


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 745/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.10.2023	<p>The implementation petition of Mr. Sheraz Ahmad submitted today by Mr. Umar Farooq Mohmand Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. 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</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 745 /2023
In
Appeal No. 517/2023

Mr. Sheraz Ahmad **PETITIONER**

VERSUS

The Chief Secretary to the Government of Khyber Pakhtunkhwa,
Peshawar & others..... **RESPONDENTS**

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PETITIONER

THROUGH:


UMER FAROOQ MOHMAND
ADVOCATE HIGH COURT

-/-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 745 /2023

In

Appeal No. 517/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8232

Dated 11/10/23

Mr. Sheraz Ahmad District Education Officer (BPS-19),
District Mohmand **PETITIONER**

VERSUS

- 1- The Chief Secretary to the Government of Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary (E&SE) , Khyber Pakhtunkhwa, Peshawar.
- 3- The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
- 4- Mr. Liaqat Ali, deputy DEO, BPS-18, Dir Lower Under transfer to District Mohmand.

..... **RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 05/09/2023 PASSED IN APPEAL NO.
517/2023 TITLED SHERAZ AHMAD VS EDUCATION
DEPARTMENT & OTHERS IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 517/2023 before this august Service Tribunal in which the petitioner/appellant impugned the transfer orders dated 4.11.2022 and dated 10-02-2023.
- 2- That the appeal of the petitioner was finally heard on 05.09.2023 and as such the ibid appeal was allowed in favour of the petitioner by this august Service Tribunal with the direction to the respondents:

Filed to-day

Registrar

" In view of the discussion, the appeal in hand is allowed as prayed for and the orders dated 04.11.2022 and 10.02.2023 to the extent of privet respondent No.4, are set aside with the direction to the respondents to restore the posting of the appellat as DEO (M) and allow him to complete his normal tenure of posting. However in case of any exigencies of services, the respondnets would at liberty to transfer him from that position in best public interest. Copy of the judgment dated 05/09/2023 is attached as annexure A.

- 3- That after obtaining copy of the judgment dated 05/09/2023 the petitioner submitted the judgment mention above along with application for implementation to the Department concerned but the respondents are not willing to obey the judgment dated 05/09/2023 in letter and spirit. Copy of the application is attached as annexure.....**B**
- 4- That the petitioner time and again visited the respondent Department for the implementation of the judgment of this august Tribunal but of no avail.
- 5- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant implementation petition the respondents may kindly be directed to implement the Judgment dated 05/09/2023 passed in appeal No. 517/2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER

THROUGH: 
UMER FAROOQ MOHMAND
ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2023

In

Appeal No. 517/2023

Mr. Sheraz Ahmad **PETITIONER**

VERSUS

The Chief Secretary to the Government of Khyber Pakhtunkhwa,
Peshawar & others..... **RESPONDENTS**

AFFIDAVIT

I, Sheraz Ahmad District Education Officer (BPS-19), District Mohmand, do hereby solemnly affirm that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



DEPONENT

CNIC NO. 1620209471627

CELL: 03411959135

"A"

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-4-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Service Appeal No. 517/2023

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Sheraz Ahmad, District Education Officer (Male) Mohmand (BS-19) Management Cadre, under transfer to Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar..... (*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. The Secretary (E&SE), Khyber Pakhtunkhwa, Peshawar.
3. The Director (E&SE), Khyber Pakhtunkhwa, Peshawar.
4. Mr. Liaqat Ali, Deputy DEO, Dir Lower (BPS-18) under transfer to District Education Officer (Male) Mohmand..... (*Respondents*)

Mr. Umar Farooq Mohmand,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney


... For official respondents

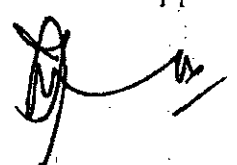
Date of Institution..... 08.03.2023
 Date of Hearing..... 05.09.2023
 Date of Decision..... 05.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 04.11.2022 whereby the appellant was transferred from District Education Officer (Male) District Mohmand and directed to report to Directorate of Elementary and Secondary Education Peshawar and against the order dated 10.02.2023 to the extent of Serial No. 06 whereby private respondent No. 4 was posted against the appellant's post of DEO (Male) Mohmand. It has been prayed that on acceptance of the appeal,

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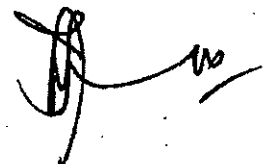


the impugned orders dated 04.11.2022 and dated 10.02.2023 to the extent of private respondent might be set aside and the respondents might be directed not to transfer the appellant from District Education Officer Male (BS-19) District Mohmand, alongwith any other remedy, which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant belonged to Management Cadre and as a BS- 19 officer, he was serving in the respondent department as District Education Officer. Through notification dated 17.06.2022 he was transferred from DEO (Male) Karak and his services were placed at the disposal of Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa. The respondent department, through notification dated 29.08.2022, posted him as DEO (Male) Mohmand. In response to the said transfer notification, he took over the charge of the said post on 01.09.2022 and started performing his duty. The respondent department issued the impugned order dated 04.11.2022, whereby he was transferred from the post of DEO (Male) District Mohmand and directed to report to the Directorate of E&SE. Feeling aggrieved from the order, the appellant preferred departmental appeal before the appellate authority. Through notification dated 18.11.2022, Mr. Abdul Manan Khan, Deputy Director (F&A), Directorate of E&SE was authorized to hold additional charge of the post of DEO (Male) Mohmand. Through subsequent impugned notification dated 10.02.2023, at serial No. 6, private respondent No. 4 was posted against the post of DEO (Male) Mohmand, despite the fact that the appellant had already preferred a departmental appeal before the appellate

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authority. The departmental appeal was not responded till the expiry of statutory period; hence the instant service appeal.

3. Respondents were put on notice. Official respondents No. 1 to 3 submitted their joint written reply/comments on the appeal. Vide order dated 14.06.2023, private respondent No. 4 was proceeded against ex-parte. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant was not treated in accordance with law and rules and the respondents violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that the impugned transfer orders dated 04.11.2022 and 10.02.2023 were issued by the respondents in arbitrary and malafide manner, hence not tenable in the eyes of law and liable to be set aside. He further argued that the impugned transfer orders were neither in the best public interest nor exigencies of service. According to him the impugned orders were violative of clauses i, iv and xiii of the Posting and Transfer Policy of the Provincial Government as the appellant was transferred prematurely from his current post. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was transferred in the best public interest and he was bound to serve anywhere throughout the province. He further argued that under Section 10 of the Khyber Pakhtunkhwa

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Civil Servants Act, 1973; the respondents were empowered to place the services of the appellant anywhere throughout the province. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, while serving in the respondent department i.e Elementary and Secondary Education Department, as District Education Officer, was transferred from District Mohmand, without completing his normal tenure of posting, and was directed to report to the Directorate of E&SE. Record further shows that prior to that posting, while serving as DEO (M) Karak, services of the appellant were placed at the disposal of Directorate of E&SE on 17.06.2022. Later on, vide order dated 29.08.2022, he was transferred as DEO (M) Mohmand and just after two months, he was directed to report to the Directorate vide the order dated 04.11.2022, impugned before us. When confronted, the learned Deputy District Attorney could not provide any cogent reason of the frequent transfers and then placing the services of the appellant at the disposal of the Directorate. The learned Deputy District Attorney was further asked to elaborate posting of an officer in BS-18 as DEO (M) Mohmand in own pay scale vide order dated 10.02.2023, impugned by the appellant before this Tribunal, despite clear directions of the August Supreme Court of Pakistan not to post any junior officer in own pay scale on a higher position. The learned DDA simply responded that it was done in the best public interest by the competent authority. Except for referring to Section 10 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the learned DDA had no other point to put forth in his defence.

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7. After going through the details of the case and keeping in view judgments as reported in 2018 SCMR 1411 and PLD 2013 SC 195, we arrive at a conclusion that the matter of posting/transfer and tenure of posting of a civil servant cannot be dealt in an arbitrary manner. The Khyber Pakhtunkhwa Civil Servants Act 1973 read with the Transfer/Posting Policy of the Provincial Government requires that the normal tenure of two years should have been adhered to by the respondent department while dealing with the posting of the appellant. Respondents failed to provide any reason to substantiate their action of placing the services of the appellant at the disposal of Directorate and posting a junior officer in his place.

8. In view of the above discussion, the appeal in hand is allowed as prayed for and the orders dated 04.11.2022 and 10.02.2023, to the extent of private respondent No. 4, are set aside with the directions to the respondents to restore the posting of the appellant as DEO (M) Mohmand and allow him to complete his normal tenure of posting. However in case of any exigencies of service, the respondents would be at liberty to transfer him from that position in the best public interest. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 05th of September, 2023.


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fuzle Subhan, P.S.
CERTIFICATE TO BE FILED COPY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 11/09/23
Number of Pages 5
Copying Fee 25/-
Urgent 57/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 11/10/23
Date of Delivery of Copy 11/10/23

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To,

The Honorable Secretary (E&SED),
Khyberpakhtunkhwa, Peshawar.

SUBJECT: Implementation of Court Judgment

Respected Sir,

It is submitted for your kind information that the Khyber Pakhtunkhwa Service Tribunal Peshawar has allowed Service Appeal No.517/2023 in favor of the undersigned on 05/09/2023. (Court Judgment is attached: ANNEX: A).

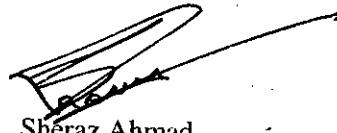
The history of the case is as under.

1. The undersigned was transferred from the post of DEO(M) Mohmand vide Notification No.SO(SF) E&SED/4-16/Posting/Transfer/2021 Dated 04/11/2023.(ANNEX:B)
2. Charge was relinquished on 09/11/2022 Vide End: No.4686-91/ dated 09/11/2022 (ANNEX:C) and arrival report was submitted to the Directorate of E&SED Peshawar on 10/11/2022(ANNEX:D).
3. A departmental appeal was preferred before the appellate authority on 18/11/2022.
4. A service appeal No.517/2023 was filed before the Khyber Pakhtunkhwa Service Tribunal Peshawar on 08/03/2023.
5. The above service appeal was decided in favor of the undersigned on 05/09/2023.

Hence it is therefore requested that the Judgment of the honorable service tribunal may be implemented and the restoration order as DEO(M) Mohmand in respect of the undersigned may be issued please.

I shall be very thankful to you for this act of kindness.

Date: 22/09/2023



Sheraz Ahmad

(MC-BPS:19)

Ex:DEO(M) Mohmand

ATTESTED

بعدالت محرم ۲۰۲۳ء



۲۰۲۳ء 2 منجانب سر

بنام انجمن

شیراز احمد

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکل کاروائی متعلقہ
آن مقام کے لیے محضر طرف صمد 7 ولہدیہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب وہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

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ماہ

المرقوم