The execution petition in appeal no. 1798/2022 received today i.e. on 13.11.2023 is returned to the counsel for the petitioner with the following remarks.

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.

No. 3579 /S.T,

Dt. 14/11 /2023.

REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Mr. Ahmad Sultan Tareen Adv.
Hogh Court Peshawar.

Note:

Resubmitted with explanation that applicant after obtaining certified copy of order/judgment sent the impages of the same to Mr. Noor Khan Asstt Secretary SMBR office through his WhatsApp number on 06/10/2023 which was seen by him. Believably he processed the case but so far there is no clue as to any positive step for implementation of the judgment by SMBR and more than 30 days have passed. Copy of WhatsApp screenshot is annexed for placing on file. The same may kindly be accepted as intimation to the department for implementation of judgment.

It is requested that case may be placed before the Tribunal for appropriate orders.

14/11/2023

Sir,

Objection of this office stands still. The reply of learned Counsel is submitted for an appropriate order, please.

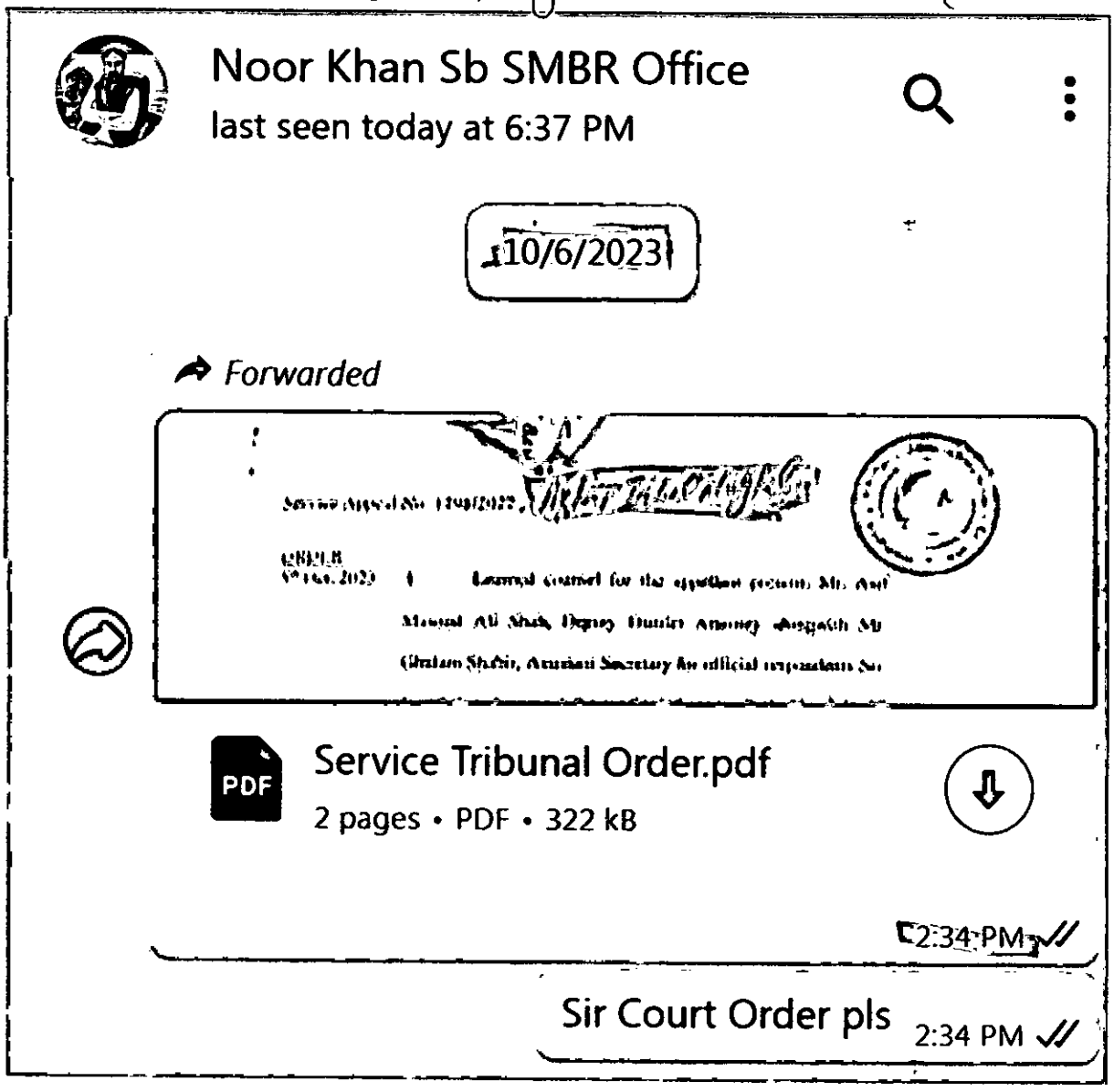
14/11/23

Hon'ble Chairman

S/O

14/11/2023

Assistant Secretary Establishment (BOR&E)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

E.P No. _____/2023

Azhar Iqbal Mughal ..... Petitioner

Versus

Senior Member Board of Revenue and another ..... Respondents

I N DE X

S.No	Description of Documents	Annex	Pages
1.	Petition for implementation		1-2
2.	Certified copy of memo appeal and of the order dated 05.10.2023	A	3-10
3.	Wakalat Nama		11

Petitioner

Through

Ahmad Sultan Tareen
Advocate High Court.

Mudassir Ali
Advocate High Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

E.P. NO. 869 /2023

DATED _____/2023

Azhar Iqbal Mughal, Computer Assistant now CO (BPS-16), Office of Deputy Commissioner, Haripur.

_____ PETITIONER

VERSUS

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

_____ RESPONDENT

PETITION FOR IMPLEMENTATION OF THE JUDGMENT/ORDR DATED 05-10-2023 PASSED IN SERVICE APPEAL NO. 1798/2022 TITILED "AZHAR IQBAL MUGHAL Vs. SENIOR MEMBER BOARD OF REVENUE AND OTHERS", THROUGH PROCEEDINGS UNDER THE ENABLING PROVISION OF CPC READ WITH RELEVANT PROVISIONS OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

==========

Respectfully Sheweth,

1. That the petitioner preferred the Service Appeal No. 1798/2022 before this Hon'ble Tribunal and by its regular hearing on 05-10-2023, the same was disposed of vide order of even date. Certified Copy of memo appeal and of the order dated 05-10-2023 are **Annexure "A"**.

2. That the executable part of the Order Annexure-A is copied below:-

> ***"Learned counsel for the appellant says that appellant would be satisfied if a direction is given to the respondents to issue seniority list, in compliance of notification dated 01.07.2022, within fifteen days. It is, however, further requested by the learned counsel for the appellant that unless issuance of the seniority list further promotion may not be made. In this respect it is observed that the department shall make promotion from the seniority list which is prepared in the light of notification dated 01.07.2022 and ultimately finalized. Copy of the same be handed over to all the persons so listed in the list. Disposed of in the above terms."***

3. That the operative part the order of this Hon'ble Tribunal as reproduced above clearly and unequivocally brings about an obligation for the respondents to prepare the requisite seniority list within fifteen days but their failing to do the needful within stipulated time make them accountable under the facts and law. Therefore, the petitioner is left with no other option but to invoke the jurisdiction of this Hon'ble Tribunal for implementation of the above mentioned order in its letter and spirit.

It is respectfully prayed that appropriate orders may graciously be passed to compel the respondents for implementation of the order dated 05.10.2023 in its letter and spirit.

PETITIONER

THROUGH:

AHMED SULTAN TAREEN,
ADVOCATE HIGH COURT,
PESHAWAR

MUDASSIR ALI,
ADVOCATE HIGH COURT,
PESHAWAR

HAIDER ALI,
ADVOCATE HIGH COURT,
PESHAWAR

Dated 13 /11/2023

Verification:

I, Azhar Iqbal Mughal, the above named petitioner do hereby verify that the contents of this petition are true to my knowledge and belief and nothing has been kept concealed.

Dated 13 /11/2023

ATTESTED
Gul Dazaz Khan
Oath Commissioner
Advocate High Court Peshawar
13

PETITIONER

3 Annex "A"

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNNAL PESHAWAR

In S.A 1798 /2022

1. Azhar iqbal Mughal, Assistant (BPS-16) at DC office Hoshab

..... Appellant

VERSUS

1. Board of Revenue Khyber Pakhtunkhwa, through Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
2. Secretary Board of Revenue, Khyber Pakhtunkhwa Peshawar.

..... Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT -1974 FOR ISSUING OF JOINT SENIORITY LIST INCLUDING NAMES OF THE APPELLANT & PLACING THE NAME OF THE APPELLANT IN THE SAME AT HIS DUE PLACE BY RECKONING SENIORITY OF THE APPELLANT W.E.F DATE OF INITIAL APPOINTMENT.

Respectfully Sheweth,

1. That the appellant is a law abiding and *bona fide* citizen of the Islamic Republic of Pakistan and hails from a respectable family.

2. That after going through the mandatorily required written examination and interview, and after being envisaged with the ordeals & inquisitions of selection process the appellant got selected, recommended, and appointed as Computer Assistants (BPS-11) on dated 20-02-2004. **(Copy of Appointment order is annexed as annexure "A")**

3. That before going to the main roots of the instant case, it would be equally importance to mention here that in 2010 the posts of the Computer Assistants were merged together with the posts of Key-Punch Operators (BPS-08), Data Entry Operators (BPS-09) and Computer Operators (BPS-10) vide Notification No. KC/FD/SO(FR)/7-3/2001 dated 12-07-2010 of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

the Finance Department, Government of Khyber Pakhtunkhwa. Interestingly not only all these different categories were illegally merged together, but as well as given the nomenclature of Computer Operators and were upgraded with a unified BPS-12 for all. **(Copy of Notification No. KC/FD/SO(FR)/7-3/2001 dated 12-07-2010 is annexed as annexure "B")**

4. That thereafter once again the post of the Computer Operators (BPS-12) were merged with the post of Data Processing Supervisors (BPS-14) and were upgraded to BPS-16, with the nomenclature of Computer Operators vide Notification No. KC/FD/SO(FR)7-3/2015-16, dated 29-07-2016 of the Finance Department, Government of Khyber Pakhtunkhwa. **(Copy of Notification No. KC/FD/SO(FR)7-3/2015-16, dated 29-07-2016 is annexed as annexure "C")**

5. That it is also important to mention here that the appellant was initially appointed as Computer Assistant and the nature of the job was the same as the of office Assistants. Now at that time when the post of the appellants were merged with key Punch Operators (BPS-08), Data Entry Operators (BPS-09) and Computer Operators (BPS-10) the initially basic pay of the appellants were BPS-11, while those of the K.P.O's, D.E.O's and Computer operators were respectively BPS-08, 09,10. While that of the Office Assistants were BPS-11 as well. Now nature of the job of both Assistants i.e., Computer Assistant as well Office Assistants were the same and similar and were placed in the same BPS-11. Now what happened that these Computer Assistants were got separated from their colleagues i.e. Office Assistants and merged together with distinct kindred i.e. k.P.O's , D.E.O's. and C. O's instead of merging them with their brothers i.e., Office Assistants. Now both the office Assistants and Computer Assistants now as (Computer Operators) are in same BP-16.

ATTESTED

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Khyber Pakhtukhwa
Service Tribunal
Peshawar

6. That the office Assistants as well as Senior Stenographers are having their own service structure and both goes up to the posts of the superintendents and private secretaries, respectively and thereafter as Tehsildar and PMS offices via quota reserved, but on the other hand there is a clog and full stop for computer Assistants / Computer Operators, having no service structure and no prospect of any further promotions and as the appellants have been merged with others instead of their brothers Assistants.

7. That is important to note that as per previous practice all cadres were adjusted in the joint seniority list with other cadres from the date of regular appointment meaning thereby, in 2015 seniority list was maintained only for Assistants for further promotion to tehsildar cadre while, in 2016 Senior Scale Stenographers were included in the seniority of Assistants and thereafter a joint seniority list was issued for of Assistants and Senior Scale Stenographer. While as per seniority list of 2021, Senior Scale Stenographer who are lying at serial No 334,415,416,417,428,434 and 435 are also included in joint Seniority list from the date of regular appointment. (Copy of Seniority list of 2015, 2016 and 2021 are annexed as annexure "D" "E" and F")

8. That by having illegally and imprudently been merged with distinctly lying cadres in a unified scale and similar nomenclature, the appellants have been envisaged with formidable consequences as having no future prospect of any further promotion against their brothers i.e. office assistants, who got tremendously bright future, as having service structure of getting further and further promotions as superintendents and as tehsildars (via 15% quota reserved) and thereafter entering into new arena of PMS cadres.

9. That after feeling exhausted from the supra mentioned discriminatory acts of the respondent department, the

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appellant approached Peshawar High Court, Peshawar in writ Petition No. 3087-P of 2019, which was disposed off vide order dated 16-03-2022. (Copy of writ petition and order dated 16-03-2022 are annexed as annexure "G & G/1")

10. That after the direction of Peshawar High Court, Peshawar the court of revenue issued an notification dated 1-07-2022 but after the lapse of more than 5 months no any revised seniority list was issued.

11. That feeling aggrieved the appellant preferred departmental appeal but all his efforts went futile. **(Copy of Departmental appeal is annexed as annexure "H")**

12. That in the meanwhile the appellant moved contempt of court application before peshawar High Court, Peshawar which was disposed off. **(Copy of order C.O.C and order are annexed as annexure "I" & "J")**

13. That feeling aggrieved and having the only remedy available being Civil Servant, the Appellant approaches this Hon'ble Tribunal for his due placement in Seniority List, upon the following grounds, inter-alia.

GROUNDS:

A. That the appellant is naturally born bona-fide citizen of the Islamic Republic of Pakistan and is fully and equally, on equality basis, entitled to all basic and fundamental rights as enshrined in the fundamental law of the land, interpreted, guaranteed, and enforced by the laws and law Courts of the land.

B. That it is a cherished principle of law that where a law requires a thing to be done in a particular manner, then the same is be done in that manner and not otherwise.

C. That the appellant has lent his prime youth in the service of the Respondent Department, yet he was robbed off his right to seniority and promotion respectively, which is a sheer violation of fundamental rights.

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

D. That the appellant has been meted out with flat-out discrimination against his colleagues as the Respondent Department suffers from legal and factual infirmities.

E. That as per Government of Khyber Pakhtunkhwa Seniority Rules part -VI (17)Seniority Explanation III para (2):-

Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the date of their regular appointment to the post in that cadre ; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

While para (3) of the said rules states that:-

In the event of merger/restructuring of the departments, Attached departments or subordinate Offices, the inter se seniority of civil servants affected by merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to the cadre or post.

That as per above seniority rules, where the law is crystal clear about seniority of the appellant than how the respondents can deny the rights of the appellants? (Copy of Seniority rules is annexed as annexure "K")

F. That as seniority is the Legal and fundamental right of every civil servant, meaning thereby that the Respondent Department is the protector and guarantors of the same, but here the appellants have been robbed off his due rights.

G. That the Respondent Department has badly failed in conferring upon the appellants, the principles of policy, as contained in the Constitution, requiring them to secure well-being of the Petitioner, by ensuring equitable adjustment of rights between the Employer - Respondent & Employee - Petitioner.

H. That the law & law courts of the land have always encouraged and appreciated that rules are to be followed, and have always discouraged, deplored, and depreciated any variation, deviation, or violation of the rules.

I. That discrimination in any form is highly abominable and *bete-noire* and is always checked down in meritorious manner by the superior courts. Reason behind checking it down and chucking it away is to ensure equality and equal treatment of its citizens and to remove any sense of discrimination.

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

J. That under the mandate of Article 4 of the constitution, no one can be treated otherwise than in accordance with law, wherein, Article 25 postulated that alike are to be treated alike, but here the case of the Petitioners is volta-facie and a totally different yardstick has been used to treat the Petitioners.

K. That from every angle, the appellants are entitled to a fixed seniority and be considered from the date of their regular appointment as per seniority rules and is eligible for promotion.

L. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the service appeal the respondent department may kindly be direct by placing the appellant at his due place by reckoning his seniority W.e.f date of initial appointment strictly as per Rule 17 (2)(3) of APT 1989 Rules and further prayed the appointment may also be extended with all back benefits in terms of arrears, seniority and promotion by fixation of his seniority W.e.f date of initial appointment.

Any other relief not specifically asked for, may very graciously be extended in the favor of the Petitioner, in the circumstances of the case.

Dated: 14/12/2022

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

Petitioner
Through

Javed Iqbal Gulbela
ASC

Saghir Iqbal Gulbela
&
Hamza Durrani
Advocates High Court, Peshawar

ORDER

5th Oct. 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Ghulam Shabir, Assistant Secretary for official respondents No. 1 and 2 and counsel for impleaded respondents No. 3 to 17 present.

2. At the very outset, learned counsel for the appellant referred to notification dated 01.07.2022, issued by the Board of Revenue, Revenue and Estate Department, Government of Khyber Pakhtunkhwa, wherein the competent authority had statedly adjusted the names of the appellants and others in the joint seniority list of Assistants and Senior Scale Stenographers at the offices of the Commissioners and Deputy Commissioners at the provincial level w.e.f the date of issuance of the notification but there was no such seniority list prepared, circulated or handed over to the persons listed in the list. Nor any such list is produced before this Tribunal. Learned counsel for the appellant says that appellant would be satisfied if a direction is given to the respondents to issue seniority list, in compliance of notification dated 01.07.2022, within fifteen days. It is, however, further requested by the learned counsel for the appellant that unless issuance of the seniority list further promotion may not be made. In this respect it is observed that the department shall make promotion from the seniority list which is prepared in the light of

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

1798 @ 10

Notification dated 01.07.2022 and ultimately finalized. Copy of the same be handed over to all the persons so listed in the list. Disposed of in the above terms. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5th day of October, 2023.*

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

Adnan Shah

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

Date of Presentation of Application 03/11/2023
Number of Words Page 8
Copying Fee 40/-
Urgent 5/-
Total 45/-
Name of Copyist —
Date of Completion of Copy 03/11/2023
Date of Delivery of Copy 03/11/2023

(B) 11

WAKALATNAMA

(Power of Attorney)

SCANNED KPST Peshawar

IN THE KPK SERVICE TRIBUNAL, PESHAWAR

Azhar Iqbal Mughal .....

(Petitioner) ✓
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder) ✓

VERSUS

Senior Member Board of Revenue & another (Respondent) ✓
(Defendants)
(Accused)
(Judgment Debtor) ✓

I/ We the undersigned (Azhar Iqbal Mughal) in the above noted (**Appeal No. ____/2023**), do hereby appoint and constitute **Ahmed Sultan Tareen, Mudassir Ali & Haider Ali** Advocate Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

CLIENT

Accepted and Attested

Ahmed Sultan Tareen

Mudassir Ali

Haider Ali
Advocate,
17-G/7-B, Haroon Mansion, Khyber Bazar,
*P E S H A W A R.-0*Office: 091-2572888
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