


## Form- A

## FORM OF ORDER SHEET

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

Implementation Petition No. 156 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.02.2024	<p>The implementation petition of Mr. Muhammad Hayat submitted today by M. Ghayur Ullah Jan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____.</p> <p>Original file be requisitioned. AAG has noted the next date. Parcha Peshi is given to the counsel for the petitioner.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

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

EXECUTION PETITION NO. 156 /2024  
IN  
APPEAL NO. 1700/2019

**Mr. Muhammad Hayat Khan V/S Government of KPK and Others:**

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Dated: 20/02/2024

Appellant/Petitioner

Through,

*M. GHAYUR*

**M. GhayurUllah Jan,**  
Advocate.  
0314-9091890

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

EXECUTION PETITION NO. 156 /2024  
IN  
APPEAL NO. 1700/2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 11276  
Dated 21-02-2024

**Mr. Muhammad Hayat Khan, S/o Muhammad Akbar Khan R/o  
Mohallah Khuaidad Khel, Tehsil & District Charsadda**

.....Applicant/Appellant

**VERSUS**

1. Government of KPK, through Secretary Education Civil Secretariat,  
Peshawar.
2. Director Elementary & Secondary Education KPK, GT. Road  
Hashatnagri, Peshawar.
3. District Account Officer Charsadda, KPK.
4. District Education Officer (Female) (Elementary & Secondary  
Education District Charsadda

..... Respondents

**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO COMPLY THE JUDGMENT  
DATED 19.11.2021 IN ITS TRUE LETTER AND  
SPIRIT**

**RESPECTFULLY SHEWETH:**

**ON FACTS:**

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

1. That petitioner/applicant was appointed as sweeper in respondent department on 13.2.1999 who served till 30.6.2017. however, his order of retirement was issued on 22.8.2017 with retrospective effect from 29.5.2016 owing to his recorded date of birth in service book i.e 30.5.1956 his pension case was taken up on 16.9.2017 upon which respondent no 3 raised objections with regard to overpayment and recovery from the withheld amount of pension.

2. That petitioner/applicant filed a service appeal no. 1700/2019 against the order of the respondents and challenged it before the worthy Khyber Pakhtunkhwa Services Tribunal Peshawar.
3. That service appeal of the petitioner/applicant was allowed in favour of the appellant in its detail judgment dated 19.11.2021, the operative part of the judgment is as:

**“In the light of what has been discussed in the preceding paras, the appeal has its own merit and is therefore, allowed as prayed for. Parties shall, however, bear their respective costs.”**

(Copy of the judgment dated 19.11.2021 is attached as ANNEXURE ..... A).

4. That, the petitioner/applicant approached time and again to the respondents and requested for implementation of the aforesaid judgment of this Hon'ble Tribunal but the respondents are lingering on the matter on one pretext or the other.
5. That feeling aggrieved, petitioner/applicant is left with no other remedy but to approach this Hon'ble Tribunal by filing the present execution petition for the implementation of the aforesaid judgment of this Hon'ble Tribunal.

It is therefore, most humbly prayed that on acceptance this execution petition the respondents may be directed to implement the judgment of this Hon'ble Tribunal dated 19.11.2021 passed in above titled Service Appeal in its true letter & spirit by granting back benefits to the petitioner.

Any other remedy which this Hon'ble Tribunal deems fit that may also be awarded in favour of the petitioner.

Dated: 20/02/2024

Petitioner/Applicant

**Muhammad Hayat Khan**

Through:

**M.GHAYURULLAHJAN**

**ADVOCATE**

0314-9091890

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

EXECUTION PETITION NO. \_\_\_\_\_/2024  
IN  
APPEAL NO. 1700/2019

**Mr. Muhammad Hayat Khan, S/o Muhammad Akbar Khan**  
**R/o MohallahKhuaidad Khel, Tehsil & District Charsadda**  
.....**Applicant/Appellant**

**VERSUS**

1. Government of KPK, through Secretary Education Civil Secretariat, Peshawar.
2. Director Elementary &Secondary Education KPK, GT. Road Hashatnagri, Peshawar.
3. District Account Officer Charsadda, KPK.
4. District Education Officer (Female) (Elementary & Secondary Education District Charsadda

..... **Respondents**

**AFFIDAVIT**

I, **Mr. Muhammad Hayat Khan, S/o Muhammad Akbar Khan R/o MohallahKhuaidad Khel, Tehsil & District Charsadda** do hereby solemnly affirm that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

**ATTESTE**  
Cml Daraz  
Peshawar  
[Signature]

[Signature]  
**DEPONENT**  
GNIC NO. 17101-4491993-7  
Cell No. 0313-3452898.

(1) (4)

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**



Appeal No. 1700/2019

Muhammad Hayat Khan  
S/O Muhammad Akbar Khan  
R/O Mohallah Khuada Khel, Tehsil & District  
Charsadda.

Petitioner

Case No. 1559

Versus

Date: 05/11/2019

1. Govt. of K.P.K., through Secretary Education, Civil Secretariat Peshawar.
2. Director Elementary & Secondary Education K.P.K., G.T. road Hashatnagri, Peshawar.
3. District Account Officer, Charsadda.
4. District Education Officer (female) (Elementary & Secondary Education, District Charsadda.

Respondents

**APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT 1974 AGAINST THE  
IMPUGNED LETTER DATED  
18.10.2017 & WHEREBY THE  
APPELLANT HAS BEEN RETIRED  
FROM SERVICE w.e.f. 30.06.2016  
WITH PENSIONARY BENEFITS but  
passed the impugned order of recovery  
of paid salary during performance of  
duty till 30.06.2017 and appellant was  
retired in BPS-2 in lieu of BPS-4 AND  
AGAINST NOT TAKING ANY ACTION  
ON THE DEPARTMENTAL APPEAL  
DATED 29.06.2019 OF THE  
APPELLANT WITHIN THE STATUTORY  
PERIOD OF NINETY DAYS**

**PRAYER IN APPEAL:**

IT IS, THEREFORE, MOST RESPECTFULLY  
PRAYED THAT ON ACCEPTANCE OF THIS WRIT

**TESTED**  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

09/11/19  
**TESTED**

491  
20/7/22

05/11/19

5/12/19

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1700/2019

Date of Institution ... 05.11.2019

Date of Decision ... 19.11.2021



Muhammad Hayat Khan S/O Muhammad Akbar Khan R/o Mohallah Khudad Khel,  
Tehsil & District Charsadda. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary Education, Civil  
Secretariat Peshawar and three others. ... (Respondents)

Present:

Mr. Asif Ali Shah, --- For Appellant.  
Advocate

Mr. Kabirullah Khattak, --- For respondents.  
Additional Advocate General

MIAN MUHAMMAD --- MEMBER(Executive)  
MR. SALAH UD DIN, --- MEMBER(Judicial)

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been filed seeking adjudication against impugned letter of respondent No.3 dated 18.10.2017 whereby recovery on account of over payment for serving beyond the date of superannuation, retirement in BS-02 instead of BS-14 and non-action on his departmental appeal dated 29.06.2019.

FACTS.

02. Brief facts of the case leading to institution of the instant service appeal are that the appellant was appointed as Sweeper in the respondent-department on 13.02.1999 who served till 30.06.2017. However, his order of retirement was issued

ATTESTED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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on 22.08.2017 with retrospective effect from 29.05.2016 owing to his recorded date of birth in service book i.e 30.05.1956. His pension case was taken up on 16.09.2017 upon which respondent No.3 raised objections with regard to over payment and recovery thereof from the withheld amount of pension.

03. Official respondents were issued notices to submit reply/parawise comments. They, except respondent No.3, submitted their written reply/parawise comments. We have heard learned counsel for the appellant as well as learned Additional Advocate General and gone through record thoroughly.

**ARGUMENTS.**

04. Learned counsel for the appellant contended that the appellant regularly served the respondent-department as sweeper with devotion since 13.02.1999 till 30.06.2017. During his service, the post of Sweeper was also upgraded from BS-02 to BS-04 in 2015 consequent upon which his pay was fixed in BS-04. The respondent-department issued retirement order of the appellant on 22.08.2017 giving it effect from 29.05.2016 on the ground that recorded date of birth in respect of the appellant was 30.05.1956 and as such he had attained the age of superannuation on 29.05.2016. The appellant actually performed his duty during the period between 30.05.2016 to 30.06.2017 and monthly salary drawn is legal which cannot be recovered from his pension under plethora of judgements of the superior courts. Moreover, he has been denied pension in his upgraded position despite the fact that he is entitled to get pension in BS-04 instead of BS-02. His fundamental right is being violated and the appellant cannot be penalized for the wrong done by the respondent-department. In support of his arguments on the principle of locus

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Service Tribunal  
Pest. 28/08/17

poenitentiae, he relied on 2003 PLC (C.S) 1262 and 2020 SCMR 188. He requested



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that the service appeal has merit may graciously be allowed and the respondents be directed to give the appellant pensionary benefits in BS-04 and declare the order of recovery wrong, illegal and void ab-initio.

05. Learned Additional Advocate General argued that the appellant is the victim of his own deeds who happens to have tempered his date of birth in service book from 30.05.1956 to 30.05.1959 and managed over stay in service beyond his actual date of superannuation. Fact of the matter is that the appellant passed his matric examination from BISE Peshawar under roll No. 2958 in 1976 (annual) and his date of birth as per SSC being 30.05.1956 the same was recorded in service book at the time of entry into service in 1999. Later on, he managed to temper with the recorded date of birth in service book and changed it to 30.05.1959 taking advantage of which he over stayed in service. However, taking cognizance of the misdeed, the authority issued his retirement order w.e.f 29.05.2016 vide order dated 22.08.2017. The appellant has therefore been rightly retired from service on attaining the age of superannuation as per recorded original date of birth in service book. The service appeal being devoid of merit and facts, may be dismissed.

**CONCLUSION.**

06. It is evident from record that the date of appellant as recorded at the time of his entry in to service was 30.05.1956 which can safely be traced from his SSC acquired in 1976. How, when and by whom the date of birth was changed? It was not investigated or inquired by the respondent-department except to attribute the tempering to appellant and considering him guilty for it but without any documentary evidence in support of their claim. However, it is also an established fact that service book of a civil servant remains in the safe custody of concerned

ATTESTED  
Service Commission  
Peshawar

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parent department for periodical necessary entries in it, as and when required. The tempering in date of birth and attestation thereof in service book subsequently, reveals that it was restored to original date of birth on 22.08.2017 i.e after nearly 15 months of his superannuation, and the same day his order of retirement was issued w.e.f 29.05.2016. It was after submission of his pension papers to respondent No.3 that over payment was pointed out to respondent No.4 with the advice for recovery of the amount from him.

07. It is not disputed that the appellant served respondent department beyond the date of superannuation falling on 29.05.2016. His exact period of over stay can be taken from the date when his retirement order was issued on 22.08.2017 giving it effect from 29.05.2016 and as such he stayed in service beyond the date of superannuation for about 13 months till 30.06.2017. So far the question of his retirement in BS-04 instead of BS-02 is concerned, it also stands established that he was allowed up-gradation in BS-04 in pursuance of Finance department Notification dated 17.08.2015 and necessary entry to this effect made in his service book. This fact has been admitted at the internal processing stage of the pension case in the department of respondent No. 3 when it was recorded "please correct the Grade/Scale as per service book i.e BPS-04 instead of BPS-02"

08. In a nutshell, it can be concluded that the appellant served the respondent-department beyond the date of superannuation due to the negligence and apathy of respondent-department. He performed duty during the period 30.05.2016 to 30.06.2017 and has rightly drawn monthly salary against the work/service actually done/performed but is not countable towards pension benefits. Reliance is placed on Peshawar High Court, Peshawar judgement dated 09.02.2005 delivered in writ

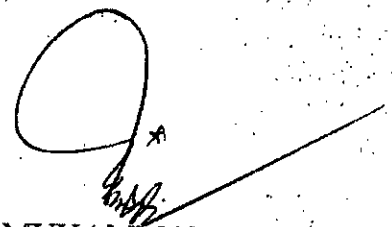
ATTESTED  
Ab. F. Khan  
Service Officer  
Peshawar

(9)

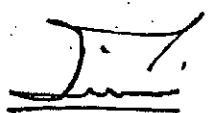
petition No. 251 of 2004 titled Kair Wali Khan versus Government of Khyber Pakhtunkhwa and Peshawar High Court judgement dated 17:11.2015 in writ petition No. 3858-P/2014. Similarly, he was upgraded and his pay was fixed in BS-04 through due process under the Notification of Provincial government dated 17.08.2015. His right had therefore accrued well before his date of superannuation falling on 29.05.2016.

09. In the light of what has been discussed in the preceding paras, the appeal has its own merit and is therefore allowed as prayed for. Parties shall, however, bear their respective costs. File be consigned to the record room.

ANNOUNCED  
19.11.2021



(MIAN MUHAMMAD)  
MEMBER(E)



(SALAH UD DIN)  
MEMBER(J)

**Certified to be true copy**

**RECEIVED**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 04/8/23  
Number of Words page 5  
Copying Fee \_\_\_\_\_  
Urgent \_\_\_\_\_  
Total 30/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 04/8/23  
Date of Delivery of Copy 04/8/23

کے لئے درخواستیں اکاؤنٹ انٹرنسٹس کے لئے

درخواستیں غیر دوست کے پیشکش اور اپنی رقم  
مطابق BPS-4

صاف عالی!

1- بہتر سہولتیں حاصل کرنے کے لئے class-IV ملازمین کے لئے درخواستیں

2- یہ کہ سہولتوں کو سال 2015 سے BPS-2 سے upgrade

کرنے کے سہولتوں کی Ray fixation کے لئے BPS-4 میں  
کرنے کے لئے

3- یہ کہ بوقت رسائی کے لئے BPS-2 میں رسائی کے  
کرنے کے لئے BPS-4 کے مساعفان میں دیکھتے

4- یہ کہ سہولتوں کے سہولتوں کے لئے اس میں اس کے لئے جو یہ سہولتوں  
کے لئے سہولتوں کے لئے سہولتوں کے لئے BPS-4 کے

مساعفان دینے کے لئے اس کے لئے سہولتوں کے لئے

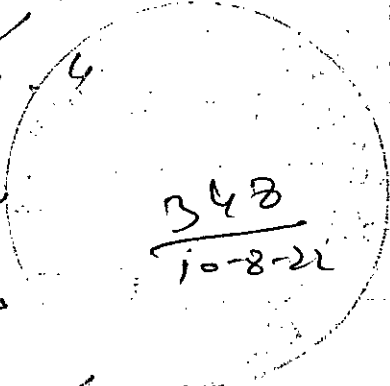
5- یہ کہ سہولتوں کے لئے سہولتوں کے لئے سہولتوں کے لئے

لکھنؤ ایڈریس درخواستیں کے لئے سہولتوں کے لئے سہولتوں کے لئے

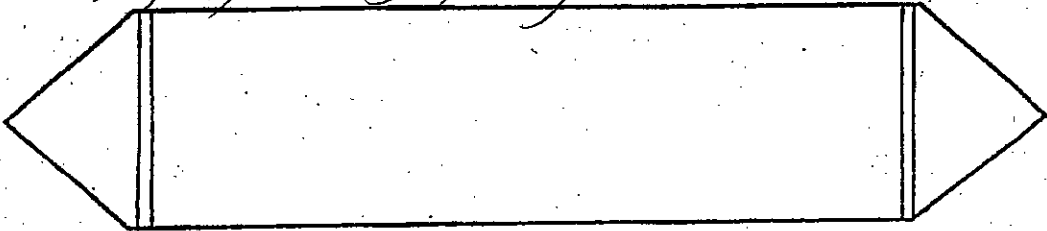
درخواستیں کے لئے سہولتوں کے لئے سہولتوں کے لئے

10-08  
2022

case No. 17101-4491993-7  
contact: 0314-4276695



بعدالت خیر و غنواخوان صبر و ستر بی مثل



مورخہ	---	2 جناب
مقدمہ	---	بنام حکومت پاکستان
دعویٰ	---	عبدال
جرم	---	BC-22-5165
	---	17101-7581359-3
	---	0314-9091890
	---	ghani071chan221@gmail.com

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام کے لئے

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 ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بسورت ڈگری کرنے اجراء اور صولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لایا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائد التوائے مقدمہ کے سبب سے ہوگا۔ 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 لکھ دیا کہ سند ہے۔

المرقوم 20 ماہ 20

بمقام کسٹواری

کے لئے منظور ہے۔

Almasi