


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 272/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	01.04.2024	<p>The implementation petition of Mr. Naqib Ullah submitted today by Mr. Saadullah Khan Marwat 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 given to counsel for the Petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution NO. 272 /2024

Nagib Ullah

VS GOVT. OF KPK & OTHERS

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

Respectfully Sheweth:

1. That the above mentioned 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: 1-4-2023

Through

11
Arbab Saif ul-Kamal

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution

Misc Pett: No. 272 /2024

IN

S.A. No. 1502/2022

Naqib Ullah

versus

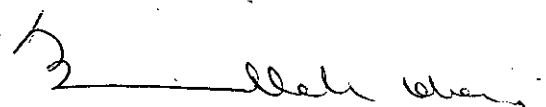
DG & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 18-10-2022	"A"	4-8
3.	Copy of Judgment dated 22-12-2023	"B"	9-13
4.	Compliance letter dated 19-02-2024	"C"	14

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 01-04-2024

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR*Execution*Misc Pett: No. 272 /2024

IN

S.A. No. 1502/2022

Naqib Ullah S/O Abdur Rehman Khan,

Senior Secretary, Village Council.

Marmandi Azeem, Lakki Marwat Appellant

VERSUS

1. Director General, Local Govt.
& Rural Development
Department, Peshawar.
2. Secretary, Govt. of KP,
Local Government &
Rural Development
Department, KP,
Peshawar.
3. Assistant Director, Local
Govt. & Rural Development
Department, Lakki Marwat Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT DATED 22-12-2023 OF THE HON'BLE
TRIBUNAL, PESHAWAR:**

Respectfully Sheweth:

1. That on 18-10-2022, applicant filed Service Appeal before this hon'ble Tribunal that the impugned order dated 04-10-2022 be set aside and Final Seniority List dated 09-06-2022 be restored with all consequential benefits. (Copy as annex "A")

2. That the said appeal came up for hearing on 22-12-2023 and then the hon'ble Tribunal was pleased to hold that:-

"We are unison to accept the appeal in hand as prayed for". (Copy as annex "B")

3. That on 19-02-2024, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so for no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 22-12-2023 of the hon'ble Tribunal be complied with hence forthwith.

OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.



Applicant


Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal



Amjad Nawaz
Advocates

Dated: 01-04-2024

AFFIDAVIT

I, Naqib Ullah Senior Secretary, Village Council Lakki Marwat (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.



Naqib Ullah
DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.

Naqib Ullah
ADVOCATE

A 4

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

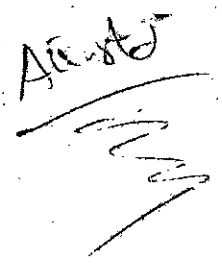
S.A No. _____/2022

Naqib Ullah S/O Abdur Rehman Khan,
Senior Secretary, Village Council,
Marmandi Azeem, Lakki Marwat Appellant

Versus

1. Director General, Local Govt.
& Rural Development
Department, Peshawar.
2. Secretary, Govt. of KP,
Local Government &
Rural Development
Department, KP,
Peshawar.
3. Assistant Director, Local Govt.
& Rural Development Department,
Lakki Marwat.
4. Allah Noor S/O Ghulam Sarwar
Secretary, VC Ahmad Khel,
Lakki Marwat. Respondents

**APPEAL UNDER SECTION 4 OF THE SERVICE
TRIBUNAL ACT 1974 AGAINST OFFICE ORDER
NO. DIRECTOR (LG) 3-1 / ESTB / 2022 / 1675-
81 DATED 04-10-2022 OF R. NO. 01 WHEREBY
REPRESENTATION OF R. NO. 04 WAS ACCEPTED
WITH DIRECTION TO PLACE HIM AT THE TOP OF
THE SENIORITY LIST OF THAT CADRE.**

Arif


Respectfully Sheweth:

1. That appellant was initially appointed on 30-04-1988 as Secretary Union Council and was posted as such at Village Council Kachi Kamar District Lakki Marwat.
2. That R. No. 04 was appointed as Junior Clerk in Revenue Department on 21-10-1992 and due to re-structuring his services were placed at the disposal of Assistant Director Local Government Department, on 03-02-2002.
3. That on 23-12-2014, Establishment Department tendered opinion to Secretary Local Government, that surplus employees adjusted in other departments they shall be given back dating seniority over the incumbents of parent department / cadre. (Copy as annex "A").
4. That one Hidayat Ullah was also serving the department as Secretary Union Council since 01-09-1979. The department issued Seniority List and one Gul Zaman was placed senior to him, so he filed S. A. No. 733/16 before the hon'ble Tribunal to place him senior which came up for hearing on 01-03-2017 and then the hon'ble Tribunal feeling some mishap remitted the case to respondents with direction to prepare proper seniority list in accordance with law and then make up promotion against the vacant posts after observing the due code formalities. (Copy as annex "B")
5. That in pursuance of the said direction respondents circulated Final Seniority List on 15-05-2017, wherein appellant was placed at S. No. 09, while R. No. 04 was placed at S. No. 25 being correct position. (Copy as annex "C")
6. That in the subsequent Seniority List dated 01-12-2019, covering letter dated 02-01-2020, appellant was placed at S. No. 08 while R. No. 04 at S. No. 24, being the correct position (Copy as annex "D")

Attd.)
[Handwritten signature]

7. That on 16-03-2021, in the Final Seniority List, appellant was placed at S. No. 06, while R. No. 04 at S. No. 20, being correct position. (Copy as annex "E")
8. That on 01-02-2022, R. No. 04 submitted representation before Director General to re-cast Seniority List and he be placed at S. No. 01. Appellant also submitted representation on 08-03-2022 for issuing direction to Assistant Director, Local Government Department, to follow the Seniority List dated 16-03-2021. (Copies as annex "F" & "G")
9. That on 29-03-2022, Director General decided both representations of appellant viz-a-viz R. No. 04, wherein claim of R. No. 04, regarding re-casting of Seniority List was turned down being time barred as well. (Copy as annex "H")
10. That on 09-05-2022, Deputy Director (Admin) Local Govt. & Rural Development Department wrote letter to Assistant Director Local Govt. & Rural Development Department, Lakki Marwat that R. No. 04 has approached appellate authority after lapse of more than three (03) years, the appeal being time barred could not be considered. (Copy as annex "I")
11. That on 12-05-2022, Tentative Seniority List was issued, wherein R. No. 04 was placed at S. No. 01 while appellant at S. No. 04. This seniority list was of no legal effect as the matter was already dealt with by the respondents. (Copy as annex "J")
12. That the said Tentative Seniority List was objected by appellant as well by Khalid Hayat and Jameel Khan submitted representations on 18-05-2022 to Assistant Director Local Govt. to kindly place them at proper position which appeals were accepted on 07-06-2022. (Copies as annex "K")
13. That in pursuance of the said direction Final Seniority List was circulated on 09-06-2022 by placing appellant at S. No. 02, while R. No. 04 at S. No. 15. (Copy as annex "L")

At 10

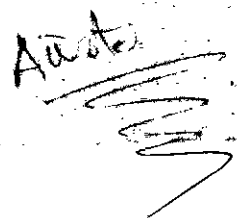
14. That the said Seniority List was again objected by R. No. 04 on 16-06-2022, submitting representation before Director General to place him on top of Seniority List. (Copy as annex "M")
15. That on 22-06-2022, Assistant Director (Admin), LG & RDD wrote letter to all Directors of the respective quarters to remit cases for promotion of senior Village Secretaries B-11 to the post of Supervisors B-14 and for the purpose meeting was scheduled on 05-07-2022 wherein others were promoted and no decision was made in respect of appellant. (Copy as annex "N")
16. That on 25-07-2022, appellant also submitted the representation before Director General for determination of seniority list of the Secretaries at Lakki Marwat. (Copy as annex "O")
17. That on 20-09-2022, Assistant Director (Admin) wrote letter to appellant viz-a-viz R. No. 04 to attend meeting to be held on 22-09-2022 in respect of seniority list of Senior Village Secretaries which directions were complied with and thereafter Director General LG & RDD Peshawar issued office order on 04-10-2022 wherein appeal of R. No. 04 was accepted to be placed at the top of list of that cadre. (Copies as annex "P" & "Q")

Hence this appeal, inter alia, on the following grounds.

GROUND S:

- a. That since 30-04-1988, appellant was serving the department to the best of his ability and without any complaint.
- b. That R. No. 04 was initially appointed as Junior Clerk in Revenue Department in the year 1992 and was adjusted in Local Govt. Department on 03-02-2002. How he could be placed senior over appellant who was appointed in parent department as Secretary Union Council on 30-04-1988 and R. No. 04 was initially appointed as Junior Clerk in Revenue Department on 21-10-1992 and was adjusted in Local Govt. Department on 03-02-2002.
- c. That numerous seniority lists were circulated wherein appellant was not only placed senior to R. No. 04 but also at correct position.

Arif




- d. That request for seniority of R. No. 04 was turned down on 09-05-2022 and later on too, he should have challenge that order and thereafter the matter of seniority was closed once for a l.
- e. That cadre of appellant viz-a-viz R. No. 04 was altogether different. Appellant was hailing in parent department while R. No. 04 was to Revenue Department.
- f. That R. No. 01 misinterpreted the law and those who were adjusted in other departments were to be placed at the bottom and not over the incumbents of the parent departments.
- g. That R. No. 04 cannot compete with appellant being of parent department, while he of alien to Local Govt. Department.
- h. That seniority list dated 15-05-2017 was made in pursuance of the direction of the hon'ble Peshawar High Court, Peshawar which cannot be interpreted by any authority of any department to issue direction to place him senior over the incumbents of parent department.
- i. That the impugned order dated 04-10-2022 of R. No. 01 is not per the mandate of Law. Policy cannot overrule settled law in respect of any terms and conditions of service of any individual.
- j. That the impugned order is not only against the law and rules but is also based on favoritism and malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned Order dated 04-10-2022 of R. No. 01 be set aside and Final Seniority List dated 09-06-2022 be restored with all consequential benefits, with such other relief as may be deemed proper and just in the circumstances of the case.

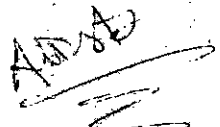

Appellant

Through


Saadullah Khan Marwat


Arbab Saif-ul-Kamal


Amjad Nawaz
Advocates


Dated: 14-10-2022

B 9

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1502/2022

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



Mr. Naqeeb Ullah S/o Abdur Rehman Khan, Senior Secretary, Village Council, Marmandi Azeem, Lakki Marwat.

.... (Appellant)

VERSUS

1. Director General, Local Government & Rural Development Department, Peshawar.
2. Secretary, Government of Khyber Pakhtunkhwa, Local Government & Rural Department, KP, Peshawar.
3. Assistant Director, Local Government & Rural Department, Lakki Marwat.
4. Allah Noor S/o Ghulam Sarwar, Secretary, VC Ahmad Khel, Lakki Marwat.

.... (Respondents)

Mr. Arbab Saiful Kamal
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents


Date of Institution.....18.10.2022
Date of Hearing.....22.12.2023
Date of Decision.....22.12.2023

JUDGMENT

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:

“It is therefore most humbly prayed that on acceptance of the appeal, the impugned order dated 04/10/2022 of R.No.1 be set aside and final Seniority list dated 09.06.2022 be restored with all consequential benefits, with such other relief as may be deemed proper and just in the circumstances of the case.”

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



2. Brief facts of the case are that appellant was initially appointed as Secretary Union Council. That the private respondent was serving in Revenue Department as Junior Clerk and due to restructuring, his services were placed at the disposal of Assistant Director Local Government Department on 03.02.2002. That the Establishment Department tendered opinion that the surplus employees be given back dated seniority and be placed senior to the incumbents of the department. That one Hidayat Ullah was serving the Department as Secretary Union Council since 01.09.1979 who challenged the seniority list before this Tribunal in Service Appeal No.733/2016, wherein, he was placed junior to one Gul Zaman. The Tribunal remitted that case to the department for preparing seniority list in accordance with law and due codal formalities. Therefore, the department issued seniority list dated 15.05.2017, wherein the appellant was at Serial No.9 and private respondent No.4 was at Serial No.25. That the subsequent seniority list dated 01.12.2019 was not objected by either the appellant or private the respondent. That on 16.03.2021 the department issued final seniority list, wherein, private respondent was at Serial No.20 and the appellant was at Serial No.6, which was objected by the private respondent No.4 and he submitted representation before the Director General to recast seniority and he might be placed at serial No.1. That the appellant also submitted representation for maintaining the seniority list dated 16.03.2021. That on 09.05.2022 the department rejected the representation of private respondent No.4 being time barred. That on 12.05.2022, tentative seniority list was issued, wherein private respondent No.4 was placed at Serial No.1 while the appellant was placed at Serial No.4, which was objected by the appellant alongwith two other employees, being aggrieved, and they submitted representations which were accepted. That the appellant was placed at Serial No.2 and private respondent No.4 was placed at Serial No.15. The said

ATTESTED

EXAMINER
 Shyber Pukhtukhwa
 Service Tribunal
 Peshawar

APPELLANT

PL

seniority list was again objected by private respondent No.4 by submitting representation to the DG Local Government. Resultantly, the DG issued office order on 04.10.2022, wherein private respondent No.4 was placed at the top of the list. Therefore, the appellant filed the instant service appeal by impugning the order dated 04.10.2022.

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.

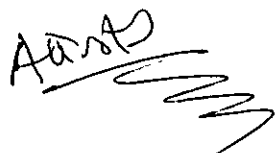
4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that impugned order dated 04.10.2022 of respondent No.1 is not as per the mandate of law. He further argued that respondent No.4 was initially appointed as Junior Clerk in Revenue Department in the year 1992 and was adjusted in Local Government Department on 03.02.2002, how he could be placed senior over appellant who was appointed in parent department as Secretary U/C on 30.04.1988 and respondent No.4 was adjusted in local government department on 03.02.2002.

5. Conversely, learned District Attorney for the respondents has contended that the appellant has been treated in accordance with law and rules. He further contended that respondent No. 4 was rightly placed at the top of seniority list because he was adjusted in a lower scale than his original scale in the respondent department. He further contended that in this respect surplus pool policy is clear. He requested for dismissal of instant service appeal.

6. Perusal of record reveals that appellant was initially appointed as Secretary Union Council on 30.04.1988 while respondent No.4 was

ATTESTED

EXAMINER
Siyar Pakhtunkhwa
Service Tribunal
Peshawar

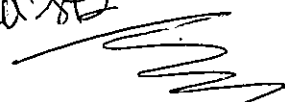


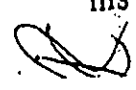
appointed as Junior Clerk in respondent department on 21.10.1992 but due to restructuring, services of respondent No.4 were placed at the disposal of Assistant Director Local Government Departments on 03.02.2022. On 23.12.2014 Establishment Department tendered opinion to Secretary Local Government about adjustment of surplus pool employees in other departments. Further they shall be given back dated seniority over incumbents of parent/department/cadre. One Mr. Hidayatullah was also serving the department as Secretary Union Council since 01.09.1979. Department issued seniority list where one Gul Zaman was placed senior to said Hidayatullah. Hidayatullah filed service appeal in this tribunal which was remitted to the department on 01.03.2017 for deciding the seniority matter in accordance with law and rules. As a result, respondent issued seniority list on 15.05.2017 wherein appellant was placed at Serial No.4 while respondent No.4 at serial No.25 and the position remained as such till 2021. Respondent No.4 submitted representation for revising/recasting seniority list with request to place him at serial No.1, on the ground that he was serving in BPS-7 in parent department and in local government he was adjusted in BPS-6. Appellant also filed application on 08.03.2022 for following/maintaining seniority list issued on 16.03.2021. Representation of respondent No. 4 was turned down being time barred. Appellate authority in this respect on 09.05.2022 wrote a letter to A.D LG&RDD that appeal of the appellant being time barred could not be considered.

7. Respondent issued tentative seniority list as stood on 12.05.2022 wherein respondent No.4 was placed at serial No.1 while appellant was at serial No.4. Appellant filed appeal to respondent as a result of which final seniority list was circulate on 09.06.2022 by placing appellant at S.No.2 and respondent No.4 at S.No.15. Respondent No.4 objected the said final list, and his appeal/objection was accepted by D.G LG&RDD Peshawar vide order

ATTESTED

EXAMINER
 Nisbat Haidar Khan
 Service Tribunal
 Peshawar

AD AS




dated 04.10.2022, perusal of which reveals that D.G LG&RDD Peshawar decided to place respondent No.4 at the top of seniority list. He placed his reliance on surplus pool policy in accordance with which when a civil servant is adjusted against a lower post he will be placed at the top of seniority list of that cadre. Relevant para of surplus pool policy is reproduced as follow:

"In case of adjustment against a post lower than his original scale, he shall be placed at the top of the seniority list of that cadre, so as to save him from rendering surplus again & becoming junior or to be juniors."

8. Perusal of surplus pool policy reveals that this para 6(d) was inserted/added vide circular letter No. SOR.VI(E&AD)5-1/2005 dated 15.02.2006 and no retrospective effect was given to this legislation or sub-para. Admittedly, respondent No.4 was adjusted in Local Government Department on 03.02.2003 much before insertion/addition of this para 6(d) of surplus pool policy. At the time of adjustment of respondent No.4 this para was not in field and he can't be benefited from it. Subsequent legislation or rules have no bearing on the case respondent No.4 who was already in service of Local Government Department on 15.02.2006 when circular/letter of 15.02.2006 was issued. It will be or help to the official who now after insertion of this para 6(d) was adjusted after 15.02.2006. Therefore, DG LG&RDD Peshawar has arrayed in wrong by placing respondent No.4 at the top of seniority list.

9. For what has been discussed above, we are unison to accept the appeal in hand as prayed for. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22nd day of December, 2023.

(Signature)
(FARLEHA PAUL)
Member (E)

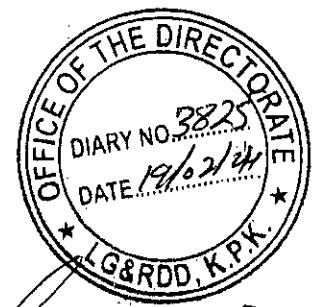
Certified to be true copy
(Signature)
(RASHIDA BAÑO)
Member (J)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Signature)
(RASHIDA BAÑO)
Member (J)

(Signature)

SCANNED BY
KAF 37
Peshawar

C 14



To

The Director General,
Local Government & Rural Development Department,
Khyber Pakhtunkhwa

Subject: **IMPLEMENTATION OF SERVICE TRIBUNAL PESHAWAR JUDGMENT IN APPEAL NO. 1502/2022 DATED 22-12-2023.**

Dear Sir,

I have the honour to the subject noted above and to state that the Khyber Pakhtunkhwa Service tribunal and its judgment date 22.12.2023, has accepted my appeal, and the impugned order dated 04.10.2022 has been set aside, whereby final seniority list dated 09.06.2022 has been restored with all consequential benefits.

From the contents of the judgment the undersigned has been placed on the 2nd of the Final Seniority list whereby the respondent Mr. Allah Noor S/O Ghulam Sarwar has been reverted back to his original seniority and order to be placed at serial no. 15th of the Final Seniority list dated 09.06.2022. Therefore, it is requested that in the light of the judgment of Service Tribunal Peshawar the undersigned may be placed on the 2nd of the Final Seniority list and respondent no. 04 Mr. Allah Noor S/O Ghulam Sarwar, Secretary Village Council District Lakki Marwat may be reverted back to his original seniority and be placed on serial no.15 of the final seniority list as dated 09.06.2022.

In view of the above, it is requested that the undersigned may be considered for promotion for the post of Supervisor (BPS-14) in the light of the decisions taken in DPC meeting dated 05.07.2022.

Thanking you in anticipation.

Your's obediently, 19/02/24

Mr. Naqeeb Ullah
Senior Secretary Village,
Council District Lakki Marwat
Cell No: 0346-9504507

Dated, 19.02.2024

Enclosures:

1. Attested Copy of judgment dated 22-12-2023.
2. Final Seniority list dated 09.06.2022.
3. DPC Letter dated 22.06.2022.

Handwritten signature and scribble at the bottom right of the page.

