


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 829/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.11.2023	<p>The implementation petition of Mr. Suleman Khan submitted today by Mr. Babar Hayat Khan 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 counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Suleman Khan

Versus

Govt

..... Appellant

..... Respondents

S NO	<u>CONTENTS</u>	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Babar Hayat Khan

Signature:- [Signature]

Dated:- 14.11.2023

- 4 -

BEFORE THE KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL,
PESHAWAR

Execution Petition No. 829 /2023

Suleman Khan.....Petitioner

V E R S U S

Secretary Elementary & Secondary Education
& anotherRespondents

I N D E X

S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Execution Petition		1-2
2.	Affidavit		3
3.	Copy of the Judgment		4-8
4.	Wakalatnama		9

Petitioner/Applicant

Through


BABAR HAYAT KHAN
Advocate, Peshawar
Cell: 0333-9727007

Dated: 14-11-2023

(1)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Execution Petition No. 829 /2023

Diary No. 9204

Dated 17-11-2023

Suleman Khan S/O Ajmal Nawaz R/O Yarak Khel PO
Khwaja Mad Mandan, Tehsil & District Bannu
(Assistant Programmer BPS-17) District Education
office (Male) District Karak.

.....Applicant

V E R S U S

1. Secretary, Elementary & Secondary Education,
Govt of Khyer Pakhtunkhwa, Peshawar.
2. Kiramat Ullah Saëed, Assistant Programmer BPS-
17 presently working at the office of DEO(F)
Bannu

.....Respondents

**EXECUTION PETITION FOR
IMPLEMENTATION OF THE JUDGMENT
DATED 26.09.2023 OF THIS HONOURABLE
TRIBUNAL IN SERVICE APPEAL NO.
1444/2023 FOR SETTING ASIDE THE
IMPUGNED TRANSFER NOTIFICATION TO
THE EXTENT OF PETITIONER**

Respectfully Sheweth:

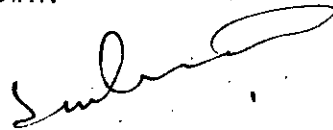
1. That the petitioner filed an appeal on 07.07.2023 u/s
4 KP Service Tribunal Act, 1974 against the
impugned transfer notification to the extent of
petitioner.
2. That after receiving para wise comments from the
respondents, the appeal was accepted as prayed

[Handwritten signature and date 17/11/23]

for in favour of the applicant. (Copy of the judgment dated 26.09.2023 is attached)

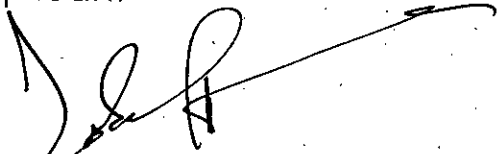
3. That the applicant then approached to the office of respondents and filed written application alongwith attested copy of the judgment dated 26.09.2023 for implementation of the judgment of this honourable Tribunal and to set aside the impugned transfer notification but despite lapse of approximately 2 months they have not done so hence this application.

It is, therefore, most humbly prayed that on acceptance of this execution petition, the judgment dated 26.09.2023 may kindly be implemented in letter and spirit.



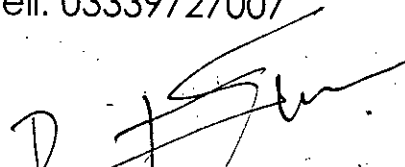
Applicant

Through



BABAR HAYAT KHAN
Advocate, High Court
Cell: 03339727007

&



TAZA KHAN ORAKZAI
Advocate, High Court

Dated: 14.11.2023

BEFORE THE KHYBER PAKHTUNKHWA, SERVICES TRIBUNAL,
PESHAWAR

Execution Petition No. _____/2023

Suleman Khan S/O Ajmal Nawaz R/O Yarak Khel PO
Khwaja Mad Mandan, Tehsil & District Bannu
(Assistant Programmer BPS-17)

.....Applicant

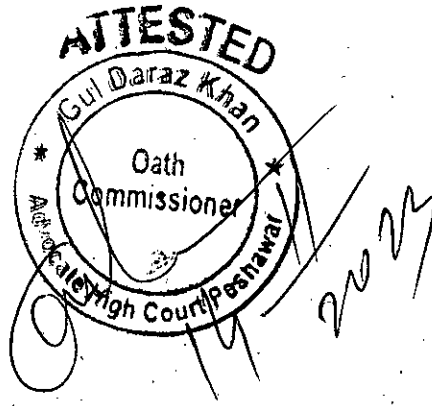
V E R S U S

1. Secretary, Elementary & Secondary Education,
Govt of Khyer Pakhtunkhwa, Peshawar.
2. Kiramat Ullah Saeed, Assistant Programmer BPS-
17 presently working at the office of DEO(F)
Bannu

.....Respondents

AFFIDAVIT

I, Suleman Khan S/O Ajmal Nawaz R/O Yarak Khel PO
Khwaja Mad Mandan, Tehsil & District Bannu do hereby
solemnly affirm and declare on oath that the contents of
the accompanying **Execution Petition** are true and
correct to the best of my knowledge and belief and
nothing has been kept concealed from this Hon'ble
Court.

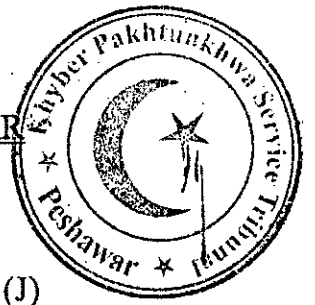


Suleman Khan

DEPONENT

(4)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 1444/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Suleman Khan Assistant Programmer (BPS-16) S/O Ajmal Nawaz R/O
Yarak Khel P.O Khawaja Mad Mandan, Tehsil & District Bannu.

.... (Appellant)

VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department Peshawar.
3. Kiramat Ullah Saeed, Assistant Programmer BPS-17 presently working in the office of DEO (Female) Bannu.

.... (Respondents)

Mr. Babar Hayat Khan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents


Date of Institution.....07.07.2023
Date of Hearing.....26.09.2023
Date of Decision.....26.09.2023

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 notification dated 14.03.2023 to the extent of appellant may very kindly be declared as illegal, unlawful, void ab initio, coram non judice, ineffective upon the rights of the

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(5)

appellant and may very kindly be set aside to the extent of the appellant."

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as Assistant Programmer (BPS-16) upon the recommendation of Khyber Pakhtunkhwa Public Service Commission vide order dated 30.05.2014. The appellant was transferred from the office of DEO (F) Bannu to the office of DEO (M) Lakki Marwat vide notification dated 24.09.2021. The appellant was transferred to DEO (F) Bannu vide order dated 24.02.2022 after lapse of five months. The appellant was again transferred to DEO (M) Karak vide impugned notification dated 14.03.2023. Feeling aggrieved, appellant filed departmental appeal 27.03.2023 which was not responded within statutory period of ninety days, hence, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that impugned transfer notification is illegal, without lawful authority and void abinitio, hence liable to be set aside. He submitted that act of the respondents is against the constitution, orders of the Election Commission of Pakistan, established dictum of the apex court and blatant violation of the posting/transfer policy of the provincial government. He contended that impugned notification is also against wedlock policy as wife of the appellant is a Primary School Teacher in District Bannu. He therefore, requested for acceptance of instant service appeal.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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5. Learned District Attorney contended that the appellant was transferred vide notification dated 14.03.2023 in accordance with law and in the best public interest and there is no violation of A-224 of Constitution of Islamic Republic of Pakistan. He further contended that respondents are empowered under Section 10 of Civil Servants Act, 1973 to place the services of appellant like all Civil Servants anywhere throughout the province in public interest.

6. Perusal of record reveals that appellant was appointed as Assistant Programmer BPS-16 in respondent department vide notification bearing No. EMIS/E&SE/1-15/IT Staff dated 30.05.2014 upon recommendation of Khyber Pakhtunkhwa Public Service Commission. It was on 14.03.2023 when vide impugned order appellant was transferred to DEO (M) Karak. Appellant filed departmental appeal on 27.03.2023 challenging said transfer/posting order which is not decided, hence instant service appeal. Appellant challenged impugned transfer/posting order on three grounds. Firstly, premature transfer, secondly in violation of spouse/wedlock policy and thirdly as a result of political/outside pressure interference. The Government of Khyber Pakhtunkhwa Posting Transfer Policy states that:

i. All the posting/transfer shall be made in the public interest and shall not be abuse/misuse to victimize the government servants.

iv. The normal tenure of posting shall be two years subject to condition that for the officers/officials posted in unattractive areas, the tenure shall be two year and for hard areas will be notify by the government.

xiii. While considering posting/transfer proposals all the concerned shall keep in mind the following.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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a. To ensure the posting of proper person on proper posts, the performance Evaluation Report/annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity the concerned officers/officials be considered.

ix. Regarding the posting of husband/wife, both in provincial services, efforts where possible would be made to post such persons at one station subject to the public interest.

7. Record transpires that appellant was earlier transferred to DEO (Female) Lakki Marwat vide order bearing NO. 4939-45/F-60/A-25/MS/Transfer/Bannu dated 24.02.2022 and appellant was again transferred vide impugned order dated 14.03.2023 just after one year while as per above mentioned transfer posting policy clause-vi normal tenure is two year. So appellant was transferred vide impugned order by the respondent without allowing him to complete his normal tenure at Bannu which is violation of clause vi of transfer/posting policy. It is also important to note here that wife of appellant Mst. Sadia Bibi is a Primary School Teacher (BPS-12) at Khwajamad Mandan District Bannu. Pay slip of his wife is attached with the appeal. Respondent did not denied from this fact and as per clause ix of mentioned above mentioned policy "Regarding the posting of husband/wife both in provincial service, efforts were possible would be made to post such persons at one station subject to the public interest" which is not taken into consideration by the respondents.

8. Furthermore, appellant annexed medical documents of his wife in accordance with which she has undergone brain surgery and she need intensive care. So, appellant being husband will look after her. Therefore, on

ATTESTED

EXAMINER
Khylar P. Khilawar
Service Division
Bannu


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humanitarian ground too appellant will have to be posted at the station where her ailing wife is posted.

9. The nutshell of the above discussion is that impugned order dated 14.03.2023 was not issued in public interest or exigencies of the service and as such is not sustainable in the eyes of law. This premature transfer is in violation of clause i, iv, xiii (a) and ix of posting/transfer policy.

10. As a sequel to above discussion, we allow the appeal as prayed for. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of September, 2023.


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

Certified to be true copy


Kaleemullah
Secretary
Service Tribunal
Peshawar

Date of Presentation of Application

16/10/23

Number of Pages page 5

Copying Fee 25/-

Urgent 5/-

Total 30/-

Name of Copyist

Date of Completion of Copy 16/10/23

Date of Delivery of Copy 16/10/23

To

Worthy Secretary E&SED
Khyber Pakhtunkhwa Peshawar.

Subject: APPEAL FOR TRANSFER,

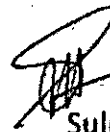
Respected Sir,

It is stated that I have been transferred from District Education Office Female Bannu to District Karak on Dated 14/03/2023, for which I submit department appeal which is not decided till date and then I have submit service appeal at Khyber Pakhtunkhwa Service Tribunal vide no.1444/2023 and decision has been decided in my favor copy attached for ready reference.

Therefore your good self is humbly requested to transferred me from District Education Officer (M) Karak to District Education Officer Female Bannu from where I have been transferred vide notification No.SO(SM)E&SE/5-17/2022/PT/G Dated Peshawar 14 March 2023.

I shall be very thankful to you.

Yours obediently



Suleman Khan

M.A.
18/10/2023

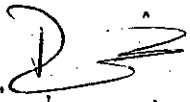
3116

18/10/23

Assistant Director -IT
E&SE Khyber Pakhtunkhwa.

AD Program (BPS-17)

Diary Number 3116
Date of Diary 18/10/23
Secretary Elementary & Secondary
Education Peshawar


(16/10/23)
Dispatcher

POWER OF ATTORNEY

BEFORE THE KP SERVICE TRIBUNALS

CASE NATURE Execution No. _____ of 2023

Suleman Khan

[Plaintiff(s)]

[Appellant(s)]

[Petitioner(s)]

[Complainant(s)]

-Versus-

Gort

[Defendant(s)]

[Respondent(s)]

[Accused(s)]

[Judgment Debtor]

I/We Suleman Khan

the above named Applicant

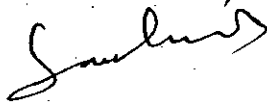
hereby appoint and constitute BABAR HAYAT KHAN LL.M, Advocate as Counsel (for _____) in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To, appear act, and plead for me/us in the above mentioned case in this Court/Tribunal or any other 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 do all other acts and things which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:

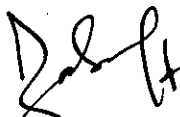
- a. To ratify whatever the said Advocate(s) may do in the proceedings.
- b. Not to hold the Advocate(s), responsible if the said case be proceeded ex-parte or dismissed in default in consequences of their absence from the Court/Tribunal when it is called for hearing.
- c. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case, if the whole or any part of the agreed fees remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalatnama herein under, the contents of which have been read / explained to me and fully understood by me this day of 14th Nov, 2023 at Peshawar.

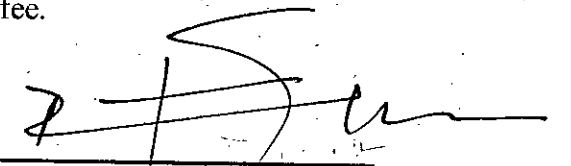


Signature of the executant/s

Attested /Accepted subject to the term regarding payment of fee.



BABAR HAYAT KHAN
LL.M, Advocate High Court
+92-300-1891-007
Chambers 13-B, Haroon Mansion,
Khyber Bazar, Peshawar



TAZA KHAN ORAKZAI
ADVOCATE HIGH COURT