Form- A

FORM OF ORDER SHEET

Court of

Implementation Petition No. 274/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
·1	2	3		
1	02.04.2024	The implementation petition of Mr. Farman Ali		
	submitted today by Mr. Mushtaq Ahmad Khan Ac			
		It is fixed for implementation report before touring		
	• • • • •	Single Bench at Swat on 07.05.2024.Original file be		
. 2		requisitioned. AAG has noted the next date. Parcha Peshi		
		given to clerk of the counsel.		
		By the order of Chairman		
		by the order or chairman		
		REGISTRAR		
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Before theservice tribunal khyber pukhtoonkhwa Peshawar .

Execution Petition no. 274/2024

Iftiharul Ghani District Education officer(M) Buner and others......Respondents

Vs

S.NO	Description of Documents	Annexure	Pages
1	Implementation petition/COC		1-2
2	Addresses of parties		3
3.	Affidavit		4
4	Service appeal No 1191 of 2019	Α	5-9
5	Judgment/order dated 9.2.2023 in appeal No 1191 of 2019	B	10-14
6	Application for implementation to respondent along with p/o reciept	C,D	15-17
	implementation petition/coc No 800 of 2023	E	18-19
-	order dated 7.12.2023 of the worthy tribunal in execution petition No 800 of 2023	F	20
7 .	Wakalat nama		21

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Dated:

29.3.2024

Through Mushtaq ahmad khan Advocate Office at district court daggar buner

Petitioner

Cell no 03469014199

Before theservice tribunal khyber pukhtoonkhwa Peshawar .

> Khyber Pakhtukhwa Service Tribunal

> Diary No. 12058

Dated 02-04-2024

Farman Alil s/o Feroz khan ,Naib Qasid GHS Chanal Mandanr district Buner

......petitioner

VS

- 1. Iftiharul Ghani District Education officer(M) Buner .
- 2. Director E & SE khyber pukhtoonkhwa at Peshawar.
- 3. District account officer buner at daggar.
- 4. Govt of K.P.K through secretary E & SE Khyber pukhtoonkhwa at Peshawar.

Petition for implementation/c.o.c in order and judgement dated 9/2/2023 passed by this worthy tribunal in appeal No 1191 of 2019 and order dated 7.12.2023 of this worthy tribunal in Action 800 /2023 and initiation of contempt proceedings against the respondents for not honoring the judgment/orders ibid.

Respectfully sheweth:

- 1. That the captioned service appeal was decided by this honorable tribunal in favor of the petitioner and the impugned order of removal of appellant from service was set aside and he was restored in service with all back benefits.(appeal no 1191 of 2019 and judgment/order dated 9.2.2023 attached as annexure A and B).
- 2. That after the aforesaid Judgment the petitioner several time visited the office of the respondents for the implementation of the judgment/order of this honorable tribunal but the respondent No 1 was very much annoyed and had got contemptuous attitude towards the aforesaid order of this worthy tribunal ,hence no proper heed was paid to the request of the petitioner and these facts were also brought into the notice of this worthy tribunal in previous execution/C.O.C petition.(copy of the applications for implementation of the judgment/order of this worthy tribunal along with post office receipt attached attached as annexure C and D).
- 3. That the petitioner time and again met with the respondent No 1 for implementation of the order but he was not going to reinstate the petitioner and told the petitioner that he will not allow at any cost the petitioner in service, hence as a last resort the petitioner filled an implementation petition before this honorable court.(implementation petition/coc No 800 of 2023 attached as anx E)
- 4. That on 7/12/2023 the respondent produced the re instatement order before this worthy tribunal and with malafide intention and ill will (i.e duely

explained in parar 4 of previous coc petition) the appellant was posted in a far-flung area which is even not accessible on daily basis and his back benefits were also not granted to him,hence this worthy tribunal ordered the respondents to release the payment of back benefits within fortnight but since the order they are not going to obey it.(order dated 7.12.2023 of the worthy tribunal in execution petition attached as anx F)

- 5. That respondent no 3 is also reluctant to implement the aforesaid orders on the ground that respondent No 1 had restrained him from releasing the back benefits of the petitioner.
- 6. That respondents are willfully disobeying the order/ judgment of this honorable tribunal and despite the passage of about 1 year they have not implemented the aforesaid order in its true spirit and have also not obeyed the order dated 7/12/2023 of this worthy tribunal. Moreover they have also stopped the current salary of the petitioner with malafide design and in violation of the law and rules and clear directions of the supreme court that stoppage of salary of civil servant is illegal, hence all these steps of the respondents amounts to contempt of court and the respondents needs to be prosecuted under the contempt laws.
- 7. That the respondents are constitutionally bound to give respect to and implement the judgments'/orders of this worthy tribunal and their refusal in this regard is unlawful and contemptuous.
- 8. That the petitioner seeks the permission of this honorable tribunal to rely on additional ground at the time of arguments.

It is therefore kindly prayed that on acceptance of this petition the judgment and order dated 9/2/2023 in appeal no 1191 of 2019 and order dated 7/12/2023 in implementation/coc petition No 800 of this worthy tribunal may kindly be implemented in its letter and spirit and contempt of court proceedings be initiated against the respondents.

Dated: 29.3.2024

petitioned UD

Through Mushtag ahmad khanAdvocate

Office at district court daggar buner

Cell no 03469014199

<u>Certificate</u>: As per instruction of my client it is certified that COC no 800 of 2023 had been filled before this one and the honorable tribunal in its order on it dated 7.12.2023 had directed the petitioner to file another petition if his back benefits are not released within fortnight.

List of books:

1. C.P.C

2. Any other law book as per need.



Before theservice tribunal khyber pukhtoonkhwa Peshawar .

Implementation/COC No...../2024 in C.O.C NO 800 of 2023 and service appeal no 1191 of 2019

Iftiharul Ghani District Education officer(M) Buner and others.......Respondents

Vs

Addresses of parties:

Addresses of petitioner:

Farman Alil s/o Feroz khan ,Naib Qasid GMS Chanal mundarn Amazi No 1Daggar district Buner

Adresses of the respondents

- 1. Iftiharul Ghani District Education officer(M) Buner .
- 2. Director E & SE khyber pukhtoonkhwa at Peshawar.
- 3. District account officer buner at daggar.
- (4. Govt of K.P.K through secretary E & SE Khyber pukhtoonkhwa at Peshawar.

Petitioners through Mushtaq ahmad khan Advocate Office at district court Buner.

Before theservice tribunal khyber pukhtoonkhwa Peshawar.

Implementation/COC No...../2024 in C.O.C NO 800 of 2023 and service appeal no 1191 of 2019

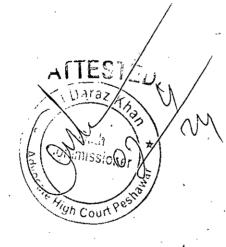
Farman Alil s/o Feroz khan ,Naib Qasid GMS Chanal mundarn Amazi No 1Daggar district Buner......petitioner

Iftiharul Ghani District Education officer(M) Buner and others......Respondents

Vs

Affidavit

I, Farman ali, petitioner, do hereby solemnly affirm and declare on oath that the contents of the instant c.o.c is correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.



Deponent.

Farman Ali

Annexuret

SRE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA AT PESHAWAI

Appeal No_1/91_ of 2019

Farman Ali son of Firoz Khan Naib Qasid at Department of Education, Presently duty on GMS No. 1 Regar, District Buner.

Diary No. 12

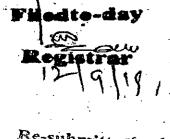
.....Appellant

Cshawar

VERSUS

- 1. District Education Officer (Male) Buner.
- 2. Director Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar. 3. Secretary: Elementary & Secondary Education Khyber Pakhtunkhwa at Peshawar.

.....Respondents



Registra

d filed

SERVICE APPEAL UNDER SECTION 4, OF THE KPK SERVICE TRIBUNAL ACT, 1974, Submitted to day AGAINST THE ORDER DATED 21-12-2018,

TESTED





WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE.

PRAYER IN APPEAL

On acceptance of this appeal the order passed by Respondent No. 1 be declared as illegal, discriminatory, against law, void ab-initio and may graciously be set aside the same and the appellant may be reinstated on service with all back benefits.

Any other relief which are proper in the instant circumstances of the may also be granted though not specifically asked for.

Respectfully Sheweth,

 That the appellant was appointed in the respondents department in year 2011, and working on the post of Naib Qasid in Government Middle School No. 1 Rega, District Buner since then.





That the appellant was performing his duties honestly, devotedly up to the entire satisfaction of the higher throughout his career. (Copy of certificate is attached)

That the appellant was removed from service by the concerned department vide removal order dated 21-12-2018 (Copy of removal order dated 21-12-2018 & other relevant record are attached)

4) That the appellant moved departmental appeal before the authority, but the same remains undecided, and the statutory period has elapsed, hence, the instant appeal is filed before the Hon'ble court.

That the appellant have no other proper remedy, except to file the appeal this Honorable Tribunal Court, on the following grounds.

GROUNDS:-

a. That the order of respondent No. 1 is illegal, against the rules & regulation and exercised their power not vested to them.

b. That in case of imposing major penalty principle of natural justice requires that a regular inquiry was to be conducted in the matter and opportunity of defense of personal hearing was to be provided to the



2)

3)

5)

civil servant proceeded against him otherwise the procedure against him without following the rules would be amount to condemned unheard. So, on this ground to the impugned order regarding dismissal / removal is liable to be struck down on this score alone.

That issuance of show cause notice and holding of inquiry was necessary under section 3 removal from service ordinance 2000 amended 2001 but Respondents fails to issue show cause notice nor any inquiry was conducted and major penalty of dismissal / removal was imposed upon him without adopting mandatory procedure resulting in manifest injustice sc, the impugned orders are liable to be set at naught.

That the penalty of dismissal / removal from service imposed upon appellant for absence from service is illegal being violative of section 7 (a).

That the appellant was illegally treated & dismissal / removal from service is too harsh so, the impugned order is not maintainable in the eye of law.



d.

That in service law concept of penalty was to make an attempt to reform the individual wrong doer (if any) but such penalty deprived the appellant from the right of earning, which defeat the reformatory



concept of punishment in administration of justice so, the order passed by the Respondent No. 1 is not sustainable on this ground too.

That further grounds, with leave of this Honorable Court, would be raised at the time of arguments before this Honorable Court.

> Therefore in view of the above submissions, it is most humbly prayed that on acceptance of this appeal the order passed by Respondent No. 1 be declared as illegal, discriminatory, against law, void ab-initio and may graciously be set aside the same and the appellant may be reinstated on service with all back benefits. Any other relief which are proper in the instant circumstances of the may also be granted though not specifically asked for.

> > Appellant Farman Ali Through Counsel

man

ADVOCATE

in find

12-99-019

MOHSIN ALI KHAN Advocate, High Court 12 - 09 - 019

CERTIFICATE:

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g.

(As per directions of my client) No such like Appeal earlier has been filed by the appellants on the subject matter before this Honorable Court r_{srm} Service Appeal No.1191/2019 titled "Farman Ali-ys-District Education Officer (Male) Buner and others". decided on 09.02.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal at Camp Court Swat.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL <u>AT CAMP COURT SWAT</u>.

BEFORE:

KALIM ARSHAD KHAN ...CHAIRMAN SALAH UD DIN ...MEMBER (Judicial)

Pakhtunkhing

vike Tribun: Pestassat

Service Appeal No.1191/2019

Farman Ai Son of Feroz Khan, Naib Qasid at Department of Education, presently duty on GMS No. 1 Rega, District Buner.

Versus

- 1. District Education Officer(Male) Buner.
- 2. Director Elementary & Secondary Education, Khyber Pakhtunkhwa at Peshawar.
- 3. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa at Peshawar.

.....(Respondents)

Present:

Mr. Mushtaq Ahmad, Advocate......For appellant.

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

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 21.12.2018, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was appointed as Naib Qasid in 2011and he had been serving as such in Government Middle School No.1, Rega, District Buner; that the appellant was removed from service vide order dated 21.12.2018; that the

Service Appeal No.1191/2019 titled "Farman Ali-vs-District Educaiton Officer (Male) Buner and others", decided on 09.02.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhninkhwa Service Tribunal at Camp Court Swat.

appellant filed departmental appeal and awaiting ninety days' waiting period, when no response was received from the respondents, he filed this appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

4. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

In the reply the respondents stated details of absence from time to time and 5. actions taken against his such absence warding him punishments from time to time. Before the impugned removal order on 21.12.2018, he was proceeded against and was awarded minor penalty of withholding of three annual increments with cumulative effect vide No.3636-40 dated 27.05.2017. It is alleged that the appellant was found absent time and again by the IMU and resultantly, in Educational Steering Committee Meeting under the Chairmanship of Deputy Commissioner Buner, the District Education Officer was directed vide meeting minutes No.6459-70/AG-III/DC/B dated 30.10.2017 to proceed against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges of impersonation, proxy, misconduct, inefficiency and absence. It was then a show cause notice was issued to the appellant vide No.5698-5700 dated 06.10.2017 and reply was found unsatisfactory and he was removed from service vide No.6433-36 dated 21.12.2018. While eeping in view the above situation we enquired about the legal status of the

Service Appeul No.1191/2019 titled "Farman Ali-vs-District Education Officer (Male) Buner and others", decided on 09.02.2023 by Division Bench comprising Kalim Arshud Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal at Camp Court Swat.

Educational Steering Committee on whose direction the appellant was proceeded but no reply was given by the respondents and the learned law officer. We also enquired about the minutes of the meeting of the Committee or the direction given for initiation of departmental proceedings against the appellant as no such minutes or direction is found placed on the file. Copies of minutes of the meetings of 10.03.2017, 30.10.2017 and 16.11.2018 were produced during the course of arguments. The minutes of 10.03.2017 the Deputy Commissioner Buner directed the District Education Officer (Male) Buner to terminate the appellant till next week. In the minutes of 30.10.2017, the Deputy Commissioner showed concern why the appellant had not been terminated and further directed that the appellant should be terminated within a week. Similarly, in the minutes of 16.11.2018, the Deputy Commissioner Buner directed the District Education Officer (Male) Buner to immediately issue termination order of the appellant. In the show cause notice of 06.10.2017 no period of absence was given nor any incident of negligence was stated. In reply to show cause notice the appellant urged that no date of his absence was mentioned in the show cause notice. He alleged that he was found present on 12.10.2017 when the District Education Officer (Male) visited the School. He also annexed the attendance register showing his attendance in the school. It appears that obeying the direction of the Deputy Commissioner Buner given in the meeting held on 16.11.2018 and after more than a year of issuance of show cause notice, the appellant was removed from service on 21.12.2018 saying that the Competent Authority (District Education Officer Buner) was satisfied that the appellant was not interested in government duty and that the charges mentioned in the charge sheet and statement of allegations had been proved against the appellant. Although it is alleged in the reply that the appellant was provided an opportunity of personal hearing but the record does not support the same as there is no document attached with the reply to show that any date for personal hearing was fixed and

Service Appeal No.1191/2019 titled "Farman Ali-vs-District Education Officer (Male) Buner and others", decided on 09.02.2023 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal at Camp Court Swat.

communicated to the appellant. The impugned order too is silent that any opportunity of personal hearing was provided to the appellant, which he had not availed. It is nowhere explained or justified as to why the action/impugned order was delayed for over a year. It seems that the Competent Authority has acted under the influence and direction of the Deputy Commissioner Buner and not according to its own wisdom or independently. Before passage of the impugned order no enquiry was conducted nor was it anywhere stated that the enquiry was dispensed with. Procedure as provided under rules 7 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 was not followed if at all the Competent Authority intended to dispense with the enquiry and to proceed against the appellant for his alleged absence. The entire proceedings conducted by the District Education Officer (Male) Buner are thus unwarranted, unjustified and not sustainable.

6. Therefore, we allow this appeal and set aside the impugned order dated 21.12.2018 removing the appellant from service. As a resultant consequence the appellant stands reinstated in service with all back benefits. Costs shall follow the events. Consign.

7. Pronounced in open Court at Swat and given under our hands and the seal of the Tribunal on this 09th day of February, 2023.

KALIM ARSHAD KHAI Chairman Certified to be true copy Camp Court Swat Date of Presentation of Application Date of Col Date of Complection : SALAH UD DIN Number of Words ij. Member (Judicial) Camp Court Swat Fee Arms of Cos onymg

<u>ORDER</u>

9th Feb, 2023

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Obaid Ur Rehman, ADEO respondents present.

2. Vide our detailed judgement of today placed on file, we allow this appeal and set aside the impugned order dated 21.12.2018 removing the appellant from service. As a resultant consequence the appellant stands reinstated in service with all back benefits. Cost shall follow the event. Consign.

3. Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 9th day of February, 2023.

(Kalim Arshad Khan) Chairman Camp Court Swat

(Salah Ud Din) Member(Judicial) Camp Court Swat

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Before the service tribunal khyber pukhtoonkhwa Peshawar.

Implementation/COC No...8.00..../2023 in service appeal no 1191 of 2019

Farman Alil s/o Feroz khan , Naib Qasid GMS Rega No 1 Daggar district Buner

Vs

- 1. Iftiharul Ghani District Education officer(M) Buner .
- 2. Director E & SE khyber pukhtoonkhwa at Peshawar.
- 3. Govt of K.P.K through secretary E & SE Khyber pukhtoonkhwa at Peshawar.

Petition for implementation of order and judgement dated 9/2/2023 passed by this worthy tribunal in appeal No 1191 of 2019 and initiation of contempt proceedings against the respondents for not honoring the judgment/order ibid.

Respectfully sheweth:

- That the captioned service appeal was decided by this honorable tribunal in favor of the petitioner and the impugned order of removal of appellant from service set aside and he was restored in service with all back benefits. (appeal no 1191 of 2019 and judgment/order dated 9.2.2023 attached as annexure A and B).
- 2. That after the aforesaid Judgment the petitioner several time visited the office of the respondents for the implementation of the judgment/order of this honorable tribunal but the respondent No 1 was very much annoyed and had got_contemptuous attitude towards the aforesaid order of this worthy tribunal hence no proper heed was paid to the request of the petitioner .(copy of the applications for implementation of the judgment/order of this worthy tribunal along with post office receipt attached attached as annexure C and D).
- 3. That the petitioner time and again met with the respondent No 1 for the last 8 months but he was not going to reinstate the petitioner and told the ber petitioner that he will not allow at any cost the petitioner in service.

4. That about one week ago the petitioner met the respondent No 1 for implementation of the order of this worthy tribunal and told him that he will approach the worthy tribunal if the order was not implemented and requested him to ventilate his grievances by implementing the order as he was a poor

Diary No. 8649 Dated 27-10-2023

ner Takhtukhu

Pakhiunkh,

Nnez

- him in a contemptuous style that let see how he would serve in the department during his tenure.
- 5. That respondents are willfully disobeying the order/judgment of this honorable tribunal and despite the passage of about 9 months they have not implemented the aforesaid order and are not paying the salary of the petitioner which amounts to contempt of court and the respondents needs to be prosecuted under the contempt laws.
- 6. That since the impugned order of removal the petitioner has not been paid a single penny due to which he is in dismal economic situation.
- 7. That the respondents are constitutionally bound to give respect to and implement the judgments'/orders of this worthy tribunal and their refusal in this regard is unlawful and contemptuous.
- 8. That the petitioner seeks the permission of this honorable tribunal to rely on additional ground at the time of arguments.
 - It is therefore kindly prayed that on acceptance of this petition the judgment, and order dated 9/2/2023 of this worthy tribunal may kindly be implemented in its letter and spirit and contempt of court proceedings be initiated against the respondents.

Dated: 21.10.2023

petitioners

Through Mushtaq ahmad khan Advocate Office at district court daggar buner Cell no 03469014199

Certificate: As per instruction of my client it is certified that no such like

Implementation/COC application have earlier been filled in the matter.

ESTED Advocate

iukł ice Tribunal

List of books:

1. C.P.C

2. Any other law book as per need.

Advocate

12.2023

Learned counsel for the petitioner present. Mr. Habib An we want the second seco

2. Representative of the respondents submitted copy of office order dated 16.10.2023, whereby the petitioner has been reinstated into service with all back benefits subject to the final outcome of CPLA pending before the august Supreme Court of Pakistan. Petitioner had already assumed the charge of the post but payment of back benefits are still awaited. Respondents are directed to release payments of back benefits within fortnight, in case of non compliance, petitioner is at liberty to approach Tribunal.

3. In view of the above, instant petition is disposed of. Consign.

4. Pronounced in open court at camp court Swat and given under my hand and seal of the Tribunal on this 7th day of December, 2023.

Certified to be true copy

(Rashida Bano) Member (J) Camp Court, Swat

Annen

Date of Presentation of Application Number of Words **Copying Fee** Urgent Total. Name of Corry Date of Complement Date of Delivery of Copy.

•Kalcemulloh

761 لم ایور p y pott 1º -1/p 7202. 1/2 - 5 - ב- ייה עו אים וריי ואיוזא- ר עיזיני لايد في من من في من من المراحية و على المن المن من من المن المن في المن في المن في المن المن المن المن المن الم -لأيده ب ب المسلمة في المتالي لورم ، ي تحفي لك مديقة الدور الايد الأيل كذر كالكنه تشفرا وير سے اسلام ایمالی میں کے اسٹ ایک فالوں پی قدیمان کا ہوتا کا میں کا مسلح کے معامل کا معال کا مع مليحالان كم حراجة جدالافار مدخد المراكع المراحد المحر المالالا بحر المحر المالالا بحر المحر ي نويد مقدت بالمشترية الموليد التوليد المولية بالمالية المراجع المالية المسلمة بالمرادية Jan Ch رد مد الروار الرابي الورد في الايد وسي مع بذ الايد الد الماية الار الماية الارد الرابة المرابية ت معقار لومي سيساني ،،،، الايون لاموكي المية ،،، التي المعادية المارين المركم المتديمة مع به الأمين إذابه الديب اي خيب شلع دسليني مشالق كمَّ يخب ركيد لا لكواري لب له الم من والمارية المالالألان المراكد منع من من من المرحد والولارا كالحر لرائمة TOP F سقلعت ركمان الألالي في المريد المحتر المصلف في ألا المالية عند منه معد س المركح بيده أ Dipa 141. لريز 5000 m 100 100 119 ራይ 6202. A. M. M. sre Picho side ier I m on 31