


# FORM OF ORDERSHEET

Court of \_\_\_\_\_

Misc. application No. 139 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14/02/2024	<p>The Misc. application in Service appeal 871/2019 submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed hearing before Division Bench at Peshawar on _____ Original file be requisitioned. Parcha Peshi is given to the representative of the police department.</p> <p style="text-align: right;"> REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

C.M NO. 139 /2021

ALTAE ABDOUL NASIR

VS GOVT. OF KPK & OTHERS

**APPLICATION FOR FIXATION OF THE ABOVE TITLED C.M. AT**  
**PRINCIPAL SEAT, PESHAWAR**

Respectfully Sheweth:

1. That the above mentioned C.M 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 C.M may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 14/2/24

Through

  
**NOOR MOHAMMAD KHATTAK**  
ADVOCATE SUPREME COURT

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

C.M No: - 139 /2024

In

Appeal No: - 871-P/2019

**ALTAF ABDUL NASIR**

**VS**

**EDU: DEPTT:**

**INDEX**

S#	Description of the Documents	Annex	Pages
1.	Application for correction with affidavit	*	1-2
2.	Copy of judgment dated 01/01/2024	"A"	3-8
3.	Vakalatnama		9

Dated:- 14/02/2024

Applicant/Appellant

Through:-

  
**Noor Muhammad Khattak**  
Advocate Supreme Court

-/-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

C.M No:- 139 /2024

In

Appeal No:- 871 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 11134

Dated 14-2-24

Mr. Altaf Abdul Nasir, Ex-Junior Clerk, GHSS Palai, District Malakand  
.....**PETITIONER**

**VERSUS**

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar
2. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
4. The District Education Officer (M), District Malakand.

..... **RESPONDENTS**

**APPLICATION FOR CORRECTION/ SUBSTITUTION IN  
RESPONDENT NO 4 OF THE JUDGMENT OF THIS  
HONOURABLE TRIBUNAL DATED 01/01/2024.**

**R/Sheweth:-**

The petitioner submits as under:-

1. That the above titled Service appeal was pending adjudication before this Honourable Tribunal and was allowed vide order dated 01/01/2024.
2. That due to typographic/clerical mistake in nomenclature of Respondent No 4 of the judgment passed by this Honourable Tribunal, it has inadvertently been mentioned as "District Education Officer (Male) Swat", which requires to correction/substitution and be replaced and read as "The District Education Officer District Malakand" as mentioned in the Memo of Service Appeal filed before this

Honourable Tribunal. Copy of judgment dated 01/01/2024 is attached as annexure..... "A"

3. That this Honourable Tribunal has exclusive inherent powers to make an appropriate order for correction and substitution in above titled appeal.

It is, therefore, humbly prayed that on acceptance of instant application, an appropriate order for necessary correction/substitution in the nomenclature of respondent No 4 in the judgment dated 01/01/2024 passed by this Honourable Tribunal in the above titled appeal be passed in the best interest of justice.

Dated:- 14/02/2024

  
Applicant/Appellant

Through:-

  
**Noor Muhammad Khattak**  
Advocate Supreme Court

**AFFIDAVIT**

I, **Altaf Abdul Nasir** (the applicant/appellant) do hereby solemnly affirm and declare on oath that the contents of this **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

  
**DEPONENT**



"A" 3-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 871 /2019

Mr. Altaf Abdul Nasir, Ex: Junior Clerk,  
GHSS Palai, District Malakand ..... **APPELLANT**

**VERSUS**

- 1) The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2) The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 3) The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 4) The District Education Officer, District Malakand.

.....**RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974**  
**AGAINST THE IMPUGNED ORDER DATED 03.06.2013**  
**WHEREBY THE MAJOR PENALTY OF REMOVAL FROM**  
**SERVICE WAS IMPOSED ON THE APPELLANT AND**  
**AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL**  
**APPEAL OF THE APPELLANT WITHIN THE STATUTORY**  
**PERIOD OF NINETY DAYS**

**PRAYER:**

That on acceptance of this appeal the impugned order dated 03.06.2013 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

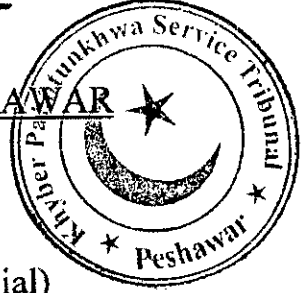
**Brief facts giving rise to the present appeal are**  
**as under:**

1. That appellant was appointed as Junior Clerk in the respondent Department vide order dated 23.6.1997. That right from appointment the appellant has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors.
2. That during service the appellant was charged in case FIR No. 1 dated 25.9.2012 U/S 409/419/420/468/471/472 PPC and in FIR No.1 dated 25/3/2013 U/S PPC 409/419/420/468/-471/ 5(2)Pc Act. That the appellant was

(1) (2) -4-

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT SWAT**

Service Appeal No. 871/2019



BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)  
MRS. RASHIDA BANO ... MEMBER (Judicial)

Mr. Altaf Abdul Nasir, Ex: Junior Clerk, GHSS Palai, District  
Malakand. .... (Appellant)

**VERSUS**

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
  2. The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
  3. Director Elementary & Secondary Education Department Khyber Pakhtunkhwa Peshawar.
  4. District Education Officer (Male) Swat.
- .... (Respondents)

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Mr. Umar Farooq Mohmand  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

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Date of Institution.....02.07.2019

Date of Hearing.....01.01.2024

Date of Decision.....01.01.2024

**JUDGMENT**

*ADP 2019 Sec 4*  
*10/2/2019*

**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 instant appeal the impugned order dated 03.06.2013 may very kindly be set aside and the appellant may be reinstated into service with all back benefits.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Junior Clerk in the respondent department vide order dated 23.06.1997 and served the department quite efficiently up to the

**ATTESTED**

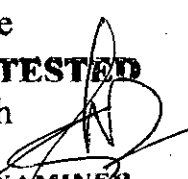
*[Signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

entire satisfaction of his superiors. During service appellant was charged in case FIR No. 1 dated 25.09.2012 under section 409/419/420/468/471/472 PPC and in FIR No.1 dated 25.03.2013 under section PPC 409/419/420/468/471/5(2) PC Act. The appellant was sent behind the bar in the above mentioned FIRs and remained there from the date of his arrest in criminal cases. Respondents without fulfilling the codal formalities and waiting for final decision of the court remove the appellant from service vide order dated 03.06.2013. After removal from service, competent court of law acquitted the appellant vide judgment dated 26.02.2019. Feeling aggrieved from order of removal, appellant filed departmental appeal which, which was not responded to, hence the instant service appeal.

3. 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.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He further argued that order passed by the respondents is against the law, facts and norms of natural justice and material on the record hence not tenable and liable to be set aside. He further argued that no charge sheet, statement of allegation, show cause notice has been issued to the appellant nor chance of personal hearing has been provided to the appellant. He further argued that no regular inquiry has been conducted against him. He submitted that respondents removed the appellant in a hasty manner without waiting for the outcome of the trial which was pending before the competent court of law at that relevant time.

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



5. Conversely, learned District Attorney for the respondent contended that the appellant has been treated in accordance with law and rules. He further contended that appellant was charged in two FIRs dated 25.09.2012 and 25.03.2013 on the charges of illegal, fake and bogus appointments against various posts has thus found guilty of causing huge financial losses to the government exchequer, on the basis of which he was arrested by the local police and was sent behind the bars. He further contended that departmental proceeding were initiated against the appellant under (E&D) Rules, 2011 by nominating Hayat Mohammad, Principal as enquiry officer who conducted inquiry against the appellant and had found the appellant guilty of charges, hence, show cause notice was issued to the appellant which was not at all replied by the appellant resultantly impugned order was issued.

6. Perusal of record reveals that appellant was appointed as junior clerk in respondent department on 23.06.1997. During the course of his service, the appellant was charged in criminal case bearing FIR No. 1 dated 25.09.2012 as well as FIR No. 1 dated 25.03.2013 and after arrest, he was sent behind the bars. Respondent department initiated departmental proceedings against the appellant and he was removed from service vide order dated 03.06.2013. Appellant was acquitted from the charges levelled against him in both the FIRs. Respondents have alleged that regular inquiry has been conducted against the appellant, which is also mentioned in the impugned order dated 03.06.2013 as under:

*"Whereas Mr. Altaf Abdul Nasir, Junior Clerk (Impersonated as Shah-e-Mulk), Ex-SET (BS-16) GHSS Palai Malakand Agency (Now in judicial lockup Malakand at Malakand) proceeded against under the Khyber Pakhtunkwa Government*

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegation”*

Respondents, despite directions failed to produce said charge sheet and statement of allegation, which were allegedly issued to the appellant. It is also pertinent to mention here that inquiry was initiated against one Mohammad Shakoor S.S/DDO GHSS Palai by the authority wherein Mr. Hayat Mohammad was appointed as Enquiry Officer who conducted inquiry against said Muhammad Shakoor and submitted his report. As a result of which, show cause notice was issued to the appellant which means that no regular inquiry was conducted against the appellant by providing chance of personal hearing and self-defence. Moreover, it is also evident from record that appellant was in the judicial lockup and was behind the bar at the time of issuing show cause notice which fact is mentioned at the bottom of show cause notice which is read as:

*“Mr. Altaf Abdul Nasir, Junior Clerk (impersonated as Shah-e-Mulk) Ex-SET (BPS-16) GHSS Palai Malakand Agency, (Now in Judicial Lockup, Malakand, at Malakand)”*

7. Appellant was awarded major penalty of removal from service without conducting regular inquiry as it is established on record that appellant was not afforded with an opportunity of personal hearing and self-defence and was condemned unheard which is against the settled norms and rules on the subject.

8. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of

imposing major penalty, the principles of natural justice required that a

ATTESTED


EXAMINED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

8-8-

regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. For what has been discussed above, we are unison to set aside impugned order dated 03.06.2013 and reinstate the appellant for purpose of inquiry with direction to respondents to conduct regular inquiry by providing proper opportunity of hearing, defence and cross examination to the appellant. Respondents are further directed to conclude inquiry within sixty days of receipt of copy this judgment. The issue of back benefits shall be subject to the outcome of inquiry. Costs shall follow the event. Consign.

10. Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 1<sup>st</sup> day of January, 2024.

  
(SALAH UD DIN)  
Member (J)  
Camp Court, Swat

\*Kaleemullah

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

  
(RASHIDA BANO)  
Member (J)  
Camp Court, Swat

Date of Presentation of Application 24-01-2024  
Number of Words 5-P  
Copying Fee 25/-  
Urgent JK  
Total 30/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 24-01-2024  
Date of Delivery of Copy 24-01-2024

**VAKALATNAMA**  
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

CM  
Appeal No 12024

ALTAF ABDUL NASIR

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Govt of KPK

(RESPONDENT)  
(DEFENDANT)

I/We ALTAF ABDUL NASIR

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**

  
**MUHAMMAD AYUB**

&

  
**MAHMOOD JAN**  
**ADVOCATES**

**OFFICE:**

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