


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	03.09.2024	<p>The implementation petition of Mr. Sami ud Din submitted today by Syed Noman Bukhari Advocate. It is fixed for implementation report before Single Bench at Peshawar on 16.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION PETITION No. 943 /2024

IN
SERVICE APPEAL NO.1184/2023

Sami Ud Din:

VS

Govt: of KP etc.

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S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment dt: 25.07.2024	- A-	03-07
3.	Copy of application	- B -	08-09
4.	Vakalat Nama	-----	09

PETITIONER

Sami Ud Din
Sami Ud Din

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)

Advocate, High Court.
Peshawar.

Room: No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 03065109438

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION PETITION No. 943 /2024
IN
SERVICE APPEAL NO. 1184/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15365
Dated 03.09.2024

Sami Ud Din Sub Engineer (BPS-16),
C&W Department, Peshawar.

(APPELLANT)

VERSUS

1. The Secretary to Government of Khyber Pakhtunkhwa, C&W Department, Civil Secretariat, Peshawar.
2. The Chief Engineer (Centre) C&W Department Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 25.07.2024 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....
RESPECTFULLY SHEWETH:

1. That the petitioner filed Service Appeal No. 1184/2023 in this august Tribunal for consideration of promotion to the post of Assistant Engineer as per the old rules when the petitioner was eligible.
2. That the above mentioned appeal was finally heard by the Honorable Tribunal on 25.07.2024 and the Honorable Tribunal is kind enough to accept the service appeal of the petitioner vide judgment dated 25.07.2024 whereas the petitioner are held to be promoted to the position of Assistant Engineer as per the rules applicable when they are eligible. They should, therefore, the consider for promotion accordingly. **(Copy of judgment is attached as Annexure-A).**
3. That the petitioner filed application to the competent authority for implementation of the judgment of Honorable Tribunal Khyber Pakhtunkhwa, in the above mentioned appeal but in vain. **(Copy of the application is attached as annexure B.)**

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4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 25.07.2024 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

PETITIONER

Sami Ud Din
Sami Ud Din

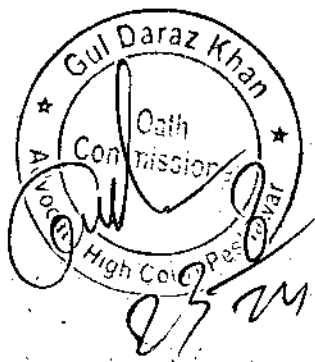
THROUGH:-

Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

AFFIDAVIT:

It is affirmed and declared that the content of the execution petition is true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Tribunal.

[Signature]
DEPONENT



The Government of Khyber Pakhtunkhwa
Department of Public Administration and Local Government
Peshawar

A (3)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
AURANGZEB KHATTAK ... MEMBER (Judicial)

Service Appeal No.1183/2023

Date of presentation of Appeal.....26.05.2023
Date of Hearing.....25.07.2024
Date of Decision.....25.07.2024

Amayāt Ullah SDO (OPS) Sub Engineer (BPS-16) C&W Department,
Peshawar.....(Appellant)

Versus

1. **The Secretary to Government of Khyber Pakhtunkhwa C&W**
Department, Civil Secretariat Peshawar.
2. **The Chief Engineer (Center) Communication & Works**
Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Service Appeal No.1184/2023

Date of presentation of Appeal.....26.05.2023
Date of Hearing.....25.07.2024
Date of Decision.....25.07.2024

Sami Ud Din Sub Engineer (BPS-16), Assistant Director (OPS),
C&W Department, Peshawar.....(Appellant)

Versus

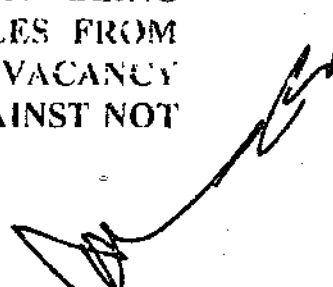
1. **The Secretary to Government of Khyber Pakhtunkhwa C&W**
Department, Civil Secretariat Peshawar.
2. **The Chief Engineer (Center) Communication & Works**
Department, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

Present:

Mr. Muhammad Asif Yousafzai, 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 LETTER DATED 05.12.2022
AND FOR NOT CONSIDERING THE
APPELLANTS FOR PROMOTION TO THE POST
OF (ASSISTANT ENGINEER) BPS-17 BEING
ELIGIBLE AS PER LAW AND RULES FROM
THE DATE I.E. THE EXISTENCE OF VACANCY
AND PROMOTION QUOTA AND AGAINST NOT


ATTESTED



DECIDING THE DEPARTMENTAL APPEAL OF
THE APPELLANTS WITHIN STATUTORY
PERIOD OF NINETY DAYS.

u

CONSOLIDATED JUDGMENT

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

02. Brief facts of the cases as reflected from the record, are that the appellants were appointed as Sub Engineers (BPS-12) in the C&W Department in the year 1986; that the said post was upgraded to BPS-12; that as per old rules, the appellants were allegedly eligible for promotion to the post of Assistant Engineer (BPS-17), therefore, their working papers were prepared; that their promotions were delayed because of the reason that DPC be postponed till the finalization of new Rules; that after the Standing Service Rules Committee meeting, rules for promotion to the post of Assistant Engineer (BPS-17) were amended vide Notification dated 20.01.2023 and the appellants were not given promotions.

03. Feeling aggrieved, they filed departmental appeals but the same were not responded within the statutory period of ninety days, therefore, they filed the instant service appeals.

04. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put

ATTESTED

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.

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

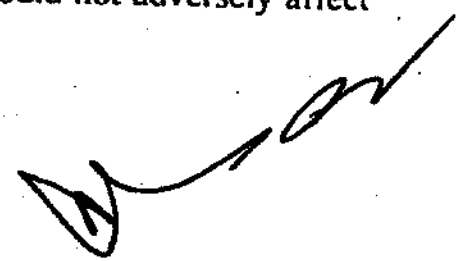
06. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

07. From the record, it is evident that the appellants were serving as Sub Engineers (BPS-16) and were eligible for promotion to the post of Assistant Engineer (BPS-17), however, they were denied promotion.

08. First of all, employees have a legitimate expectation to be considered for promotion based on the rules and conditions applicable at the time of their eligibility. Therefore, principle of legitimate expectation protects against arbitrary changes in rules that disadvantage employees who have met the eligibility criteria under the earlier rules.

ATTESTED

09. Secondly administrative delays in processing promotions, such as postponements of the DPC, do not negate the employees' right to promotion under the existing rules at the time they were eligible. Such delays should not adversely affect the substantive rights of the employees.



10. Besides, if promotion rules are amended after the civil servant have become eligible for promotion, the new rules typically do not apply retrospectively unless explicitly stated. Changes in rules should not apply to individuals who were already in the pipeline for promotion based on the old rules.

11. Last, but not the least, the Apex Court has consistently held that amendments to promotion rules should not affect the rights of civil servants who have fulfilled the eligibility criteria as per the rules existing at the time of their eligibility. The principle of non-retrospectivity of rules supports the argument that the appellants should be considered for promotion under the old rules. In this regard, reliance is made on 2021 SCMR 1281 titled "Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others Vs. Hizbullah Khan and another", wherein, the Supreme Court of Pakistan has held that:

"Once an employee case (for promotion) was put up before the DPC, the same had to be decided by the DPC fairly, justly and honestly, by either allowing the promotion or not allowing the same. In the latter case, the employees had to be informed by giving reasons for denial of promotion to him. When relevant promotion rules were in the field, a civil servant's case of promotion could not be kept pending by the

ATTESTED

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DPC on the ground that new promotion rules were being finalized."

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12. Therefore, the appellants were eligible for promotion under the old rules and as their working papers were prepared, they should have been considered for promotion to the post of Assistant Engineer (BPS-17) based on the rules in effect at the time of their eligibility. The delay caused by administrative processes or changes in rules should not be used to deny their rightful promotion.

13. In view of the above, instant service appeals are accepted and the appellants are held entitled to be promoted to the position of Assistant Engineer (BPS-17) as per the rules applicable when they were eligible. They should, therefore, be considered for promotion accordingly. Costs shall follow the event. Copy of this judgment be placed on file of the connected appeal. Consign.

14. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 25th day of July, 2024.*


ATTESTED


KALIM ARSIAD KHAN
Chairman


AURANGZEB KHATTAR
Member (Judicial)

Diary No. 4806
Date 6/8/2024
Secretary C&W Deptt:

To

The Honorable Secretary, to Govt. of Khyber Pakhtunkhwa,
Communication and Works Department, Peshawar.

Subject:

APPLICATION FOR IMPLEMENTATION OF JUDGMENT OF
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
DATED: 25.07.2024
SERVICE APPEAL NO. 1184 / 2023

SAMI UD DIN, SUB ENGINEER (BPS-16), ASSISTANT DIRECTOR
(OPS) C&W DEPARTMENT, PESHAWAR

VERSUS

1. THE SECRETARY TO GOVERNMENT OF KHYBER
PAKHTUNKHWA, C&W DEPARTMENT, CIVIL SECRETARIAT
PESHAWAR
2. THE CHIEF ENGINEER (CENTRE), COMMUNICATION & WORKS
DEPARTMENT KHYBER PAKHTUNKHWA, PESHAWAR

Respected Sir,

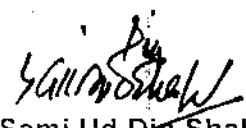
The Honorable Service Tribunal, Peshawar has accepted the above subject appeal and passed the aforementioned judgment (Copy Attached) in the favour of undersigned which need to be implemented.

It is therefore, requested to your kind honour that the judgment may please be implemented accordingly and obliged.

I shall be very thankful to you for your this act of kindness.

Yours Sincerely

Dated: 06.08.2024.


Sami Ud Din Shah,
Sub Division Officer, (OPS),
C&W Roads Sub Division Hangu


ATTESTED

VAKALAT NAMA

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NO. _____/2023

IN THE COURT OF

KD Seawize (Bilour) Peshawar

Sani-ud-din

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Cau Depte

(Respondent)
(Defendant)

I/We, Sani-ud-din (Petitioner)

Do hereby appoint and constitute M. Asif Yousafzai, Advocate Supreme Court of Pakistan & Syed Noman Ali Bukhari, Advocate High Court & Hilal Zubair 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.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default; if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

Dated _____/2023

Sani-ud-din

(CLIENT)

ACCEPTED

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.
(BC No. 10-7327)

(S. NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,

&
HILAL ZUBAIR
Advocate

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