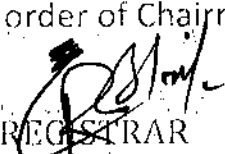


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 443/2024

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 Syed Muhammad Jan submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 0706.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to the counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

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

Execution Petition No. 443 /2024
In Service Appeal No.5893/2020

Syed Muhammad Jan

VS

Education department

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment dated 07.03.2024	-A-	03-07
3.	Copy of application dated 06.05.2024	-B-	08
4.	Vakalat Nama	-----	09

PETITIONER

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

& 
(SHAKIR ULLAH TORANI)
ADVOCATE PESHAWAR

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

Execution Petition No. 443/2024
In Service Appeal No. 5893/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 13208

Dated 06.06.2024

Syed Muhammad Jan, Retired Senior Clerk (BPS-14),
GHS No.1, Charsadda.

(PETITIONER)

VERSUS

1. The Secretary, (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director, (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer, (Male) Charsadda.

(RESPONDENTS)

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 07.03.2024 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the petitioner has filed an appeal bearing No.5893/2020 in this Honorable Tribunal against the order dated 06.03.2020, whereby the departmental appeal of the petitioner has been rejected for no good grounds and against the order dated 28.05.2014 whereby petitioner was promoted as senior clerk with immediate effect instead of due date 14.03.2012 the date on which juniors to petitioner were promoted to the post of senior clerks. with the prayer that on acceptance of appeal, the rejection order dated 06.03.2020 may kindly be set aside and the petitioner may kindly be considered for promotion to the post of Senior Clerk by antedating his promotion with effect from 24.03.2012 "the date on which his juniors were promoted to the post of Senior Clerk" by modifying the promotion order dated 28.05.2014 to the extent of the appellant with all back and consequential benefits.
2. That the said appeal was heard and decided by the Honorable Tribunal on 07.03.2024. The Honorable Tribunal accepted the appeal of the petitioner and directed the respondents to place before the relevant forum the case of the petitioner for promotion to the post of senior clerk along with his junior colleagues who were promoted on 24.03.2012. Since the petitioner has retired from service on attaining the age of superannuation on 01.04.2020, therefore, case for his proforma promotion shall be processed by the respondents. **(Copy of judgment 07.03.2024 is attached as Annexure-A)**

3. That the petitioner has also filed application on 06.05.2024 for implementation of judgment dated 07.03.2024, but no action has taken on his application by the respondents to implement the judgment dated 07.03.2024 of this Honorable Tribunal. **(Copy of application is attached as Annexure-B)**
4. That the Honorable Service Tribunal has accepted the appeal of the petitioner on 07.03.2024, but after the lapse of about three months the respondents has not implemented the judgment dated 07.03.2024 of this Honorable Tribunal.
5. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 07.03.2024 of this Honorable Tribunal in letter and spirit.
7. That the petitioner has having no other remedy except to file this execution petition in this Honorable Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 07.03.2024 of this Honorable Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

S. m. Jan
PETITIONER
Syed Muhammad Jan

THROUGH:

(Signature)
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
& *(Signature)*
SHAKIR ULLAH TORANI
ADVOCATE PESHAWAR

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



S. m. Jan
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

A
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D

Service Appeal No. 5893/2020

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Syed Muhammad Jan, Senior Clerk, GHS No. 1
Charsadda.....(Appellant)

VERSUS

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) Charsadda.....(Respondents)

Present:-

TAIMUR ALI KHAN,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.


Date of Institution.....21.04.2020
Date of Hearing.....07.03.2024
Date of Decision.....07.03.2024

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal, the rejection order dated 06.03.2020 may kindly be set aside and the appellant may kindly be considered for promotion to the post of Senior Clerk by antedating his promotion with effect from 24.03.2012, "the date on which the his juniors were promoted to the post of

ATTACHED


06-5-24

(3) (4)

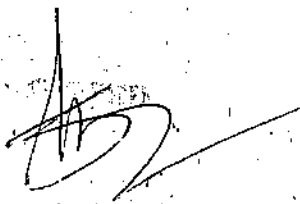
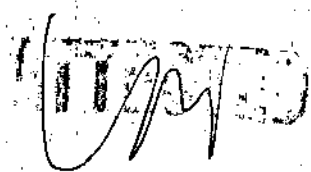
Senior Clerk" by modifying the promotion order dated 28.05.2014 to the extent of the appellant with all back and consequential service benefits. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of appellant."

02. Brief facts of the case are that appellant was appointed as Junior Clerk in the Education Department on 27.11.1986; that he was placed in the seniority list of Junior Clerks above the names of his junior colleagues i.e. Sartaj, Said Anwar and Muhammad Daud. That in the seniority list dated 14.03.2012, his name was placed at Serial No.90 while juniors to him were placed at Serial No.2, 3 & 4 and accordingly, they were promoted to the post of Senior Clerk vide order dated 24.03.2012. Therefore, he filed service appeal No.806/2012 and this Tribunal vide order dated 06.10.2015 set aside the said promotion order and directed the competent authority to issue revised seniority list as per law and rules. It is pertinent to mention that he had been promoted to the post of Senior Clerk vide order dated 28.05.2014 but with immediate effect, and not from 24.03.2012. That the appellant filed execution petition for implementation of judgment dated 16.05.2015 and during the pendency of the said petition, tentative seniority list was issued, wherein, name of the appellant was placed above the names of Sartaj Ali, Said Anwar and Muhammad Daud, however, he was not given antedated promotion i.e. from 24.03.2012. Feeling aggrieved, the appellant filed departmental appeal on 11.10.2019 against the order dated 28.05.2014, which was rejected vide order dated 06.03.2020, hence, preferred the instant service appeal on 21.04.2020.

 ATTENDED

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the order dated 06.02.2020 28.05.2014 are against the law, rules, facts and norms of justice; that the appellant was at serial No. 3, while Sartaj Ali, Said Anwar and Muhammad Daud Sr. No. 4, 5 & 6 respectively, but despite that they were promoted to the post of Senior Clerk on 24.03.2012 while the appellant was promoted to the post of Senior Clerk on 28.05.2014, therefore, the order dated 28.05.2014 is required to be antedated with effect from 24.03.2012, when his junior were promoted to the post of Senior Clerk; that the appellant was senior to his colleagues namely Sartaj Ali, Said Anwar and Muhammad Daud, but was placed junior to them; that the appellant was appointed in the year 1986 while Sartaj Ali, Said Anwar and Muhammad Daud were appointed in the year 1987 but despite being juniors to the appellant they were promoted on 24.03.2012 and the appellant was promoted after two years on 28.05.2014 which is violation of law and rules; that the appellant was entitled for antedated promotion which was not given to him, therefore, he was deprived of his legal rights; that appellant had not been treated in accordance with law and rules, therefore, he requested for acceptance of the instant service appeal.

④ ⑥

05. As against that, learned Deputy District Attorney argued that the appellant was not entitled for promotion as he had been transferred from Directorate of Colleges to Directorate of Schools. He submitted that promotions are always given with immediate effect and not antedated. Further submitted that the appellant had been transferred from Directorate of Colleges on his own choice, therefore, he was not entitled to antedated promotion. Lastly, he submitted that the appellant had already been promoted to the post of Senior Clerk, therefore, he requested for dismissal of the instant service appeal.

06. The case in hand is basically second round of litigation in the Tribunal. In the earlier round the appellant challenged his seniority for the year 2012 and the promotion order dated 24.03.2012 whereunder certain junior officials were promoted. The Tribunal vide judgment dated 06.10.2015 in the service appeal No. 806/2012 of the appellant accepted the prayer of the appellant relating to the fundamental issue of seniority of the appellant vis-a-vis his juniors. During pendency of the appeal the appellant was also promoted to the post of Senior Clerk vide order dated 28.05.2014 with immediate effect. The respondent department during pendency of execution petition of the appellant revised the seniority list of the Senior Clerks issued in the year 2019 and placed his name above his juniors who were promoted on 24.03.2012. We hold that the Tribunal had decided the seniority of the appellant as Junior Clerk and as such he remained senior to his junior colleagues who got promotion in the year 2012. When his status of seniority in the lower post stood settled then he was required to be considered for promotion alongwith his junior colleagues who got promotion

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(8) (7)

two years earlier than the appellant otherwise there are no benefits of restoration of his seniority after prolonged litigation. At the time of consideration of promotion of Senior Clerks in the year 2012 the appellant was eligible for promotion in terms of seniority. Nothing is on record to show that there was any fault on the part of the appellant i.e. pendency of inquiry, missing of ACRs, flaws in the ACRs etc at the time of consideration of promotion of Junior Clerks to the post of Senior Clerks in the year 2012 except the dispute of seniority which stands settled by the Tribunal.


07. In view of above discussion we accept the appeal in hand and direct the respondents to place before the relevant forum the case of the appellant for promotion to the post of Senior Clerk alongwith his junior colleagues who were promoted on 24.03.2012. Since the appellant has retired from service attaining the age of superannuation on 01.04.2020, therefore, case for his proforma promotion shall be processed by the respondents. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 07th day of March, 2024.*


(RASHIDA BANO)
Member (J)

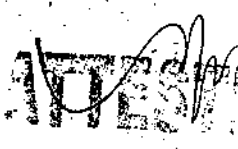

(MUHAMMAD AKBAR KHAN)
Member (E)

Kamran


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5-P

06-5-24


ATTESSED

06-5-24
06-5-24

To

B

8

The Director (E&SE),
KP, Peshawar.

Subject: Application for Implementation
of Judgment dated 07.03.2024
Passed in S.A# 5893/2020

R/Sir,

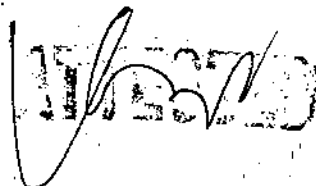
Most respectfully, it is stated that
I have filed a Service Appeal before the
KP Service Tribunal with the above number
which was decided in my favour vide
judgment dated 07/03/2024. (Attested
copy of judgment dated 07/03/2024 is
attached with the application.)

It is, therefore, most kindly requested
that to implement the judgment dated
07/03/2024 in its true letter & spirit.
Please.

06th May 2024.

S. M. Jan
Sincerely Yours

S. M. Jan
Senior Clerk (B-14)
GHS # 1, Charsadda



VAKALAT NAMA

NO. _____/2024

IN THE COURT OF Khyber Pakhtun Khwa Service Tribunal
Peshawar
Syed Muhammad Jan

(Appellant)
(Petitioner)
(Plaintiff)

Education VERSUS Department

(Respondent)
(Defendant)

I/We, Syed Muhammad Jan

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT AND SHAKIR ULLAH TORANI ADVOCATE**, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2024

S. M. Jan
(CLIENT)

ACCEPTED

TAIMUR ALI KHAN
Advocate High Court

BC-10-4240
CNIC: 17101-7395544-5
Cell No. 03339390916

& SHAKIR ULLAH TORANI
Advocate Peshawar
BC-22-4994