

Form- A

FORM OF ORDER SHEET

Court of

Implementation Petition No. 92/2024

No. of order
made today

order or other proceedings with signature of judge

3

1

22.01.2024

The implementation petition of Mr. Hijab Khan submitted today by Mr. Noor Muhammad Khattak Advocate, is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parana Pesni is given to the counsel for the petitioner.

By the order of Chairman


REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution NO. 92 /2023

Hijab Khan VS GOVT OF KPK

APPLICATION FOR FIXATION OF THE ABOVE TITLED Execution AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned Execution is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the Execution may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: _____

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 92 /2024

In

Appeal No. 1374/2022

MR. HIJAB KHAN,

VS

THE SECRETARY ELEMENTARY &
SECONDARY EDUCATION

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PETITIONER

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 92 /2024

In

Appeal No. 1374/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 10697

Dated 22-1-2024

Mr. Hijab Khan, Chowkidar
GGPS Thoti, Kohistan

.....PETITIONER

VERSUS

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.

..... 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 30/10/2023 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 1374/2022 before this august Service Tribunal, against the order dated 09/09/2021, whereby the petitioner has been compulsory retired from service.
- 2- That the appeal of the petitioner was finally heard on dated 30/10/2023 and as such the ibid appeal was allowed with the following terms by this august Service Tribunal:-

Therefore, the instant service appeals are accepted. The matters are remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellants shall be

provided proper opportunity of defense during the inquiry proceedings. Appellants are reinstated in service for the purpose of proper inquiry. The issue of the back benefits shall be subject to the outcome of inquiry. Consign". Copy of the judgment dated 30/10/2023 is attached as annexure.....**A**

- 3- That after obtaining copy of the judgment dated 30/10/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondent department despite to implement the judgment of this Honourable Tribunal dated 30/10/2023, issued order dated 28/12/2023, whereby the petitioner was reinstated with immediate effect and the intervening period has been treated as leave without pay without considering the inquiry recommendation and the judgment of this Honourable Tribunal. Copies of application and order dated 28/12/2023 are attached as annexure.....**B**
- 4- That now the 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 30/10/2023 passed in Appeal No. 1374/2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

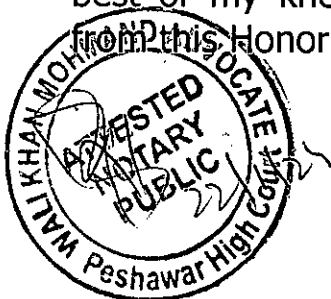
Hijab Khan
PETITIONER
MR. HIJAB KHAN

THROUGH:

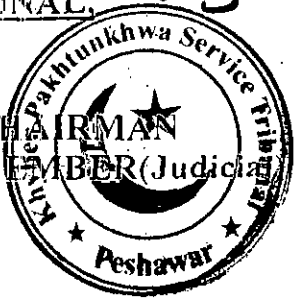
Noor Mohammad Khattak
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Mr. Hijab Khan, Chowkidar, 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.



Hijab Khan
DEPONENT



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN**
SALAH-UD-DIN

... **CHAIRMAN**
... **MEMBER (Judicial)**

Service Appeal No.1372/2022

Date of presentation of Appeal.....20.09.2021

Date of Hearing.....30.10.2023

Date of Decision.....30.10.2023

Muhammad Nabi, Chowkidar (BPS-01), GGPS, Sigloo Seo, Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa**.....(Respondents)

Service Appeal No.1373/2022

Date of presentation of Appeal.....20.09.2021

Date of Hearing.....30.10.2023

Date of Decision.....30.10.2023

Imran Khan Chowkidar (BPS-03), GGPS Tayeb Abad, District Kohistan(Appellant)

Versus

1. **The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
2. **The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.**
3. **The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa**.....(Respondents)

Service Appeal No.1374/2022

Date of presentation of Appeal.....20.09.2021

Date of Hearing.....30.10.2023

Date of Decision.....30.10.2023

Hijab Khan, Ex-Chowkidar, GGPS, Thoti, Kohistan.....(Appellant)

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

-4-

Appeal No. 1375/2022 filed by Muhammad Kabir & others against the Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others, decided on 30.10.2023 by Division Bench consisting of Mr. Kalim Arshad Khan, Chairman, and Mr. Sahib Ullah, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Versus

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)

Service Appeal No.1375/2022

Date of presentation of Appeal.....20.09.2021
Date of Hearing.....30.10.2023
Date of Decision.....30.10.2023

Muhammad Kabir, Ex-Chowkidar, GGPS, Karang, District Kohistan(Appellant)

Versus

1. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Kohistan, Khyber Pakhtunkhwa.....(Respondents)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellants
Mr. Asif Masood Ali Shah Deputy District AttorneyFor respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.09.2021 WHEREBY MAJOR PENALTY OF COMPULSORY RETIREMENT FROM SERVICE HAS BEEN IMPOSED UPON THE APPELLANTS AND AGAINST THE APPELLATE ORDER DATED 05.09.2022 WHEREBY THE DEPARTMENTAL APPEALS OF THE APPELLANTS HAVE BEEN REJECTED.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above four appeals are going to be decided as all are similar in

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Service Appeal No.1272/2022 titled "Muhammad Nabi & others -vs- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", declared on 30.10.2023 by Division Bench comprising of Mr. Kalam Arshad Khan, Chairman and Mr. Saïd-Ul-Din Member Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar

nature and almost with the same contentions, therefore, all can conveniently be decided together.

2. The appellants' cases in brief are that appellants were appointed and were serving in the Education Department as Chowkidars. In the meanwhile, they were compulsorily retired from service vide order dated 09.09.2021. Feeling aggrieved of the said impugned order, they filed departmental appeals, but the same were rejected, hence, the present service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who 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.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

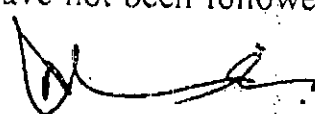
5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. It appears from the impugned order dated 09.09.2021 that the appellants were compulsorily retired from service on the basis of alleged absence from duty, reported by the Education Monitoring Authority (EMA). The same

shows that there are some flaws in it. There is nothing available on the files which could show that any inquiry was conducted, whereas, the proceedings appear to be for absence of the appellants but rules have not been followed.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar



-6-

Service Appeal No.1372/2022 titled "Muhammad Rabi & others vs. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar and others", declared on 30.10.2023 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mr. Salah-Ud-Din, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

It is otherwise a well settled legal proposition that regular inquiry is must before imposition of major penalty which includes provision of full opportunity of defense to be provided to the civil servant which however was not done in the case of appellant. Reliance is placed on 2009 PLC (CS) 650.

7. Therefore, instant service appeals are accepted. The matters are remitted to the Department for conduct of proper inquiry, which is to be done within 60 days of the receipt of this judgment. Needless to mention that the appellants shall be provided proper opportunity of defense during the inquiry proceedings. Appellants are reinstated in service for the purpose of proper inquiry. The issue of back benefits shall be subject to the outcome of inquiry. (Copy of this judgment be placed on files of above mentioned connected service appeals). Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 30th day of October, 2023.

KALIM ARSHAD KHAN
Chairman

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

SALAH-UD-DIN
Member (Judicial)

Date of Presentation of Application	<u>01-11-23</u>
Number of Words	<u>4P</u>
Copying Fee	<u>20/-</u>
Urgent	<u> </u>
Total	<u>20/-</u>
Name of Copy	<u> </u>
Date of Copy	<u>08-11-23</u>
Date of Delivery of Copy	<u>08-11-23</u>

Muftazem Shah

7- "B" بحالت خطاب ڈسٹرکٹ ایجوکیشن آفیسر ملتان

عنوان: درخواست فرادہ طالبی ملازمت

جناب عالی! موربانہ گزارش ہے کہ سابقان محمد امجد علی صاحب محنت
جو تدار مدرسہ سے فراغت کر چکے تھے تو سابقان کو ملازمت سے
موربانہ 9/7 کو جبری ریٹائرڈ کیا گیا تو سابقان نے محلمان ایسٹ فائل
کیا اس کے بعد سروس ٹرانسفر ہو گیا اور وہیں سے
ایسٹ فائل سے جو کہ سابقان کے حقوق میں قبضہ
ہوا اور سابقان کو ملازمت پر بحالی کا حکم موربانہ 30/10/23
کو عدالت سے صادر ہوا۔

لہذا استدعا ہے کہ سابقان کو
عدالت کے فیصلے کے مطابق نوٹری / ملازمت پر بحالی
کا حکم صادر فرمایا جائے۔

موربانہ: 13-11-23

محمد امجد علی
3 محمد امجد علی
عمران خان
4 عمران خان

سابقان
1 محمد نبی - محمد نبی
2 حاج خان - حاج خان

~~ATTESTED~~



**OFFICE OF THE DISTRICT EDUCATION OFFICER (FEMALE)
KOHISTAN UPPER**



RE-INSTANTMENT/OFFICE ORDER.

WHEREAS, the following Chowkidars posted in the schools mentioned against each, they were reported absent from school duty during the visit of DCMA repeatedly and ASDEO (F) Circle also reported about their absenteeism several time.

WHEREAS, the then DEO (F) issued showcase notice to the mentioned Chowkidars vide No.4152-57/4164-69/4182-87/4217-22 dated, 2/08/2021 but they failed to reply in stipulated period.

WHEREAS, the then District Education Officer (F) Kohistan Upper issued compulsory retirement order in respect of the following Chowkidars vide No.4597-4606 dated 09/09/2021

S.No.	Name of Chowkidars	School names
1	Muhammad Nabi	GGPS Siglo
2	Muhammad Kabir	GGPS Karang
3	Imran Khan	GGPS Taib Abad
4	Hijab Khan	GGPS Tohti

WHEREAS, the above named chowkidars submitted departmental appeal before next Higher Authority i.e., Director, the worthy Director rejected their appeal, vide letter No.65-66-N/291/A-2020/Class-IV/Kohistan/Vol-5-6 dated 5.9.2022.

WHEREAS, The above Ex-chowkidar submitted their service appeal before Hon'ble Service Tribunal Peshawar vide, SA No.1372/22, 1373/22, 1374/22 and 1375/22 dated 20.09.2021

WHEREAS, the Hon'ble Service Tribunal accepted their appeal and the matter of are remitted to the department for conducting of proper inquiry within 60 days and the appellants are re-instated in service for the purpose of proper inquiry, order passed by Honourable service tribunal on 30/10/2023.

WHEREAS, this office constituted inquiry committee for conducting of proper inquiry vide this office order No.5051-54 dated 24.11.2023.

WHEREAS, The Inquiry Committee inquired the matter and report to the undersigned with the recommendation that the above chowkidars may be re-instated in service and intervening period w.e.f, 9.9.2021 to 23.11.2023 may be converted into extra ordinary leave (without pay) report submitted on 25.12.2023 bearing dairy No.1169 dated 28.12.2023.

In view of the above, and in the light of inquiry report, being competent authority as District Education Officer (F) Kohistan Upper, the above mentioned chowkidars are hereby re-instated in service w.e.f 24.11.2023 and intervening period w.e.f 9.9.2021 to 23.11.2023 (805 days) is converted into extra ordinary leave without pay (EOL)

(Parveen Begum Khattak)
District Education Officer (F)
Kohistan upper

Endstt: No. 6061-69 / DEO Female Kohistan upper dated 28/12/2023

1. Additional Registrar Peshawar high court bench Abbottabad.
2. Additional advocate general Abbottabad.
3. Deputy Commissioner Kohistan upper.
4. PS to secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
5. P.A to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
6. District Account Officer Kohistan Upper.
7. Sub-Divisional Education Officer Female Seo Kohistan.
8. Sub-Divisional Education Officer Female Kandia Kohistan
9. Official Concerned

(Signature)
District Education Officer (F)
Kohistan upper

ATTESTED

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EP No /2024

Hijab Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Edy Deft

(RESPONDENT)
(DEFENDANT)

I/We Hijab Khan

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

حجاب خان

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

&

MAHMOOD JAN
ADVOCATES

OFFICE:

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