


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 960/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.12.2023	<p>The implementation petition of Mr. Muhammad Ayub submitted today by Mr. Noor Muhammad Khattak 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

Execution Petition No. 960 /2023
In
Appeal No. 146/2019

MR. MUHAMMAD AYUB VS CHIEF SECRETARY & OTHERS

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PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-/-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 960 /2023
In
Appeal No. 146/2019

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 9812
Dated 11-12-2023

Mr. Muhammad Ayub,
Computer Operator (BPS-16), Governor House, Peshawar

.....PETITIONER

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. The Secretary Establishment Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Administration Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF
THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF
THE KP SERVICE TRIBUNAL RULES 1974 READ
WITH SECTIONS 36 AND 51 OF THE CIVIL
PROCEDURE CODE AND ALL ENABLING LAWS ON
THE SUBJECT FOR THE IMPLEMENTATION OF THE
JUDGMENT DATED 27/09/2023 IN LETTER AND
SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 146/2019 before this august Service Tribunal against the inaction of the respondents department by not including the names of appellant in the seniority list of Computer Operator.
- 2- That the appeal of the petitioner was finally heard, allowed vide order dated 27/09/2023 and as such the ibid appeal was decided with the following terms by this august Service Tribunal:

"8. " The respondents are, therefore, directed to scrutinize eligibility of the appellant in terms of their qualification for the post of Computer Operator and if they are found qualified then they shall be taken on the cadre strength of Computer

Operator by including their names at the appropriate place in the seniority list of Computer Operators.

9. The instant service appeal as well as connected service appeal bearing No 147/2019 are allowed on the above terms. Parties are left to bear their own costs. Consign". Copy of the judgment dated 27/09/2023 is attached as annexure.....**A**

3- That after obtaining copy of the judgment dated 27/09/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure.....**B**

4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 27/09/2023 passed in Appeal No. 146/2019 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.



PETITIONER
Mr. Muhammad Ayub

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Mr. Muhammad Ayub, Computer Operator (BPS-16), Governor House, do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT

'A' -3-



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 146/2019

BEFORE: RASHIDA BANO --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Muhammad Ayub, Computer Operator (BPS-16), Governor House
Peshawar.....(*Appellant*)

Versus

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department Government of Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Administration Department Government of Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. NOOR MUHAMMAD KHATTAK,
Mr. ASAD MEHMOOD & MAIN MUHAMMAD IMRAN
Advocates..... For appellant

Mr. MUHAMMAD JAN
District Attorney.....For respondents

Date of Institution.....21.12.2018
Date of Hearing.....27.09.2023
Date of Decision.....27.09.2023

CONSOLIDATED JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- Through this judgment this appeal and the connected service appeal bearing No. 147/2019 titled " Muhammad Haleem versus The Chief Secretary, Khyber Pakhtunkhwa Peshawar and others", are decided as both are the same and can conveniently be decided together.

ATTES

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

SCANNED
IN BT
Peshawar

02. According to the facts gathered from the record, the appellants were appointed as Key Punch Operators (BPS-10) on 22.08.2009 in the office of Governor House Peshawar; that the Khyber Pakhtunkhwa Finance Department upgraded the post of Key Punch Operators from (BPS-10 to BPS-12) with the nomenclature of Computer Operator w.e.f. 12.07.2010 vide order dated 05.08.2010; that the Finance Department Khyber Pakhtunkhwa further upgraded the post of Computer Operator from (BPS-12 to BPS-16) vide Notification dated 29.07.2016 due to which the post of the appellants were also upgraded; that since the date of appointment the appellants were working as Computer Operator which was up-graded from BPS-12 and then BPS-16 but the name of the appellants were not included in the seniority list of Computer Operator. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 27.11.2018 hence preferred the instant service appeal on 21.12.2018.

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 appellants and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsels for the appellants contended that the order dated 27.11.2018 refusing inclusion of the names of the appellants in the seniority list of Computer Operator (BPS-16) are against the law fact, norms of justice; that the appellants are regular civil servants and as per Section 8 of the Khyber Pakhtunkhwa Civil Servants, Act, 1973 and rule 17 of the (Appointment Promotion & Transfer) Rules, 1989 the appellants are entitled

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

to be placed at proper place in the seniority list of Computer Operator (BPS-16); that the appellants are civil servants and can not be deprived from their legal right of seniority of Computer Operators as mandated in Section-8 of the civil servants Act, 1973; that the posts of the appellants were created by the Government of Khyber Pakhtunkhwa Finance Department with the approval of competent authority and all the arrangement for the recruitment of the appellants have been done by the provincial government which means that the appellants have also right of seniority of BPS-16 like other provincial government servants; that the appellants have not been treated in accordance with law and rules and deprived from their legal rights of seniority.

05. Learned District Attorney on the other hand contended that the appellants are not entitled to be included in the seniority list of I.T Cadre of Civil Secretariat being employee of Governor's House rather than Establishment Department; that the departmental appeal of the appellants were rejected on the ground that they were appointed as Key Punch Operator (BS-10) under the terms & conditions issued by Governors House in August 2009. Moreover, all such appointments in Civil Secretariat were being made under the Khyber Pakhtunkhwa (Provincial Information Technology Group) Service Rules, 2006 wherein the nomenclature of Key Punch Operator is not mentioned; that the appellants were not employees of Establishment Department, therefore, they have no rights of inclusion of their name in the seniority list as well as of promotion in the I.T cadre of Civil Secretariat.

06. It is admitted fact that the appellants are bonafide civil servants initially appointed as Key Punch Operator in BS-10 through proper

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Handwritten signature]

procedure by the Military Secretary to the Governor being appointing authority under the prevalent rules. There were two categories of employees in the Governor House i.e. one drawing Pay & Allowances from the budget provided by the Federal Government and the other from the Provincial consolidated fund duly authorized by the Provincial Assembly and allocated/released by the Provincial Finance Department. Admittedly the appellant belonged to the second category and as such are provincial civil servants borne on the cadre strength of Administration Department. A total 10 posts of various nomenclature and Basic Pay Scale including two posts of Key Punch Operator (BS-10) were created by the Finance Department for the Governor House on 28.04.2009 which were filled through prescribed manner. It is also not disputed that before 12.07.2010 computer related posts with different nomenclature and pay scale were in existence in various departments and offices of the Provincial Government. To do away with the anomaly and standardize related posts the Provincial Government of Khyber Pakhtunkhwa upgraded the posts of Key Punch Operator, Data Entry Operator, Computer Assistant and Computer Operator to BS-12 and changed their nomenclature to one standard nomenclature of Computer Operator vide Notification dated 12.07.2010. All the incumbents/beneficiaries of this Notification are on the way to their career progression in their respective cadres and departments who have now been placed in BS-16 vide Finance Department Notification dated 29.07.2016.

07. Admittedly the categories of employees other than the house hold staff of the Governor House either directly managed by the Establishment & Administration Department from the very first appointment or taken on the cadre strength of Civil Secretariat by maintaining joint seniority list. All the

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regular employees who were recruited in the Governor House are working on the cadre strength of Civil Secretariat. Record available in the case file reveals that the following employees appointed by Governor/MS to the Governor were later on promoted on the cadre strength of Civil Secretariat:

Sr. No.	Name of Employees initially appointed by MS to Governor	Years of promotion encadrement in Civil Secretariat
1.	Muhammad Sabir S/o Abdur Rehman, Naib Qasid	13 th March, 2009 as Junior Clerk on acting charge basis
2.	Muhammad Latif S/o Nadir Khan, Bhishti,	30.05.2007 as Daftari
3.	Hazrat Ullah S/o Duwat Khan, Naib Qasid	31.01.2009 as Daftari
4.	Atiqur Rehman S/o Muhammad Ayub, Daftari	05.07.1997 as Junior Clerk

08. The case of the appellant is similar to the above mentioned employees as the appellant like similarly placed employees are civil servant governed by the Civil Servants Act, 1973 and rules made thereunder, validly appointed by the appointing authority in the prescribed manner and as such they are also eligible to be treated on equal footings. The only point to be determined for inclusion of the appellant in the cadre/seniority list of Computer Operators maintained by Establishment & Administration Department is whether the appellant meet the criteria prescribed for appointment of Computer Operator in accordance with the service rules. The respondents are, therefore, directed to scrutinize eligibility of the appellant in terms of their qualification for the post of Computer Operator and if they are found qualified then they shall be taken on the cadre strength of Computer Operator by including their name at the appropriate place in the seniority list of Computer Operators.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

09. The instant service appeal as well as connected service appeal bearing No. 147/2019 are allowed on the above terms. Parties are left to bear their own costs. File be consigned to the record room.

10. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 27th day of September, 2023.

SCANNED
K-37
Peshawar



(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Kamranullah

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	_____	27/9/23
Number of Words	_____	Page 6
Copying Fee	_____	30/-
Urgent	_____	
Total	_____	30/-
Name of Copy	_____	
Date of _____	_____	15/11/23
Date of Delivery of _____	_____	15/11/23

"B"

-9-

To
The Military Secretary to Governor,
Governor's House Peshawar.

Through: Proper Channel

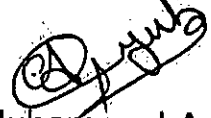
Subject: **REQUEST FOR IMPLEMENTATION OF JUDGMENT PASSED BY
THE HONORABLE SERVICE TRIBUNAL KP IN SERVICE APPEAL
NO.146-47/2019**

Dear Sir,

With due respect it is stated that our departmental appeal were forwarded to Establishment Department with the request to include our names in the seniority list of Computer Operator maintained by the Establishment Department Civil Secretariat vide Letter No. SOMSG/GH/2018/979-80 dated 13.09.2018 which was rejected by the Establishment Department on 27-11-2018. Then we had filed an appeal in the Service Tribunal KP Peshawar for justice. Now the honorable Service Tribunal KP had accepted our appeal on 27-09-2023. The detail judgment is enclosed for ready reference.

In this regard, it is humbly requested that our judgment may kindly be forwarded to Secretary Establishment for implementation / compliance and necessary action, please.

Yours faithfully,


Muhammad Ayub

 &
Abdul Haleem

Appeal No. 146-47/2019

Dated: 24/11/2023

ATTESTED

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution No 12023

Muhammad Ayub (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Chief Secretary and others (RESPONDENT)
(DEFENDANT)

I/We Muhammad Ayub

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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 cost. 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.

Dated. ___/___/202


CLIENT M. Ayub

ACCEPTED


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT


WALEED ADNAN


UMAR FAROOQ MOHMAND


MUHAMMAD AYUB


MAHMOOD JAN
ADVOCATES

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