


Form-A

FORM OF ORDER SHEET

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

Execution petition No. 925/2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	22/8/2024	<p>The instant Execution petition presented today by Noor Muhammad Khattak Advocate, may be entered in the relevant register and put up to the Court for proper order please. This restoration application is entrusted to S. Bench at Peshawar to be put up there on 11/9/2024.</p> <p style="text-align: right;"> REGISTRAR</p>

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

Execution Petition No. 925 /2024  
In  
Appeal No. 661/2019

**MR. SHAMSHER KHAN**

**VS**

**HEALTH DEPTT:**

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**Petitioner**  
**Shamsher Khan**

**THROUGH:**  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE SUPREME COURT**

①

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

Execution Petition No. 925 /2024

In

Appeal No. 661/2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 15734

Dated 22/8/24

Mr. Shamsheer Khan, Ex-Assistant Sub Inspector  
Office of the Deputy Inspector General of Police, Telecommunication  
Khyber Pakhtunkhwa, Peshawar.

..... **Petitioner**

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Telecommunication,  
Khyber Pakhtunkhwa, Peshawar.

..... **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 03/05/2024 IN LETTER AND SPIRIT.**

**R/SHEWETH:**

1- That the petitioner filed service appeal bearing No. 661/2019 before this august Service Tribunal, against the impugned order dated 17/01/2013 whereby juniors to the appellant have been promoted to the ranks of officiating Sub Inspectors.

2- That the appeal of the petitioner was finally heard on dated 03/05/2024 and as such the ibid appeal is accepted as follows:

***"09. In view of the above, instant service appeals are accepted. The impugned order dated 17/01/2019 is modified to the extent of appellants by directing the respondents to confirm the appellants in the rank of Assistant Sub Inspector w.e.f 01/09/2016 instead of 31/08/2018 and grant proforma promotion to the appellants to the rank of Officiating sub Inspector w.e.f 17/01/2019 with all monetary benefits. Costs shall follow the event. Consign."*** Copy of the consolidated judgment dated 03/05/2024 is attached as annexure.....**A**

3- That after obtaining copy of the judgment dated 03/05/2024 the same was submitted with the respondents for implementation of his grievance coupled with an application,

but the respondents/ department 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 03/05/2024 passed in Appeal No. 661/2019 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

*[Signature]*  
**Petitioner**  
**Shamsher Khan**

**THROUGH:**  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE SUPREME COURT**

**AFFIDAVIT**

I, Shamsher Khan, (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.

*[Signature]*  
**DEPONENT**



"A"

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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN  
**MUHAMMAD AKBAR KHAN** ... MEMBER(Executive)

*Service Appeal No.660/2019*

Date of presentation of Appeal.....21.05.2019  
Date of Hearing.....03.05.2024  
Date of Decision.....03.05.2024

**Mr. Habib Ur Rehman**, Ex: Assistant Sub Inspector, O/O the Deputy Inspector General of Police, Telecommunication, Khyber Pakhtunkhwa, Peshawar.....*Appellant*

Versus

1. **The Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
2. **The Deputy Inspector General of Police**, Telecommunications, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

*Service Appeal No.661/2019*

Date of presentation of Appeal.....21.05.2019  
Date of Hearing.....03.05.2024  
Date of Decision.....03.05.2024

**Mr. Shamsher Khan**, Ex: Assistant Sub Inspector, O/O the Deputy Inspector General of Police, Telecommunication, Khyber Pakhtunkhwa, Peshawar .....*Appellant*

Versus

1. **The Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
2. **The Deputy Inspector General of Police**, Telecommunications, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For the appellants  
Mr. Muhammad Jan, District Attorney .....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 17.01.2019 WHEREBY JUNIORS TO THE APPELLANTS HAVE BEEN PROMOTED TO THE RANKS OF OFFICIATING SUB INSPECTORS WHILE THE APPELLANTS HAVE BEEN IGNORED AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

TESTED

*[Handwritten signatures and marks]*

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## CONSOLIDATED JUDGMENT

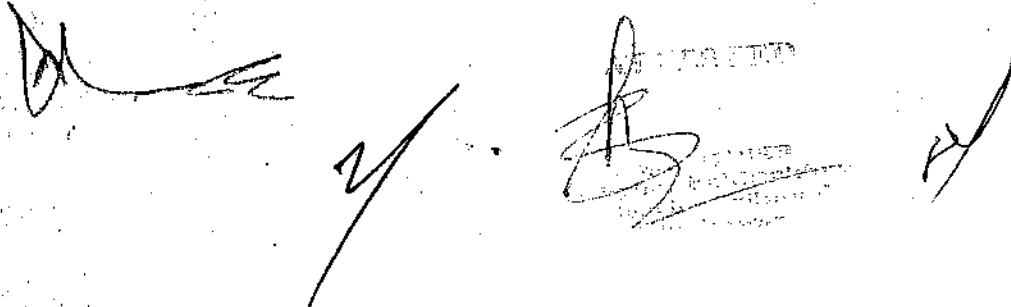
**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment, both the appeals, are jointly taken up as both are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

2. The appellants' cases in brief are that they were serving in the Police Department. Vide impugned order dated 17.01.2019, alleged junior to the appellant was promoted to the rank of Officiating Sub Inspector while the appellants were not. Feeling aggrieved, they filed departmental appeals, during the pendency of which, they were confirmed in the rank of Assistant Sub Inspectors but w.e.f 31.08.2018 instead, w.e.f 01.09.2016. The appellants have been retired from service vide order dated 30.04.2019 w.e.f 04.05.2019, without availing promotion to the rank of Officiating Sub Inspectors w.e.f 17.01.2019. Therefore, they filed the instant service appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants and learned District Attorney for the respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the

The bottom of the page contains several handwritten signatures and stamps. On the left, there is a signature that appears to be 'Kalim Arshad Khan'. In the center, there is a large, stylized signature. To the right of this signature, there is a circular stamp with some text inside, which is partially obscured by the signature. Further to the right, there is another signature. The overall appearance is that of a formal judgment document with multiple signatures and an official stamp.

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learned District Attorney controverted the same by supporting the impugned order(s).

6. The appellants were not confirmed to the ranks of Sub Inspectors because of pendency of inquiry. The record reflects that the appellants had moved application for confirmation as ASI and promotion to the rank of SI, which applications were processed as is evident from the note sheet annexed with the appeal. SP/MT had made recommendation to the DIG Telecommunications to approve confirmation of the appellants to the rank of ASI and promotion to the higher ranks of SIs, because they were senior-most in the seniority list. The DIG, in turn, put a note with the words "next DPC". This note was put on 04.03.2019, but before the case of promotion of the appellants could be placed in the next DPC, the appellants had retired from service vide order dated 30.04.2019 w.e.f 04.05.2019. The next DPC was held on 23.05.2019, wherein, other officials were promoted.

7. The Supreme Court of Pakistan in 2022 SCMR 1546 has held that:

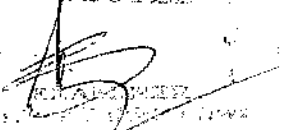
*"A retired civil servant shall not be eligible for grant of promotion; provided that he may be considered for grant of pro forma promotion as may be prescribed"*

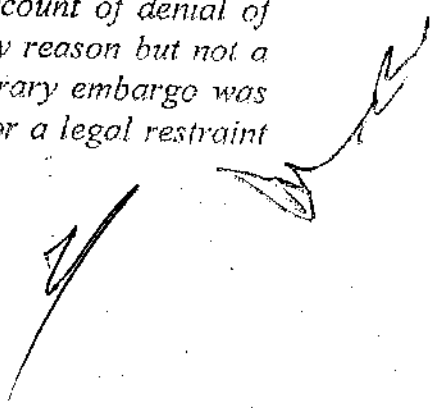
8. Besides, the Lahore High Court has held in 2023 PLC (CS) 431 titled "Ijaz Akhtar versus Secretary to Government of Punjab and others"

also held that:

*"The concept of proforma promotion is to remedy the loss sustained by an employee/civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in cases where a temporary embargo was created against his right for such promotion or a legal restraint*

ATTESTED





(B)

was posed against his claim owing to any departmental proceedings inquiry etc. against him and the said obstacle is done away with ultimately then in such a situation, his monetary loss and loss of rank is remedied through proforma promotion. A civil servant has a fundamental right to be promoted even after his retirement through awarding pro forma promotion provided his right of promotion accrued during his service and his case for promotion could not be considered for promotion for no fault of his own and he is retired on attaining the age of superannuation without any shortcoming on his part pertaining to deficiency in the length of service or in the form of inquiry and departmental action taken against his right of promotion. It is fundamental right of a civil servant to be promoted even after his retirement by awarding pro forma promotion provided such right accrued during his service and his case could not be considered for no fault of his own and that he should not be penalized for lapses and negligence on part of the department."

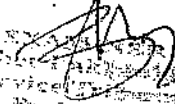
9. In view of the above, instant service appeals are accepted. The impugned order dated 17.01.2019 is modified to the extent of appellants by directing the respondents to confirm the appellants in the rank of Assistant Sub Inspector w.e.f 01.09.2016 instead of 31.08.2018 and grant proforma promotion to the appellants to the ranks of Officiating Sub Inspector w.e.f 17.01.2019 with all monetary benefits. Costs shall follow the event. Copy of this judgment be placed in the file of the connected service appeal. Consign.

10. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3<sup>rd</sup> day of May, 2024.

  
KALIM ARSHAD KHAN  
Chairman

  
MUHAMMAD AKBAR KHAN  
Member (Executive)

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar



To

Deputy Inspector General of Police,  
Telecommunication, Khyber Pakhtunkhwa, Peshawar.

"B"

(7)

**Through Proper Channel**

Subject:- **APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 03/05/2024  
OF THE HONOURABLE SERVICE TRIBUNAL, KP PESHAWAR IN SERVICE APPEAL  
NO 661/2019**

Respected Sir

1. It is stated that the applicant was serving in the police department, vide impugned order dated 17/01/2019 junior to the applicant were promoted to the rank of officiating Sub Inspector while the applicant was not.
2. That the applicant feeling aggrieved, filed departmental appeal during the pendency of which, the applicant was confirmed in the rank of Assistant Sub Inspector, but w.e.f. 31/08/2018 instead of w.e.f. 01/09/2019.
3. That the applicant has been retired from service vide order dated 30/04/2019 w.e.f. 04/05/2019 without availing promotion to the rank of Officiating Sub Inspector w.e.f. 17/01/2019, thus the applicant filed Service Appeal No 660/2019 before the KP Service Tribunal, which was accepted vide order dated 03/05/2024 and the impugned order dated 17/01/2019 is modified to the extent of applicant by directing the department to confirm the applicant in the rank of Assistant Sub Inspector w.e.f. 01/09/2019 instead of 31/08/2018 and grant proforma promotion to the applicant to the rank of Officiating Sub Inspector w.e.f. 17/01/2019 with all monitory benefits. (Copy of judgment is attached)

It is, therefore, most humbly requested that on acceptance of this application, the judgment dated 03/05/2024 of Service Tribunal KP, Peshawar in Service Appeal No 661/2019 may please be implemented in letter and spirit.

Dated:- 30/05/2024

  
**Shamsheer Khan,**

Ex-Assistant Sub Inspector  
Office of the Deputy Inspector  
General of Police,  
Telecommunication  
Khyber Pakhtunkhwa, Peshawar.



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**VAKALATNAMA**  
**BEFORE THE KHYBER PAKHYUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

EP No /2024

Shamshav Khan

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Police deptt

(RESPONDENT)  
(DEFENDANT)

I/We/ Shamshav Khan

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

  
**CLIENT**

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

**WALEED ADNAN**

**UMAR FAROOQ MOHMAND**

**&  
KHANZAD GUL**

**ABID ALI SHAH  
ADVOCATES**

**OFFICE:**  
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Deans Trade Centre, Peshawar Cantt.  
(0311-9314232)