


FORM OF ORDER SHEET

Court of _____

Restoration Application No: 825/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.11.2023	<p>The application for restoration of Appeal no. 946/2019 submitted today by Mr. Saifullah Khalil Advocate. It is fixed for hearing before Single Bench at Peshawar on _____. Original file be requisitioned. Parcha Peshi is given to the counsel for the applicant.</p> <p style="text-align: right;">By the order of Chairman</p> <div style="text-align: right;">  REGISTRAR </div>

BEFORE THE WORTHY SERVICES TRIBUNAL KPK,
PESHAWAR

Restoration. Appli No. 825/2023
Service Appeal No. 946 / 2019

Akhter Hussain
V/S
Govt of KP & Others

INDEX

S.No	Description	Annexure	Pages
01.	Application		1
02.	Affidavit		2
03.	Copy of order dated: 30/08/2023	A	3 to 7
04.	Copy of order dated: 25/10/2023	B	8 to 10

Dated: 16 / 11 / 2023

Through

Appellant

SAIF ULLAH KHALIL (SR)

Advocate, High Court Peshawar

BEFORE THE WORTHY SERVICES TRIBUNAL KPK,
PESHAWAR

Restoration Appli. No. 825/2023
Service Appeal No. 946 / 2019

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 9090

Dated 16-11-2023

- Akhter Hussain S/O Abdul Khaliq Khan R/O Regi Aftezai, Peshawar,
Ex-Look After Superintendent at Pakistan Forest Institute, Peshawar.

.....Appellant

VERSUS

1. Government of KPK through Secretary Environment Peshawar.
2. Secretary to Government of KPK, Establishment Department Civil Secretariat Peshawar.
3. Director General, Pakistan Forest Institute, Peshawar.

.....Respondents

Application for Restoration of Appeal No. 946/2019,
Adjourned Sine Die on 30/08/2023, titled "Akhter
Hussain VS Government of KPK".

Respectfully sheweth:-

The appellant submit as under.

1. That the above titled appeal was adjourned sine die on 30/08/2023 due to the pendency of CA.No. 468/21 before the Honorable Supreme Court of Pakistan in which the same question of law was involved.
(Copy of order dated: 30/08/2023 is attached as Annex "A")
2. That the above CA.No 468/21 is dismissed by the Honorable Supreme Court of Pakistan vide order dated: 25/10/2023.
(Copy of order dated: 25/10/2023 is attached as Annex "B")
3. That now in the light of the above development, the instant appeal needs to be restored so that the same may very kindly be decided in the light of order delivered in CA.No. 468/21, dated: 25/10/2023.

It is therefore most humbly prayed that on acceptance of the instant petition, the appeal in hand may very kindly be ordered to be restored & be decided on merits.

Dated: 16/11/2023

THROUGH

SAIFULLAH KHALIL (SR)

Adv, High Court Peshawar

Appellant

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BEFORE THE WORTHY SERVICES TRIBUNAL KPK,
PESHAWAR

Service Appeal No. 946 / 2019

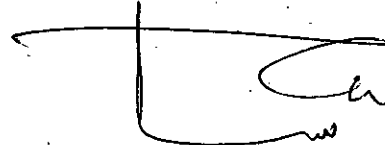
Akhter Hussain

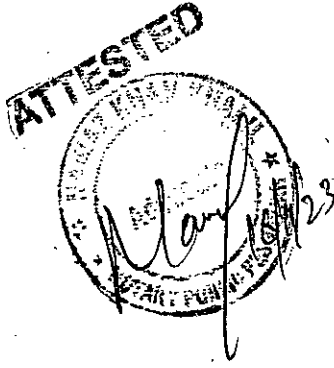
V/S

Govt of KP & Others

AFFIDAVIT

I, **Saifullah Khalil Advocate (Counsel for the appellant)**, on the instruction of my client do hereby solemnly affirm & declare on oath that the contents of the instant application are true & correct to the best of my knowledge & nothing has been concealed from this Honorable Tribunal.


ADVOCATE



DEPONENT

CELL NO:- 0313-5941431

CNIC NO:- 17301-4134473-3

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Annex A

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BEFORE THE SERVICES TRIBUNAL PESHAWAR

Service Appeal No: 946 2019

1. Akhtar Hussain s/o Abdul Khaliq Khan R/O Regi Aftizai,
Peshawar Ex-Look After Superintendent at Pakistan Forest
Institute Peshawar.

Appellant

VERSUS

1. Government of K.P.K through Secretary Environment Peshawar.
2. Secretary to Govt of K.P,K Establishment Department Civil
Secretariat Peshawar
3. Director General Pakistan Forests institute Peshawar.

Respondents

^{19.5.19}
APPEAL UNDER SECTION 22 OF SERVICE TRIBUNAL ACT AGAINST
THE ORIGINAL ORDER DATED 30/05/2019 VIDE WHICH THE
APPELLANT HAS NOT BEEN CONSIDERED FOR PROMOTION TO B.P.S
17 BY THE RESPONDENTS AND AGAINST THE JUDGMENT /ORDER
DATED 01/07/2019 OF THE APPELLATE AUTHORITY VIDE WHICH
THE APPEAL OF THE APPELLANT HAS BEEN DISMISSED.

PRAYER

ON ACCEPTANCE OF THIS SERVICE APPEAL BOTH THE IMPUGENED
ORDERS MENTIONED ABOVE MAY VERY KINDLY BE SET ASIDE AND
THE APPELLANT MAY VERY KINDLY BE ORDERED TO BE PROMOTED
TO THE POST OF SUPERINTENDENT B.P.S 17 FROM JAN, 2015 ALONG
WITH ALL BACK BENEFITS TILL 19/01/2019. (DATE OF HIS
RETIREMENT)

Respectfully Sheweth:

The Appellant submits as under:

ATTESTED
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

1. That the Appellant joined the Department of the Respondents as Lower
Division Clerk on 12/05/1998 and thereafter the appellant was promoted
from time to time and on 25/01/2001 the appellant was promoted on the



post of Assistant on BPS 14. (Copy of office order dated 25/01/2016 as annexure A.)

2. That vide office order date 28/09/2016 the appellant was upgrade from BPS-14 to BPS-16.(Copy of office order dated 20/09/2016 is annexure B)

3. That vide office order date 13/10/2016 pay of the appellant was fixed in BPS-16.(Copy of office order dated 13/10/2016 is annexure C)

4. That there after vide office order dated 6/4/2017 the appellant was given Look after charge of the post of superintendent BPS-17 and since the appellant Was serving on the said post and performing the duties of superintendent on BPS-17 but draw the pay of BPS-16. (Copy of office order dated 6/4/2017 is annexure D)

5. That before on his retirement on 17/1/2019 the appellant filed a Writ Petition no 3982-P/2018 against the Respondents to place his case for promotion before the DPC, which was accepted by the Hounreble High Court Peshawar vide order dated 11/12/18.(Copy of Writ Petition and order is Annexure as E,E1 Respectively.

6. That two posts of superintendent BPS- 17 were Lying vacant with the Respondents since 2014 and the appellant was eligible to be promoted to the said post after performing 5 years' service on BPS -16 as such the appellant, was entitled to be promoted on the said post in the year 2015 but the Respondents Delayed the matter on one or the other pretext.

ATTENDED
[Signature]

That in this respect the appellant filed a numbers of applications to the Respondents but in vain(Copy of office order dated 6/4/2017 is annexure F)

8. That on the Direction of the High Court case of the appellant was put before the DPC who rejected the same vide order dated 15/5/19 against which the appellant filed a departmental appeal on 30/05/19 which was dismissed vide order dated 01/07/19. Copy of the orders dated 15/5/19 and 01/07/19 are annexure G,H)

9. That having no other alternate remedy the Appellant impugns both the judgments/ Orders before this Honourable Court on the following grounds inter alia:

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(B)

GROUNDS

- A. That the act of the Respondents by not promoting the appellant to BPS-17 and their refusal is against the Law and Rules hence untenable.
- B. That the appellant has a vested right to be promoted to the post of BPS-17 from the year 2015 as the appellant is the post senior in the seniority List for the said promotion.
- C. That the appellant is already performing duties at Look after duty on the post of superintendent BPS-17 and has also fulfilled the entire criteria for promotion as such entitled to be promoted to the said post.
- D. That the Respondents are bound to act in accordance with Law and Rules and cannot refuse the rights of the appellant guaranteed by the Law and Rules.
- E. That if the appellant is not promoted to the said post the appellant will suffer irreparable Loss as the said post is laying vacant since 2014.
- F. That the appellant has already retired from service on 17/01/19 as such he is entitled for promotion since 2015 till the date of retirement along with all back benefits.
- G. That Framing of Rules was the responsibility of the Respondents on this practice the appellant cannot be deprived from his vested of promotion.
- H. That even if the entire department of the appellant was on deputation to the provincial Govt which is there after absorbed by it promotion to the appellant cannot be refused keeping in waive the rule of estoppel and principle of Locus ponetentia.
- I. That during the absorption period the Respondents have promoted their employees. (Copies are annexure I.)
- That any other points/ Grounds would be raised at the time of arguments with the prior permission of this Honourable Court.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Quetta

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It, is there for most humbly prayed that on acceptance of this service appeal both the impugned orders mentioned above may very kindly be set aside and the appellant may very kindly be orderd to be promoted to the post of superintendent bps- 17 from jan,2015 along with all back benefits.

Date: 11 /07/2019


appellant

Through

Saif Ullah Khalil (Senior)
Advocate, High Court Peshawar

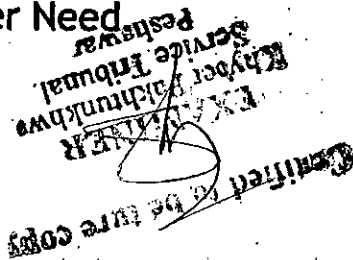
CERTIFICATE:

Certified that no such like service appeal has earlier been filed before this Honourable Court for the same petitioners.

Advocate

LIST OF BOOKS:

1. Book of Services Law
2. Any other Book as per Need


Service Tribunal
Peshawar
EX-11111111
Certified to be true copy




ORDER

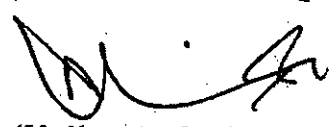
30th Aug. 2023

Kalim Arshad Khan, Chairman: Learned counsel for appellant and Mr. Muhammad Jan, District Attorney for respondents present.

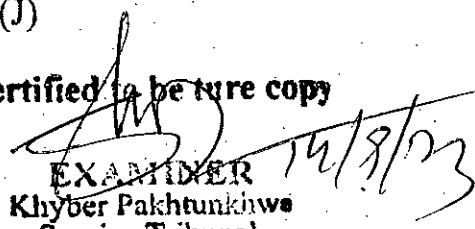
2. Learned counsel for the appellant and learned District Attorney, both say that against the same impugned order one Lakhkar Khan has filed writ petition before the Hon'ble Peshawar High Court which was allowed and the Government had filed CPLA before the august Supreme Court of Pakistan, in which the august Supreme Court had granted leave on 18.05.2021, suspending the operation of the impugned judgment. The learned counsel for appellant and learned District Attorney both say that the decision of the appeal before the august Supreme Court of Pakistan, in either way, may have effect on the decision of this appeal, therefore, they request that this appeal may be adjourned sine die. On the joint request of the learned counsel for the appellant and learned District Attorney, it is accordingly adjourned sine die. Any of parties may, however, get it restored and decided after decision in the august Supreme Court of Pakistan in the appeal of Government of Khyber Pakhtunkhwa. Consign.

3. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 30th day of August, 2023.*


(Safah-Ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazeni Shah

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Annex B

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Jamal Khan Mandokhall
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi

C.A.468/2021 AND C.M.A.1029-P/2020

1. C.A.468/2021 Government of Khyber Pakhtunkhwa through Secretary Establishment & Administration Department, Peshawar and others v. Lakhkar Khan and another
(Against judgment dated 16.09.2020 passed by the Peshawar High Court, Peshawar in WP No.4429-P/2019)
2. C.M.A.1029-P/2020 Government of KP. through Secretary Establishment & Administration Department, Civil Secretariat, Peshawar and others v. Lakhkar Khan and another
(Stay application)

For the Applicant(s)/ Appellant(s) : Mr. Zahid Yousaf Qureshi, AOR
Mr. Farhan Ahmad, Admin Officer, PFI Peshawar

Respondent No.1 : Respondent in person
Mrs. Kausar Iqbal Bhatti, AOR

Date of Hearing : 25.10.2023

ORDER

Jamal Khan Mandokhall, J: C.A.468/2021: The respondent No.1 was serving as Assistant in Pakistan Forest Institute, a Federal entity, but on account of 18th amendment to the Constitution, the department was devolved to the Province of Khyber Pakhtunkhwa ("KPK"), In the year 2011, consequently, the services of the respondent alongwith other employees were also transferred to KPK. In the meanwhile, the post of Superintendent (BPS-17) fall vacant, to which the respondent applied, but the department did not process his case. Being

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

aggrieved, the respondent filed WP No.248-P of 2017, which was disposed of vide order dated 25.01.2017 with the direction to the department to consider his case for promotion in the first available meeting of the Promotion Committee. Before a meeting of the said committee could be convened, the respondent was retired from his service on 27.02.2017. The Provincial Government finally framed the Pakistan Forest Institute Recruitment and Promotion Rules, 2019 ("Rules"), on the basis whereof, a meeting of the Promotion Committee was convened by the department on 27.05.2019. The request of the respondent for his *proforma* promotion was turned down by the petitioner. Feeling aggrieved, the respondent filed a WP No.4429-P/2019 before the High Court which was allowed vide judgment dated 16.09.2020, hence the instant petition for leave to appeal.

2. Arguments heard and record perused. The learned AOR for the petitioners states that the department was devolved upon the Province of KPK in the year 2011, but on account of none framing of service rules by the Province, the respondent's case for promotion was not considered. However, he admits the fact that before framing of Provincial Rules, the services of the respondent was governed by the previous rules framed by the Federal Government. Under such circumstances, when the right of promotion has accrued to the respondent, he was in service and that time, the rules framed by the Federal Government were

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Senior Court Associate
Supreme Court of Pakistan

In field. He applied for his proforma promotion in terms of the rules applicable to him at that time, but with no response, despite directions of the High Court.

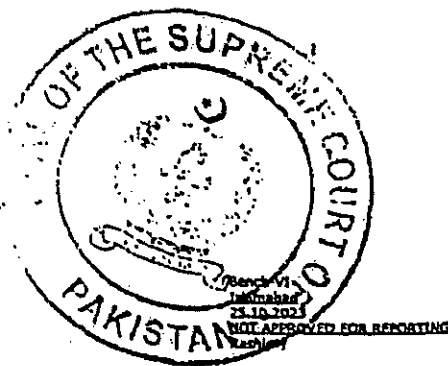
3. In view of the above, we see no reason to Interfere In well reasoned findings of the High Court, based upon law and facts. The department shall consider the case of respondent No.1 on the basis of the previous rules and decide the same preferably within a period of 90 days, after receiving a copy of this order. The petition is dismissed and leave is declined.

4. C.M.A.1029-P/2020: Disposed of accordingly.

Sd/-J
Sd/-J
Sd/-J

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Senior/Court Associate
Supreme Court of Pakistan
Islamabad



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CR No: _____

Date of Presentation: 25-10-23

No of Words: _____

No of Pages: _____

Admission Fee Rs: 5.00

Copy Fee Rs: 5.00

Stamp Fee: 10.00

Date of Completion of Copy: 21/11/23

Date of Delivery of Copy: _____

Prepared by/Prepared by: 7-4-11-23

Received by: _____

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پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: سدیف ارشد خلیل

بار کونسل ایسوسی ایشن نمبر: BC 10-7499

رابطہ نمبر: 0313-5941431

PESHAWAR
BAR ASSOCIATION



بعدالت جناب: سر جسٹس نواب خلیل حسین خٹک، چیف جسٹس، پشاور

مخانب: Appellant	دعویٰ:
احسن حسین	علت نمبر:
بنام	مورخہ:
RP حکومت وینس	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام پشاور کے سدیف ارشد خلیل خلیل فرید خان خلیل کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثت و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا کٹرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگزانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساخستہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائد التوائے مقدمہ کے سبب سے ہوگا وکالی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب بابت نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHA

المرقوم: 16/11/2023

العواہ شد العبد

مقام پشاور کے لیے منظور ہے۔