## Form-A FORM OF ORDER SHEET

court				
	Doctoration	Application	NI.	C2C/2024

Restoration Application	n No.	636/2024

	`	Restoration Application No. 636/2024
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.06.2024	The application for restoration of Appeal No 1396/2019 submitted today by Mr. Javed Ali Ghan
		Advocate. It is fixed for hearing before Division Benchat Peshawar on 28.06.2024. Original file be
•		requisitioned. Parcha Peshi given to the counsel for the applicant.
		By the order of Chairman  REGISTRAR
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## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

R.A. No.636/2024

C.M	No	/2024
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In

Service Appeal No.1396/2019

Saleem Khan SST Govt. Shaheed Fahid Ahmad Higher Secondary School Ghani Dheri Malakand Agency

. . . . . . PETITIONER

#### **VERSUS**

- 1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer (Male) Malakand.

.......RESPONDENTS

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Applicant/Petitioner

Through

Dated: 25.06.2024

JAVED ALI GHANI

Advocate Supreme Court.

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

R.A- No.636/2024

Khyber Pakhtukhwa Service Tribunal	
Diary No. 13789	
Daron 26-06-202.	2

C.M No.\_\_\_\_\_/2024

In

Service Appeal No.1396/2019

Saleem Khan SST Govt. Shaheed Fahid Ahmad Higher Secondary School Ghani Dheri Malakand Agency

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#### **VERSUS**

- 1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
- 3. District Education Officer (Male) Malakand.

.......RESPONDENTS

APPLICATION FOR RESTORATION
OF THE TITLED SERVICE APPEAL
WHICH WAS DISMISSED IN DEFAULT
VIDE ORDER DATED: 04.06.2024.

## **Respectfully Sheweth:**

1. That the above titled service appeal was fixed for adjudication before this Honorable Tribunal on 04.06.2024, but was dismissed in default due to non-appearance of the counsel for petitioner. (Copy of the Order dated: 04.06.2024 is attached as annexure AA).

- That counsel for the petitioner was suffering from severe illness and was not in knowledge about the date of hearing of the titled case, hence this application.
- That the absence of the counsel for the petitioner 3. was neither intentional nor deliberate but the result of an honest misunderstanding.
- That there is no legal bar in restoring the above titled case and this Honorable Court has power and jurisdiction to restore the case and decide the case on merit.
- That the instant application has been within time, and therefore there is no legal cavil to accept the same.

It is, therefore, most humbly prayed that on acceptance of this application, the subject Writ Petition may very graciously be restored to its original number for its conclusion on merits.

Applicant/Petitioner

Through

JAVED ALI GHANI

Dated: 25.06.2024 Advocate Supreme Court.

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

C.M No/2024
In
Service Appeal No.1396/2019
Saleem Khan SST Govt. Shaheed Fahid Ahmad Higher Secondary School Ghani Dheri Malakand Agency
Petitioner
VERSUS
1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
<ol><li>Director, Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.</li></ol>
3. District Education Officer (Male) Malakand.
Respondents

## <u>AFFIDAVIT</u>

I, Saleem Khan SST Govt. Shaheed Fahid Ahmad Higher Secondary School Ghani Dheri malakand Agency, do hereby solemnly affirm and declare on oath that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

•

## BEFORE THE KHYBER PAKHTUNKHW. SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtukhwa Service Tribunal

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Diary No. 1314

Dated 27/9/2

Appeal No.1396/2019

Saleem Khan SST Govt Shaheed Fahid Ahmad Higher Secondary School Ghani Dheri Malakand Agency.

(Appellant)

### **VERSUS**

- 1. Govt. of Khyber Paktunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (Male) Malakand.

(Respondents)

Registrary,

Re-submitted to -day

Prayer in Appeal: -

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Order dated order dated 28.03.2019, whereby the appellant has been refused the promotion to BPS 17 from the date when the appellant has been eligible for promotion against which the departmental appeal dated 14.12.2018 has been rejected vide order dated 28.03.2019 communicated on 02.09.2019.

On acceptance of this appeal the impugned refusal order dated 28.03.2019 communicated on 02.09.2019, may kindly be declared illegal, void abinitio and the appellant may be promoted to BPS 17 from the date when the appellant become fit and eligible i.e 01.09.2013 with all arrears of salary and back benefits of service for the intervening period i.e from the date of

EXAMINER (hyher Pakhtukhy Service Tribuna) Peshawar

suspension 01.09.2013 till 21.01.2016.

BEFORE THE KHYBER PARHTUNKH <u>SERVICE TRIBUNAL PESHAWAR</u>

Saleem Khan SST Cext Shaheod habid Ahmad Higher Scoretary School Ghani Dhen Malakand Agency.

(App. diant)

### VERSI'S

- Paktunkhwa Khyber . ोत 1 Geva through Secretary Secondary DHG Elementary 1.07d2 Education Pakhtunkhwa Peshawar
- Duestor, Frementary and Secondary Education Khyter Patht inkhwa Peshawar
  - 3. Distract Education Officer (Male) Maleland

(Respondents)

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1, praise 139 8 2019

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### Respectfully Submitted:

- 1. That the appellant is serving in the Respondents' department as SS Teacher.
- 2. That ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.
- 3. That while serving in the said capacity, the appellant was falsely implicated in a criminal case under section 302 PPC, vide FIR No.50, dated 31.10.2012 of Police Station Kopar Malakand,. The appellant duly informed his department about his false implication in criminal case. (Copy of the FIR is attached as Annexure A)
- 4. That after facing trial, the appellant was acquitted from criminal charges by the Learned Additional Sessions Judge vide his judgment and order dated 09.06.2015. (Copy of the judgment of the A.S.J. Malakand dated 09.06.2015 is attached as Annexure B)
- 5. That after obtaining copies of the acquittal order, the appellant duly reported the matter to the respondent. The respondent resultantly reinstated the appellant in service with immediate effect vide order dated 10.07.2015. However, the alleged trial period has been considered as period under suspension. (Copy of the order dated 10.07.2015, is attached as Annexure attached as Annexure C).
- 6. That the appellant was promoted by the Departmental selection committee after being found fit and eligible to the post of BPS 17 vide notification dated 21.01.2016.
- 7. That partially aggrieved from the order dated 10.07.2015, the appellant filed his departmental appeal dated 14.12.2018. However the same has been rejected vide order dated 28.03.2019. However the order was communicated to the appellant on 02.09.2019. (Copies of departmental appeal dated 14.12.2018 and rejection order dated 28.03.2019 is attached as Annexure D & E).

8. That the appellant prays for the acceptance of the instant appeal inter alia on the following grounds:-

EXAMINER
Khyber Pakhtukhww
Service Tribuns

## GROUNDS OF APPEAL

A. That the appellant have not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.

B. That the case of the appellant is covered under FR- 53 and 54 which provides that:

"F.R 53---A Government servant under suspension is

entitled to the following payments:-

(a) In the case of {en employee of the Armed Forces} who is liable to revert to Military duty, to the any and allowances to which he would have been entitled had he been suspended while in military employment.

(b) In case of a Government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of suspension.

F.R.54—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—

a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or

b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribed.

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty unless the revising appellate authority so directs.

Since the appellant has been Honourable acquitted in criminal case, therefore on his reinstatement he cannot be denied the back benefits of service to which he would have been entitled had he been in service.

C. That the competent authority vide order dated 10.07.2015 while reinstating the appellant into service from the date of suspension i.e 26.11.2012 by admitting my stance and considering the service of the appellant from the side date, which held entitled the appellant for all the consequential benefits i.e promotion seniority etc, so the appellant is entitled for promotion to BPS 17 from the date when he became fit and eligible for promotion i.e 01.09.2013.

Knyber Puktauktuwe Service Tribundi Peshawat

(F)

- D. That the respondent department is bound under the orders of the competent authority which is explain in the above para and cannot deny / refuse the due right of promotion form the date when the appellant become eligible for further promotion.
- E. That the refusal order of the respondent department by not promoting the appellant from his due date of promotion is also against the spirit of order passed by the competent authority while reinstating the service of the appellant and the department is bound to implement the due order.
- F. That it has also been held by the Superior courts in a number of reported cases that all acquittals are honorable and there can be no acquittal that can be termed as dis-honourable, reliance is places on 1998 SCMR 1993 and 2001 SCMR 269.
- G. That since the absence of the appellant was not willful but was due to his false implication in criminal case, moreover the respondents were fully aware of the registration of criminal case against the appellant, therefore under the law/rules when the appellant is reinstated on his acquittal from criminal case, then he under no circumstance can be denied the back benefits for the period he remained out of service.
- H. That the appellant was falsely implicated in FIR, and due to threats to his life and blood shed enmity, he had to go under ground and therefore he remained out of service during that period. The absence period of the Appellant was thus beyond his control and he cannot be made suffered for the events which were beyond his control.
- I. That the appellant has never committed any act or omission which could be termed as misconduct, his absence from duty was not willful but it was due to his false implication in criminal case. Since the appellant have honorably acquitted in the criminal case, and subsequently reinstated, thereafter treating the absence period as leave without pay is uncalled for and liable to be set aside.
- That during the intervening period the appellant never remained in gainful employment, therefore on his reinstatement he is entitled for the grant of all benefits also.
- K. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

ATTESTUM.

It is, therefore, humbly prayed that On acceptance of this appeal the impugned refusal order dated 28.03.2019 communicated on 02.09.2019, may kindly be declared illegal, void abinitio and the appellant may be promoted to BPS 17 from the date when the appellant become fit and eligible i.e 01.09.2013 with all arrears of salary and back benefits of service for the intervening period i.e from the date of suspension 01.09.2013 till 21.01.2016

Through

Javed Ali Ghani
Advocate Peshawar

### <u>AFFIDAVIT</u>

I, Saleem Khan SST Govt Shaheed Fahid Ahmad Higher Secondary School Ghani Dheri Malakand Agency, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

TTESTED

EXAMINER Khyber Payhtukhyh Servide Tribunal Peshawan



Service Appeal No.1396/2019 titled "Saleem Khan Vs. Education Department"

4th June. 2024 Kalim Arshad Khan, Chairman: Nobody is present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.



- 2. This case was called several times but nobody put appearance on behalf of the appellant till rising of the Court.

  Therefore, the appeal in hand is dismissed in default. Consign.
- 3. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4<sup>th</sup> day of June, 2024.

(Fareeha Paul) Member (É)

(Kalim Arshad Khan) Chairman

\*Mutazem Shah\*

ATTESTED	7/2
EXAMINER hyber Pakhtukhwe Service Tribunat	Date of Presentation of Application
Peshawar	Number of Workafes = 6
	Copying Fee
•	Urgent
	Total 35/
	Name of Copylest Shelet.

Date of Delivery of Copy,