Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 96/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.01.2024	The implementation petition of Mr. Mahmood Ali Khan submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petition No. 96 /2024
In Service Appeal No.9140/2020

Mahmood Ali Khan **V/S** Police Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	--------	01-03
2	Copy of judgment dated 09.10.2023	A	04-08
3	Copy of application	B	09
4	Vakalat Nama	------	10

PETITIONER

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution petition No. 96 /2024
In Service Appeal No.9140/2020

Mahmood Ali Khan, Ex-Sub-Inspector Police, No. P/334
R/0 Dhaki, Tangi, (Charsadda).

PETITIONER

VERSUS

1. Provincial Police Officer/IGP, Khyber Pakhtunkhwa, Central Police Officer, Peshawar.
2. Additional Inspector General of Police Headquarter.
3. Capital City Police Officer, Police Line Peshawar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 10.10.2023 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed an appeal bearing No.9140/2020 in this Honorable Service Tribunal against the final impugned Order No. CPO/CPB/167 dated 17.07.2020 whereas the appeal regarding notional promotion to the rank/post of Inspector under the garb of policy vide official letter No-247-53/ CPB dated 09/02/2016, promulgated by the respondent No. 1 was rejected/filed and whereas the petitioner being highly eligible, deserving and confirmed Sub-Inspector, properly placed on List "F" was deprived of his legitimate right of such promotion only on discriminative score with the prayer that on acceptances of this service Appeal and in accordance with the impugned policy, the impugned order may be set-aside and respondents may please be directed to ensure the notional promotion of the petitioner to the rank/post of Inspector being highly eligible, deserving and confirmed Sub-Inspector, properly placed on list "F"

and extend equal treatment in terms of Articles 4, 8, 9,14,18 and 25 of the constitution as his colleagues have already been granted such promotion just before their retirement in such upper age zone and the petitioner by depriving of his due promotion, was retired from service on attaining the age of superannuation on mere discrimination.

2. That the appeal of the petitioner along with other connected appeal were heard and decided by this Honorable Tribunal on 10.10.2023 and the Honorable Tribunal remit back the case of the petitioner to department to consider it again at par with his colleagues who were given benefits of the policy as if his case was consider at due time then there will be no question of out of turn promotion and respondents were directed to decide it within sixty days after receipt of this order. **(Copy of judgment dated 10.10.2023 is attached as Annexure-A)**

3. That the petitioner along with other petitioners has filed application on 28.11.2023 for implementation of judgment dated 10.10.2023 of this Honorable Tribunal, but no action has been taken by the respondent on his application by implementing the judgment dated 10.10.2023 of this Honorable Tribunal. **Copy of application is attached as Annexure-B)**

4. That the Honorable Tribunal in its judgment dated 10.10.2023 gave direction to the respondents to consider case of the petitioner it again at par with his colleagues who were given benefits of the policy within sixty days but after the lapse more than sixty days the respondents did not consider the case of the petitioner at par with his colleagues who were given benefits of the policy department as per direction of this Honorable Tribunal in its judgment dated 10.10.2023.

5. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.

6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this Honorable Service Tribunal in letter and spirit.

7. That the petitioner has having no other remedy except to file this execution petition for Implementation of judgment dated 10.10.2023 of this august Service Tribunal.

(3)

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 10.10.2023 of this august Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate may also be awarded in favour of petitioner.

PETITIONER
Mahmood Ali Khan

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Service Tribunal.

DEPONENT

ATTESTED
Khan Advocate
22-1-24

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 9139/2020

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Bahadur Khan, Ex-Sub-Inspector Police, No. P/341 R/O Shabqadar, Charsadda. .... *(Appellant)*

VERSUS

1. Provincial Police Officer/IGP, Khyber Pakhtunkhwa, Central Police Officer, Peshawar.
2. Additional Inspector General of Police Headquarter.
3. Capital City Police Officer, Police Lines Peshawar.

.... *(Respondents)*

Mr. Taimoor Ali Khan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....10.08.2020
Date of Hearing.....10.10.2023
Date of Decision.....10.10.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

> **"On acceptance of this appeal and in accordance with the impugned policy, the impugned order may kindly be set aside and respondents may please be directed to ensure the notional promotion of the appellant to the rank/post of Inspector being highly eligible, deserving and confirmed sub-Inspector, properly place on list F and extend equal treatment in terms of Article 4, 8, 9, 14, 18 and 25 of the constitution as his colleagues have already been granted such promotion just before retirement in such upper age zone and the appellant by depriving of his**

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due promotion, was retired from service on attaining the age of superannuation on mere discrimination."

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 9140/2020 titled "Muhammad Ali Khan Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (ii) Service Appeal No. 9141/2020 titled "Mohammad Nawaz Khan Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (iii) Service Appeal No. 1942/2020 titled "Naseer Ur Rehman Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (iv) Service Appeal No. 1943/2020 titled "Fazli Hadi Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal, are that appellants have joined services in police department and were gradually promoted as confirmed Sub-Inspector being placed on list "F" dated 31.03.2016. Respondent introduce a policy vide letter dated 09.02.2016 wherein CCPO and all RPOs were asked to send cases of those confirmed Sub-Inspectors to CCPO who have left three months period to their retirement for inclusion their name in list "F"and grant officiating promotion to the rank of Inspector. The name of the appellants were already on list "F" and they seek promotion to rank of Inspectors. They were selected for upper course and upon completion of course their names were properly placed in list "F" on 19.07.2016 and were eligible for promotion. As the appellants entered in his retirement zone on attaining the age of superannuation had to be promoted to the rank of Inspector before or just after his retirement in accordance with impugned policy. In such like situation twenty confirmed Sub-Inspectors having case at par with applicant

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

were promoted to the rank of Inspector and appellant alongwith others were ignored. Feeling aggrieved appellants filed departmental appeal which was not responded then they filed writ petition before Worthy Peshawar High Court, Peshawar which was dismissed vide order dated 24.05.2017. Appellant filed service appeal No. 1286/17 which was also disposed of vide judgment dated 11.12.2019. In consequence of that order departmental appeal of the appellant was rejected by the respondent vide order dated 17.07.2020. Feeling aggrieved appellant filed instant appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further contended that due to unblemished service record they were promoted to the rank of confirmed Sub-Inspector. He further contended that appellants have passed the Upper Course Training and were fully qualified and eligible for promotion to the rank of Inspector and juniors were promoted hence respondents violated Article 4, 25 & 27 of the constitution of the Constitution of Islamic Republic of Pakistan.

6. Learned District Attorney contended that the appellant has not been treated in accordance with law and rules. He further contended that claim of appellants for promotion as Inspector on the basis of placing his name in list "F" is quite unlawful and illegal. As list "F" is maintained on the basis of seniority on provincial level and appellant were not entitled for promotion as Inspectors. He argued that respondent department is made

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Examiner
Khyber Pakhtunkhwa
Service Tribunal

purely on seniority cum fitness basis adopting proper procedure and no one rights has been violated.

7. Perusal of record reveals that appellants were serving in respondent department who were confirmed as Sub-Inspectors and were enlisted at list "F" dated 31.03.2016. That respondent introduced a policy vide letter No. 247-53/CPB dated 29.02.2016 wherein CCPO Peshawar and all RPOs asked to send cases of those confirmed Sub-Inspectors to CCPO who have left months period to their retirement for inclusion their names in list "F" and grant officiating promotion to the rank of Inspector. It is pertinent to mentioned here that appellants were already placed on list "F" and they requested for his promotion only. Respondent despite the fact of appellants being entered into overage zone in violation of standing order 09/2014 selected for upper course and he remained successful and result of the upper course was announced on 31.05.2015 after which appellants were properly placed on list "F" by allotting him Belt No. 341. So, appellants being eligible for promotion to rank of Inspector, attain the age of superannuation on 04.05.2017, had to be promoted to the rank of Inspector before or just after his retirement in accordance with the above mentioned policy. Appellant case is that earlier 20 confirmed Sub-Inspector who were at the verge of retirement having case similar to appellant were promoted to the rank of Inspector vide notification dated 11.04.2017 beside one Inspector Mumtaz No. P/345 who was confirmed Sub-Inspector like appellant, was promoted as officiating Inspector, vide notification dated 03.05.2016. It is also on record that on basis of policy dated 09.02.2016 three Inspectors/colleagues of the appellant filed writ petition, which was accepted and they were promoted vide order dated 03.05.2016. It is noted with great concern that every time appellants were discriminated by the

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Service Tribunal
Peshawar

respondent and he knocked the door of court for redressal of his grievances which is violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.

8. In our humble view, appellants have right to be treated like his other colleagues. Therefore, in the circumstance we deemed it appropriate to remit back the case of appellants to department to consider it again at par with his other colleague who were given benefit of the policy as if his case was consider at due time then there will be no question of out of turn promotion. Respondents are directed to decide it within sixty days after receipt of this of order. Costs shall follow the event. Consign.

9 *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10th day of October, 2023.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

Kaleemullah

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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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B (9)

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11

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Page-No. 1

بخدمت جناب پروشنل پولیس آفیسر خیبر پختونخوا صاحب پشاور

درخواست بمراد عطائیگی پروموشن

جناب عالی: گزارش ہے کہ ہم پانچ سب انسپکٹر جو کہ انسپکٹر پروموشن سے رہ گئے تھے۔ اس سلسلے میں بدست سروس ٹریبونل پشاور سے ہمارے پروموشن سروس اپیل نمبر 9139/2020 داخل کر کے ہمارے پروموشن کا حکم بمطابق فیصلہ مورخہ 10.10.2023 کو کیا ہے جو کہ کنسٹیبلان سن 2017 میں ریٹائرڈ ہو چکے ہیں اور اب عمر کے آخری لمحے میں ہم داخل ہو چکے ہیں۔

استدعا ہے کہ ہمارے حال پر رحم فرما کر تمام سب انسپکٹرز کو پروفارمہ پروموشن انسپکٹر دے کر مشکور فرمادے۔ تمام عمر دعا گو رہینگے۔

عدالتی فیصلہ ہمراہ لف ہے۔

المرقوم 25/11/2023

تابعدار سائلان

1. بہادر خان ریٹائرڈ سب انسپکٹر
2. محمد علی ریٹائرڈ سب انسپکٹر
3. نظیف الرحمان ریٹائرڈ سب انسپکٹر
4. فضل ہادی خان ریٹائرڈ سب انسپکٹر
5. محمد نواز خان ریٹائرڈ سب انسپکٹر

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بعدالت

سروس ٹربیونل لشپاور

منجانب 2ء

محمود علی

مورخہ

مقدمہ محمود علی خان بنام محکمہ پولیس

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آن مقام لشپاور کیلئے محمود علی خان ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

Accepted

Attested

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المرقوم

ماہ العد

العبد

Anas