


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 321/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.04.2024	<p>The implementation petition of Mr. Falak Naz Khan 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 KPK SERVICE TRIBUNAL, PESHAWAR

Execution Petition M. No. 321 / 2024

Falak Naz Khan

versus

DEO (M) & Others

**APPLICATION FOR HEARING OF THE SUBJECT
EXECUTION PETITION AT THE PRINCIPAL SEAT AT
PESHAWAR:**

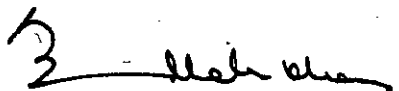
Respectfully Sheweth,

1. That the applicant filed the subject Execution Petition before this hon'ble Tribunal today.
2. That R. No. 02 and 03 hails at Peshawar, furthermore, the main appeal was decided before this hon'ble Tribunal at Principal seat, so it will be convenient to hear the Subject Execution Petition at Principal Seat too.

It is; therefore, most humbly prayed that the application be accepted as prayed for.

Applicant

Through



Saadullah Khan Marwat

Advocate

Dated 29-04-2024

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Execution

Misc Pett: No. 321 /2024

IN

S.A. No. 832/2022

Falak Naz Khan

versus

DEO (M) & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-3
2.	Copy of Appeal dated 17-05-2022	"A"	4-7
3.	Copy of Judgment dated 30-01-2024	"B"	8-13
4.	Compliance letter dated 11-03-2024	"C"	14

Applicant

Through



(Saadullah Khan Marwat)
Advocate

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 26-04-2024

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR*Execution*
Misc Pett: No. 321 /2024

IN

S.A. No. 832/2022

Falak Naz Khan S/O Qadir Khan,
Laboratory Attendant, GHS No. 03,
BannuKhyber Pakhtunkhwa
Service TribunalDiary No. 12483Dated 30/4/24
Appellant

VERSUS

1. District Education Officer (M),
Elementary & Secondary
Education Department,
Bannu.
2. Director, Elementary & Secondary
Education Department, GT Road
Hashtnagri, Peshawar City.
3. Secretary, Government of KP
Elementary & Secondary
Education Department, Civil
Secretariat, Peshawar Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
JUDGMENT DATED 30-01-2024 OF THE HON'BLE
TRIBUNAL, PESHAWAR:**

Respectfully Sheweth:

1. That 17-05-2022, applicant filed Service Appeal before this hon'ble Tribunal for promotion to the post of Junior Clerk with effect from 14-03-2020 with all service benefits. (Copy as annex "A")

2. That the said appeal came up for hearing on 30-01-2024 and then the hon'ble Tribunal was pleased to hold that:-

"We are unison to direct the respondents to consider appellants in quota reserved for promotion of Class-IV employees for the posts of Junior Clerk on the basis of their seniority like other employees from date when they were considered for it for the first time". (Copy as annex "B")

3. That on 11-03-2024, applicant as well as Registrar of the hon'ble Service Tribunal remitted the judgment to respondents for compliance but so far 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.

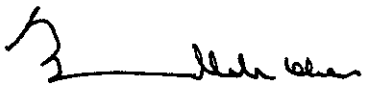
It is, therefore, most humbly requested that the judgment dated 30-01-2024 of the hon'ble Tribunal be complied with hence forthwith.

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: 26-04-2024

AFFIDAVIT

I, Falak Naz Khan S/O Qadir Khan, Laboratory Attendant, GHS No. 03, Bannu (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.

Falak Naz Khan

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.

20/11/2013
[Signature]
ADVOCATE



Respected Sir:

1. That appellant has into his credit the education qualification up to FA. (Copy as annex "A")
2. That on 10-02-1996, appellant was appointed as Laboratory Attendant and is performing his official duties for the last 27 years as such. (Copy as annex "B")
3. That on 18-07-2019, the Government of KP issued Notification where amendment was brought in KP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 where method of appointment and promotion to the post of Junior Clerk was made / enumerated:-
 - a. Forty (40%) by promotion, on the basis of seniority-cum-fitness, from amongst Daftaries, Gestetner, Operators, Qasids and Naib Qasids including holding of other equivalent post in the Secretariat with two (02) years services as such, who have passed FA / F. Sc examination or its equivalent qualification from a recognized Board; and
 - b. 60% by initial recruitment. (Copy as Annex "C")

Here it would be not out of place to mention that condition of typing skill / knowledge is not applicable for Class-IV seeking promotion to the post of Junior Clerk B-11 against 33% reserved quota.
4. That on 31-01-2020, Final Seniority List of Class-IV for promotion to Junior Clerk in district Bannu was maintained. Name of appellant was figured at S. No. 15, while name of Taj Murad was figured at S. No. 58 appointed on 24-04-1998 and of R. No. 05 Hameed Ullah Khan at S. No. 105 appointed on 30-08-2009. (Copy as Annex "D")
5. That on 14-03-2020, R. No. 04 and 05 were promoted to the post of Junior Clerks against law and rules, being most juniors. (Copy as Annex "E")
6. That on 20-04-2020, appellant submitted representation before R. No. 02 which met dead response. (Copy as annex "F")

Asif

7. That on 08-06-2020, appellant then filed Writ Petition before Peshawar High Court, Bench Bannu for setting aside of the impugned Notification order dated 14-03-2020 and to promote him to the post of Junior Clerk. (Copy as Annex "G")
8. That on 16-04-2021, R. No. 03 issued memo whereby it was held that no condition of typing test exists for the promotion of Class-IV employees as per letter dated 26-11-2018 of the Regulation Wing of Establishment Department. (Copy as annex "H")
9. That the said Writ Petition came up for hearing on 20-04-2022 and then the hon'ble Bench was pleased to direct appellant to approach before Service Tribunal in accordance with law. (Copy as annex "I")

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

GROUND S.

- a. That in the seniority list dated 31-01-2020 name of appellant was figured at S. No. 15, while that of R. No. 04 and 05 at S. No. 58 and 105, meaning thereby that appellant is much senior than the promoted respondents.
- b. That method of promotion is enumerated in the rules, seniority-cum-fitness. No reason for non promotion to the appellant was ever given. Thus R. No. 04 and 05 was promoted to the post of Junior Clerk with closed eyes and against the rules.
- c. That extra ordinary favoritism was shown to R. No. 04 and 05 in promotion because the matter was not dealt with as per the mandate of law.
- d. That no limitation ever runs against factum of promotion, seniority and money matter. The promotion of R. No. 04 and 05 was based on favoritism as well as with malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 14-03-2020 of R. No. 01 promoting R. No. 04 and 05 to the post of Junior Clerks be set aside and appellant be promoted to the post of Junior Clerk with effect from 14-03-2020 with all service benefits.

Ades


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Appellant

Through

[Handwritten signature]

Saadullah Khan Marwat

[Handwritten signature]

Arbab Saiful Kamal

[Handwritten signature]

Amjad-Nawaz

Advocates

Dated: 16-05-2022

CERTIFICATE:

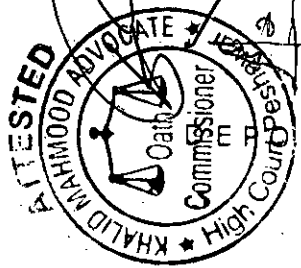
As per instructions of my client, no such like Service Appeal has been earlier filed by the appellant before this Hon'ble Tribunal.

[Handwritten signature]

Advocate

AFFIDAVIT

I, Falak Naz Khan S/O Qadir Khan, Laboratory Attendant, GHS No. 03, Bannu (appellant), do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief



[Handwritten signature]

B 8

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 832/2022



BEFORE: MRS. RASHIDA BANO ... MEMBER (M)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (M)

Falak Naz Khan S/o Qadir Khan, Laboratory Attendant, GHS No.03,
Bannu. (Appellant)

VERSUS

1. District Education Officer (M), Elementary & Secondary Education Department, Bannu.
2. Director, Elementary & Secondary Education Department, GT Road Hashtnagri, Peshawar City.
3. Secretary, Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Taj Murad, Junior Clerk, Office of DEO (M), Bannu.
5. Hameed Ullah Khan, Junior Clerk, GHSS Abdul Hameed Noor JaniKhel, Bannu.

.... (Respondents)

Mr. Arbab Saiful Kamal
Advocate ... For appellant

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

Date of Institution.....17.05.2022

Date of Hearing.....30.01.2024

Date of Decision.....30.01.2024

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:

“It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 14.03.2020 of R.No.01 promoting R.No.4& 05 to the post of Junior Clerk be set-aside and appellant be promoted to the post of junior clerk with effect from 14.03.2020 with all service benefits.”

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

(9)

2. Through this judgment, we intend to dispose of instant service appeal as well as service appeal No:833/2022 titled "Afsar Ali Shah Vs Education Department" as in both the appeals common questions of law and facts are involved.
3. Brief facts of the case, as given in the memoranda of appeals, are that appellants are the Class-IV employees of the Education Department who were appointed on 10.02.1996 & 01.12.1993 respectively and having high qualification and quality service record at their credit. That on 31.02.2020 final seniority list of Class-IV employees for promotion to the post of Junior Clerk was issued wherein name of the appellants were rightly mentioned at Sr. No.11 & 15 while name of private respondents No.4 at serial No.58 and R. No.5 at serial No.105 respectively. Thereafter, on 14.03.2020 respondents issue promotion order wherein juniors to the appellants were promoted to post of Junior Clerks and appellants were ignored. Appellants filed departmental appeals, which were not responded, Then appellants filed writ petition No.525-B/2020 before Hon'ble Peshawar High Court, Bannu Bench, which was decided on 20.04.2022 with direction to approach Service Tribunal, hence the present service appeal.
4. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellants in their appeals. We have heard arguments of learned counsel for the appellants and learned Deputy District Attorney and have gone through the record with their valuable assistance.
5. Learned counsel for the appellants argued that appellants had not been treated in accordance with law and rules and respondents violated

ATTIESTED

EXAMINER
Peshawar High Court

Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued promotion orders of private respondents issued against the law and rules hence liable to be set aside. He submitted that extraordinary favoritism was show in promotion of private respondents because the matter was not dealt with in accordance with law. Lastly, he submitted that no limitation runs against the matter of promotion, seniority and financial matter, hence instant appeal might be accepted.

6. Conversely, learned Deputy District Attorney contended that appellants had been treated in accordance with law rules. He further contended that it was the responsibility of the appellants to submit application for correction in the tentative seniority list within time, but they failed to so. He further contended that respondent No.1 informed all Class-IV employees for typing test in which appellants had failed and private respondents passed the test, hence they were promoted. Lastly he submitted that appeals of the appellants are time barred, hence dismissed with costs.

7. Perusal of record reveals that appellants were appointed on 10.02.1996 & 01.12.1993 as chowkidar Class IV in the respondent/department and are serving with full devotion. Appellants done their F.A in the year 2005, Government of Khyber Pakhtunkhwa issued policy/rules for recruitment and promotion of employees if respondent/department on 8 July, 2014 which was amended on 18.07.2019. Method of appointment to the post of junior Clerk BPS-

It was given in the following manner;

ATTESTED
Deputy District Attorney
Khyber Pakhtunkhwa
Service Tribunal

(113)

(a) Forty per cent by promotion, on the basis of seniority-cum-fitness, from amongst Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts in the Secretariat with two years of service as such. Who have passed FA/F.Sc examination or its equivalent qualification from a recognized Board; and

(b) sixty per cent by initial recruitment.

Note: For the purpose of promotion, there shall be maintained a common seniority list of Daftaries, Gestetner Operators, Qasids, Naib Qasids etc. with reference to the dates of their acquiring the FA/F.Sc qualification:

Respondent No.4 & 5 were appointed on 24.04.1998 and 30.08.2009 respectively but they were rightly placed at Serial No.58 & 105, junior to the appellant in seniority list of Class-IV employees by placing appellant at Sr. No.11 & 15 respectively. Respondent/department vide order dated 14.03.2020 promoted respondent No.4 & 5 despite being juniors to the appellants. Appellants approached worthy High Court wherein direction was given to approach this tribunal.

8. Main contention of the appellants is the requirement of typing test having 30 words per minute is not meant for Class-IV employees and only condition for them is having qualification of F.A/F.Sc and seniority cum-fitness.

9. Appellants in this respect referred to letter dated 6.01.2021 bearing No. E&AD(152)2021/APCA by administration department to Secretary to Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department with subject of "Application for Class-IV promotion and the condition of typing test, wherein it is mentioned that no condition of typing test exists for promotion of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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Class-IV employees. Therefore, instruction contained in the letter dated 26.11.2018 of Regulation Wing Establishment Department may be followed in its letter and spirit while making promotion of Class-IV.

10. Perusal of letter dated 26.11.2018 reveals that the amended Service Rules for ministerial staff of Elementary & Secondary Education Department vide Notification No.SO(PE)4-10SSRC/Ministerial Staff:2013 dated 2nd August 2017 are silent with regard to the condition of typing skill/knowledge. As such the condition of typing skill/knowledge is not applicable for Class-IV seeking promotion to the post of Junior Clerk (BS-11) against 33% reserved quota. The posts are to be filled strictly in accordance with the method of appointment, qualification and other conditions applicable to a post as laid down in the relevant Service Rules frame under Rule-3 (2) of Khyber Pakhtunkhwa Civil Servants (Appointments Promotion & Transfer) Rules, 1989.

Respondents themselves by following instruction contained in letter dated 06.01.2021 and 26.11.2018 promoted vide order dated 4.12.2023,

“Amin ullah Khan S/O Khair Muhammad Khan, Chowkidar

Anwarullah Khan S/O Amanullah Khan, Chowkidar

Mashal Khan S/O Asaf Khan, Chowkidar

Sanaullah S/O Ghulam Rasool, Naib Qasid

Nasir Ali Khan S/O Mir Azad Khan, Chowkidar

Abdul Samad Khan S/O Abdul Qayum Khan, Chowkidar

Umer Ayaz S/O Muhammad Ayaz, Naib Qasid

Wali Khan S/O Gul Mir Khan, Chowkidar

Rahim Bad Shah S/O Rehman Shah, Lab: Attendant

Ghafar Ali Khan S/O Zerdad Khan, Lab: Attendant

Muhammad Ishaq S/O Sultan Shah, Chowkidar”

TESTED
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

and provide cushion period of six months for improving their typing skill and speed vide promotion/appointment notification by mentioning;

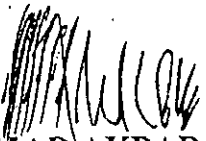
“3. They will be bound to obtain certificate the effect that they will have achieved the type/computer knowledge within six months from the date of issuance of promotion order.”


In this appointment order there is no mention of typing speed of 30 words per minute and factum of acquiring knowledge of typing is mentioned.

11. We are of the view that appellants are not treated fairly like appointees of order dated 04.12.2023. Therefore, they being seniors also deserved the same treatment under law, otherwise too in notification dated 18.7.2019 cushion period for acquiring educational qualification was given to Class-IV employees what to say about the typing speed of 30 words per minutes.

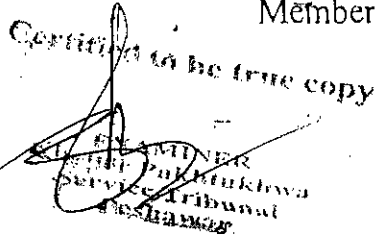
12. For what has been discussed above we are unison to direct the respondents to consider appellants in quota reserved for promotion of Class-IV employees for the posts of Junior Clerk on the basis of their seniority like other employees from date when they were consider for it for the first time. Costs shall follow the event. Consign.

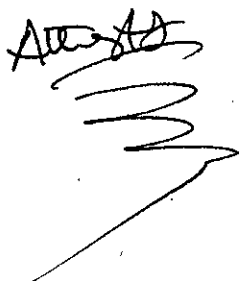
13. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30th day of January, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan

Certified to be true copy

MEMBER
Peshawar
Service Tribunal
Peshawar



To

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14-03-24
Zee/sum

- 1) District Education Officer (M)
Elementary & Secondary Education
Department, Bannu.
- 2) Director, Elementary & Secondary Education
Department, Peshawar.

APPLICATION FOR COMPLIANCE OF
THE JUDGMENT DATED 30.01.2024 OF
THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR
PASSED IN S.A.NO. 832/2022 IN ITS TRUE
LETTER AND SPIRIT.

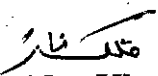
Respected Sir,

Please comply with the order dated 30.01.2024 of the Hon'ble
Khyber Pakhtunkhwa Services Tribunal, Peshawar in S.A.No.832 /2022 in
its letter and spirit without fail and obliged. (Certified copy attached)

Thanking you, Sir

Dated: 11.03.2024

Applicant


Falak Naz Khan
s/o Qadir Khan
Laboratory Attendant
GHS No. 3, Bannu
Cell: 0333-9727661

