Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No._____471/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.06.2024	The implementation petition of Mr. Muhammad Sohail submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 12.06.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 471 /2024
In
Appeal No. 7699/2021

MUHAMMAD SOHAIL **VS** **GOVT: OF KP & OTHERS**

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Petitioner

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 471 /2024
In
Appeal No. 7699/2021

Muhammad Sohail, SST (G) (BPS-16)
GMS Sura Dara, District Mohmand

.....PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Peshawar.
3. Chairman Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar Cantt.

..... 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 12/10/2023 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 7699/2021 before this august Service Tribunal, against the impugned order dated 11/06/2021 of the respondents, whereby the respondent withdrew the appointment order of the appellant from the date of appointment.

2- That the appeal of the petitioner was finally heard on dated 12/10/2023 and as such the ibid appeal was accepted with the following terms by this august Service Tribunal:

"8. As a sequel to the above discussion, we set aside the impugned orders and remand case back to the respondent to conduct denovo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. Appellants are reinstated into service for the purpose of denovo inquiry, it is expected from respondents to appoint impartial honest inquiry committee to meet the ends of justice, however, at the same time appellants are

directed to associate and co-operate with inquiry committee without raising any further objection for putting an end to further litigation. Costs shall follow the event. Consign". Copy of the consolidated judgment dated 12/10/2023 is attached as annexure.....**A**

3- That after obtaining copy of the judgment dated 12/10/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ departments 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 12/10/2023 passed in Appeal No. 7699/2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Petitioner
Muhammad Sohail

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Muhammad Sohail (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.

WALI KHAN MOHMAND ADVOCATE HIGH COURT Peshawar High Court ATTESTED NOTARY PUBLIC 16

DEPONENT

"A" -3-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 7699 /2021

Mr, Muhammad Sohail, SST (G) (BPS-16),
GMS, Sura Dara , District, Mohmand.

..... **APPELLANT**

VERSUS

1- The Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
3- The Chairman Khyber Pakhtunkhwa Public Service Commission, Fort Road, Peshawar.

..... **RESPONDENTS**

SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 11.6.2021 WHEREBY THE WITHDRAWAL NOTIFICATION DATE 4.4.2019 REGARDING APPOINTMENT OF THE APPELLANT AS S.S.T (G) (BPS-16) HAS BEEN RESTORED IN UTTER VIOLATION OF LAW AND RULES AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned Notification dated 4.4.2019 and 11.6.2021 may kindly be set aside and the appellant may kindly be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

R.SHEWETH:
ON FACTS:

1- That the appellant was initially appointed by the competent authority on contract basis for a period of one year vide order dated 16.09.2008 and was later on regularized w-e-f 01-01-2009 through regularization Act, 2009. Copies of the appointment and regularization order dated 11.02.2010 are attached as annexure .....**A& B.**

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5. Service Appeal No. 7627/2021
6. Service Appeal No. 7628/2021
7. Service Appeal No. 7629/2021
8. Service Appeal No. 7630/2021
9. Service Appeal No. 7631/2021
10. Service Appeal No. 7641/2021
11. Service Appeal No. 7642/2021
12. Service Appeal No. 7643/2021
13. Service Appeal No. 7644/2021
14. Service Appeal No. 7645/2021
15. Service Appeal No. 7646/2021
16. Service Appeal No. 7649/2021
17. Service Appeal No. 7650/2021
18. Service Appeal No. 7651/2021
19. Service Appeal No. 7652/2021
20. Service Appeal No. 7653/2021
21. Service Appeal No. 7654/2021
22. Service Appeal No. 7655/2021
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24. Service Appeal No. 7657/2021
25. Service Appeal No. 7658/2021
26. Service Appeal No. 7678/2021
27. Service Appeal No. 7679/2021
28. Service Appeal No. 7680/2021
29. Service Appeal No. 7681/2021

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30.Service Appeal No. 7682/2021

31.Service Appeal No. 7683/2021

32.Service Appeal No. 7688/2021

33.Service Appeal No. 7689/2021

34.Service Appeal No. 7690/2021

35.Service Appeal No. 7691/2021

36.Service Appeal No. 7692/2021

37.Service Appeal No. 7697/2021

38.Service Appeal No. 7698/2021

39.Service Appeal No. 7699/2021

40.Service Appeal No. 7700/2021

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

2. Precisely stated the facts of the case are that the appellants were appointed as SSTs in 2012 who serve the department as regular employee and obtain pay while some of them were promoted. They were directed to produce service record but failed. After completion of codal formalities, their appointment orders were withdrawn vide order dated 04.04.2019. Appellant challenged order dated 04.04.2019 in service appeals, which was remitted back to the department for the purpose of denovo enquiry by reinstating the appellants into service. Respondents after conducting denovo enquiry without providing opportunity of personal hearing and cross examination again withdrew the appointment orders of the appellant from the date of appointment vide impugned order dated 11.06.2021. They preferred

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departmental appeals but the same were not responded to, hence, the present service appeals.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellants submitted that the appointments were made in accordance with law by following the prescribed procedure which cannot be held fake appointments. That notifications dated 04.04.2019 and 11.06.2021 are against law and facts. That the appellants were not treated in accordance with law and they were not given an opportunity to defend themselves as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. Learned counsel further argued that neither regular inquiry was conducted nor the appellants were served with show cause notices, hence, they all were condemned unheard. That all the appellants being qualified, were properly appointed after due process of law and fulfillment of all codal formalities but they were shown out of service with a single stroke of pen without care and caution of its legal consequences which caused grave miscarriage of justice. In order to substantiate his version, reliance has been placed on 2011 SCMR 1581; 2004 SCMR 303; 2016 SCMR 1299 and 2010 PLD SC 483.

5. Conversely learned District Attorney appearing on behalf of respondents, controverted the contentions of learned counsel for appellants by contending that claim of the appellants regarding their appointment is baseless and liable to be rejected as they never applied for the said post nor appeared in

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any interview, therefore, their appointment was declared fake & bogus and have been disowned by the Department vide notifications dated 04.04.2019 and 11.06.2021. He submitted that they were treated as per law, rules and policy and there is no question of violation of Article 10-A of the Constitution of Islamic Republic of Pakistan 1973, hence stance of the appellants is baseless and liable to be rejected and lastly, he submitted that those appellants who claimed to have been recommended by the Khyber Pakhtunkhwa Public Service Commission, failed to produce any proof of their recommendation by Public Service Commission. Reliance was placed on 2005 SCMR 1814; 2005 SCMR 1040; 2009 SCMR 1492 and 2012 SCMR 673.

6. Before dilating upon the main issue, it merits a mention here that total 40 connected cases are intended to be disposed of through this single judgment. There are three categories of cases, category-I includes fives cases of those employees who were appointed on contract basis and subsequently were regularized in service under the Khyber Pakhtunkhwa Employees (Regularization of Service) Act, 2009 and it was on 04.04.2019 when they received notification vide which appointment record in respect of these appellants was found bogus, thus, their appointment/adjustment notification dated 11.02.2010 was disowned. Category-II includes those employees who upon recommendation of D.S.C, were appointed as PTC, subsequently applied for SSTs' posts and were selected by the Khyber Pakhtunkhwa Public Service Commission. It was on 04.04.2019 when they received notification vide which appointment record in respect of these appellants was found bogus, thus, their appointment notification was disowned. Appellants of category-III are those, who were appointed as SSTs on the recommendations of KPPSC and two of

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Khyber Pakhtunkhwa
Service Tribunal
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them were promoted to the rank of S.S and it was on 04.04.2019 when they received notification vide which appointment record in respect of these appellants was found bogus, thus, their appointment/adjustment notification was disowned.

7. Perusal of record reveals that it second round of litigation because earlier appellants filed service appeals bearing No. 958/19 to 1075/19, 1009/19, 1018/19 to 1033/19, 1041/19 and 1111/19. All the above mentioned appeals were decided by this Tribunal vide order dated 20.10.2021 by setting aside the impugned order and reinstating the appellants into service with direction to the department to conduct proper inquiry. Respondents after receipt of order of this Tribunal constituted enquiry committee consisted upon Mr. Muhammad Salim Khan, Principal GHSS NCMHS No. 1 Tank Chairman of Inquiry Committee and Mr. Munawar Gul, Principal GHSS Tarnab Farm Peshawar member inquiry committee, committee initiated its proceedings and summon appellant and the then Director FATA MR. Fazal Manan. It is mentioned in the inquiry report that most of the appellants refused to avail opportunity of personal hearing and cross examination on the plea that they wanted to change the instant inquiry committee and they had also submitted written application in this regard to the authority concern. Said application was annexed with departmental appeal. When appellant had no trust upon the inquiry committee members and they had submitted proper written application to the authority concern for change/replacement of inquiry committee and also provided copy of said objection/application to the inquiry committee, then in our humble view inquiry committee itself brought matter to the notice of their highups and stop the matter till proper order by the authority for the sake of safe administration

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of justice and fair trail but inquiry committee opt to proceed which show their interest. It is held that after remand for denovo inquiry by the Tribunal no proper inquiry was conducted by the respondent wherein proper chance of self defense by providing opportunity of cross examination upon the person who deposed against them was provided to the appellant. So order of this Tribunal was not complied with in its true letter and spirit. Appellant must be provided with opportunity of personal hearing and cross examination for fulfilling purpose of fair trial.

8. As a sequel to above discussion, we set aside the impugned orders and remand case back to the respondent to conduct denovo inquiry within a period of sixty days, by providing proper opportunity of self-defense and cross examination. Appellants are reinstated into service for the purpose of denovo inquiry, it is expected from respondents to appoint impartial honest inquiry committee to meet the ends of justice, however at the same time appellants are directed to associate and co-operate with inquiry committee without raising any further objection for putting an end to further litigation. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 12th day of October, 2023.*

(MUHAMMAD AKBAR KHAN)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 06-06-24
Number of Words 89
Copying Fee 40/-
Urgent
Total 40/-
Name of Co
Date of Comp 07-06-24
Date of Delivery of Copy 07-06-24

"B"

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بحکمت صنا ساڈا الگ بکشن ایلیمنٹری اینڈ سیکنڈری KPK

ATTESTED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

EP No ____/2024

Muhammad Sohail (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt (RESPONDENT)
(DEFENDANT)

I/We Muhammad Sohail

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

Sohail

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

&

MAHMOOD JAN
ADVOCATES

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