Form- A

FORM OF ORDER SHEET

Court of .....

Implementation Petition No. 966 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.12.2023	The implementation petition of Hafiz Muhammad Haroon resubmitted today by Mr. yasir Salim Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on -_____. Original file be requisitioned. AAG has noted the next date. By the order of Chairman REGISTRAR

The execution petition in appeal no.1886/2022 received today i.e. on 29.11.202 is returned to the counsel for the petitioner with the following remarks.

1. Copy of application moved by the petitioner to competent authority for the implementation of judgment is not attached with the petition. If the application has already been preferred and reasonable period of 30 days has been expired be placed on file. If not, the same process be completed and then after approach to this Tribunal for the implementation of Judgment.
2. Affidavit is not attested by the Oath Commissioner.
3. Address of the petition is incomplete be completed according to the rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974.
4. Two more copies/sets of the petition along with annexures i.e. complete in all respect be submitted with the petition.

No. 3733 /S.T,

Dt. 30/11/2023.

REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Mr. Yasir Saleem Adv.
High Court Peshawar.

R/Sir
Resubmitted after
clearing all the objection
Re-submitted today

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 966/2023

Service Appeal No 1023 /2023

Hafiz Muhammad Haroon, District Public Prosecutor Upper Kohistan (BPS-19).....**Appellant**

Vs

Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar & others.....**Respondents**

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Applicant/Petitioner

Dated: 29.11.2023

YASIR SALEEM
Advocate Supreme Court of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 966/2023

Hafiz Muhammad Haroon, District Public Prosecutor (BPS-19) Upper Kohistan

.....Applicant/Petitioner

Vs

1. **Government of Khyber Pakhtunkhwa,** through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department,** Civil Secretariat, Peshawar.
3. **Director General Prosecution,** Khyber Pakhtunkhwa, Peshawar.

.....Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 26-09-2023 PASSED BY THIS HONORABLE TRIBUNAL IN SERVICE APPEAL NO. 1886/2022 TITLED HAFIZ MUHAMMAD HAROON VS GOVT. OF KPK & OTHERS VIDE WHICH THIS HONORABLE TRIBUNAL HAD DIRECTED THE RESPONDENTS TO ENSURE THE POSTING OF PROPER PERSON IN GRADE-20 AGAINST THE POST OF REGIONAL DIRECTOR PROSECUTION.

Respectfully submitted:

1. That service appeal No. 1886/2022 was preferred in this Honorable Tribunal which was decided on 26-09-2023. Copy of Judgment dated 26-09-2023 is annexed as *"Annexure A"*.

2. That vide Judgment under reference this Honorable Tribunal had directed the respondents to ensure posting of proper person in BPS-20 against the post of Regional Director Prosecution. The operative para is reproduced below:-

> ***"In view of the Posting/Transfer Policy clause xiii, the concerned authorities shall ensure the posting of proper person in Grade-20 against the post of Regional Director".***

3. That the petitioner approached the respondents seeking implementation of the order dated 26-09-2023 passed by this Honorable Tribunal and also moved an application to respondent No. 03 but in vein, as such there cannot be any reasonable justification for it except the executive chauvinism, hence, repelable being condemnable. Copy of application is annexed as "***Annexure B***"

4. That the respondents are reluctant to implement the Judgment of this Honorable Tribunal and trying to eliminate the valuable rights of the proper persons who are eligible to be promoted to the post of Regional Director BPS-20.

5. That the delaying tactics of respondents are effecting the valuable rights of the appellant and other senior most Prosecution officers in BPS-19 who are otherwise eligible for Promotion to BPS-20 as Regional Director Prosecution.

6. That presently 06 posts of Regional Director Prosecution (BPS-20) are lying vacant in the department which have been filled in by cherry picking junior most officers in BPS-19 on acting charge basis.

7. That the respondents are deliberately avoiding to promote/transfer proper persons in BPS-20 as Regional Director and are reluctant to implement the Judgment of this Honorable Tribunal dated 26-09-2023, just to eliminate the appellant alongwith his other senior most colleagues to get the right of seniority/promotion from BPS-19 to BPS-20 by different modes, as the appellant and his other 05 senior most colleagues fulfill the requisite conditions laid down for promotion from BPS-19 to BPS-20 including the length of prescribe service according to the Promotion Policy 2010.

8. That the delaying tactics of the respondents would put the applicant and his senior colleagues lengthy service into stake as the applicant and his other senior colleague are at the verge of retirement & are also in promotion zone to BPS-20, but despite this fact just to humiliate and frustrate the applicant and his other senior colleagues, they are being relegated and side-lined for reasons best known to them.

9. That it may also be mentioned here that the respondents have not filed appeal before the Apex Court till now.

10. That this Honorable Tribunal has ample powers to implement its order dated 26-09-2023.

It is therefore, requested that the respondents may kindly be directed to implement the order dated 26-09-2023 in its true letter & spririt. Any other relief which this Honorable tribunal deems appropriate may also be granted.

Applicant/Petitioner

through

YASIR SALEEM
Advocate Supreme Court of Pakistan

Dated: 29.11.23

AFFIDAVIT:

It is solemnly affirmed and declared on oath that the contents of the petition are true and correct to the best of my knowledge and belief and that nothing has been suppressed or concealed from this Honourable Tribunal.

KHALID MAHMOOD ADVOCATE NOTARY PUBLIC PESHAWAR HIGH COURT

12-12

Deponent

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No _____/2022

Hafiz Muhammad Haroon, Regional Director Prosecution, Hazara Division Abbottabad (BPS-20) as Senior Public Prosecutor (BPS-19). Kohistan Upper.

.....Appellant

Vs

Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar & Others.

.....Respondents

APPLICATION FOR RESTRAINING THE RESPONDENTS FROM TRANSFERRING/POSTING JUNIOR OFFICERS IN BPS-19 TO THE POST OF REGIONAL DIRECTOR PROSECUTION BPS-20 ON ACTING CHARGE BASIS TILL THE IMPLEMENTATION OF JUDGMENT OF THIS HONORABLE COURT DATED 26-09-2023 AND PROMOTION OF PROPER PERSONS IN BPS-20.

Respectfully Sheweth;

1. That the above titled appeal has been filed by the applicant in this Honorable Tribunal, the contents whereof may kindly be read as an integral part of instant application.

2. That the applicant has a good prima-facie case and hopes to succeed in it.

3. That a bare perusal of the instant matter also illustrates that the balance of convenience also lies in the favor of the applicant.

4. That the applicant would also suffer irreparable damage if the Hon'ble Tribunal does not grant interim relief to him.

It is therefore prayed that on acceptance of instant application the respondents may graciously be restrained from posting/transferring junior officers in BPS-19 to the post of Regional Director Prosecution BPS-20 on acting charge basis and appointment of proper persons in BPS-20 till the final determination of the forgoing application.

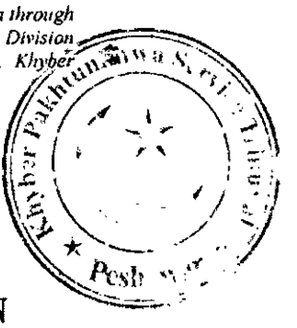
Applicant/Petitioner

Dated: 29.11.23

YASIR SALEEM
Advocate Supreme Court
of Pakistan

A/5

Service Appeal No 1886/2022 titled "Hafiz Muhammad Haroon versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar and others", decided on 26.09.2023by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Salah Ud Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR, AT CAMP COURT, ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No.1886/2022

Date of presentation of Appeal.....21.10.2022
Date of Hearing.....25.09.2023
Date of Decision.....26.09.2023

Hafiz Muhammad Haroon, Regional Director Prosecution, Hazara Division Abbottabad (BPS-20) as Senior Public Prosecutor (BPS-19) .....***Appellant***

Versus

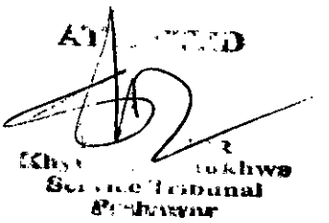
1. **The Government of Khyber Pakhtunkhwa** through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department,** Civil Secretariat, Peshawar.
3. **Director General Prosecution,** Khyber Pakhtunkhwa, Peshawar.
4. **Saqib Sultan Jadoon, Senior Public Prosecutor (BPS-19),** Directorate of Prosecution, Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.....(***Respondents***)

Present:

Mr. Muhammad Aslam Tanoli, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney..For official respondents
Mr. Arshad Khan Tanoli, Advocate.....For private respondent No.4

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION NO.SO(PROS)/HD/1-2/POST&TRANS/2022 DATED 15.09.2022, WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM THE POST OF REGIONAL DIRECTOR PROSECUTION, HAZARA DIVISION ABBOTTABAD (BPS-20) TO KOHISTAN UPPER AS DISTRICT PUBLIC PROSECUTOR (BPS-19) AND RESPONDENT NO.4 HAS BEEN POSTED VICE THE APPELLANT AGAINST WHICH HIS DEPARTMENTAL APPEAL/REVIEW DATED 19.09.2022 HAS BEEN REJECTED BY RELIEVING THE APPELLANT VIDE ORDER DATED 27.09.2022.



JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Relevant facts of the case in brief as narrated in the memo and grounds of appeal are that the appellant was initially appointed as Additional Public Prosecution (BPS-17) through Khyber Pakhtunkhwa Public Service Commission; that he was posted as Regional Director (a post in BPS-20) vide Notification dated 24.11.2020 in his own pay scale. That he took charge of the post on 07.12.2020 and after serving for one and half year, he was transferred and posted as District Public Prosecutor, Upper Kohistan vide impugned Notification dated 15.09.2022. Feeling aggrieved of the said notification, he filed departmental appeal/review petition on 19.09.2022, which was rejected, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Deputy District Attorney for the official respondents and learned counsel for private respondent No.4.

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy

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Service Tribunal
Peshawar

District Attorney assisted by the learned counsel for private respondent No.4, controverted the same by supporting the impugned order(s).

05. The appellant claims that he was not allowed to complete his normal tenure of posting, therefore, his transfer was in violation of Posting/Transfer Policy of the Provincial Government and also against judgment of the Superior Court reported in PLD 1995 SC 530 and 2013 PLD SC 195. He further contends that there were no departmental proceedings pending against him nor the impugned order was passed in any exigency, therefore, the order was to humiliate and victimize the appellant because the Directorate of Prosecution was annoyed on inspection of DPP Office, Lower Kohistan, who (DPP) was given final show cause notice by the authority due to his continuous absence from duty for three years. That the appellant was senior most officer and was replaced with a junior officer. That the appellant was in the last leg of his service. On the other side, the contention of the official respondents is that the post of Regional Director Prosecution was a BPS-20 post and could only be filled by an officer of BPS-20, however, there was no officer of Grade-20 available in the department, therefore, post of Regional Director was filled in by posting of a Grade-19 officer in his own pay & scale. It was added that the appellant was posted as Regional Director 07.12.2020 and transfer vide order dated 15.09.2022 i.e. almost two years i.e. after completion of normal tenure of posting. It was also contended that during his posting as Regional Director, he was charge sheeted for non-reporting the long absence of the officer under his command. Private

respondent No.4 contended that the appellant had failed to supervise field formation and was proceeded under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

06. There is no denial of the fact that both the appellant and private respondent are officers in Grade-19 while the post of Regional Director, Directorate of Prosecution Hazara Division is of Grade-20. In disregard of various pronouncements of superior courts, it appears that the official respondents have not made any attempt to make promotions from amongst the officers of BPS-19, so that proper person could be posted against proper post. Resorting to filling the post on own pay & scale (OPS) basis has also been deprecated in a number of judgments by the Supreme Court of Pakistan. It is true that posting of a senior person under a junior colleague disturbs the discipline of the department but this does not mean that a senior, just by a number or so in the seniority list of equal grade persons, would have a permanent right to remain posted for years on a higher post and that too, on OPS basis, especially when the written contention of the department is that the appellant has spent almost two years as Regional Director and such contention was not rebutted by the appellant, therefore, his ground of premature transfer can also be safely said to be having no legs to stand upon.

07. This Tribunal in a recent judgment in Service Appeal No.1061/2023 tiled "Kashif Vs. Senior Member Board of Revenue", in a matter of posting on OPS basis, has held as under:

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"5. There is no ifs ands or buts about the fact that the appellant and private respondent, both are Kanungos/Girdawars, therefore, none of the two are having any locus standi to strive for posting in their own pay and scale, against a post in a higher grade. Even the civil servant, who is in the relevant grade cannot claim posting against his choice post rather it is the domain and prerogative of the departmental authorities to post a Civil Servant against any post. Reliance is placed on 2018 SCMR1411 titled "Khan Muhammad versus Chief Secretary Government of Balochistan and others", wherein the Supreme Court of Pakistan held that "The impugned notification stipulates that the petitioner and the respondent No.3 were posted/transferred in their "own pay and scale". In the case of Province of Sindh v. Ghulam Fareed (above) it was held, that posting/transferring a civil servant on his own pay and scale (OPS) is not legally permissible:

"11. We have inquired from the learned Additional Advocate-General to show us any provision of law and or rule under which a Civil Servant can be appointed on higher grade/post on OPS basis. He concedes that there is no specific provision in the law or rule which permits appointment on OPS basis. He, however, submitted that in exigencies the Government makes such appointments as a stop gap arrangement. We have examined the provisions of Sindh Civil Servants Act and the Rules framed thereunder. We do not find any provision which

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

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could authorize the Government or Competent Authority to appointment [of] any officer on higher grade on "Own Pay And Scale Basis". Appointment of the nature that, too of a junior officer causes heart burning of the senior officers within the cadre and or department. This practice of appointment on OPS basis to a higher grade has also always been discouraged by this Court, as it does not have any sanction of law, besides it impinges the self respect and dignity of the Civil Servants who are forced to work under their rapidly and unduly appointed fellow officers junior to them. Discretion of the nature if allowed to be vested in the Competent Authority will offend valuable rights of the meritorious Civil Servants besides blocks promotions of the deserving officers." The Supreme Court further held that "18. Under section 10 of the Act a civil servant cannot insist to be posted or transferred to a particular post but this does not mean that a civil servant can be made to serve under a subordinate. Moreover, while section 10 does not prescribe a minimum period during which a civil servant must serve at his post it does not mean that the Government without assigning any reason can move a civil servant from the place he was posted to after a month or subject the civil servant to repeated postings in a short period of time because this would amount to punishing him. Such postings also adversely affect the public interest and result in the wastage of scarce resources and constitute bad governance."

08. The last but not the least, the appellant had assumed the charge in compliance with the impugned transfer order and has spent a couple of months there, while private respondent has also assumed the charge as Regional Director.

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

(11)

09. For the reasons that neither the appellant nor private respondent but in view of the Posting/Transfer Policy clause xiii, the concerned authorities shall ensure the posting of proper person in Grade-20 against the post of Regional Director. The appeal is disposed of in the above terms. Consign.

10. Pronounced in open Court at Camp Court, Abbottabad and given under our hands and the seal of the Tribunal on this 26th day of September, 2023.

KALIM ARSHAD KHAN
Chairman
Camp Court, Abbottabad

SALAH-UD-DIN
Member (Judicial)
Camp Court, Abbottabad

Mutazem Shah

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation ... 28-11-23
Number of Words 779
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Urgent 5/-
Total 40/-
Name of Co...
Date of Co... 28-11-23
Date of Delivery ... 28-11-23

To

13

The Secretary

Govt. of Khyber Pakhtunkhwa

Home & Tribal Affairs Department, Peshawar

Through proper channel

Subject: DEPARTMENTAL REPRESENTATION IN PURSUANCE TO JUDGMENT OF HONORABLE SERVICE TRIBUNAL DATED 26-09-2023 IN CASE TITLED HAFIZ MUHAMMAD HAROON VS GOVT OF KPK etc.

Dear Sir;

1 That applicant filed service appeal before the Honorable Service Tribunal impugning therein transfer Notification 15-09-2022 to the extent of applicant which Service Appeal was decided on 26-09-2023, wherein the Honorable Service Tribunal directed the Provincial Government to appoint a proper person as Regional Director Prosecution BPS-20 in place of present RD Hazara, who is a junior officer in BPS-19 officer. Copy of Judgment dated 26-09-2023 is annexed herewith.

2 That applicant being Senior Prosecution Officer in BPS-19 on regular basis in promotion zone to BPS-20 and in this respect the department had issued Tentative Seniority List, wherein name of applicant is reflected at serial No.4 of the said list.

3 That applicant has attained 58 years of age on 01-04-2023 and as such is exempted form specialized training as notified vide Notification bearing No.SO(Policy)E&AD/1-16/2017 dated 21-05-2018 Copy annexed as "*Annexure B*"

It is therefore humbly requested that in the light of Judgment of Honourable Service Tribual, applicant being Senior and proper person for the post of Regional Director BPS-20, may be transferred and posted as Regional Director Prosecution Hazara, being in his last year of service please

4-10-23

Attested

Hafiz Muhammad Haroon

District Public Prosecutor

Upper Kohistan

(12)

POWER OF ATTORNEY

In the court of KPK Service Tribunal, Peshawar.

Hafiz Muhammad Haroon **Versus** Govt of KPK

..... Petitioner/Plaintiff/Appellant .....Respondent/Defendant

KNOW ALL to whom these presents shall come that I the undersigned appoint:

Mr. YASIR SALEEM, Advocate Supreme Court of Pakistan, (herein after called the advocate) to be the Advocate for the Petitioner/Plaintiff/Appellant or Respondent/Defendant in the above mentioned case, to do all the following acts, deeds and things or any of them ,that is to say

1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
2) To sign, verify and present pleadings, appeals, cross- objections ,petitions for execution, review , revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case and in consequence of his absence from the court when the said case is called up for hearing

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid., He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this 26 day of November 2023.

Executant/Executants

Accepted subject to the terms regarding Professional Fee

YASIR KHALID
Advocate High Court
Peshawar.

YASIR SALEEM
Advocate Supreme Court of Pakistan
Legal Advisor, Services & Labor Law Consultant
FR-4, 4th Floor, Bilour Plaza, Peshawar Saddar.
Cell No. 0331-8892589 Email: yasirsaleemadvocate@gmail.com