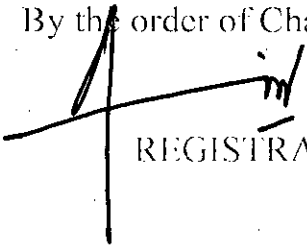


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

Appeal No. 2616/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1-    | 22/12/2023                | <p>The appeal of Mr. Abdul Qayyum presented today by Mr. Noor Muhanimad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ Parcha Peshi is given to the counsel for the appellant.</p> <p>By the order of Chairman<br/><br/>REGISTRAR</p> |

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

APPEAL NO. 2616 /2023

MR. ABDUL QAYYUM

V/S

EDU: DEPTT:

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| 2.    | Copy of appointment order     | A        | 4    |
| 3.    | Copy of Regularization Order  | B        | 5    |
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**APPELLANT**

THROUGH:

  
**NOOR MUHAMMAD KHATTAK**  
**ADVOCATE SUPREME COURT**

-1-

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

APPEAL NO. 2616 /2023

Mr. Abdul Qayyum, PST (BPS-12),  
GPS Bara, District Khyber

.....**APPELLANT**

**VERSUS**

- 1- The Director, E&SE Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Education Officer (M), District Khyber.

.....**RESPONDENTS**

**APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR FIXATION OF PAY IN BPS-12 W.E.F. 20/12/2005 I.E. BY COUNTING THE INITIAL CONTRACTUAL SERVICE TOWARDS REGULAR SERVICE (20.7.2016) AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:**

That on acceptance of this appeal the contractual service of the appellant may kindly be counted towards regular service i.e. 20.12.2005 to 20.7.2016 and the respondents may also be directed to grant pay fixation to the appellant w.e.f. 20.12.2005 with all back benefits. Any other remedy which this august Service Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise to the present appeal are as under:**

- 1- That the appellant was initially appointed in the respondent Department as PST BPS-07 in Communal School BCS Rehmat Gul Killi against vacant PST post, vide order dated 20/12/2005. Copy of the appointment order is attached as annexure..... **A**

- 2- That thereafter the appellant was regularized on 20/07/2016. Copy of regularization order is attached as annexure.....**B**
- 3- That where after the post of the appellant was up graded to BPS-12 from BPS-7 and accordingly the pay of the appellant was fixed in BPS-12.
- 4- That since then the appellant is performing his duties with full devotion and zest. It is pertinent to mention here that the appellant is entitled for the above relief as seeks, because it is settled principles of law that when a contract period is followed by regularization, then in that very case the employee is entitled for the regularization of his service from the date of his initial contractual appointment.
- 5- That the appellant filed Departmental appeal before respondent No.2 for fixation of pay w.e.f. the date of his first appointment i.e. 20/12/2005, which was not decided within the statutory period of 90 days. Copy of Departmental Appeal is attached as annexure.....**D**
- 6- That feeling aggrieved the appellant filed the instant appeal on following grounds inter alia.

**GROUND:**

- A- That the inaction of respondents by not allowing pay fixation to the appellant w.e.f. 20/12/2005 is against the law, facts, norms of natural justice and materials on the record.
- B- That appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and mala fide manner by not allowing pay fixation to the appellant w.e.f. 20/12/2005 and as such the inaction of the respondents is violative of law and rules.
- D- That the inaction of the respondents is discriminatory and against the norms of natural justice, therefore not tenable in the eye of law.

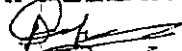
E- That as per rule 2.3 of the West Pakistan Pension Rules, 1963 and Article 371A of the Civil Service Regulations the appellant is fully entitled for the grant of pay fixation and counting of his previous service.

F- That under Article 38 (e) of the Constitution of Pakistan, 1973 state is bound to reduce disparity in the income and earning of the individuals including persons in the various services of Pakistan, therefore in light of the above mentioned Article the appellant is fully entitle for the grant of pay fixation w.e.f. the date of initial appointment.

G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

**APPELLANT**



**ABDUL QAYYUM**

Through:



**NOOR MOHAMMAD KHATTAK**

Advocate Supreme Court



**Muzzammil Khan Mohmand**



**Umar Farooq Mohmand**



**Waleed Adrian**  
Advocates High Court

**CERTIFICATE:**

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.



Advocate

**AFFIDAVIT**

I, Mr. Abdul Qayyum, PST (BPS-12), GPS Bard District Khyber do hereby solemnly affirm on oath that the contents of the above appeal are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.



**DEPONENT**

OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD  
APPOINTMENT ORDER

The following candidates are hereby appointed against the project post of PTC in BPS No.07 for the project period of three years at Boys Communal School Rehmat Gul Killi Aka Khel Tirah in inaccessible area of Tirah Khyber Agency against the vacant PTC post with effect from the date of taking over charge in the school noted against each.

| S.No | Name/ Father's Name           | Qualif: | Name of School       | Remarks                    |
|------|-------------------------------|---------|----------------------|----------------------------|
| 01   | Gul Amin S/O<br>Angor Kahn    | SSC     | BCS Rehmat Gul Killi | Against vacant<br>PTC Post |
| 02   | Abdul Qayum S/O<br>Rehmat Gul | SSC     | BCS Rehmat Gul Killi | Against vacant<br>PTC Post |

## Note:-

1. The employee shall serve the Govt. as communal schools teacher from the date of assumption of charge.
2. They shall devote their whole time to their duties as communal school teacher.
3. They shall submit himself to the lawful orders of Govt. officers.
4. They shall motivate the parents to send their children to school.
5. These posting will not be transferable, however local teachers preferably trained can be adjusted against regular posts on case to case basis.
6. They shall produce Health and Age certificate from the Agency Surgeon concerned.
7. Their Original Education qualification, date of birth and domicile certificate should be checked before handed over charge of the school.
8. If they fail to report within 15 days the order will be treated as cancelled.
9. Charge report should be submitted to all concerned.
10. Age should be recorded to the Government rules.
11. They will take over charge on 4.3.2006.

(MR. ABDUR RASHID)  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Endst: No 241-45Dated 20/12/2005

Copy forwarded to the for information and necessary action to the:-

1. Director of Education FATA (NWFP) Peshawar.
2. Agency Accounts Officer Khyber at Peshawar.
3. AAEO concerned.
4. Candidate concerned

*(Signature)*  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD.

SERVICES REGULARIZATION /ADJUSTMENT ORDER:

Consequent upon Notification No. SO (E)/SSD/CSTR-59-102/ dated 11/5/2012 issued by Secretary Social Sector Department FATA Secretariat Peshawar and subsequent guidance received from Directorate of Education FATA vide No.10380 dated 02/09/2013, the following Local (Male) Communal School Teachers of Tehsil Jamrud and Bara are hereby Regularized/Adjusted against regular vacant PST posts from Tehsil-Wise merit list purely on temporary basis in BPS-07(7490-415-19940) plus usual allowances as admissible under the rules w.e.f the date of their taking over charge in the schools noted against their names in the interest of public service.

| S/No. | Name              | Father Name  | Name of Tehsil | Name of Community School         | Posting at Regular School                     | Remarks |
|-------|-------------------|--------------|----------------|----------------------------------|---|---------|
| 1.    | Ghuab Sher        | Aqal Meer    | Jamrud         | BCS Khaista Gul Sra Wela Tirah   | GPS Malak Sardar Mir Kili Sher Braj Mullagori | VI Post |
| 2.    | Mohammad Jan      | Alta Baz     | Jamrud         | BCS Yousaf Madu Khel Spori Tirah | GPS Nazar Kili BZX                            | VI Post |
| 3.    | Syed Ahmad Afandi | Lalmadar     | Bara           | BCS Pakistan Tara Wela Zoddin    | GMS Shin Kamar Bara.                          | VI Post |
| 4.    | Khista Noor       | Walayat Shah | Bara           | BCS Barkat Shah Maskat Tirah     | GMPS Hayat Meer Aka Khel Bara.                | VI Post |
| 5.    | Abdul Qayum       | Rehmat Gul   | Bara           | BCS Rehmat Khan Shahibeg         | GPS Gulab Kili Loi Shalman Khyber Agency.     | VI Post |

TERMS/CONDITIONS.

- 1 The appointments of the candidates are made purely on temporary basis & are liable to termination at any time without assigning any reason.
- 2 They will not be entitled to get pension/gravity benefits, however GP/Fund will be deducted as per rules.
- 3 Charge report should be submitted to all concerned.
- 4 All kinds of documents would be verified from the concerned Boards/University before the drawal of their salaries.
- 5 Health and Age certificate should be produced to this office to be obtained from the Agency Surgeon Khyber Agency.
- 6 Their age should be according to the Govt. policy.
- 7 If they failed to report of their arrival within 15-days their appointment order will be automatically considered as cancelled.

(ABDUR RAUF SHAH)  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Endst. No. 5401-7 / Communal File Dated 20 / 7 / 2010

Copy of the above is forwarded to the:-

- 1 Director Education (FATA) at Peshawar.
- 2 Political Agent Khyber Agency at Peshawar.
- 3 Agency Accounts Officer Khyber Agency at Jamrud.
- 4 AAO (Male) concerned.
- 5 Supernatant Local Office
- 6 Accountant/Pay Clerk concerned.
- 7 Officials concerned.

AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

**OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT  
JAMRUD**

**SERVICE REGULARIZATION/ADJUSTMENT ORDER**

Consequent upon Notification NO SO (E)/SSD/CSTR-99-108/ dated 11/05/2012 issued by Secretary Social Sector Department, FATA Secretariat Peshawar and subsequent guidance received from Directorate of Education FATA vide No 10380 dated 02/09/2013, the following Local (Male) Communal School Teachers of Tehsil Jamrud and Bara are hereby regularized/adjusted against regular vacant PST posts from Tehsil-Wise merit list purely on temporary basis in BPS-07(7490-415-19940) plus usual allowances as admissible under the rules w.e.f. the date of their taking over charge in the schools noted against their names in the interest of public service.

| S. No | Name              | Father Name  | Name of Tehsil | Name of community school         | Posting at regular school                      | Remarks |
|-------|-------------------|--------------|----------------|----------------------------------|--|---------|
| 1)    | Gulab Sher        | Aqal Meer    | Jamrud         | BCS Khaista Gul Sra Wela Tirah   | GPS Malak Sardar Mir Killi Sher Braj Mullagori | V/Post  |
| 2)    | Mohammad Jan      | Allah Baz    | Jamrud         | BCS Yousaf Madu Khel Spori Tirah | GPs Nazar Killi BZK                            | V/Post  |
| 3)    | Syed Ahmad Afridi | Lalمدار      | Bara           | BCS Pakistan Tora Wela Ziuddin   | GMS Shin Kamar Bara                            | V/Post  |
| 4)    | Khsita Noor       | Walayat Shah | Bara           | BCS Barkat Shah Maskat Tirah     | GMPS Hayat Meer Aka Khel Bara                  | V/Post  |
| 5)    | Abdul Qayum       | Rehmat Gul   | Bara           | BCS Rehmat Khan Shahi Beg        | GPS Gulab Kili Loi Shalman Khyber Agency       | V/Post  |

**Terms/conditions**

1. The appointments of the candidates are made purely on temporary basis & are liable to termination at any time without assigning any reason.
2. They will not be entitled to get pension gratuity benefits, however, GP/Fund will be deducted as per rules.
3. Charge report should be submitted to all concerned.
4. All kinds of documents would be verified from the concerned Boards/universities before the drawl of their salaries.
5. Health and age certificate should be produced to this office to be obtained from the Agency Surgeon Khyber Agency.
6. Their age should be according to the Govt: Policy.
7. If they failed to report of their arrival within 15 days their appointment order will be automatically considered as cancelled.

Abdur Rauf Shah  
Agency Education Officer,  
Khyber Agency at Jamrud

Endst No 549-7/Communal File Dated 20/07/2016

Copy to:-

1. Director of Education FATA, at Peshawar
2. Political Agent Khyber Agency at Peshawar
3. Agency Accounts Officer Khyber Agency at Jamrud
4. AAEO (Male) concerned
5. Superintendent Local Office
6. Accountant/Pay Clerk concerned
7. Officials concerned

Agency Education Officer,  
Khyber Agency at Jamrud



To,

The District Education Officer (Male)  
District Khyber

Subject:

REQUEST FOR PAY PROTECTION / FIXATION UPON  
REGULARIZATION OF CONTRACT / PROJECT EMPLOYEE OF  
EDUCATION DEPARTMENT

Respect Sir,

1. It is kindly stated that the employee/appellant was initially appointed as PST, the then PTC in Communal vide order dated 20/12/2005. *(Copy of appointment order is attached).*
2. That then the appellant was conditionally regularized on 20/07/2016. *(Copy of regularization order is attached)*
3. That thereafter the appellant was promoted to the BPS-12 in the merged district Khyber. *(Copy of promotion order is attached)*
4. That since then the appellant is performing his duties with full devotion and zest.
5. That it is pertinent to mention here that the appellant is entitled for the above relief as seeks, because it is settled principles of law that when a contract period is followed by regularization, then in that very case the employee is entitled for the regularization of their service from the date of their appointment, therefore, the instant departmental appeal.
6. That, the appellant/employee is filing the instant departmental appeal for the counting of the contract period be considered for the pay protection, regularization and the back benefits.
7. That appellant have not been treated by the department concerned in accordance with law and rules on the subject noted above and as such action of the department is violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
8. That the treatment meted out to the appellant is a clear violation of the Fundamental Rights of the appellant as enshrined in the Constitution of Pakistan 1973.
9. That any other ground will be agitated at the time of hearing of appellant.

In view of the above, it is requested that the pay of the appellant/employee of Education Department may be protected from his initial date of appointment. Any other relief, which deems fit in the circumstances of the subject matter may also kindly be awarded in favour of appellant.

Dated: - 13/09/2023

Appellant

  
Abdul Qayyum

PST

Govt: Primary School  
Bara District Khyber

-7-

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

Appel No          /20        

Abdul Qayyum

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Education Dept

(RESPONDENT)  
(DEFENDANT)

I/We Abdul Qayyum

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        

Abdul Qayyum  
Relmat Gul  
**CLIENT**

**ACCEPTED**

NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

MUHAMMAD AYUB

&

MAHMOOD JAN  
**ADVOCATES**

**OFFICE:**

Flat No. (TF) 291-292 3<sup>rd</sup> Floor,  
Deans Trade Centre, Peshawar Cantt.  
(0311-9314232)