


Form-A  
FORM OF ORDER SHEET

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

**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	<p>The application for restoration of Appeal No. 1396/2019 submitted today by Mr. Javed Ali Ghani Advocate. It is fixed for hearing before Division Bench at Peshawar on 28.06.2024. Original file be requisitioned. Parcha Peshi given to the counsel for the applicant.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: right;"> REGISTRAR</p>

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

*R.A. No. 636/2024*

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**

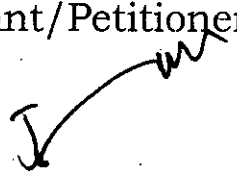
1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer (Male) Malakand.

.....RESPONDENTS

**I N D E X**

<b>S.No</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Page</b>
1.	Application		1-2
2.	Affidavit		3
3.	Copy of Ground of appeal along with order dated: 04.06.2024	<b>AA</b>	4-9

Applicant/Petitioner  
Through



**JAVED ALI GHANI**

Advocate Supreme Court.

Dated: 25.06.2024

①

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

R.A - No. 636/2024

Khyber Pakhtunkhwa  
Service Tribunal

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

Diary No. 13789

In

Date: 26-06-2024

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

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

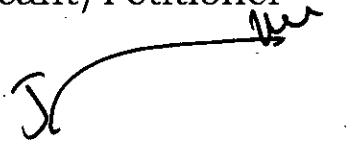
**Respectfully Sheweth:**

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).**

2. 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.
3. That the absence of the counsel for the petitioner was neither intentional nor deliberate but the result of an honest misunderstanding.
4. 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.
5. 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.

Through Applicant/Petitioner



**JAVED ALI GHANI**

Advocate Supreme Court.

Dated: 25.06.2024

**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

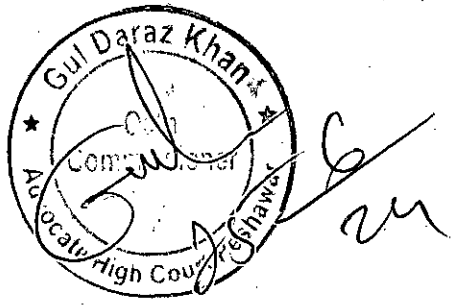
**VERSUS**

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

.....RESPONDENTS

**AFFIDAVIT**

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.



*[Handwritten Signature]*  
DEPONENT

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**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Appeal No. 1396/2019

Diary No. 1314

Dated 27/9/2019

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

(Appellant)

**VERSUS**

1. Govt. 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)

**Filed to-day**

**Registrar**

27/9/19

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.

**Re-submitted to -day  
and filed.**

**Registrar**

22/10/19

Prayer in Appeal: -

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.

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR

Case No. 1311  
Date: 13/11/2019

Applicant: M. S. P. H. R.

Respondent: Secretary School (Male) Malakand Agency

Salim Khan SST Govt Shaded Field Armed Higher  
Secondary School (Male) Malakand Agency

(Applicant)

VERGERS

1. Govt 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

(Respondent)

Appeal under Section 4 of the Khyber  
Pakhtunkhwa Service Tribunal Act, 1974  
against the Order dated 28.03.2019, whereby the applicant has been  
reused the promotion to BPS 17 from the  
date when the applicant 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.

Photo-day  
Registered  
22/10/19


Registration  
22/10/19  
Present in Appeal  
Re-submitted to - org.

On acceptance of this appeal the impugned  
refusal order dated 28.03.2019  
communicated on 02.09.2019 may kindly be  
declared illegal, void ab initio and the  
applicant may be promoted to BPS 17 from  
the date when the applicant became fit and  
eligible i.e. 01.09.2014 with all arrears of  
salary and back benefits of service for the  
intervening period i.e. from the date of  
suspension 01.09.2014 till 21.01.2016.

13/11/2019  
13/11/2019

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:-

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



(B)

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**GROUND 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.

ATTESTED

EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

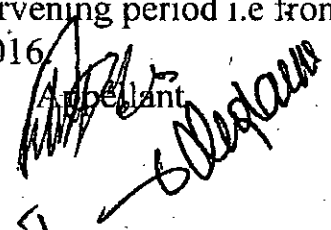


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It is, therefore, humbly prayed that On acceptance of this appeal the impugned refusal order dated 28.03.2019 communicated on 02.09.2019, may kindly be declared illegal, void abinitio and the appellant may be promoted to BPS 17 from the date when the 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

AFFIDAVIT

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.

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

  
Appellant

9

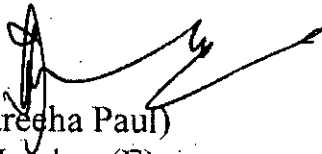
Service Appeal No.1396/2019 titled "Saleem Khan Vs. Education Department"


4<sup>th</sup> 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 (E)

  
(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

**ATTESTED**  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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