


Form- A  
FORM OF ORDER SHEET

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

Implementation Petition No. 313/2024

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. Basharat Qayyum submitted today by Syed Asif Shah 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. Parcha Peshi given to counsel for the Petitioner.</p> <p style="text-align: right;">By the order of Chairman  <b>REGISTRAR</b></p>

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

Implementation Petition No 313 A of 2024

IN

Service appeal No 1304 of 2022

Basharat Qayyum..... **Petitioner**

**VERSUS**

Chairman Khyber Pakhtunkhwa Environmental  
protection Tribunal Peshawar etc.

..... **Respondents**

**IMPLEMENTATION PETITION**  
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Dated 19.04.2024

*Basharat Qayyum*

**BASHARAT QAYYUM**  
**PETITIONER**

Through

*Syed Asif Shah*

**SYED ASIF SHAH**  
**ADVOCATE HIGH COURT**  
**MANSEHRA**

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

Implementation Petition No. 313 / of 2024

IN **Khyber Pakhtunkhwa  
Service Tribunal**

Service appeal No 1304 of 2022

Diary No. 12396

Dated 25/4/24

Basharat Qayyum son of Abdul Qayyum Bailif  
 BPS-03 resident of Swati House PMA Road Bilal  
 Town House No. CB41 Street No. 15 Abbottabad  
 Cant Tehsil & District Abbottabad  
 ..... **Petitioner**

**VERSUS**

- (1) Chairman Environmental protection  
Tribunal Khyber Pakhtunkhwa Peshawar.
- (2) Registrar Environmental protection Tribunal  
Khyber Pakhtunkhwa Peshawar.

..... **RESPONDENTS**

**PETITION FOR IMPLEMENTATION OF ORDER**  
**DATED 13.12.2023 PASSED BY THIS HON'BLE**  
**TRIBUNAL IN SERVICE APPEAL NO. 1304 OF**  
**2022 WHEREBY RESPONDENTS Are DIRECTED**  
**TO REINSTATED THE PETITIONER WITH ALL**  
**BACK BENEFITS AND ALSO PROCEED AGAINST**  
**THE RESPONDENTS FOR NON COMPLIANCE OF**  
**TRIBUNAL ORDER.**

Respectfully sheweth!

- 1) That, petitioner filed the above titled service appeal before this Hon'ble Tribunal against impugned order.
- 2) That, the above mentioned service appeal was accepted as prayed for vide Judgment and order 13.12.2023.

**(Attested copy of Judgment dated 13.12.2023 annexed as annexure "A").**

- 3) That, after obtaining the attested copies of Judgment petitioner approach the respondents by filing the application and given the copies to respondents for implementation, respondents receive the application and Judgment copies, but so far, after passage of sufficient long time, the respondents never issue the reinstatement order nor obey the Judgment of the Honourable tribunal, which is clear cut violation of the Judgment/order of the this Honourable Tribunal .

**(copy of application annexed as annexure "B").**

- 4) That, feeling aggrieved, petitioner having no other remedy is filing the instant petition for implementation.

**PRAYER:**

It is therefore most humbly prayed that on acceptance of the instant implementation petition, the respondents be directed to implement the order/Judgment dated **13.12.2023** passed by this Hon'ble tribunal, if the respondent not implement the order/Judgment of this Honourable Tribunal, than the contempt proceedings be initiated against him.

**Dated 19.04.2024**

  
**BASHARAT QAYYUM  
PETITIONER**

Through

  
**SYED ASIF SHAH  
ADVOCATE HIGH COURT  
MANSEHRA**

(Affidavit)

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

Implementation Petition No \_\_\_\_\_ A of 2024  
IN  
Service appeal No 1304 of 2022

Basharat Qayyum..... **Petitioner**

**VERSUS**

Chairman Khyber Pakhtunkhwa Environmental  
protection Tribunal Peshawar etc.

..... **Respondents**

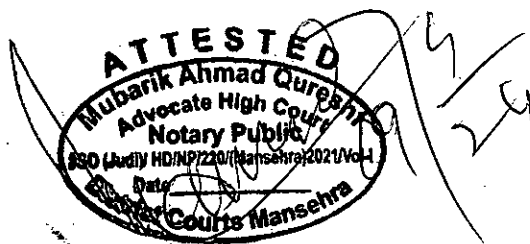
**AFFIDAVIT!**

I, Basharat Qayyum son of Abdul Qayyum Bailif  
BPS-03 resident of Swati House PMA Road Bilal  
Town House No. CB41 Street No. 15 Abbottabad  
Cant Tehsil & District Abbottabad do hereby  
undertake/solemnly affirm that the contents of  
fore-going contempt of court petition are true  
and correct to the best of my knowledge and  
belief and nothing has been concealed or  
suppressed from this Honorable court

**Dated :19.03.2024**

  
Basharat Qayyum

**(DEPONENT)**  
CNIC 13503-7213159-5



Judgment

Answer (A)

(5)

**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**



Service appeal No <sup>304</sup> \_\_\_\_\_ of 2022

Basharat Qayyum son of Abdul Qayyum  
Bailiff BPS-03 resident of Swati House PMA  
Road Bilal Town House No. CB41 Street No.  
15 Abbottabad cant Tehsil & District  
Abbottabad.....**Appellant**

**VERSUS**

- 1) Chairman Environmental Protection  
Tribunal, Khyber Pakhtunkhwa,  
Peshawar.
- 2) Registrar Environmental Protection  
Tribunal, Khyber Pakhtunkhwa,  
Peshawar.

.....**Respondents**

**APPEAL UNDER SECTION 4 OF KPK**  
**SERVICE TRIBUNAL, ACT, 1974 AGAINST**  
**THE IMPUGNED ORDER NO. 694/ADMIN**  
**DATED 11.05.2022 WHEREBY THE**  
**MAJOR PENALTY WAS IMPOSED ON THE**  
**APPELLANT BY RESPONDENT NO. 01**

**ATTESTED**  
  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

S.A 1304/2022

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15<sup>th</sup> Dec. 2023 01. Mr. Muhammad Anwar Khan Lughmani, Advocate  
appellant present. Mr. Asif Masood Ali Shah, Deputy District  
Attorney for the respondents present. Arguments heard and record  
perused.

02. Vide our detailed judgment consisting of 06 pages in  
connected Service Appeal No. 1237/2022, titled "Ahsan Hussan  
Khan Versus Chairman, Khyber Pakhtunkhwa Environmental  
Protection Tribunal , Peshawar", the service appeal in hand is  
allowed as prayed for. Cost shall follow the event. Consign.

03. Pronounced in open court at Camp Court, Abbottabad and  
given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of  
December, 2023.

  
(FAREEHA PAUL)

Member (E)  
Camp Court, Abbottabad



(SALAH-UD-DIN)  
Member (J)  
Camp Court, Abbottabad

\*Fazle Subhan, P.S\*

Certified to be true copy

PAKISTAN  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 01-02-2024  
Number of words Page 2  
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Urgent  
Total 25/-  
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Date of Completion 01-02-24  
Date of Delivery 01-02-24



7

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**CAMP COURT ABBOTTABAD.**



Service Appeal No. 1237/2022

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Ahsan Hussan Khan son of Santaraz, resident of Mian Abad Baffa,  
Tehsil and District Mansehra. .... (Appellant)

Versus

1. Chairman, Khyber Pakhtunkhwa Environmental Protection  
Tribunal, Peshawar. .... (Respondent)

Mr. Muhammad Anwar Khan Lughmani,  
Advocate ... For appellant


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

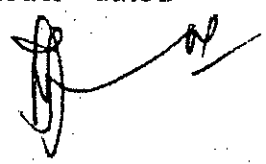
Date of Institution..... 22.08.2022  
Date of Hearing..... 13.12.2023  
Date of Decision..... 13.12.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** Through this single judgment, we intend to dispose of instant service appeal as well as connected Service Appeal No. 1304/2022 titled "Basharat Qayyum Versus Chairman Environmental Protection Tribunal, Khyber Pakhtunkhwa, Peshawar and others", as in both the appeals common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 11.05.2022, whereby the appellant was removed from service. It has been prayed that on acceptance of the appeal, the impugned order dated

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar




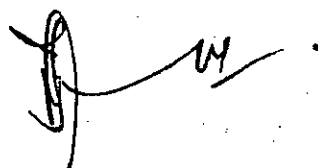


11.05.2022 might be set aside and the appellant to be reinstated into service with all back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant applied for the post of Naib Qasid against a vacant post advertised in daily newspaper Mashriq on 03.08.2018. After codal formalities, he was short listed and was called for interview before the Selection Committee on 31.10.2018. In pursuance of the recommendation of Departmental Selection Committee vide its meeting dated 28.10.2018, the competent authority appointed the appellant, alongwith others. He assumed the charge on 13.05.2019 and started performing his duties. After three years, a newly appointed Chairman issued a show cause notice to the appellant on 01.03.2022 with the allegation that his appointment was as a result of nepotism and favoritism. The appellant replied the same within the specified time and denied the allegations but the respondents without considering his reply and citing any reason, straightaway imposed major penalty of removal from service on him vide order dated 11.05.2022. Feeling aggrieved, the appellant filed a departmental appeal which was kept pending till filing of the instant service appeal on 22.08.2022.

4. Respondent was put on notice who submitted his reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondent and perused the case file with connected documents in detail.

**ATTESTED**  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar




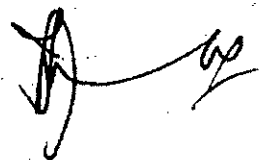
(9)

5. Learned counsel for the appellant, after presenting the case in detail, argued that before passing the impugned order, it was incumbent upon the respondent to appoint the inquiry officer to probe into the allegations but no such inquiry was conducted and the appellant was penalized for the fault which was not attributable to him. He further argued that final show cause notice was not issued to the appellant which was mandatory under the law. He further argued that the impugned order was illegal, unlawful, without jurisdiction, based on malafide and having no legal effect and hence was liable to be set aside. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was the co-villager of the appointing authority and his appointment was the outcome of favoritism, nepotism and conflict of interest. He further argued that due process of law and codal formalities were not fulfilled in his appointment. According to him, the Environmental Protection Tribunal was permanently at Peshawar and Naib Qasid should have been a local while the appellant belonged to District Mansehra. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the Khyber Pakhtunkhwa Environmental Protection Tribunal advertised various posts in daily Mashriq, which interalia included the post of Naib Qasid also. Applications were invited from candidates from the Khyber Pakhtunkhwa and qualification for the post was mentioned as literate in the

ATTESTED  
  
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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



(10)

advertisement. The appellant applied for the post of Naib Qasid and, after fulfilling the required process, was selected and appointed vide an order dated 30.04.2019. On 01.03.2022, he was served with a show cause notice, serial No. 5, 6 & 7 of which is reproduced as follows:-

"5) *AND WHEREAS you being class-iv employee your appointment is against the provisions of section 12(3) Civil Servants (Appointment, Promotion & Transfer) Rules 1989, as you are non local and no reasons have been given as to why locals were rejected.*

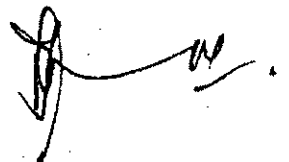
6) *AND WHEREAS the post of Naib Qasid in the EPT Peshawar is not transferable.*

7) *AND WHEREAS in addition to the above you are close co-villager rather living in the neighborhood of the authority under whose signature being Chairman of the DSC, you were appointed and thus your very appointment is the result of favoritism and nepotism which is gross violation of the service & appointment Rules."*

8. First of all, we take up serial No. 5 of the showcause notice according to which appointment of the appellant is against the provisions of Section 12 (3) of Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and that he is a non-local. If we look at the advertisement, there is no mention of the district of candidates who should apply for the post of Naib Qasid, rather applications have been invited from the entire province of Khyber Pakhtunkhwa. Secondly, when we go through Rule 12(3), it appears that it is meant for recruitment to the posts in Basic Pay Scales 1 and 2 or equivalent to be made on local basis. In this case, the post

ATTESTED

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Khyber Pakhtunkhwa  
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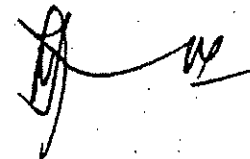


(4)

of Naib Qasid is in BS- 3 and hence this rule does not apply on the appellant. As far as serial No. 7 of the showcause notice is concerned, it has been stated that the appellant belongs to the same village to which the Chairman of the DSC belongs and that his appointment is a result of favoritism and nepotism which is a gross violation of service and appointment rules. A question that arises here is whether the appellant got selected by himself and issued his appointment order or it was done by the authority competent to select and issue such an order, and the answer to that is very simple that he was selected by a Departmental Selection Committee and accordingly his appointment order was issued by the Chairman Khyber Pakhtunkhwa Environment Protection Tribunal, Peshawar. We fail to understand the charge of gross violation of service and appointment rule committed by the appellant. It was the Chairman who committed this violation, if any, and he should have been asked to explain his position. When confronted whether any disciplinary action was taken against the Departmental Selection Committee who recommended the appellant and the Chairman who issued the appointment order, the learned Deputy District Attorney as well as the departmental representative clearly stated that no such action had been taken against them.

9. After going through the details of the case, we arrive at a conclusion that the appellant could not be penalized for any wrong that has not been done by him. Moreover, he has been in receipt of salaries for three years and has safely completed his probation period also and hence his right to appointment on that position has been established.


**ATTESTED**  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar




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10. In view of the above, the service appeal in hand, as well as connected Service Appeal No. 1304/2022, is allowed as prayed for. Cost shall follow the event. Consign.

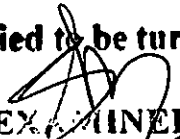
11. Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal this 13<sup>th</sup> of December, 2023.

  
(FARZEETA PAUL)  
Member (F)  
Camp Court, Abbottabad

  
(SALAH UD-DIN)  
Member (J)  
Camp Court Abbottabad

\*Faate Subhan, P.S.\*

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**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar


Date of Presentation of Application 19-1-24  
 Number of Words 6-8  
 Copying Fee 30/-  
 Urgent 5/-  
 Total 35/-  
 Name of Copyist \_\_\_\_\_  
 Date of Completion of Copy 19-1-24  
 Date of Delivery of Copy 19-1-24

13<sup>th</sup> Dec. 2023

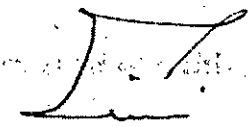
01. Mr. Muhammad Anwar Khan Lughmani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is allowed as prayed for. Cost shall follow the event. Consign.

03. Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day of December, 2023.

  
(FAREEHA PAUL)  
Member (E)

Camp Court, Abbottabad

  
(SALAH-UD-DIN)  
Member (J)

Camp Court, Abbottabad

\*Fazle Subhan, P.S\*

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~~Khyber Pakhtunkhwa~~  
~~Service Tribunal~~  
~~Peshawar~~

Date of Presentation of Application 19-01-24  
Number of Words \_\_\_\_\_  
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Total \_\_\_\_\_  
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Date of Completion of Copy \_\_\_\_\_  
Date of Delivery of Copy \_\_\_\_\_

Dashrath Qayyum  
Ex-Bailiff BPS-03  
Environmental Protection Tribunal  
Peshawar

*[Handwritten signature]*

*[Handwritten signature]*

The applicant remains your obedient

Keeping in view of the above, it is humbly requested the kindly  
reinstatement/restore my service as Bailiff (BPS-03) with all back and consequential benefits.

PRAYER:

benefits.

December-2023 by this Service Tribunal, Khyber Pakhtunkhwa, Peshawar, with all back

2) That the applicant has been reinstated vide judgement appeal No. 1304/2022 dated 13<sup>th</sup>

694/Admin dated 11-05-2022.

1) That unfortunately the applicant was removed from service vide office order bearing No.

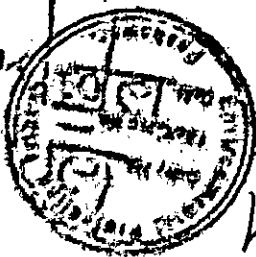
1) That the applicant has served this Hon'ble Tribunal as Bailiff (BPS-03).

The applicant very respectfully submits as follows:

Respected Shewah:

SUBJECT: - REINSTATEMENT SERVICE AS BAILIFF (BPS-03)

The Hon'ble Chairman,  
Environmental Protection Tribunal,  
Peshawar, Khyber Pakhtunkhwa



Encl: 12 February 2024

Applic



# وکالت نامہ

(Wakalat Na

بعدالت جناب سروس ٹریبونل خیبر پختونخواہ پشاور  
چیمبر مین خیبر پختونخواہ ماحولیات وغیرہ

بشارت قیوم

سروس پیشین  
پیشینئر / اپیلانٹ  
باعث تحریر آئنگہ!

منجانب:

اندریں مقدمہ عنوان بالا اپنی طرف سے برائے پیروی و جواب دہی بمقام پشاور

## سید آصف شاہ ایڈووکیٹ ہائی کورٹ مانسہرہ

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص زور و عدالت حاضر ہوتا رہوں گا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہونگے اگر مقدمہ مقام کچہری کے آگے یا پیچھے ساعت ہونے پر منظر کو کوئی نقصان پہنچے تو صاحب موصوف ذمہ دار نہ ہوں گے اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراء کے ڈگری و نظر ثانی، اپیل و گرانے دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا، ہر قسم کا بیان دینے اور سپردگاری وراثی نامہ و دستبرداری و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا فیصلہ ڈگری و اجراء کے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ فیس کرنے کا مجاز ہوگا۔ بصورت ضرورت بدوران مقدمہ یا اپیل و گرانے کسی دوسرے وکیل یا پیرسٹر کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ مجھے کل ساختہ پر داختمثل ذات خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے تاکہ سندر ہے۔ مضمون وکالت نامہ سن لیا اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 19.04.2024

بشارت قیوم ولد عبدالقیوم ساکنہ ضلع ایبٹ آباد..... پیشینئر

Attested & Accepted

Syed Asif Shah

Advocate High Court

0301-8143188