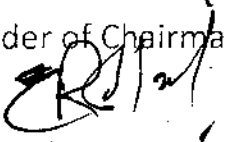


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 445/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.06.2024	<p>The implementation petition of Mr. Muhammad Ismail submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 10 .06.2024. 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 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 445 /2024
In
Appeal No. 649/2022

MR. MUHAMMAD ISMAIL

VS

GOVT: OF KP & OTHERS

INDEX

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4.	Vakalat Nama		11

Petitioner
Muhammad Ismail

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 445 /2024
In
Appeal No. 649/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13214

Dated 06-06-2024

Mr. Muhammad Ismail, Assistant (BPS-16)
Office of the District Attorney at Service Tribunal, Peshawar

.....**PETITIONER**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary Establishment Department Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat, Peshawar.
4. The Director General of Law & Parliamentary Affairs & Human Rights Department, Civil Secretariat, Peshawar.

.....**RESPONDENTS**

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 01/04/2024 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 649/2022 before this august Service Tribunal, against the impugned order dated 10/12/2020 of the respondents, whereby the appellant as promoted to the post of Assistant (BPS-16) on regular basis with immediate effect and not w.e.f 30/01/2023 i.e. when the post of Assistant was sanctioned/created.
- 2- That the appeal of the petitioner was finally heard on dated 01/04/2024 and as such the ibid appeal was accepted with the following terms by this august Service Tribunal:

"10. For what has been discussed above, we are unison to accept instant appeal in hand as well as connected service appeals as prayed for. Costs shall follow the event. Consign." Copy of the consolidated judgment dated 01/04/2024 is attached as annexure.....**A**

- 3- That after obtaining copy of the judgment dated 01/04/2024 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure.....**B**
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 01/04/2024 passed in Appeal No. 649/2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

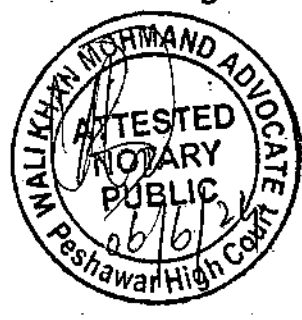
M. Ismail
Petitioner
Muhammad Ismail

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Mr. Muhammad Ismail, Assistant (BPS-16) Office of the District Attorney at Service Tribunal, Peshawar (The appellant) do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

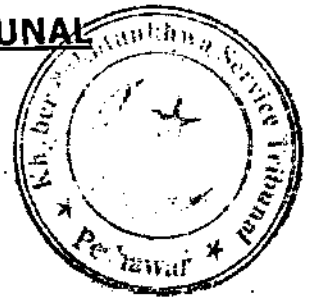
M. Ismail
DEPONENT



-3-
"A" 18

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 649 /2021



Mr. Muhammad Ismail, Assistant (BPS-16),
Office of the District Attorney at Service Tribunal Peshawar

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
- 2- The Secretary Establishment Department, Civil Secretariat, Peshawar.
- 3- The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
- 4- The Director General of Law & Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10-12-2020 OF THE RESPONDENTS WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF ASSISTANT (BPS-16) ON REGUALR BASIS WITH IMMEDIATE EFFECT AND NOT W.E.F. 30-01-2013 I.E. WHEN THE POST OF ASSISTANT WAS SANCTIONED/CREATED AND ALSO AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 10-12-2020 may kindly be modified/rectified to the extent that the appellant may very kindly be promoted to the post of Assistant (BPS-16) with effect from the date when the post Assistant BPS-16 was sanctioned/created i.e. w.e.f. 30-01-2013 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
3-6-24

-4-



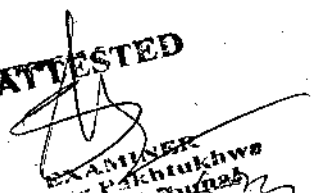
ORDER
01.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgment of today placed on file in main service appeal No.648/2022 titled "Muhammad Ishfaq Vs Law", we are unison to accept the appeal in hand as prayed for. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1st day of April, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDA BANO)
Member (J)

*M.Khon

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 3/5/24
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 Total 10/-
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 Date of Completion of Copy 03-6-24
 Date of Delivery of Copy 03-6-24

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 648/2022



BEFORE: MR. KALIM ARSHAD KHAN CHAIRMAN
MRS. RASHIDA BANO MEMBER (J)

Mr. Muhammad Ishfaq, Assistant (BPS-16), Office of the District Attorney
at Service Tribunal, Peshawar.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat, Peshawar.
4. The Director General of Law and Parliamentary Affairs & Human Rights Department, Civil Secretariat, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney For respondents

Date of Institution.....28.04.2022
 Date of Hearing.....01.04.2024
 Date of Decision.....01.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“That on acceptance of this appeal, the impugned order dated 10.12.2020 may very kindly be modified/rectified to the extent that appellant may very kindly be promoted to the post Assistant BPS-16 w.e.f the date when the post of

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Assistant BPS-16 was sanctioned/created i.e w.e.f 30.01.2013 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.”

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals which are mentioned below as in all these appeals common question of law and facts are involved:

1. Service Appeal No.649/2022
2. Service Appeal No.650/2022
3. Service Appeal No.651/2022
4. Service Appeal No.652/2022
5. Service Appeal No.653/2022

3. Brief facts of the case are that appellants were serving in the Law & Parliamentary Affairs Department. That on promotion of 19 Office Assistants to the post of Superintendent, those 19 posts were lying vacant for promotion. That promotion quota, 75% was reserved for seniority-cum-fitness amongst Senior Clerks while 25% quota was reserved for initial recruitments. The respondent department advertised 08 posts of Assistants for initial recruitment against 75% quota. Feeling aggrieved, the appellant filed Writ Petition before the Peshawar High Court which was decided in their favor and the appellants were given promotion to the post of Assistant (BPS-16) vide order dated 10.12.2020 but with immediate effect and not from the date of their eligibility i.e. 30.01.2013. Feeling aggrieved, they filed departmental appeal, which was not responded, hence, the instant service appeal.

4. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellants argued that the impugned order was against law, facts and norms of natural justice; that the appellant had not been treated in accordance with law and rules; that the respondents had acted arbitrarily and malafidely; that the appellant were eligible from the date of sanction of posts, however the said right was not given to them; that the appellants had been discriminated and the respondents had violated the principle of natural justice. Lastly, he submitted that under Section-9 of the Civil Servants Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 the appellant were fully eligible to be promoted from the date of creation of posts i.e. 2013. Therefore, he requested for acceptance of the instant service appeal.

6. Conversely, learned Deputy District Attorney argued that promotion was always with immediate effect under the promotion policy of the Provincial Government. He submitted that no discrimination had been done against the appellants nor any provision of the constitution had been violated. Further, submitted that the appellants had no solid ground and proof in support of their claim. Therefore, he requested for dismissal of the instant service appeal.

7. Perusal of record reveals that appellants are serving in respondent department. That earlier on strengthening of Law, Parliamentary Affairs & Human Rights Department and its lower

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

formations, 28 posts of Office Assistants were sanctioned/created by the Finance Department in the Office of Government Pleader (renamed/redesigned as District Attorneys) in various department of the Khyber Pakhtunkhwa. Nineteen (19) posts of Office Assistants BPS-16 fell vacant due to promotion of 19 Office Assistants to the post of Superintendents in various offices of District Attorneys in Khyber Pakhtunkhwa. It is pertinent to mention here that the Senior Clerks including the appellants who were entitled for promotion on these vacant posts of Office Assistants were not considered rather 19 out of 28 posts of Office Assistants were abolished and only 09 posts were left behind.

8. Perusal of rules/notification notified on 26.04.2017 reveals that 75% posts of Assistants will have to be filled by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five year of experience as Junior Clerk and Senior Clerk and 25% will have to be filled by initial recruitment, but respondents are intending to infringe upon 75% quota reserved for promotion, because instead of filling vacant posts of Office Assistants by promotion they abolished 19 posts out of total 28 posts while remaining 9 posts were advertised for fresh recruitments.

When it is clearly mentioned in the rules that share of promotion quota is 75% then respondent, are not competent to alter the statutory rules by means of any administrative instruction, 75% quota of promotion will have to be filled first and therefore, direct recruitment shall be made to extent of 25% quota reserved for the same.

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 Service Tribunal
 Peshawar

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9. It is the respondent department who willfully dclayed process of promotion of the appellants despite availability of posts, service rules and more importantly eligibility of the appellants in which there was no fault of the appellant. Therefore, in these circumstance, it will be in fitness of the things that let the due right be given to its real claimants/officials. Hence appellants are entitled to be considered for promotion from date of filling of vacancy, i.e. 29.01.2013, when Office Assistants were promoted to the posts of Superintendents vide notification order dated 29.01.2013 and not from immediate effect as is done by the respondent which is evident from promotion order of the appellant dated 10.12.2020.

10. For what has been discussed above, we are unison to accept instant appeal in hand as well as connected service appeals as prayed for. Costs shall follow the event. Consign.

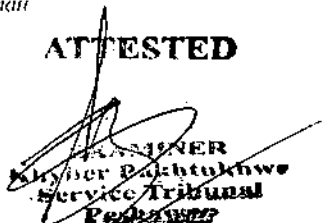
11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1th day of April, 2024.*


(KALIM ARSHAD KHAN)
 Chairman


(RASHIDA BANO)
 Member (J)

"At Khan

ATTESTED


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 Service Tribunal
 Peshawar
 3-6-24

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 Total 25/-
 Name of Copyist _____
 Date of Copying 03-6-24
 Date of Delivery of Copy 02-6-24

To,

The Director General,
Law & Human Rights, Khyber Pakhtunkhwa.

- 10 -

DHR-18110
9/5/24

F. H. Khan

THROUGH:- PROPER CHANNEL

**SUBJECT:- APPLICATION FOR IMPLEMENTATION OF JUDGEMENT
DATED 01/04/2024 OF THE KHYBER PAKTUNKHWA
SERVICE TRIBUNAL PESHAWAR.**

R/Sir,

The applicant humbly and respectfully submits as under:-

1. That 19 posts of Assistants were laid vacant due to promotion of 19 Assistants to the post of Superintendents and the applicant filled an Appeal No. 649/2022 before the august Khyber Pakhtunkhwa Service Tribunal Peshawar against the impugned Order dated. 10/12/2020, wherein it has been prayed that the promotion order of the applicant/appellant may very kindly be modified/rectified to the extent that the applicant/appellant be promoted to the post of Assistant BPS-16 with effect from the date when the post of Assistant BPS-16 was sanctioned/created i.e w.e.f 30/01/2013 with all back benefits.
2. That the aforementioned Service Appeal has been allowed and decided in favor of the applicant/appellant on 01/04/2024 by the honorable Service Tribunal that the applicant/appellant is entitled to be considered for promotion from date of filling of vacancy, i.e 29/01/2013 when Office Assistants were promoted to the posts of Superintendents vide Notification Order dated 29/01/2013 and not from immediate effect as is done by the respondent which is evident from promotion order of the applicant/appellant dated 10/12/2020 vide para 9/N of the enclosed judgement.

It is, therefore, requested/prayed that the impugned promotion order dated. 10/12/2020 may very kindly be modified/rectified to the extent that the applicant/appellant be promoted to the post of Assistant BPS-16 with effect from the date when the post of Assistant BPS-16 was sanctioned/created i.e w.e.f 30/01/2013 with all back benefits as per judgement and further requested that the applicant/appellant be promoted against the vacant post of Superintendent BPS-17 on conditional basis and oblige.

ENCL: COPY OF JUDGEMENT DATED 01/04/2024

Dated: 08 / 05 / 2024

ATTESTED

Yours Obediently

M. Ismail
(MUHAMMAD ISMAIL)
ASSISTANT (BPS-16)

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

E-P No 12024

Muhammad Ismail

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KP

(RESPONDENT)
(DEFENDANT)

I/We M. Ismail

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/202

M. Ismail
CLIENT

ACCEPTED

usf
**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

WALEED/ADNAN

U
UMAR FAROOQ MOHMAND

&

M. Jan
**MEHMOOD JAN
ADVOCATES**

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)