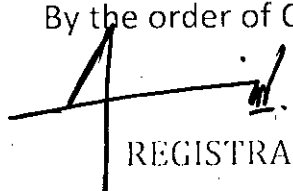


Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 41/2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	05.01.2024	<p>The application for restoration of Service Appeal no. 1546/2019 submitted today by Mr. Mubarak Zeb Advocate. It is fixed for hearing before Division Bench at Peshawar on _____. Original file be requisitioned. Parcha Peshi is given to the counsel for the applicant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

DANo=41/2024

In the matter of
Appeal No/s 46/2019.

Sine die adjourned on 26.05.2023

FAZAL ICHAN

(Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat, Peshawar and others. (Respondents)

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2.	affidavit		2
3.	Other relevant documents	A	3-11

Appellant

Through

MUBARAK ZEB

Advocate High Court

Office FR, 3-4 Forth Floor Bilour

Plaza Peshawar Cantt.

Cell: 0334-4274247

Email: mubarakzeb13@gmail.com

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In the matter of:

Appeal No 1548/2019.

Sine die adjourned on 26.05.2023

RA No-41/2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10393

Dated 25-1-2024

Razal Khan, Govt Primary School, Charsadda.
Appellant

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance, Civil Secretariat, Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Education (E&S), Civil Secretariat, Peshawar

.....Respondents

**Application for restoration of titled service appeal which was
 adjourned sine die on 26.05.2023.**

Respectfully Submitted:

That the above noted Service appeal for two advance increments was pending before this Honorable Tribunal and was adjourned sine die on 26.05.2023 due to pendency of the *writ petition 3081-P/2012 titled Anyat Ullah and others vs Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar and others* which was decided on 14.06.2023 by allowing the writ petition.(Copy attached)

It is, therefore, prayed that on acceptance of this application, the instant service Appeal may please be restored and be decided on merit.

Applicant

Through

Mubarak Zeb

Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In the matter of
Appeal No/548/2019.
Sine die adjourned on 26.05.2023

Fazal Khan

(Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil
Secretariat, Peshawar and others. (Respondents)

AFFIDAVIT

I, *Fazal Khan* Charsadda, do hereby solemnly affirm and
declare that the contents of the above application are true and correct to the
best of my knowledge and belief and that nothing has been kept back or
concealed from this Honourable Tribunal

[Signature]
Deponent

[Signature]
OATH COMMISSIONER
NAVEED ALAM
Advocate Peshawar High Court
27/12/23



BEFORE THE PESHAWAR HIGH COURT PESHAWAR

3081-P
W.P NO 2012

1. Anyat Ullah Khan PET GMS Palosa Kemanri Distt Karak.
2. Farooq Jan PET GMS Lagharai Bajawar agency.
3. Aftab Rahman AT GHS Bahader Khel Distt Karak.
4. Nisar Khan DM GHS Laghari Bajawar Agency.
5. Rahim Khan PTC GPS Kalorri NO.1 District Karak.
6. Rahman Ullah DM GHS Rahmat Ullah Korouna Shabqdar Charsada.
7. Taib Urhman PST GPS Pir Khan Baran Dem F.R Bannu.
8. Safder Ali PET GMS Kamali Banada Distt Karak.
9. Farhad Hussain PET GHS Latember Distt Karak.
10. Atiq Urhman A.T GHS Latember Distt Karak.
11. Muhammad Kamal D.M GCMH Coukara Distt Karak.
12. Nacem Ullah A.T GCMH Choukara Distt Karak.
13. Noor Muhammad PET GHS Noushera.
14. Afik har Ali PET GHS Noushera.
15. Murad Ali PET GHS Noushera.
16. Rashid Ullah PET GHS Noushera.
17. Gul Faraz PET GHS Latember Distt Karak.
18. Fazal Raouf C.T GHS Bankand Kohistan.
19. Muhammad Nazeer PST GMPS Dhaki Bagnoter Abbottabad.
20. Aurang Zeb PST GPS Dabb Sangani Distt Karak.
21. Jales Najmi PST GPS Shwal Algada Distt Karak.
22. Rooh Ullah Amin DM GHS Taraki Distt Sawabi.
23. Shoukat Ali DM GMS Dandoqa Distt Sawabi.
24. Shoukat Ali PET GMS Dandoqa Distt Sawabi.
25. Saeed Urhman A.T GMS Dandoqa Distt Sawabi.
26. Gohar Rahman DM GMS Nik Nam Distt Sawabi.
27. Muhammad Iqbal DM GMS Ghazi Kot Distt Sawabi.
28. Jehan Farooq A.T GMS Ser Distt Der Lower.
29. Hassan Ali PST GPS Patwak Katlang Dist Mardan.
30. Miss Rabhat Jamal C.T GGMS Dandoqa Distt Sawabi.
31. Nageen Iqbal C.T GGMS Dandoqa Distt Sawabi.
32. Muhammad Shahid PST GPS Sarfaraz Kali Katlang Mardan.
33. Bahramand PST GPS Sarfaraz Kali Katlang Distt Mardan.
34. Saifurhman PST GPS Jehangari Distt Karak.
35. Ihsan Ullah PST GPS Gul Khan Abad Jerhangri Distt Karak.

139
3202/15
FILED TODAY
Deputy Registrar
22 OCT 2012

ATTESTED
EXAMINER
Peshawar High Court

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.3081-P/2012 with CM No.1672-P/2022

Anayat Ullah Khan and others

Vs.

**Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and others**

Date of hearing 14.06.2023

Petitioner(s) by: **M/s. Noor Muhammad Khattak and L.
Nawab Ali Noor, Advocates.**

Respondent(s) by: **Mr. Amir Javed, Advocate General
Khyber Pakhtunkhwa and Barrister
Muhammad Yaseen Raza Khan, Addl:
Advocate General a/w Mr. Fazi-e-Khalig,
Litigation Officer, DEO (M&F), Swabi.**

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant writ petition and Writ Petitions, listed below, since in all these cases, similar questions of law and facts are involved. The connected writ petitions are:-

- ii
- i. *W.P. No.913-P/2014 titled, Muhammad Iqbal and others Vs. Government of Khyber Pakhtunkhwa through Secretary to Government, Finance Department, Peshawar and others.*
 - ii. *W.P. No.1418-P/2014 titled, Molvi Muhammad and others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others*
 - iii. *W.P. No.2053-P/2014 titled, Saeed Ullah and others Vs. Government of Khyber Pakhtunkhwa through Secretary S&GAD, Peshawar and others*
 - iv. *W.P. No.1182-P/2018 titled, Muhammad Rehman and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others*
 - v. *W.P. No.2326-P/2019 titled, Muhammad Anwar Vs. Government of Khyber*

ATTESTED
EXAMINER
Peshawar High Court

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Pakhtunkhwa through Secretary
Education, Peshawar and others
vi. W.P. No.1680-P/2021 titled, Ghandal
Khan Vs. District Education Officer
(Male), Peshawar and others

2. In the instant writ petition, the petitioners have prayed for the following relief:-

"It is, therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may be pleased to declare the act as against the basic norms of law & rules repugnant to constitution, law and practice/policy as such no legal effect liable to be set-aside".

3. In all these petitions, the petitioners have mainly questioned the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (hereinafter to be referred as "the Act").

4. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioners.

5. Arguments heard and record perused.

6. Perusal of the record transpires that the petitioners have questioned the vires of "the Act" on the ground that promulgation of "the Act" had defeated the judgments of the superior Courts. He further contended that vested rights of the petitioners have accrued in the matter and placed reliance on the judgments reported as "FECTO Belarus Tractor Ltd Vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605), 2013

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ATTESTED
EXAMINER
Peshawar High Court

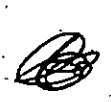
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SCMR 1749, 2013 SCMR 1752 (Contempt of Court Proceedings case) and AIR 1975 SC 2199".

7. On the other hand, the learned Advocate General, Khyber Pakhtunkhwa has referred to a recent judgment of the Hon'ble Supreme Court of Pakistan passed in the case titled "The Divisional Superintendent, Pakistan Railways, Rawalpindi and others Vs. Syed Irshad Ali Abid (2021 PLC (C.S.) 277)" and contended that the grant of increments on higher educational qualification has since been discontinued through Notification dated 13.09.2001, as such, it is a past and closed transaction and that necessary time was granted to the employees who have any claim, albeit, when they failed to claim the same for long ten years, as such, "the Act" in question was promulgated. He has also produced a letter dated 29.04.2010 issued by the Additional Secretary (Regulation), Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), whereby, clarification was given about the advance increments on higher educational qualification and according to which, a period of sixty days was provided for the remaining claims and argued that even then, petitioners have failed to claim the advance increments at the relevant time.


21
8. During the course of hearing, learned counsel for the petitioners has produced letters/applications which were duly placed on file and contended that the rights of the petitioners to the grant of advance increments were secured

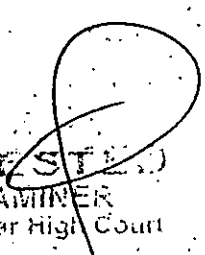
ATTESTED
EXAMINER
Peshawar High Court

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and guaranteed by a Government's circular letter dated 11.08.1991 and that the case of the petitioners was matured at the relevant time before the cut-of-date i.e. 13.09.2001 when the grant of such increments was discontinued. He also referred to a judgment of the Hon'ble Supreme Court of Pakistan passed in "CPLAs No.525 and 526/2007 decided on 19.07.2007".

9. At this stage, the learned Advocate General, Khyber Pakhtunkhwa, representing the respondents, contended that the civil servants, who were holding higher educational qualification prior to discontinuation of advance increments in the year, 2001, are entitled for the benefit flowing from circular letter dated 11.08.1991, however, those who have improved their qualification after the notification dated 13.09.2001, under no circumstances, can claim the same benefit and that the bar created through "the Act" would be equally applicable.

 10. In view of the above, we, without commenting upon the vires of "the Act" and in view of the statement of the learned Advocate General, Khyber Pakhtunkhwa, dispose of this and the connected writ petitions and direct the respondents to consider the case of the petitioners in the light of circular letter dated 11.08.1991 and in case, they fulfill the condition mentioned therein for the grant of advance increments prior to the cut-of-date, they be allowed such benefit. It is, however, clarified that only the case of the present petitioners shall be


ACCEPTED
EXAMINER
Punjab High Court

considered and that others cannot claim such benefits, having
not agitated the matter at the relevant time.

Announced
Dt:14.06.2023

JUDGE

JUDGE

(DB) Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Atifous Shah

CERTIFIED TO BE TRUE COPY

EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Qanoon-e-Shahadat Act 1984

11 JUL 2023

707
Date of Presentation of Application 06/07/2023
No of Pages 13-p
Copying fee 50/-
Total 50/-
Date of Preparation of Copy 11-07-2023
Date of Delivery of Copy 11-07-2023
Witnessed By Mubarak Zeb

ATTESTED
EXAMINER
Peshawar High Court

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR



9
Diary No. 1628
Dated 14/11/2019

Service Appeal No. 1546 /2019

Fazal Khan, PSHT, Govt Primary School, No.1 Palossa Jadeed,
Charsadda

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Finance, Civil Secretariat, Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Education (F&S), Civil Secretariat, Peshawar

.....Respondents

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the non granting of two annual increments in terms of notification issued by the Provincial Govt dated 11.08.1991, against which his Departmental Appeal dated 25.07.2019 has also been not been responded after the expiry of statutory period of 90 days

Filed-to-day
14/11/19

PRAYER-IN-APPEAL

On acceptance of this appeal the appellant is entitled to the advance increments on account of higher education in light of the judgment of the Hon;able Peshawar High Court in terms of notification issued by the Provincial Govt dated 11.08.1991, where by the advance increments on account of higher education was allowed, similarly the appellant are discriminated in the matter whereby the advance increments on account of higher education has been allowed to the colleagues / similarly placed employees through order of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

21.03.2023

Junior to counsel for the appellant present.

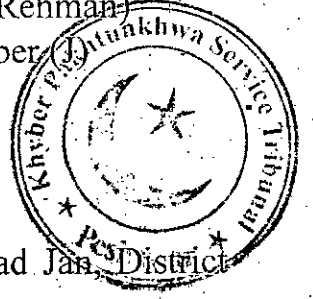
23.11.2023

Fazal Shah Mohmand, Additional Advocate General for the respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 26.05.2023 before D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Rozina Rehman)
Member



Service Appeal No.1547/2019

26th May, 2023

1. Learned counsel for appellant and Mr. Muhammad Jan, Attorney for respondents present.
2. At the very outset learned District Attorney pointed out that the matter in issue in this appeal was subject-matter before the Hon'ble Peshawar High Court in a writ petition and the Hon'ble Peshawar High Court had earlier issued that writ. The judgment of the Hon'ble Peshawar High Court was challenged in the august Supreme Court of Pakistan and the august Supreme Court of Pakistan set aside the judgment of Peshawar High Court and remitted the matter to the Hon'ble Peshawar High Court which is admittedly still pending. Learned counsel for appellant and learned District Attorney are unanimously requesting that let this matter be adjourned sine die till the decision of the similar matter by the Hon'ble Peshawar High Court.


Adjourned sine die on the request of both the parties. Any of them may,

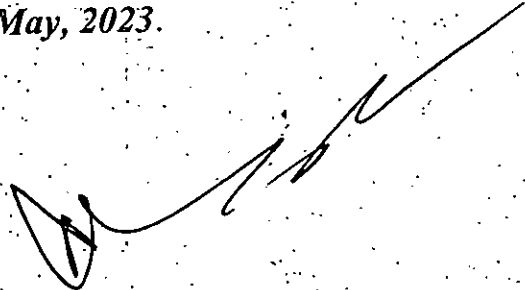
ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

however, get it restored after decision of the matter pending in the Hon'ble Peshawar High Court. Consign.

3. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 26th day of May, 2023.*


SO
P... 150


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Mutazem Shah

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 31/10/23

Number of Words Page 3

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