Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 300/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.04.2024	The implementation petition of Mst. Ayesha Qureshi received today by registered post through Muhammad Arshad Khan Tanoli Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on .Original file be requisitioned. AAG has noted the next date. Counsel for the petitioner has been informed telephonically. By the order of Chairman **REGISTRAR**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT, ABBOTTABAD

Execution No. 300 /2024
IN
S.A 1760/2023

Ayesha Qureshi Assistant BPS-16, Public Library Mansehra.

...PETITIONER

VERSUS

Director Archie and Library KP, Peshawar.

...RESPONDENT

APPLICATION

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...APPLICANT /PETITIONER

Through

Dated: _____/2024

(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad
&

(Muhammad Ibrahim Khan)
Advocate High Court, Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT, ABBOTTABAD

Execution No. 300 /2024
IN
S.A 1760/2023

Khyber Pakhtukhwa
Service Tribunal
Diary No. 12331
Dated 22-04-2024

Ayesha Qureshi Assistant BPS-16, Public Library Mansehra.

...PETITIONER

VERSUS

Director Archie and Library KP, Peshawar.

...RESPONDENT

SERVICE APPEAL

APPLICATION FOR EXECUTION OF JUDGMENT DATED 11/03/2024 OF THIS HONOURABLE TRIBUNAL FOR RE-INSTATEMENT IN SERVICE OF APPLICANT WITH ALL SERVICE BACK BENEFITS W.E.F 28/04/2023 ONWARDS.

Respectfully Sheweth:-

1. That the respondent illegally removed the applicant/petitioner from service on 24/04/2023.

2. That the petitioner/applicant impugned removal from her service order dated 28/04/2023 before this Honourable Tribunal vide Service Appeal No.1760/2023.

3. That, this Honourable Tribunal accepted the service appeal No.1760/2023 of the petitioner/applicant as prayed for vide judgment of this Honourable Tribunal dated 11/03/2024. Copy of judgment of this Honourable Tribunal is attached as Annexure "A".

4. That following this, the petitioner/applicant filed application to the respondent for her reinstatement in service but the said respondent did not bother to implement the judgment of this Honourable Tribunal dated 11/03/2024. Copy of applicant dated 28/03/2024 of the petitioner/applicant addressed to the respondent is attached as Annexure "B".

5. That, respondent is willfully not implementing the judgment dated 11/03/2024 of this Honourable Tribunal which amounts to the contempt of this worthy tribunal.

In view of the above, it is prayed that respondent may be directed to reinstate the petitioner in service with all service back benefits forthwith failing which contempt of court proceedings may be initiated against the respondent to punish her.

...APPLICANT /PETITIONER

Through

Dated: _____/2024

(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad
&

(Muhammad Ibrahim Khan)
Advocate High Court, Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT, ABBOTTABAD

Execution No._____/2024
IN
S.A 1760/2023

Ayesha Qureshi Assistant BPS-16, Public Library Mansehra.

...PETITIONER

VERSUS

Director Archie and Library KP, Peshawar.

...RESPONDENT

APPLICATION

AFFIDAVIT

I, **Ayesha Qureshi Assistant BPS-16, Public Library Mansehra**, do hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

DEPONENT

ATTESTED
ALI ORAKZAI
NOTARY PUBLIC
Advocate High Court Abbottabad
20 24

Annex-A P-4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa Service Tribunal Peshawar

Service Appeal No. 1760/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER(E)

Miss Ayesha Qureshi Ex-Assistant, Public Library Mansehra, presently Circuit House, Mansehra. .....*(Appellant)*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Higher Education Archives and Libraries, Peshawar.
2. Director Archive and Libraries Khyber Pakhtunkhwa, Peshawar.
3. Librarian, Public Library Mansehra. .....*(Respondents)*

Mr. Muhammad Arshad Tanoli, Advocate ... For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney ... For respondents

Date of Institution..... 29.08.2023
Date of Hearing..... 11.03.2024
Date of Decision..... 11.03.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the removal from service order dated 28.04.2023. It has been prayed that on acceptance of the instant service appeal, the impugned removal from service order dated 28.04.2023 might be ordered to be set aside and respondents might be directed to reinstate the appellant in service with all service back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the respondent department advertised the post of Assistant BPS- 16 on

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

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23.03.2019 and the appellant applied for appointment, having the requisite prescribed qualification. She qualified the ETEA test and obtained 51 marks and was placed at the top of merit list for appointment as Assistant and was appointed vide order dated 29.09.2020. On the complaint of one, Mst. Makhtoon Rahman, resident of Hayatabad Peshawar, the appellant was terminated from service vide order dated 27.07.2022 on the sole ground that experience certificate attached by the appellant alongwith application was issued by the FATA Secretariat Peshawar where she served w.e.f. 01.07.2015 to 30.6.2018 on voluntary basis. The order was issued without conducting proper inquiry under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Later on the appellant filed departmental appeal to respondent No. 1 against the termination order dated 27.07.2022 which was accepted and the appellant was reinstated into service with all back benefits. Respondent No. 1 directed the competent authority to conduct fresh inquiry on the basis of which the appellant was again removed from service vide order dated 28.04.2023. Feeling aggrieved, she filed departmental appeal, which was not decided and was still pending till filing of the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant obtained experience certificate from a government

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Khyber Pakhtunkhwa Service Tribunal Peshawar

department, w.e.f. 01.07.2015 to 30.06.2018, which was got verified by the respondent department from FATA Secretariat vide letter dated 22.09.2021 of respondent No. 2. The experience certificate was issued by FATA Secretariat on the basis of which 10 marks were correctly awarded by the Departmental Selection Committee in the final merit list and the appellant was appointed, having higher score. The learned counsel argued that she was removed from service on the sole ground that she served in FATA Secretariat on voluntary basis and she did not receive any pay and allowances. The learned counsel further stated that at the time of appointment, the appellant was serving in respondent department in Molana Muhammad Ishaq Memorial Library and was having all the requisite prescribed qualification. He referred to the merit list attached with the appeal showing 7 marks out of 8 in interview. He further argued that the complainant, Ms. Makhtoon Rahman, could not qualify the interview and was declared failed in final merit list. The learned counsel contended that the appellant served the department as Assistant in Public Library Mansehra since 2020 to 2023 and hence her right to serve the department had accrued. He argued that the competent authority could not undo the appointment order of the appellant once she had acquired that valuable right. He further argued that the experience certificate of the appellant was not found bogus because the same was duly verified by the issuing authority on the letter of respondent No. 2, hence the impugned removal from service order was liable to be cancelled. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant participated in the

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test conducted by the ETEA authorities and was placed at 4th position of the ETEA merit list. The ETEA added ten (10) marks of experience to Mst. Bibi Hajira only. The rest of candidates, including the appellant, failed to provide the experience certificate at the relevant time. He stated that Miss Maryam Sahibzada, Miss Makhtoon Rahman, Miss Shehzadi Khushboo and Miss Ayesha Qureshi obtained 144, 143, 136, 134 marks respectively, exclusive of 10 marks of experience. The Departmental Selection Committee (DSC) thus interviewed the successful candidates on 24.09.2020. Later on, Mst. Ayesha Qureshi produced experience certificate and was awarded 10 additional marks of experience by the Committee. The learned DDA contended that the Ex-Director, who was the competent authority, maliciously awarded her the highest 7 marks out of 8 in interview to select her whereas the rest of the top three candidates in ETEA list were deliberately given low marks i.e only 3, 3, and 2 respectively. The appellant, with overall 151, marks was appointed as Office Assistant. He informed that on 01.10.2020, Miss Maryam Sahibzada filed a complaint in PMDU against the appointment of the appellant and the Chairman DSC, in its meeting dated 09.10.2020, recommended Mst. Maryam Sahibzada for appointment against another post vacated on retirement of an Office Assistant. Miss Makhtoon Rahman, the 2nd candidate of the merit list, filed a complaint in the office of Provincial Ombudsman Khyber Pakhtunkhwa stating therein that the appellant was given 10 marks on a certificate which was fake. He further argued that the appellant was serving as Librarian-II (BPS-09) in the Directorate of Archives and Libraries and had less than 6 months experience at her credit. He further argued that the experience certificate was required to have been issued by a government department and duly

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countersigned by the Head of that department. According to him, in pursuance of the findings of the Ombudsman, the Higher Education Department conducted a fact finding inquiry and found the appointment of the appellant as fake and her experience as illegal and recommended for termination of her service and recovery of salaries. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it appears that the appellant was appointed as Office Assistant in the respondent department but she was removed from service on the ground that she produced a fake experience certificate. Record shows that she produced a certificate of experience that she gained as Library Assistant in the Reference and Archival Library, FATA Secretariat Peshawar, from 1st July 2015 to 30th June 2018, where she worked on voluntary basis. The certificate dated 16.12.2019 was signed by a Consultant/Incharge of the Reference and Archival Library, FATA Secretariat, Peshawar. Record further shows that the Chairman of the Departmental Selection Committee got the certificate verified from the Incharge who issued it. The point raised by the learned Deputy District Attorney was that any voluntary service was not counted towards experience as per rules. Moreover, the Chairman of the DSC got the certificate verified on telephone only, whereas it was found that the certificate was not issued by the competent authority. He referred to the advice of Establishment Department in this regard, tendered vide their letter dated 03.06.2022. Nowhere in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the term "experience" has been defined. Rule 10 relates to appointment by initial recruitment. In its sub-rule 3, it states that a candidate, for initial

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appointment to a post, must possess the educational qualification or technical qualifications and experience. In the present case, the Establishment Department was asked by the respondent department to guide them regarding determining validity of certificates for allotment of experience marks and the Establishment Department advised that "experience" means experience gained in a regular full time paid job after obtaining the required qualification. From the response of Establishment Department and the inquiry reports presented before us, it appears that the respondents have taken strength from the Khyber Pakhtunkhwa Public Service Commission Regulations 2003, where experience has been defined in Part-VIII, Regulation 30(1), as follows:-

> *"If not specifically provided otherwise in the relevant Service Rules, prescribed experience means the experience gained in line in a regular full time paid job acquired after obtaining the prescribed qualification."*

There seems no objection in getting strength from the Regulations of KP PSC, if the government rules are silent on any point, but then there was another observation regarding the interview marks. When asked about the qualification marks for interview, the learned DDA as well as the departmental representative could not produce any criteria for that. Here a questions is that if regarding the experience, strength can be taken from KPPSC Regulations, then why the same regulations were not followed for the qualifying marks in interview? Why the criteria has been adopted in bits and pieces and not taken in totality where the APT Rules and Service Rules of the respondent department were silent on experience and qualifying marks in interview. Rest

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Khyber Pakhtunkhwa Service Tribunal Peshawar

of the marks were regarding academic qualification and any additional or higher qualification, and there is clarity in it. If for experience, KPPSC Regulations were adopted, then the same could be adopted for qualifying marks in interview also. Regulation 29(b) is clear when it states that minimum passing standard in the interview is 60%. When we apply these regulations on the candidates who appeared in the ETEA test and got qualified, the first three candidates namely Maryum Sahibzada, Makhtoon Rehman and Shehzadi Khushboo got 3, 3, and 2 marks respectively in interview out of 8, which is less than 60% and hence they do not qualify the interview as per KPPSC Regulations. In case of the appellant, Ayesha Qureshi, she got 7 marks in interview. By applying the standard of KPPSC Regulations, if we deduct the experience marks altogether, even then she qualifies because her interview marks are more than 60%.

7. In view of the above discussion, we can safely say that the appellant, who was among the four top most candidates who qualified the written ETEA test, and was considered fit for interview, got passing marks in interview, whereas the rest of the three failed in interview, therefore, the appellant qualified in the entire process conducted for the appointment of Office Assistant in the respondent department. The appeal is, therefore, allowed as prayed for. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of March, 2024.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member(J)

FazleSubhan P.S

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 04-04-24

Number of W... 77

Copying Fe... 35/-

Urgent —

Total 35/-

Name of Co...

Date of Compl... 08-4-24

Date of Delivery of Copy 08-4-24

22/4

275

Annex-B

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To

The Director,
Directorate of Archives and Libraries,
Peshawar.

Subject: Reinstatement in Service as Per Judgement of Honorable Service Tribunal, KP Peshawar Dated 11.03.2024

Respected Madam,

(1) Reference to the removal of service order No 400/3/10/DA dated 28.04.2023 and judgement of Honorable Service Tribunal Dated 11.03.2024. (Copy attached)

(2) That the appellant was illegally removed from service by the Director Archives and Libraries KP, Peshawar vide order No 400/3/10/DA Dated 28.04.2023 which was challenged by the appellant in Honorable Service Tribunal KP, Peshawar vide service appeal No 1760/2023.

(3) The Honorable Service Tribunal accepted the appeal by declaring removal order No 400/3/10/DA Dated 28.04.2023 as illegal and directed to reinstate the appellant in service as prayed for i.e., with all service back benefits.

In view of above, it is prayed that the appellant may kindly be reinstated in service with all back benefits forth with.

Yours sincerely

Ayesha Qureshi
Dated: 28.03.2024

Copy forwarded to:

1- Secretary, Higher Education Archives and Libraries, Peshawar.

2- Minister, Higher Education Archives and Libraries, Peshawar.

DY. Dir

کورٹ فیس

وکالت نامہ

بعدالت Service Tribunal KP Peshawar

عنوان: Ayesha Qureshi بنام Director Archive

منجانب: Appleant

نوعیت مقدمہ: Execution Petition

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آں مقام

M. Ashraf Tanoli Adv, M. Ibrahim Adv

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ وتقرر ثالث وفیصلہ برحلف ودینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ وعرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور وقبول ہوگا۔ دوران مقدمہ جو خرچہ وہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جز و بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد استجارت نالش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

M. Ibrahim Adv

لہذا وکالت نامہ تحریر کر دیا تاکہ سند رہے۔

المرقوم: ____________

بمقام: M. Ashraf Tanoli Adv

العبد

وقاص فوٹوسٹیٹ کچہری (ایبٹ آباد)