****TRIBUNAL, PESHAWAR:****Respectfully Sheweth:**

1. That on 02-09-2013, applicant filed Service Appeal before this hon'ble Tribunal for proforma promotion to B-19 for award of monitory benefits with effect from 30-05-2011 with all service benefits. (Copy as annex "A")
2. That the said appeal came up for hearing on 14-09-2022 and then the hon'ble Tribunal was pleased to allow the same as prayed for. (Copy as annex "B")
3. That on 27-12-2022, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but the same is not honored in letter and spirit till date. (Copy as annex "C")

4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 14-09-2022 of the hon'ble Tribunal be complied with hence forthwith.

OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.

[Signature]
Applicant

Through

[Signature]
Saadullah Khan Marwat

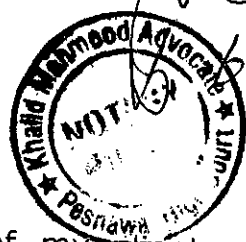
[Signature]
Arbab Saif-ul-Kamal

[Signature]
Amjad Nawaz
Advocate

Dated: 04-10-2023

AFFIDAVIT

I, Khalid Saleem Marwat S/O Amir Sardar Khan (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.



[Signature]
DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.

[Signature]
ADVOCATE

copy of Appeal

A 3

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1280 /2013

Stamp No. 1308
Date 02-9-13

Khalid Salim Marwat S/o Amir Sardar Khan, R/o House No.75, Street No.4, Sector E-1, Phase-I, Hayatabad, Peshawar, Ex-Deputy Secretary, Home & Tribal affair Department, KPK, Peshawar Appellant

Versus

- 1. Chief Minister, Govt. of KPK, through R.No.2.
- 2. Chief Secretary, Govt. of KPK, Peshawar.
- 3. Secretary, Govt. of KPK, Establishment Department, Peshawar Respondents

✓4. Akbar Khan Marwat, Additional Secretary, Law Department, Peshawar.

5. Shafir Ullah, Additional Secretary, FATA, Fata Secretariat, Warsak Road, Peshawar.

6. Muhammad Maqbool, Additional Secretary, Auqaf Department, Peshawar cantt.

7. Syed Mubashar Hussain Shah, Deputy Commissioner, Nowshera Proforma Respondents

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29/13
Respectable
President
W. order
6-7-14
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APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST APPELLATE ORDER NO.SO(E-1)E&AD/4-472/2013. DATED 04.07.2013 OF R.NO.1 WHEREBY APPEAL

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Signature of the attesting officer

Signature of the appellant

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AGAINST OFFICE NOTIFICATION NO. SO(E-I)/E&AD/5-1/2001, DATED 30.05.2011 AND OFFICE NOTIFICATION NO. SO(E-I)/E&AD/4-2/2001, DATED 27.10.2011, PROMOTING R.NO. 4 TO 7 TO THE POSTS OF ADDITIONAL SECRETARY, BPS-19 WAS REJECTED FOR NO LEGAL REASON.

◊<=>◊<=>◊<=>◊<=>◊

Respectfully Sheweth;

1. That appellant started service as Naib Tehsildar since the year, 1975. He was promoted to the post of Tehsildar, BPS-16 in 1979, to the post of Extra Assistant Commissioner (EAC), BPS-17 in 1990 and to BPS-18 in the year, 2006. From 2002 till 2007, he remained as District Officer (Revenue & Estate) (DOR), Peshawar.
2. That on 08.03.2010, Seniority List of PCS, Executive Group was issued wherein appellant was placed at S.No.2. (Copy as annex "A")
3. That grabbing of Govt. property became play of child everywhere in the province, so such issue cooked up and appellant was too termed and was booked for departmental action and then on 25.05.2010, penalty of reduction to lower post/pay scale for a period of 3 years and on restoration, it shall operate to postpone future increments for 3 years was imposed upon him. (Copy as annex "B")
4. That against the aforesaid penalty, appellant filed S.A.No.1393/2010 before this hon'ble Tribunal which was contested by the department. (Copy as annex "C")
5. That during the pendency of the appeal before the hon'ble Tribunal, R.No.1, without considering appellant for promotion to BPS-19, promoted junior most respondents from BPS-18 to BPS-19 vide orders dated 30.05.2011 and 27.10.2011. (Copies as annex "D & E")

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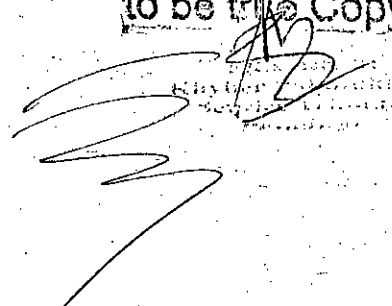
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- 5**
6. That the aforesaid appeal of appellant came up for hearing on 15.12.2011 and after lengthy discussion, the same was accepted on 15.12.2011 and the impugned order dated 25.05.2010 was set aside. (Copy as annex "F")
 7. That the department filed Civil Petition for Leave to Appeal (CPLA) before the apex Supreme Court of Pakistan which came up for hearing on 19.04.2012 and then grant of Leave was declined. (Copy as annex "G").
 8. That by now, appellant was retired from service on 29.04.2012 on attaining the age of superannuation. (Copy as annex "H")
 9. That in pursuance of the aforesaid judgment/order dated 15.12.2011 and 19.04.2012 of the hon'ble Tribunal and Supreme Court of Pakistan, appellant was restored to his original position on 03.08.2012 by withdrawing Notification dated 25.05.2010. (Copy as annex "I")
 10. That after the final settlement of his fate, appellant submitted departmental appeal on 06.08.2012 before R.No.2 for award of BPS-19 which was rejected on 04.07.2013, Copy of which was received on 27.08.2013 from the office of the respondent. (Copies as annex "J & K")

Hence this Writ Petition, inter alia, on the following grounds:-

G R O U N D S:

- a. That appellant was at S.No.2 of the seniority list and was senior to the promoted respondents. The promoted respondents were given BPS-19 but appellant was ignored due to the so called illegal order of reduction to lower grade.
- b. That the stigma of reduction was washed out by the hon'ble Service Tribunal, the apex Supreme Court of

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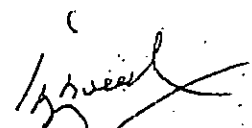
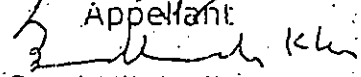
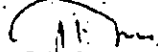
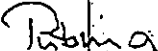
Pakistan and the department herself, so appellant is legally entitled for the grant of BPS-19.


- c. That appellant was compelled to lengthy litigation for no legal reason and was harassed and deprived from monetary benefits of BPS-19 due to the so called order dated 25.05.2010.
- d. That order dated 25.05.2010 was based on malafide and was illegal, so the same was struck down by the hon'ble Tribunal/Supreme Court of Pakistan.
- e. That appellant was dropped from award of the post of Additional Secretary BPS-19 with ulterior motive, otherwise he was qualified and eligible for the same.
- f. That by now appellant has been retired from service on 29.04.2012 but is legally entitled for proforma promotion to get monetary benefits of BPS-19.
- g. That order of rejection dated 04.07.2013 is not supported by reasons, so the same cannot be treated under the law as a legal order.

It is, therefore, most humbly prayed that on acceptance of appeal, the impugned Notifications dated 30.05.2011, 27.10.2011 and 04.07.2013 of the respondents be set aside/modified and appellant be given proforma promotion to BPS-19 for monetary benefits with effect from 30.05.2011 with all service benefits, with such other relief as may be deemed proper and just in circumstances of the case.

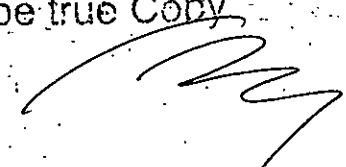
Dated: 2.09.2013

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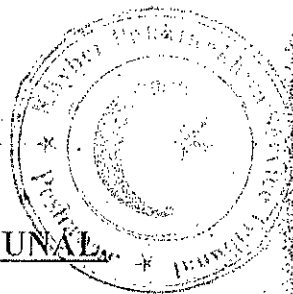

 Appellant

 Saad Ullah Khan Marwat

 Arbab Saiful Kamal

 Miss Rubina Naz,
 Advocates.

Certified

 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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B 7/1



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1280/2013

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Khalid Salim Marwat S/o Amir Sardar Khan, R/o House No. 75, Street No. 4, Sector E-1, Phase-I Hayatabad, Peshawar, Ex-Deputy Secretary, Home & Tribal Affair Department, Khyber Pakhtunkhwa Peshawar..... (*Appellant*)

VERSUS

1. Chief Minister, Government of Khyber Pakhtunkhwa, through Respondent No. 2.
2. Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar.
3. Secretary Government of Khyber Pakhtunkhwa Establishment Department, Peshawar.
4. Akbar Khan Marwat, Additional Secretary FATA, Fata Secretariat Warsak Road Peshawar.
5. Shafir Ullah, Additional Secretary FATA, Fata Secretariat Warsak Road Peshawar.
6. Muhammad Maqbool, Additional Secretary, Auqaf Department Peshawar Cantt.
7. Syed Mubashar Hussain Shah, Deputy Commissioner, Nowshera.
..... (*Respondents*)

Present:

ARBAB SAIFUL KAMAL,
Advocate --- For Appellant.

MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General, --- For respondents.

Date of Institution.....02.09.2013
Date of Hearing.....14.09.2022
Date of Decision.....14.09.2022

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JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The appellant has invoked jurisdiction of the Service Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the

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Mian Muhammad, Member (E)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

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appellate order dated 04.07.2013 passed on his departmental appeal against promotion Notification of private respondent No. 4 & 5 dated 30.05.2011 and promotion Notification of Private respondent No. 6 & 7 dated 27.10.2011. It has been prayed that "on acceptance of appeal, the impugned Notifications dated 30.05.2011, 27.10.2011 and 04.07.2013 of the respondents be set aside/modified and appellant be given proforma promotion to BPS-19 for monetary benefits with effect from 30.05.2011 with all service benefits, with such other relief as may be deemed proper and just in circumstances of the case".

02. Brief facts, giving rise to the service appeal are that the appellant joined the respondent department as Naib Tehsildar in 1975 and elevated to BS-18 by way of promotion in his cadre in the year 2006. When he was posted as District Officer (Revenue & Estate) Peshawar (March, 2002- September, 2007), disciplinary action was taken against him as well as others co-accused at that time under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 for illegal registration of gift deed. He was awarded the penalty of "reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years" on 25.05.2010. The penalty was challenged in the first round of litigation before the Service Tribunal through service appeal No. 1393/2010 and the Service Tribunal while allowing his appeal partially on 15.12.2011, remanded case of the appellant as well as

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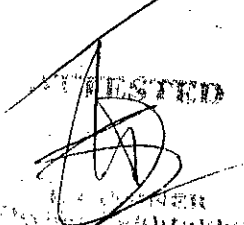
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other appellants to the competent authority for de-novo departmental proceedings in accordance with letter and spirit of law. The respondents assailed the Service Tribunal Judgement in the august Supreme Court of Pakistan through filing of CPLA, which was declined on 19.04.2012. The respondents having no other option but to implement Service Tribunal judgement dated 15.12.2011 and the then impugned Notification of penalty dated 25.05.2010 was withdrawn vide Notification dated 03.08.2012 and through another Notification dated 03.08.2012 the appellant was retired from service on attaining the age of superannuation w.e.f. 29.04.2012. The instant service appeal is second round of litigation seeking proforma promotion in BS-19 from the date when his erstwhile juniors were promoted during pendency of the appeal.

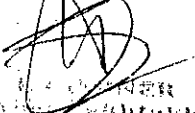
03. On admission of the service appeal in preliminary hearing on 09.01.2014, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 13.08.2015. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant vehemently contended that the appellant had over 36 years unblemished

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service record to his credit. His penalty of "reduction to lower post/pay scale" was set aside when the Service Tribunal remanded the case for denovo enquiry on 15.12.2011. The respondent did not conduct the denovo enquiry as per judgement of the Service Tribunal and challenged it thorough CPLA in the august Supreme Court of Pakistan which was declined on 19.04.2012. All charges and the penalty so imposed on the appellant were quashed away and there remained no stigma in the service career of the appellant. Moreover, it was due to the apathy of department and pending appeal of the appellant that he could not be considered for promotion to BS-19 alongwith his erstwhile juniors at due time and he retired from service on attaining the age of superannuation on 29.04.2012. But once the appellant was restored to his original position on 03.08.2012 by withdrawing the then impugned Notification dated 25.05.2010, he became eligible to be given proforma promotion w.e.f. 30.5.2011. In support of his argument, learned counsel for the appellant relied on 2007 SCMR 1769, 2013 SCMR 752 and produced copy of the judgement delivered on 13.12.2019 by Accountability Court III Peshawar in criminal case against the appellant whereby he has been acquitted. He therefore, requested that nothing is pending against the appellant and being entitled for proforma promotion in BS-19, his service appeal may graciously be accepted, he concluded.

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Secretary
Public Service Commission

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05. Learned Assistant Advocate General controverted the assertions taken in the service appeal and arguments of the learned counsel for appellant mainly on the ground that "major penalty of reduction to lower post/scale for three years" had been imposed on the appellant as a result of which name of the appellant was dropped from the list of PCS (Executive Group BS-18) and came down to the list of BS-17. Since his name was no longer on the list of PCS (Executive Group) BS-18 Officers, therefore, his name was not included in the panel for consideration of PSB and his otherwise juniors on the list i.e. private respondent No. 4, 5, 6 and 7 were promoted vide Notification 30.05.2011 and 27.10.2011. Moreover, in pursuance of the Service Tribunal judgement dated 15.12.2011, de novo enquiry was ordered vide Notification dated 12.04.2012 but the appellant escaped the penalty only because he attained the age of superannuation on 29.04.2012. In terms of FR-54 A, enquiry proceedings against the appellant were abated and he was not exonerated of the charges previously framed against him. The appeal being devoid of merits, may be dismissed with costs, he concluded.

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06. A careful perusal of the record reveals that the Service Tribunal remanded cases of all the three appellants in service appeal No. 1393/2010 to the competent authority for de-novo enquiry on 15.12.2011. Para 10 (operative part of the judgement) is relevant to be quoted here for better understanding;

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"As a sequel to the foregoing discussion, all the three appeals are partially accepted and by setting aside the impugned orders, the cases of all the three appellants are remanded to the competent authority for denovo departmental proceedings in accordance with letter and spirit of law, in light of above observations, with further direction to afford reasonable opportunity of defence and hearing to the appellants, where-after the competent authority shall pass an appropriate order strictly according to law, within reasonable time, but in no case beyond the period prescribed by the law. There shall, however, be no order as to costs."

07. On communication of the judgement of Service Tribunal, the respondent department was under obligation to have either conditionally/provisionally implemented the judgement or got it suspended by the Apex Court subject to the outcome of CPLA. Reliance in this regard is made on Supreme Court of Pakistan Order No. XX (Miscellaneous) and PLD 1981 (C.S) 249. But it is evident from Para 9 of the reply/Parawise comments of respondents that denov enquiry was ordered vide Notification dated, 12.04.2012 meaning thereby that de-novo proceedings were initiated after about 04 months of the said judgement. Interestingly, the august Supreme Court of Pakistan declined CPLA of the Provincial government on 19.04.2012 i.e. just after one week of the department ordered the denovo enquiry! It is also beyond comprehension that the then impugned order "reduction to lower post/pay scale for a period of three years", dated 25.05.2010 was withdrawn vide Notification dated

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03.08.2012 and the appellant was retired from service on attaining the age of superannuation w.e.f. 29.04.2012 vide Notification of the same date i.e. 03.08.2012. It is observed that what did the department do after rejection of CPLA by the august Supreme Court of Pakistan on 19.04.2012 till 03.08.2012 i.e. during 106 days? Had the department initiated de-novo proceedings against the appellant immediately on communication of the Service Tribunal judgement dated 15.12.2011, a just, final and timely outcome was obvious to have arrived for orders of the competent authority well before the superannuation of appellant on 29.04.2012. This proves to be a classic example of locus poenitentia where the appellant has suffered from the wrong doings of the respondent department.

08. It is not disputed and rather an admitted fact that the appellant's name was placed at serial No. 2 of the list of PCS (Executive Group BS-18) whereas that of private respondent No. 4, 5 6, 7 were at serial No. 4, 8, 3 and 9 respectively on the said seniority list. When the penalty of "reduction to lower post/pay scale" dated 25.05.2010 was withdrawn on 03.08.2012, the appellant regained his seniority in BS-18 and there was no penalty left in the field against him on 30.05.2011 and 27.10.2011 i.e. the dates of notifications; his erstwhile juniors were promoted in BS-19.

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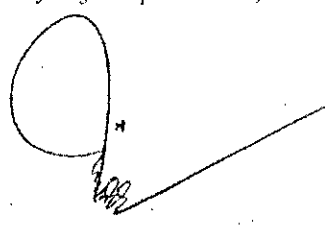
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CHIEF CLERK
Service Tribunal

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09. As a sequel to the foregoing discussion, we have arrived at the conclusion that the appellant has valid reasons on facts, circumstances and material on record for proforma promotion with effect from the due date. The appeal is, therefore, allowed as prayed for. Parties are left to bear their own costs. File be consigned to record room.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 14th day of September, 2022.



(MIAN MUHAMMAD)
MEMBER (E)



(SALAH UD. DIN)
MEMBER (J)

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 02/11/22
Number 347/2022
347
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Date of Delivery of Copy 03/11/22
03/11/22

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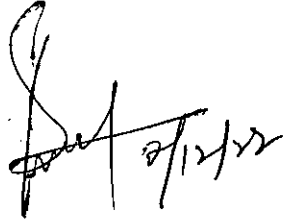


C 5.

To,

The Chief Secretary
Government of Khyber Pakhtunkhwa
Peshawar.

PS/C.S Khyber Pakhtunkhwa
Diary No. 4060(w/e)
Date: 07-12-2022



Subject: Implementation of the judgement dated 14-09-2022 in Service Appeal No:1280/2013 titled Khalid Saleem Marwat V/S Chief Minister Government of Khyber Pakhtunkhwa & Others.


Dear Sir,

The undersigned is a retired Civil Servant having retired on 29-04-2012. The undersigned submitted an appeal before the KPK Service Tribunal for "Proforma Promotion", which has been allowed vide Judgement dated 14-09-2022 (Copy of the Judgement is annexed).

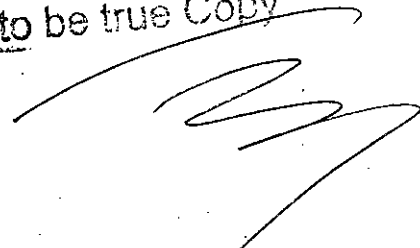
2. It is, therefore, prayed that on the acceptance of the application, the undersigned may very graciously be granted "Proforma Promotion" in the light of Judgement mentioned above please.

Yours Obediently,




Khalid Saleem Marwat
Provincial Civil Services
(E.G) KPK

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یعدالت چٹای سروس ٹریڈ مارک کے طور پر استعمال کیا گیا ہے

مستجاب ایڈوائس

خالد سلیم مروت
دعویٰ اپیل
مقام
محکمہ جیٹا سیکرٹری وغیرہ
Execution

باعث شہرہ ایسٹیک

مختارہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و عمل کاروائی متعلقہ آن مقام ایسٹ اور
کیسٹ اسٹیکس اڈاکس خان سروسٹس ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب
مروت مروت کو مقدمہ کی عمل کاروائی کا مکمل اختیار ہوگا نیز وکیل صاحب کو کرنے یا رضی نادر و آفیز ٹرانٹ و ٹیبلہ برتلف
دینے جواب دہی اور اقبال دعویٰ اور بھرتی ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست
پر قسم کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بھرتی عدم پیروی یا ڈگری کیسٹ پر یا اپیل کی برآمدگی
اور مروتی ڈگری دائر کرنے اپیل ٹرانٹ و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بھرتی ضرورت مقدمہ مذکور
کے عمل یا بھرتی کاروائی سے واسطے اور وکیل یا بھرتی قانونی کو اپنے ہمراہ یا اپنی بجائے تفرک کا اختیار ہوگا
اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پر دستخط متعلقہ
قبول ہوگا اور دوران مقدمہ یہ جو شرحہ و ہر جانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب
مروت مروت ہوں گے نیز بقایا دفعہ چہ کی وضوری کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ
پیروی یا عدست باہر ہو تو وکیل صاحب یا بھرتی ہوں گے کہ پیروی مذکور کریں۔
لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المرقوم 3/10/23

التسکد التسکد التسکد

ادریاب سینگ اکنال
ایڈووکیٹ

سیدہ العیوبہ خان
ایڈووکیٹ

Signature

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ایچ ڈی نواز
ایڈووکیٹ