


Form- A  
FORM OF ORDER SHEET

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

Implementation Petition No. 310/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.04.2024	<p>The implementation petition of Mr. Akhtar Hussain submitted today by Mr. Saifullah Khalil 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  REGISTRAR</p>

**BEFORE THE WORTHY SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

*Execution*  
**Civil Misc. Petition No. \_\_\_\_\_ /2024**

**IN**

**Service Appeal No. 946 / 2019,**  
**Decided On: 02/02/2024**

**Akhter Hussain**  
**V/S**  
**Govt of KP & Others.**

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**Dated: 25 / 04 / 2024**

**Petitioner**

Through

**SAIF ULLAH KHALIL (SR)**

**Advocate, High Court Peshawar**

1

**BEFORE THE WORTHY SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

~~Execution~~ Petition No. 310 /2024

IN

Service Appeal No. 946 / 2019,  
Decided On: 02/02/2024

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 12375

Dated 25-01-2024

➤ Akhter Hussain S/O Abdul Khaliq Khan R/O Regi Aftezai, Peshawar, ①  
Ex-Look After Superintendent at Pakistan Forest Institute, Peshawar.  
.....Petitioner

**VERSUS**

1. Government of KPK through Secretary Environment Peshawar.
2. Secretary to Government of KPK, Establishment Department Civil Secretariat Peshawar.
3. Director General, Pakistan Forest Institute, Peshawar.

.....Respondents

**Civil Miscellaneous Petition for implementation of the  
Judgment / Order dated: 02/02/2024 of this Honorable  
Tribunal.**

**Respectfully sheweth:-**

The Petitioner submits as under.

1. That the petitioner being appellant filed appeal in respect of his promotion to the post of superintendent BPS-17 which was contested by the respondents & after hearing arguments, this Honorable Tribunal allow the appeal of the appellant vide Judgment / Order dated: 02/02/2024 through which the impugned order dated: 27/05/2019 was set-aside & the case was remanded to the respondents to put the same before Departmental Promotion Committee (DPC) with the direction to consider the case of notional promotion of the appellant under the rules invokes at the occasion before his retirement.  
**(Copy of Appeal is Annex "A" while Copy of Order dated: 02/02/2024 is Annex "B")**
2. That the petitioner submitted above order of this Honorable Tribunal to the respondents but they refused to implement the same but thereafter on 17/04/2024 the petitioner submitted an application along with order of this tribunal for the implementation of the same which is refused.  
**(Copy of Application is Annex "C")**
3. That the respondents are bound to implement the order of this Honorable Tribunal & cannot refuse the same.
4. That the respondents are willfully floating & violating the above order as such needs to be proceeded against.

5. That another similar case of Lakhkar Khan on the same post is already considered by the DPC & he has been given notional promotion through court order, as such the petitioner is also entitle for the same & the respondents cannot refuse it.

It is therefore most humbly prayed that on acceptance this petition, the respondents be directed to implement the order of this Honorable Tribunal in letter & spirit without further delay.

**Dated: 25 / 04 / 2024**

~~Petitioner~~  
THROUGH  
**SAIFULLAH KHALIL (SR)**  
Adv, High Court Peshawar

*A. Hassan*

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**BEFORE THE WORTHY SERVICES TRIBUNAL KPK,**  
**PESHAWAR**

**Civil Misc. Petition No. /2024**

**IN**

**Service Appeal No. 946 / 2019,**  
**Decided On: 02/02/2024**

**Akhter Hussain**

**V/S**

**Govt of KP & Others**

**AFFIDAVIT**

I, **Akhter Hussain S/O Abdul Khaliq Khan R/O Regi Aftezai, Peshawar,** do hereby solemnly affirm & declare on oath that the contents of the instant petition are true & correct to the best of my knowledge & nothing has been concealed from this Honorable Tribunal.

*Akhter Hussain*

**DEPONENT**

**CELL NO:- 0300-5865339**

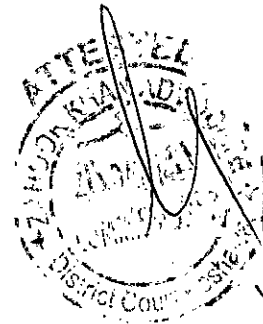
**CNIC NO:- 17301-1344600-7**

**Identified by:**

*Saifullah Khalil*

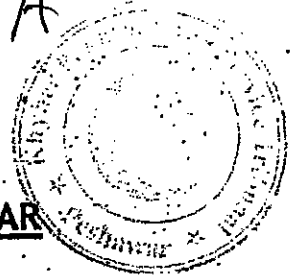
**Saifullah Khalil**

**Advocate, High Court Peshawar**



*25/2/2024*

Annex A



BEFORE THE SERVICES TRIBUNAL PESHAWAR

Service Appeal No: 9416 2019

1. Akhtar Hussain s/o Abdul Khaliq Khan R/O Regi Artizai,  
Peshawar Ex-Look After Superintendent at Pakistan Forest  
Institute Peshawar.

Appellant

VERSUS

1. Government of K.P.K through Secretary Environment Peshawar.
2. Secretary to Govt of K.P,K Establishment Department Civil  
Secretariat Peshawar
3. Director General Pakistan Forests Institute Peshawar.

Respondents

19.5.19  
APPEAL UNDER SECTION 22 OF SERVICE TRIBUNAL ACT AGAINST  
THE ORIGINAL ORDER DATED 30/05/2019 VIDE WHICH THE  
APPELLANT HAS NOT BEEN CONSIDERED FOR PROMOTION TO B.P.S  
17 BY THE RESPONDENTS AND AGAINST THE JUDGMENT /ORDER  
DATED 01/07/2019 OF THE APPELLATE AUTHORITY VIDE WHICH  
THE APPEAL OF THE APPELLANT HAS BEEN DISMISSED.

PRAYER

ON ACCEPTANCE OF THIS SERVICE APPEAL BOTH THE IMPUGENED  
ORDERS MENTIONED ABOVE MAY VERY KINDLY BE SET ASIDE AND  
THE APPELLANT MAY VERY KINDLY BE ORDERD TO BE PROMOTED  
TO THE POST OF SUPERINTENDENT BPS 17 FROM JAN, 2015 ALONG  
WITH ALL BACK BENEFITS TILL 19/01/2019. ( DATE OF HIS  
RETIREMENT)

Respectfully Sheweth:

The Appellant submits as under: -

1. That the Appellant joined the Department of the Respondents as Lower  
Division Clerk on 12/08/1978 and thereafter the appellant was promoted  
from time to time and on 25/01/2001 the appellant was promoted on the

ATTESTED

Signature  
Secretary  
Peshawar

Signature  
Secretary  
Peshawar

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(D)

post of Assistant on BPS 14. (Copy of office order dated 25/01/2001 as annexure A.)

2. That vide office order date 28/09/2016 the appellant was upgrade from BPS-14 to BPS-16. (Copy of office order dated 28/09/2016 is annexure B)

3. That vide office order date 13/10/2016 pay of the appellant was fixed in BPS-16. (Copy of office order dated 13/10/2016 is annexure C.)

4. That there after vide office order dated 6/4/2017 the appellant was given Look after charge of the post of superintendent BPS-17 and since the appellant was serving on the said post and performing the duties of superintendent on BPS-17 but draw the pay of BPS-16. (Copy of office order dated 6/4/2017 is annexure D)


5. That before on his retirement on 17/1/2019 the appellant filed a Writ Petition no 3982-P/2018 against the Respondents to place his case for promotion before the DPC, which was accepted by the Honourable High Court Peshawar vide order dated 11/12/18. (Copy of Writ Petition and order is Annexure as E, E1 Respectively.

6. That two posts of superintendent BPS- 17 were lying vacant with the Respondents since 2014 and the appellant was eligible to be promoted to the said post after performing 5 years' service on BPS -16 as such the appellant, was entitled to be promoted on the said post in the year 2015 but the Respondents Delayed the matter on one or the other pretext.

7. That in this respect the appellant filed a numbers of applications to the Respondents but in vain (Copy of office order dated 6/4/2017 is annexure F)

8. That on the Direction of the High Court case of the appellant was put before the DPC who rejected the same vide order dated 15/5/19 against which the appellant filed a departmental appeal on 30/05/19 which was dismissed vide order dated 01/07/19. Copy of the orders dated 15/5/19 and 01/07/19 are annexure G, H)

9. That having no other alternate remedy the Appellant impugns both the judgments/ Orders before this Honourable Court on the following grounds:

*Attested*  


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## GROUNDS

A. That the act of the Respondents by not promoting the appellant to BPS-17 and their refusal is against the Law and Rules hence untenable.

B. That the appellant has a vested right to be promoted to the post of BPS-17 from the year 2015 as the appellant is the post senior in the seniority List for the said promotion.

C. That the appellant is already performing duties at Look after duty on the post of superintendent BPS-17 and has also fulfilled the entire criteria for promotion as such entitled to be promoted to the said post.

D. That the Respondents are bound to act in accordance with Law and Rules and cannot refuse the rights of the appellant guaranteed by the Law and Rules.

E. That if the appellant is not promoted to the said post the appellant will suffer irreparable Loss as the said post is laying vacant since 2014.

F. That the appellant has already retired from service on 17/01/19 as such he is entitled for promotion since 2015 till the date of retirement along with all back benefits.

G. That Framing of Rules was the responsibility of the Respondents on this practice the appellant cannot be deprived from his vested of promotion.

H. That even if the entire department of the appellant was on deputation to the provincial Govt which is there after absorbed by it promotion to the appellant cannot be refused keeping in waive the rule of estoppel and principle of Locus ponetentia.

I. That during the absorption period the Respondents have promoted their employees. (Copies are annexure I.)

J. That any other points/ Grounds would be raised at the time of arguments with the prior permission of this Honourable Court.

Abdullah  
Khan



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O  
B

It, is there for most humbly prayed that on acceptance of this service appeal both the impugned orders mentioned above may very kindly be set aside and the appellant may very kindly be orderd to be promoted to the post of superintendent bps- 17 from jan,2015 along with all back benefits.

Date: 11 /07/2019

appellant

Through

Saif Ullah Khalil (Senior)  
Advocate, High Court Peshawar

**CERTIFICATE:**

Certified that no such like service appeal has earlier been filed before this Honourable Court for the same petitioners.

Advocate

**LIST OF BOOKS:**

1. Book of Services Law
2. Any other Book as per Need.

Certified to be true copy

Signature of Advocate  
Saif Ullah Khalil  
Advocate, High Court Peshawar

Date of Presentation 15/3/24

Number of Words 4-p

Copying Fee 20/-

Urgent 5/-

Total 25/-

Name of Appellant

Date of Completion 15/3/24

Date of Draft 15/3/24

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.946/2019

BEFORE: MRS. RASHIDA BANO. .... MEMBER(J)  
MR. MUHAMMAD AKBAR KHAN... MEMBER(E)Akhtar Hussain S/o Abdul Khaliq Khan R/o Regi Aftizai, Peshawar Ex-  
Look after Superintendent at Pakistan Forest Institute Peshawar.

.... (Appellant)

VERSUS

1. Government of K.P.K through Secretary Environment Peshawar.
2. Secretary to Govt of K.P.K, Establishment Department Civil Secretariat, Peshawar.
3. Director General, Pakistan Forest Institute Peshawar.

.... (Respondents)

Mr. Saifullah Khalil  
Advocate

.... For appellant

Mr. Muhammad Jan  
District Attorney

.... For respondents

Date of Institution..... 16.07.2019  
Date of Hearing..... 02.02.2024  
Date of Decision..... 02.02.2024

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:

“On acceptance of this service appeal both the impugned orders may very kindly be set-aside and the appellant may very kindly be ordered to be promoted to the post of Superintendent BPS-17 from Jan, 2015 along with all back benefits till 17.01.2019. (Date of his retirement).”

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

2. Brief facts of the case as given in the memorandum of appeal are that appellant was appointed as Lower Division Clerk on 15.09.1998 and thereafter, the appellant was promoted to the post of Assistant on 25.01.2001.

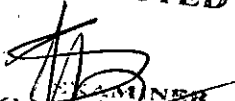
The post of Assistant was upgraded from BPS-14 to BPS-16 vide order dated 28.09.2016. On 17.01.2019 the appellant filed writ petition No. 3982-P/2018 against the respondents to place his case for promotion before the DPC, which was accepted by the Hon'ble High Court Peshawar, vide order dated 11.12.2018. Upon the direction of court order promotion case of the appellant was put before the DPC who rejected the same vide order dated 15.05.2019 against which appellant filed departmental appeal on 30.05.2019 which was dismissed vide order dated 01.07.2019, 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 appellant has not been treated in accordance with law and rules. He further argued that the appellant has a vested right to be promoted to the post of Superintendent BPS-17 from the year 2015 as the appellant is the senior most in the seniority list. That the appellant had already performed duty as Superintendent and also held entitled for the promotion of the said post. Lastly, he submitted that appellant was retired from service on 17.01.2019 as such he is entitled for promotion since 2015 till the retirement alongwith all back benefits.

5. Conversely, learned District Attorney contended that appellant had been treated in accordance with law and rules. He further contended that PFI was declared as attached department of Environment and on 09.01.2018 all the employees including the appellant were provincialized u/s 11-B of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015. He further contended that due to devolution of PFI, all the appointments and promotion was become defunct to the extent of PFI, therefore, promotion case of the appellant could not be made. Appellant filed Writ petition which decided on 11.12.2018

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

wherein respondents were directed to place the promotion case of the appellant before DPC, if he otherwise deserved to be promoted. His case was placed before the DPC, wherein the committee considered his case and observed that all the employees of PFI including the appellant were on deputation to Khyber Pakhtunkhwa province u/s 10 of Civil Servants Act, 1973 as the appellant was retired from service as federal government employee on 17.01.2019 whereas service rules of PFI were notified on 16.04.2019, therefore, the DPC did not find him fit for promotion as Superintendent (BPS-17).

6. Perusal of record reveals that appellant was serving in respondent/department after his appointment as lower division clerk on 15.09.1998 who was firstly promoted as Assistant BPS-14 on 25.01.2001 whose post was upgraded in BPS-16 vide order dated 13.10.2016. Appellant was given look after charge of the post of superintendent BPS-17 on 06.4.2017. Appellant before his retirement on 17.01.2019 filed writ petition bearing No.3982-P/2018 for placing his case for promotion before DPC which was accepted vide order dated 11.12.2018 upon direction of High Court, case of the appellant was placed before DPC on 15.05.2019 which was rejected and appellant was not consider for promotion on the ground all employees of PFI were on deputation to Khyber Pakhutnkhwa Province under Section 10 of Civil servant Act, 1973. The appellant/official retired on 17.01.2019 on superannuation whereas service rules of PFI were notified on 16.04.2019 and these rules are not applicable to employees who retired before notification of the service rules of PFI.

7. It is admitted position that respondent/department devolved upon the province of Khyber Pakhtunkhwa, in the year 2011, but on account of none framing of service rules by the Province, the appellant case for promotion was not considered. However, it is admitted fact that before framing of Provincial


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*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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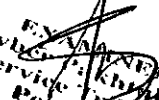
Rules, the services of the appellant was governed by the previous rules framed by the Federal Government. Under such circumstance, when the right of promotion has accrued to the appellant, when he was in service and that time, the rules framed by the Federal Government were in field. He applied for his promotion in terms of the rules applicable to him at that time, but with no response, despite directions of the High Court and stood retired from service on 17.01.2019.

8. The record reveals that appellant had already attained the status of a permanent employee, absorbed employee, on account of implication of law before order of Worthy Peshawar High Court, Peshawar dated 11.12.2018 and the Rules invogue at the occasion of judgment of Worthy Peshawar High Court, Peshawar but the Departmental Promotion Committee did not consider the appellant's case in view of the same rules, which were the proper rules on the subject. Therefore, the appeal in hand is accepted by setting aside the impugned decision of the Departmental Promotion Committee (DPC) dated 27.05.2019 and remand the case to the DPC with direction to consider the case of notional promotion of the appellant under rules in vogue at the occasion before his retirement accordingly. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of February, 2024.

  
(MUHAMMAD) AKBAR KHAN  
Member (E)

  
(RASHIDA BANO)  
Member (J)

Certified to be true copy  
Kaleemullah  
By:   
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 07-2-2024  
Number of Words P-4  
Copying Fee 20/-  
Urgent \_\_\_\_\_  
Total 20/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 27-02-2024  
Date of Delivery of copy 27-02-2024

14.02.2023 1. Clerk of counsel for the appellant present. Mr. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Lawyers are on general strike, therefore, case is adjourned. To come for arguments on 02.02.2024 before D.B. P.P given to the parties. Shakil

(Muhammad Akbar Khan)  
Member (E)

(Rashida Bano)  
Member (J)

SCANNED  
BY  
PESHAWAR  
\*KaleemUllah

**ORDER**

02.02.2024 1 Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present..

2. Vide our detailed judgement of today placed on file, by setting aside the impugned decision of the Departmental Promotion Committee (DPC) dated 27.05.2019 and remand the case to the DPC with direction to consider the case of notional promotion of the appellant under rules in vogue at the occasion before his retirement accordingly. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2<sup>nd</sup> day of February, 2024.*

(Muhammad Akbar Khan)  
Member (E)

(Rashida Bano)  
Member (J)

13 Anwar e

کودست صفحات ڈائریٹر جنرل صحت پاکستان کا رجسٹر الیٹریٹ لگام

سوال :- پروموشن کیسٹس آف پیپر انڈسٹریز 17 BPS

مدعا ہے گڈ اڈیشن کہ عدالت محسوس ٹریبونل کے  
ڈیٹا 18/8/2024 کو میرے حق میں سرجیل سنایا گیا تھا۔ تم درخواست  
گڈ اڈیشن 17 BPS میں پروموشن دی جائے۔ کیس جٹا والا  
18/8/2024 سے کیس آر آر تک عدالت کا سرجیل / complement ایس  
ہو۔ کیس آر آر سے التعماء ہے۔ تم میرے BPS-17 کا Fraction  
آر آر کے لئے مشکور فرمائیں۔

Dairy No: 201  
Dated: 17-4-2024  
Director General Office  
PFI, Peshawar

8 No

تم جفا کبیر

17/4/2024

ایم آر جسٹس خٹک

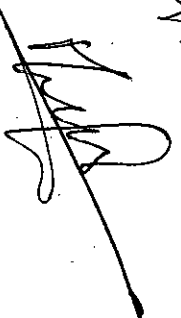
سابقہ ڈائریٹر انڈسٹریز




پاکستان کا رجسٹر الیٹریٹ لگام

نوٹ: عدالت کا سرجیل درخواست

کے ساتھ منسلک ہے =

PKM/24



قیمت 50 روپے	39001	پشاور بار ایسوسی ایشن، خیبر پختونخواہ
ایڈوکیٹ: <u>سعید اللہ خیل</u>	بار کونسل ایسوسی ایشن نمبر: <u>BC 10-7499</u>	  
رابطہ نمبر: <u>0313-5941481</u>		

بعدالت جناب: مسردیس ٹریبیونل خیبر پختونخواہ پشاور

مخاتب: <u>Petitioner</u>	دعویٰ: <u>CM No 124</u>
<u>اختر حسین</u>	علت نمبر: _____
<u>بنام</u>	منورخص: _____
<u>حکومت KP</u>	جرم: _____
	تھانہ: _____

### باعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
 آن مقام پشاور کیلئے سعید اللہ خیل، فرمان خیل کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کال اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر حالت و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرائی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

PESHAWAR BAR ASSOCIATION  
 KHYBER PAKHTOONHWA

المرقوم: 25/04/2024

الع ہد گواہ شد الع ہد  
 مقام پشاور کے لیے منظور ہے۔