


# FORM OF ORDERSHEET

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

Misc. application No. 197/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28/02/2024	<p>The Misc. application in Service appeal No. 537/2023 submitted today by Mr. Mujeeb Ullah Advocate. It is fixed for hearing before Single Bench at Peshawar on <u>06-03-2024</u>. Original file be requisitioned. Peshi is given to counsel for the applicant.</p> <p style="text-align: right;"> REGISTRAR</p>

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

CM No...197...../2024

In

Service Appeal No: 537/2023

Khair Ur Rehman & others

Versus

Naimat Ali 

**APPLICATION ON BEHALF OF RESPONDENT NO.4, 5 & 6 FOR SETTING ASIDE  
EX-PARTE PROCEEDINGS INITIATED AGAINST VIDE ORDER DATED  
15/06/2023 IN ABOVE TITLED APPEAL.**

**INDEX OF DOCUMENTS**

S.No	Description of Documents	Annexure	Page No
1	Application for setting aside ex-parte proceedings		1-2
2	Affidavit		3
3	Application condonation of delay along with affidavit		4-5
4	Attested Copy of order dated 15/06/2023	"A"	6-7
12	Wakalat Nama		8

  
Applicant/ Respondent No. 4, 5 & 6

Through

Mujeeb Ullah 

Advocate

High Court, Peshawar

Khalid & Law Associates  
46-C, 2<sup>nd</sup> Floor, Cantonment Plaza,  
Peshawar Cantt

①

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

CM No. 197 /2024

In

Service Appeal No: 537/2023

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 11453

Dated 28/2/24

1. Khair Ur Rehman Certified Teacher GMS Bazar, Kot, District Shangla
2. Jamshid Ali Certified Teacher GMS District Shangla
3. Sohrab Ali Certified Teacher GMS, District Shangla

Applicants/ Respondent No. 4, 5 & 6

Versus

Naimat Ali ECT (BPS 15)

GHS Malakhel, Kotkay District Shangla Respondent/ Appellant

**APPLICATION ON BEHALF OF RESPONDENT NO.4, 5 & 6 FOR SETTING  
ASIDE EX-PARTE PROCEEDINGS INITIATED AGAINST VIDE ORDER  
DATED 15/06/2023 IN ABOVE TITLED APPEAL.**

Respectfully Sheweth,

The Applicant/ Defendant humbly submits as under,

1. That the above titled service appeal was instituted on 02/03/2023 by appellant before this Hon'ble Tribunal and is now fixed for arguments on 06/03/2024.
2. That the Applicant/ Respondents came to know on previous date of hearing i.e 15/02/2024 that they were proceeded ex-parte vide Order dated 15/06/2023. It is pertinent to note that Respondents were never served through summons of the court.

{Attested Copy of order dated 15/06/2023 is annexed as A}

3. That the Applicant/ Respondents seeks setting aside of Ex-Parte proceedings dated 15/06/2023 inter alia on the following grounds,

**GROUND**

- A. That the impugned Ex-Parte proceedings & Order is against law on the subject and fact hence, is liable to be set aside.

(2)

- B. That as per Order 5 Rule 20 of Civil Procedure Code of 1908, no personal service has been effected on the Applicants or on the male adult family member and also no summon has been affixed on his house etc nor substitute service procedure has been adopted.
- C. That in the instant case, this hon'ble Tribunal completely ignored the procedure laid down in order 5 CPC which amounts to irregularity as well as against the basic principle of "audi alterm partem". Moreover this Hon'ble Tribunal has made no effort under the law for service in person with all due diligence hence, the impugned Order is liable to be set aside on this score too.
- D. That right of hearing/ giving proper opportunity is a constitutionally guaranteed fundamental right of Applicant/ Defendant and no one should be condemned unheard.
- E. That in plethora of Judgments the August Supreme Court of Pakistan has held that law favours adjudication on merit and not on technicalities. In this respect reliance is placed on case titled Anwar Khan V/S Fazal Manan reported as **2010 SCMR 973**.
- F. That any other ground will be adduced at the time of arguments with kind permission of the Court.

It is, therefore, most humbly prayed that on acceptance of instant application, the impugned Ex-Parte proceedings initiated against Applicants vide order dated 27/7/2016 may graciously be set aside and Respondents may kindly be awarded opportunity to defend his case.

  
Applicant/ Respondent No. 4, 5 & 6

Through

  
Mujeeb Ullah

Advocate  
High Court, Peshawar

Khalid & Law Associates  
46-C, 2<sup>nd</sup> Floor, Cantonment Plaza,  
Peshawar Cantt

5

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

CM No...../2024

In

Service Appeal No: 537/2023

Khair Ur Rehman & others

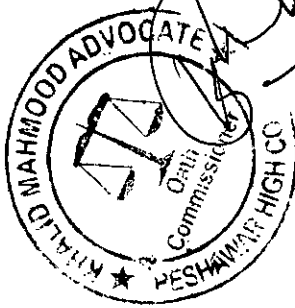
Versus

Naimat Ali

**APPLICATION ON BEHALF OF RESPONDENT NO.4, 5 & 6 FOR SETTING ASIDE  
EX-PARTE PROCEEDINGS INITIATED AGAINST VIDE ORDER DATED  
15/06/2023 IN ABOVE TITLED APPEAL.**

**Affidavit**

I Khair Ur Rehman Certified Teacher GMS Bazar Kot District Shangla do hereby solemnly declared and affirm that the contents of the **accompanied Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this August Court



  
Deponent

4

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

CM No...../2024

In

Service Appeal No: 537/2023

Khair Ur Rehman & others

Versus

Naimat Ali

**APPLICATION FOR CONDONATION OF DELAY ON BEHALF  
OF RESPONDENT NO. 4,5 & 6**

*Respectfully Submitted as under,*

1. That the Applicant/Respondents has filed the above titled application for setting aside ex parte proceedings before this Hon'ble Court in which next date of hearing is fixed as 06/03/2024.
2. That the instant application may kindly be read as integral part of the said application.
3. That the Applicant/Respondents seek condonation of delay (if any) inter alia on the following grounds.

**GROUND**

- A. That Applicant/Appellant came to know about the impugned order dated 15/06/2023 of this Hon,ble Tribunal on previous date of hearing when the counsel for Respondents was submitting their power of attorney. It is important to note that no service or summon of the court has been served on Respondents.
- B. That the delay on the part of the Respondents is not intentional or deliberate, but due to the above stated reason. Even as an exceptional case, this Hon'ble Tribunal has ample powers to condone the delay.
- C. That in plethora of judgment the Superior courts have held that in such like matters, cases are to be decided on merit rather than technicalities.
- D. That if the condonation is not granted the Applicant will suffer irreparable loss.

5

E. That in Plethora of Judgments, superior Courts, held that no limitation runs against void order.

It is, therefore, humbly prayed that in the light of above stated grounds the instant application may be graciously accepted and the delay (if any) may kindly be condoned in the interest of justice.

*[Signature]*

Applicant/Respondents

Through

*[Signature]*

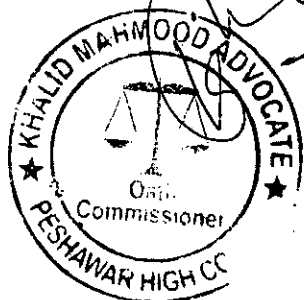
Mujeeb Ullah

Advocate

High Court, Peshawar

**AFFIDAVIT**

I Khair Ur Rehman Certified Teacher GMS Bazar Kot District Shangla do hereby solemnly declared and affirm that the contents of the **accompanied Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this August Court



*[Signature]*  
Deponent



-1- (6)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

SERVICE APPEAL NO. 537/2023

Mr. Niamat Ali, CT (BPS-15),  
GHSS Malakkhel, Kotkay District Shangla.

Khyber Pakhtunkhwa  
Service Tribunal  
Registry No. 4012  
Dated 2/3/2023

..... APPELLANT

**VERSUS**

- 1- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Elementary and Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Education Officer, District Shangla.
- 4- Khair ur Rehman, Certified Teacher GMS Bazar Kot District Shangla.
- 5- Jamshid Ali Certified Teacher GMS, District Shangla.
- 6- Sohrab Khan Certified Teacher GMS, District Shangla.
- 7- Bahkt Zaman, Certified Teacher GMS Martoba, District Shangla.
- 8- Muhammad Nabi Certified Teacher GMS Towa, District Shangla.

..... RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 20.09.2022 WHEREBY THE APPELLANT HAS WRONGLY BEEN PLACED JUNIOR TO THE PRIVATE RESPONDENTS AND THE INACTION OF THE RESPONDENT DEPARTMENT BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:**

That on acceptance of this appeal, the respondents may kindly be directed to modify/rectify the seniority list by placing appellant at his due position. 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:-**

That the appellant was initially appointed as PTC on the basis of open merit vide order endorsement NO.3097-3167 dated 24-06-1997 through proper selection. Copy of the Appointment Order is attached as Annexure .....

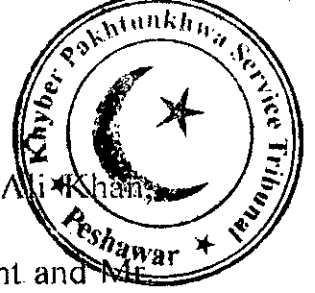
A.

*Filed to day*  
*Registrar*  
*2/3/2023*

*Certified to be true copy*  
*Registrar*  
*Khyber Pakhtunkhwa Service Tribunal Peshawar*



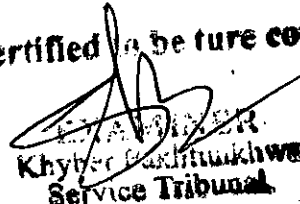
A. No. 537/2023  
Mamat Ali is Great (7)



15.06.2023, Clerk to counsel for the appellant present. Mr. Asad Ali Khan,

Assistant Advocate General alongwith Mr. Tufail, Assistant and Mr. Faheem, Assistant on behalf of official respondents No. 1 to 3 present. None present on behalf of private respondents despite issuance of proper notice through TCS, hence they are placed ex-parte.

Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Adjourned. To come up for reply/comments on 31.07.2023 before S.B. Parcha Peshi given to the parties.

Certified to be true copy  
  
Muhammad Akbar Khan  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(Muhammad Akbar Khan)  
Member (E)

\*Kamranullah\*

Date of Presentation of Application 15/02/2024  
Number of Words page 2  
Copying Fee 60/-  
Urgent 5/-  
Total 15/-  
Name of Copyist Shahzad  
Date of Completion of Copy 15/02/2024  
Date of Delivery of Copy 15/02/2024

Accepted  
Miyeeb Ullah

Respones

Ques

\_\_\_\_\_

2024-2025  
19

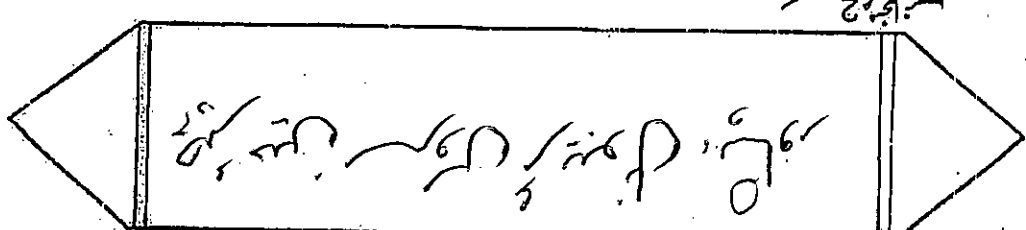
میں نے اپنے جواب میں اس سوال کا جواب دیا ہے کہ میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔  
میں نے اس سوال کو پڑھا اور اس کا جواب دیا ہے۔

Ques

Ques

Ques

Resp 6 Ques No 15501-171683-1  
Resp 5 Ques No 15501-2249276-1  
Resp 4 Ques No 15501-2259064-3



نمائندہ طالب

Naimat Ali

Appeal no 537/2023

اپیل نمبر

Applicants  
Govt of KP  
of classes