


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 817/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.11.2023	<p>The implementation petition of Mr. Muhammad Hamayun submitted today by M.Asif Yousafzai 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 petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 817 /2023

In

Service Appeal No. 7751/2021

Muhammad Hamayun,

V/S

KP Government.

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S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-03
2.	Copy of Judgment dt: 12.09.2023	-A-	04-09
3.	Copy of the application dt:10.10.2023	-B-	10
4.	Vakalat Nama		11

APPLICANT

Muhammad Hamayun

THROUGH:

(M. ASIF YOUSAFZAI)

Advocate Supreme Court
Of Pakistan.

(SYED NOMAN ALI BUKHARI)

Advocate, High Court
Peshawar.

(HILAL ZUBAIR)

Advocate Peshawar.

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 817 /2023

In

Service Appeal No.7751/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8941

Dated 10-11-2023

Muhammad Hamayun, Ex-Junior Clerk (BPS-11),
Khyber Pakhtunkhwa Public Service Commission, Peshawar.

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
4. The Assistant Director (Admn), Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 12.09.2023 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No. 7751/2021 in this august Tribunal against the order dated 02.08.2021 & rejection order dated 27.09.2021 whereby the appellant was removed from Service.
2. That the said appeal was finally heard by the Honorable Tribunal on dated 12.09.2023 and the Honorable Tribunal was kind enough *(to allow the appeal and direct the respondents to conduct de-novo inquiry associating the appellant with the proceeding and affording him opportunity of self defence at every stage of the*

proceedings as per law order dated 02.08.2021 and 27.09.2021 are set aside and appellant is reinstated into service for the purpose of de-novo inquiry. The matter of back benefit subject to outcome of the de-novo inquiry.)

(Copy of judgment is attached as Annexure-A).

3. That the appellant filed application to the competent authority on dated 10.10.2023 for implementation of the judgment of Honorable Tribunal Khyber Pakhtunkhwa, in the above mentioned appeal but in vain. **(copy of the application dated 10.10.2023 is attached as annexure B.)**
4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 12.09.2023 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

APPLICANT

Muhammad Hamayun

THROUGH:

Asif Yousafzai
(M. ASIF YOUSAFZAI)
Advocate Supreme Court
Of Pakistan.

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

Hilal Zubair
(HILAL ZUBAIR)
Advocate Peshawar.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

[Signature]
DEPONENT

17301-5998859-1

ATTESTED



08-11-2023

Executions A

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



Service Appeal No. 7751/2021

BEFORE:

KALIM ARSHAD KHAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Hamayun Ex-Junior Clerk (BPS-11) Khyber
Pakhtunkhwa Public Service Commission, Peshawar.....(*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission Peshawar.
4. The Assistant Director (Admn), Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:-

MUHAMMAD ASIF YOUSAFZAI,
Advocate --- For Appellant

FAZAL SHAH MOHMAND,
Additional Advocate General --- For respondents.

Date of Institution.....12.11.2021
Date of Hearing.....12.09.2023
Date of Decision..... 12.09.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the impugned order dated 02.08.2021 and rejection order dated 27.09.2021 may be set aside and the appellant may be reinstated into service with all

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back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant."

02. Brief facts of the case are that the appellant was serving as Junior Clerk in the Khyber Pakhtunkhwa Public Service Commission. That during the month of November, 2020 he was attached with the Inspection Supervisor as staff driver at the examination center Kohat and allegation was leveled against him regarding taking snap of the question papers during the screening test on 27.11.2020 for the post of Tehsildar/Naib Tehsildar. His mobile phone was checked by the Inspection Supervisor of the examination hall; that the appellant's phone after being checked, no pictures of any sort of the said test/examination were found in his mobile phone; that the Chief Supervisor reported against the appellant to the Director Examination. That he was charge sheeted on the basis of aforementioned allegations which he denied in the reply. That an inquiry was conducted and a show cause notice was issued to the appellant. Resultantly, the appellant was removed from service vide order dated 02.08.2021. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 27.09.2021, hence preferred the instant service appeal.


03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

04. Learned counsel for the appellant contended that the impugned orders dated 02.08.2021 and 27.09.2021 are against the law, rules and material on record, therefore, liable to be set aside. That the appellant has been condemned unheard and has not been treated according to law and rules. He further contended that no codal formalities were fulfilled by the department before imposing the penalty which is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan; that the inquiry was not conducted as per mandate of law, as no opportunity of defense was afforded to the appellant; that neither statement of witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses, which is violation of law and rule; that no report of the inquiry and other documents related to the case were given to the appellant by the department even after repeated requests before imposing major punishment of removal from service which is also violation of law and rules. In the last, learned counsel for the appellant argued that the penalty of removal from service is very harsh because the appellant have along considerable service about 24 years which is passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law.

05. Learned Additional Advocate General on the other hand contended that the appellant was deputed as driver with Inspection Supervisor vide order dated 19.11.2020 and he was found involved taking snap of the question papers during the screening test on 27.11.2020 for the post of Tehsildar/Naib Tehsildar. Therefore, his mobile phone was checked by the Inspection Supervisor of the examination hall; That the inquiry was conducted into the matter has duly proved that the appellant had taken

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pictures of the question papers and forwarded to other people; that the inquiry officer in her inquiry report confirmed the presence of pictures of certain MCQs paper readable on the screen. Moreover, a hand written answer key was also noticed in his mobile phone and the appellant did not cooperate with the inquiry officer regarding the provision of security codes of his mobile phone. He further contended that the appellant was provided with the opportunities of cross examination of the witnesses and personal hearing under the rules but he failed to prove himself innocent. He further contended that the penalty was awarded after fulfilling all the codal and legal formalities as laid down in the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.

06. The appellant, as is evident from record available on case file, has 24 years service to his credit in the Khyber Pakhtunkhwa Public Service Commission. He was being deputed for exams duty on various occasions. On 26.11.2020 he was deputed as Deputy Supervisor at examination center in Kohat City. The next date i.e. 27.11.2020 he was deputed as Driver with Inspection Supervisor of the Commission namely Mr. Abdul Bari, Assistant Director, I.T on the date of the screening test for the post of Tehsildar/Naib Tehsildar at Kohat. The Principal/Chief Supervisor of the exam center, vide letter dated 27.11.2020, addressed to Director Examination Khyber Pakhtunkhwa Public Service Commission, reported that the appellant tried to take out question paper from the examination hall. He took picture of the question paper from his mobile phone, which was confiscated and handed over to Mr. Abdul Bari, Inspection Supervisor, with whom the appellant was

performing duty as a driver, for that particular day. The Chief Supervisor

TESTED

MINISTRY
OF
PUBLIC SERVICE
COMMISSION

recommended for forensic analysis of the cell phone. The aforementioned episode led to initiation of disciplinary proceedings by the competent authority against the appellant labeled guilty of misconduct under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 on the following grounds as narrated in the charge sheet/statement of allegations;

(a) That during screening test for the posts of Tehsildar/Naib Tehsildar held on 27.11.2020, he tried to take the question paper out of the examination hall several times which was foiled by the supervisory staff.

(b) During the same test, he took snaps of question paper and rushed out of the hall the examination.

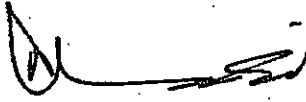
07. Legal scrutiny of the inquiry proceedings reveals that the findings of the inquiry report are entirely based on the statement of supervisory staff of exam center Kohat who are otherwise complainants in the case. Their statements have not been recorded in presence of the appellant nor the appellant granted opportunity to cross examine them. The report conveyed by the Chief Supervisor of the exam center Kohat dated 27.11.2020 clearly recommended for forensic analysis of cell phone of the appellant. Similarly the inquiry officer also recommended that mobile camera data of the cell phone of the appellant be retrieved and analyzed with help of professional service provides or get it probed through specialized investigation agency. Therefore, we believe that without authentication of the charge imposition of major penalty of removal from service imposed upon the appellant does not seem fair and just.


ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar


08. In view of above discussion we allow the appeal and direct the respondents to conduct *de-novo* inquiry associating the appellant with the proceedings and affording him opportunity of self defense at every stage of the proceedings as per law. The orders dated 02.08.2021 and 27.09.2021 are set aside and the appellant is reinstated into service for the purpose of *de-novo* inquiry. The matter of back benefits shall be subject to the outcome of *de-novo* inquiry. Costs shall follow the event. Consign.

09. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 12th day of September, 2023.


(Kalim Arshad Khan)
Chairman


(Muhammad Akbar Khan)
Member (E)

Certified to be true copy


MANAGER
Peshawar
Service Tribunal
Peshawar

kouramallah

Date of Presentation of Application 18/9/23
Number of Pages page 6
Copying Fee 30/-
Urgent 30/-
Total 30/-
Name of Applicant
Date of Completion 09/10/23
Date of Delivery of Copy 09/10/23

To,

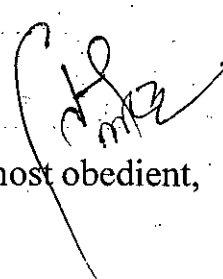
B (10)

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
4. The AD (Admn), Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

Subject:- **IMPLEMENTATION OF THE JUDGMENT OF HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PASSED IN SERVICE APPEAL NO. 7751/2021 TITLED MUHAMMAD HAMAYUN ---VS--- THE GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS.**

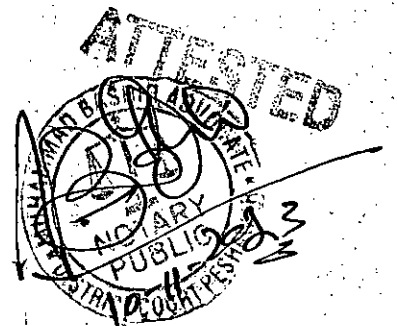
Respected Sir,

I have the honor to annex herewith the attested copied of the subject judgment of the Honorable Service Tribunal Peshawar for its implementation, please.


Your most obedient,

**MUHAMMAD HAMAYUN JUNIOR CLERK
Khyber Pakhtunkhwa Public Service Commission
Peshawar.**

Dated: 10/10/2023.



(11)

VAKALAT NAMA

NO. _____/2023

IN THE COURT OF Service Tribunal Peshawar

M. Hamayun

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt's Rep

(Respondent)
(Defendant)

I/We, M. Hamayun

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court of Pakistan & Syed Noman Ali Bukhari, Advocate High Court & Hilal Zubair Advocate** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

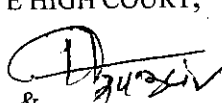
Dated _____/2023


(CLIENT)

ACCEPTED

Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.
(BC No. 10-7327)

& Syed
(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,


& Hilal Zubair
HILAL ZUBAIR
Advocate

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