


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 762/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 13.10.2023 | <p>The implementation petition of Mr. Inayat Ullah submitted today by Naila Jan 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  REGISTRAR</p> |

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 762 /2023

In

Service Appeal No: 15792/2020

Inayat Ullah Senior Clerk

Versus

Government of Khyber Pakhtunkhwa and others

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Dated: 12/10/2023

Through

Inayat
Petitioner

Naila Jan

Advocate, High Court
Peshawar

D

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 762 /2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8294

Dated 13-10-2023

In

Service Appeal No: 15792/2020

Inayat Ullah Senior Clerk, DPO Office Bannu.

.....Petitioner

Versus

1. Government of Khyber Pakhtunkhwa, through Inspector General of Police, Peshawar.
2. Additional Inspector General of Police Khyber Pakhtunkhwa Peshawar.
3. Regional Police Officer, Bannu Region Bannu.
4. District Police Office Bannu.

.....Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
15792/2020 DECIDED ON
01/08/2023

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 01/08/2023 (Copy of the judgment is annexed as annexure "A")
2. That the relevant portion of the judgment is reproduced "we allowed the appeal of the appellant

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and direct the respondents to consider him for antedated promotion with effect from the date when his promotion was deferred for the first time i.e 27/03/2013 with all back benefits costs shall followed the event. Consign”.

3. That the Petitioner after getting of the attested copy of same approached the Respondents several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.
4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 12/10/2023

Through

Petitioner

*Full
negat*
Naila Jan

Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2023

In

Service Appeal No: 15792/2020

Inayat Ullah Senior Clerk

Versus

Government of Khyber Pakhtunkhwa and others

AFFIDAVIT

I, Inayat Ullah Senior Clerk, DPO Office Bannu, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

Deponent

IDENTIFY BY:

Naila Jan

Advocate, High Court
Peshawar



13-10-23

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2023

In

Service Appeal No: 15792/2020

Inayat Ullah Senior Clerk

Versus

Government of Khyber Pakhtunkhwa and others

ADDRESSES OF PARTIES

PETITIONER

Inayat Ullah Senior Clerk, DPO Office Bannu.

RESPONDENTS

1. Government of Khyber Pakhtunkhwa, through Inspector General of Police, Peshawar.
2. Additional Inspector General of Police Khyber Pakhtunkhwa Peshawar.
3. Regional Police Officer, Bannu Region Bannu.
4. District Police Office Bannu.

Dated: 12/10/2023

Inayat

Through

Petitioner

Naila Jan
Advocate
 Advocate, High Court
 Peshawar

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15792/2020



BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Inayat Ullah, Senior Clerk, DPO Office, Bannu.

.... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region Bannu.
4. District Police Officer, Bannu.

.... (Respondents)

Ms. Naila Jan
Advocate

For appellant

Mr. Fazal Shah Mohmand
Additional Advocate General

For respondents

Date of Institution.....23.11.2020
Date of Hearing.....01.08.2023
Date of Decision.....01.08.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this service appeal, the impugned order dated 07.11.2019 may kindly be modify to the extent that the same may be given effect from 27.03.2013 with all back benefits from the date when juniors to the appellant were promoted while the appellant has been illegally deprived from promotion thus subjected to discrimination and set aside the appellate order dated 27.10.2020 .”

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as Junior Clerk vide order dated 11.06.2009. He was performing his official duty with zeal and zest. He was at Sr. No. 244 of the seniority list of Junior Clerk (BPS-7) as stood on 31.12.2011. However, Juniors to the appellant at Sr. No. 298, 300, 304, 304 and 307 were promoted vide order dated 27.03.2013 and the appellant was ignored. The appellant again was placed at Sr. No. 109 of the Seniority List as stood on 31.12.2013, however once again the appellant was discriminated and other officials placed at Sr. No. 148, 149 and 151 were promoted. Later on, he was promoted to the post of Senior Clerk (BPS-14) with immediate effect and not from the date when juniors to the appellant were promoted. Feeling aggrieved, he filed departmental appeal which was filed on 27.10.2020, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that that the appellant had been treated in accordance with law and rules. He further contended that in-action of the respondent is against the law, rules and principle of natural justice hence void ab-initio and not sustainable in the eyes of law. He argued that appellant has been subject to discrimination by promoting juniors to him and he was deprived from his due right of promotion which is violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5. The learned Assistant Advocate General contended that the appellant was treated in accordance with law and rules. He further contended that vide seniority list dated 31.12.2011, the appellant was deferred due to incomplete ACRs for the period 12.06.2009 to 31.12.2009, 2011 and 2012. He submitted that appellant was promoted vide notification dated 07.11.2019 in accordance with law/rules and policy as the promotion of the appellant was subject to the seniority-cum-fitness and competition of incomplete ACRs.

6. Perusal of record reveals that appellant was appointed in respondent department as Junior Clerk on 11.06.2009 and was performing his duties up to the entire satisfaction of his superiors. Appellant, with the passage of time, was placed at Serial No. 244 of the seniority list of junior clerks issued on 31.12.2011 but his promotion was deferred when vide notification dated 27.03.2013, juniors to him placed at serial No. 298, 300, 304, 305 and 307 were promoted. Appellant, then was placed at serial No. 109 of the seniority list issued on 31.12.2013 but he was again not promoted. He was promoted as Senior Clerk (BPS-14) vide notification dated 07.11.2019 but with immediate effect. Now appellant seeks his ante-dated promotion from the date when juniors to him was promoted i.e 27.03.2013.

7. Perusal of record further reveals that promotion of the appellant was deffered by the Departmental Promotion Committee upon the recommendation of which juniors to the appellant were promoted vide notification dated 27.03.2013. Respondents in their parawise comments admitted the fact of defferment of the appellant with contention that due to incomplete ACRs for the period 12.06.2009 to 31.12.2009 and for the year 2011 and 2012. Appellant was not promoted due to incomplete ACRs for periods mentioned above and - not due to some other reason which means he had a clean record. So the case

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of the appellant is covered under Rule V(d) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009 which deals with deferment of promotion and determination of seniority of deferred employee/civil servant which reads as follows:-

"If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance the proviso of Sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior"

So according to above referred rule of promotion policy, appellant has a fit case for antedated promotion.

8. We allow the appeal of the appellant and direct the respondents to consider him for antedated promotion with effect from the date when his promotion was deferred for the first time i.e 27.03.2013 with all back benefits. Cost shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1st day of August, 2023.

(FAREZHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Certified to be true copy

Date of Presentation of Application 12/16/23
Number of Words Page 4
Copying Fee 20
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Date of Completion of Copy 12/16/23
Date of Delivery of Copy 12/16/23

وکالت نامہ

بعدالت ضابطہ KP سروس رٹرنس لٹا اور
محکمات اللہ بنام بنو لیس
منجانب جماعت اسلامی تاریخ 13/10/2023

علت نمبر: مورخہ: مجرم: تھانہ:


باعث تحریر آنکہ
مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی وجوابدہی بمقامہ کے
لیئے ہے۔

نالہ جان ایڈوکیٹ ہائی کورٹ پشاور

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو بروئے عدالت حاضر ہوتا رہوں گا اور ہونگی اور بوقت پکارے جانے مقدمہ
وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے
برخلاف ہو گیا تو صاحب موصوف اس کے کسی طراح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا
بروز تعطیل یا پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس
کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخنتہ
صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرضی دعویٰ وجواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل
و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہو گا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید
دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہو گا۔ اور بصورت
اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ہوگی علیحدہ مختیار نامہ
پیروی کا اختیار ہو گا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہو گا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل،
اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں نیز ایسے مشیر قانون کو ہر امر میں وہی اور ایسے ہی اختیارات حاصل
ہونگے جیسے کہ صاحب موصوف کو حاصل ہیں اور پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت
میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہو گا۔ لہذا یہ مختیار نامہ لکھ دیا تاکہ سند رہے۔ مورخہ 13/10/2023

مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

ATTESTED & ACCEPTED



نالہ جان ایڈوکیٹ ہائی کورٹ پشاور



محکمات اللہ (جو بیرسٹر)

رابطہ نمبر: 0312-9215473