

Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 93/2024

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. Muhammad Nabi submitted today by Mr. Noor Muhammad Khattak 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 NO. 93 /2028 4

Muhammad Nabi 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. 93 /2024
In
Appeal No. 1372/2022

MR. MUHAMMAD NABI,

VS

**THE SECRETARY ELEMENTARY &
SECONDARY EDUCATION**

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THROUGH:

PETITIONER

MR. MUHAMMAD NABI

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 93 /2024

Khyber Pakhtunkhwa
Service Tribunal

In

Appeal No. 1372/2022

Diary No. 10702

Dated 22-1-2024

Mr. Muhammad Nabi, Chowkidar (BPS-01),
GPS Sigloo Seo, 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:

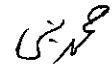
- 1- That the petitioner filed service appeal bearing No. 1372/2022 before this august Service Tribunal, against the order dated 09/09/2021, whereby the petitioner has been compulsory retired from service.
- 2- That the appeal of the petitioner was finally heard on dated 30/10/2023 and as such the ibid 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. 1372/2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

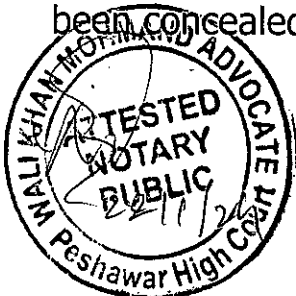

PETITIONER
MR. MUHAMMAD NABI


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

THROUGH:

AFFIDAVIT

I Mr. Muhammad Nabi, Chowkidar (BPS-01), 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.




DEPONENT

"A-3"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
SALAH-UD-DIN ... 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)

ATTESTED

Service Appeal No.1374/2022

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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)

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 Kabeer, 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

-5-

Service Appeal No.1372/2022 titled "Mohammad 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. Salih-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

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



Service Appeal No.1372/2022 titled "Mohammad 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. 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
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

SALAH-UD-DIN
Member (Judicial)

Muazzem Shah

Date of Presentation of Application 01-11-23
 Number of Wards 47
 Copying Fee 207
 Urgent
 Total 207
 Name of Copyist
 Date of Completion 08-11-23
 Date of Delivery of Copy 08-11-23

7-B خدمت خطاب ڈسٹرکٹ ایجوکیشن آفیسر صاحب کوستان

عنوان: درخواست فرادہ کالی ملازمت

صاحب کالی اور صاحبہ گزارش ہے کہ سائنس محکمہ ایجوکیشن میں محنت جو کثیر ملازمت سرایم دے رہے تھے تو سائنس کو ملازمت سے مورخہ ۹/۹/۲۱ کو جبری ریٹائرڈ کیا گیا تو سائنس نے محترمہ ایمل خان کیا اس کے بعد سروس ٹرن اوور شروع میں سروس ایمل خان سے جو کہ سائنس کے حقوق میں مفید ہوا اور سائنس کو ملازمت پر کالی کا حکم مورخہ ۳۰/۱۰/۲۳ کو عدالت سے صادر ہوا۔

لہذا استدعا ہے کہ سائنس کو عدالت کے فیصلے مطابق نوکری / ملازمت پر کالی کا حکم صادر فرمایا جائے۔

مورخہ: ۱۳-۱۱-۲۳

محمد بشیر
محمد بشیر

عمران خان
۴۔ عمران خان

سائنس
۱۔ محمد بشیر - محمد بشیر
۲۔ حجاب خان - حجاب 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

District Education Officer (F)
Kohistan upper

ATTESTED

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EP No 12024

Muhammad Nabi (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Edu Dept: (RESPONDENT)
(DEFENDANT)

I/we M. Nabi

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



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)