


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 977/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05.09.2024	<p>The implementation petition of Mr. Zia Jan submitted today by Mr. Fazal Shah Mohmand Advocate. It is fixed for implementation report before Single Bench at Peshawar on 24.09.2024. 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

Implementation Petition No 977 /2024

In

Service Appeal No.7505 /2021

Zia JanApplicant/Appellant.

V E R S U S

Govt and OthersRespondents

I N D E X

S.No	Description of documents	Annexure	Pages
1.	implementation Petition with Affidavit		1 - 2
2.	Copy of the Order and Judgment dated 18.04.2024	A	3 - 7
3.	Copies of Application	B	8
4.	Wakalat Nama		9

Dated:-05.09.2024

Azhar Jan
Applicant/Petitioner

Through

Fazal Shah
Fazal Shah Mohmand ASC

Baseer Ahmad Shah
Baseer Ahmad Shah

&
Ibad Ur Rehman
Ibad Ur Rehman Khalil

Advocates High Court.

**OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell #
0301-8804841**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

①

PESHAWAR

Implementation Petition No 977 /2024

Khyber Pakhtunkhwa
Service Tribunal

In

Diary No. 15474

Service Appeal No.7505 /2021

Dated 05.09.2024

Zia Jan, Sub Engineer (Retired), Office of Executive Engineer,
Communication & Works Division, Charsadda.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Communication & Works Department, Civil Secretariat Peshawar.
2. Chief Engineer, (Center), Communication & Works Department, Civil Secretariat Peshawar.
3. Chief Secretary, Govt. Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

.....Respondents

**IMPLEMENTATION PETITION UNDER SECTION 7 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR
THE IMPLEMENTATION OF ORDER/JUDGMENT DATED 18-04-
2024 PASSED BY THIS HONORABLE TRIBUNAL IN THE ABOVE
TITLED SERVICE APPEAL.**

Respectfully Submitted:-

1. That the applicant/appellant earlier filed Service Appeal No. 7505/2021 before this honorable Tribunal for his proforma promotion as Assistant Engineer/SDO (BPS-17) w.e.f 13.10.2015 with all back benefits which was allowed vide order/judgment dated 18-04-2024. **(Copy of the Order/Judgment dated 18.04.2024 is enclosed as Annexure A).**
2. That the appellant time and again approached respondents for the implementation of the order/judgment dated 18-04-2024 of this honorable Tribunal but of no use, Even he submitted application for

the purpose but of no avail. **(Copies of Applications is enclosed as Annexure B).**

- 3. That the respondents are not ready to implement the Order/ Judgment of this honorable Tribunal dated 18-04-2024 in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 18-04-2024 of this honorable Tribunal.
- 4. That noncompliance of the order of this honorable Tribunal, speaks malafide on part of the respondents and they are bent upon to lower the position of the judiciary in the eyes of the public at large.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 18-04-2024 passed in Service Appeal No 7505/2021 in its true letter and spirit.

Dated:-05.09.2024

Zia Jan
Applicant/Petitioner

Through

[Signature]
Fazāl Shah Mohmand ASC

Baseer Ahmad Shah *[Signature]*
& *[Signature]*
Ibad Ur Rehman Khalil
Advocates High Court

AFFIDAVIT

I, Zia Jan, Sub Engineer,(Retired), Office of Executive Engineer, Communication & Works Division Charsadda, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and believe.



Zia Jan
DEPONENT

"A" (3)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Amended Service Appeal No 7505 /2022

Zia Jan, Sub Engineer, (Retired), Office of Executive Engineer,
Communication & Works Division CharsaddaAppellant

V E R S U S

1. Govt. of Khyber Pakhtunkhwa through Secretary, Communication & Works Department, Civil Secretariat Peshawar.
2. Chief Engineer, (Centre), Communication & Works Department, Civil Secretariat Peshawar.
3. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.Respondents

AMENDED SERVICE APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST
THE ORDER ISSUED VIDE LETTER DATED 15-02-2018 AND
COMMUNICATED TO THE APPELLANT ON 10-11-2022
WHEN RESPONDENTS FILED REPLY/COMMENTS IN THIS
HONORABLE TRIBUNAL WHEREBY DEPARTMENTAL
APPEAL OF THE APPELLANT HAS BEEN REJECTED

PRAYER:-

On acceptance of this appeal the impugned Order issued vide letter dated 15-02-2018 and communicated to the appellant on 10-11-2022; may kindly be set aside and the appellant may granted proforma promotion as Assistant Engineer/SDO (BPS-17) with effect from 13-10-2015 with all back benefits.

Respectfully Submitted:-

1. That the appellant had earlier filed the above the titled Service Appeal by which time, order on departmental appeal of the appellant was not communicated to the appellant, however respondents annexed copy of letter dated 15-02-2018 with their comments on 10-11-2022 whereby departmental appeal of the appellant has been **TESTED** rejected, hence, this amended service appeal.
2. That the appellant is highly qualified who has passed his Diploma of Associate Engineer with Bachelor of Civil Technology from the University of Engineering and Technology Peshawar. **(Copies of documents are enclosed as Annexure A).**

EXAMINER

Khyber Pakhtunkhwa
Service Tribunal
Peshawar
[Signature]
03/11/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7505/2021

BEFORE: MRS.RASHIDA BANO MEMBER (J)
MISS FAREEHA PAUL MEMBER (E)



Zia Jan, Sub Engineer, (Retired), Office of Executive Engineer, C & W
Division, Charsadda.

... (Appellant)

VERSUS

1. The Secretary, Communication & Works Department, Civil Secretariat, Peshawar.
2. Chief Engineer, (Centre), Communication & Works Department, Civil Secretariat, Peshawar.
3. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Fazal Shah Mohmand
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....30.09.2021

Date of Hearing.....18.04.2024

Date of Decision.....18.04.2024

JUDGEMENT

RASHIDA BANO, MEMBER (J):The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the following prayer:

“On acceptance of this appeal, the impugned order issued vide letter dated 15.02.2018 and communicated to the appellant on 10.11.2022 may kindly be set aside and the appellant may be granted proforma promotion as Assistant

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
03/19/24

Engineer/SDO (BPS-17) w.e.f 13.10.2015 with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal are that appellant was appointed as Sub-Engineer in the respondent department on 22.02.1979. Final seniority list of Diploma Holder, Sub Engineers was issued on 26.08.2015 wherein he was placed at serial No. 2. In the year 2015, process for promotion of Sub-Engineers to Assistant Sub Engineers/SDEOs was initiated and appellant being eligible for promotion was deferred on the ground of missing ACRs/PERs and junior to him were promoted vide notification dated 13.10.2015. Feeling aggrieved, appellant filed departmental appeal, which was not responded. Then appellant filed writ petition before worthy Peshawar High Court, Peshawar which was transmitted to respondent department with direction to decide the departmental appeal of the appellant which was again not responded; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law, rather he has been discriminated and deprived from further promotion which is illegal, unconstitutional, unlawful and of no legal effect; that appellant had served the department for long 38 years and retired from service in May 2016 with spotless service record and is entitled for promotion w.e.f. 13.10.2015; he requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney argued that appellant has

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

been treated in accordance with law and rules and no rights of appellant has been infringed. He further contended that in the year 2015 promotion case of the appellant has been placed before the Departmental Promotion Committee and the committee deferred the promotion case of the appellant due to lack of ACRs which were not countersigned.

6. Perusal of record reveals that appellant was appointed as Sub Engineer on 22.02.1979 being Diploma Holder of Associate Engineer alongwith Bachelor in Civil Engineering in respondent department. After serving 38 years, name of the appellant was placed at serial No.2 of the seniority list of Diploma Holders Sub Engineers issued on 26.08.2015. Process for promotion of Sub Engineer BS-16 to Assistant Sub Engineer/SDO BPS-17 was initiated and appellant being eligible was also considered but was deferred for want of provision of PERs/ACRs for the period from 22.02.1979 to 31.12.2013 and junior to the appellant were promoted including Main Manzoor Khattak Shah and Zahir Ur Rehman vide notification dated 13.10.2015. Appellant provided ACR of the required period till 2014 but he was not considered despite lapse of two years till the filing of appeal.

7. It is important to mention here that appellant in response to letter dated 14.05.2015 submitted his ACRs/PERs to the department which was sent to Section Officer Establishment C&W by Administration Officer vide letter No.48, 79/CEC/C&W dated 21.08.2015, which means process of ACRs was initiated and appellant discharged his duties by submitting his PERs/ACRs before meeting of DPC which was held on 01.09.2015.

Appellant was deferred as his ACRs for the period are not countersigned.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Countersigning of ACRs is not the responsibility and duty of the appellant rather it was the responsibility of the authority and initiating officer to whom same was submitted, to defer appellant for the reason that his ACRs were not countersigned is not logical otherwise too under promotion policy respondent would have to reserve one vacant position for appellant and after removal of deficiency to promote him from the date when his junior were promoted and he was deferred. Appellant was retired from service in May, 2016, therefore, he is entitled for proforma promotion. Reliance is placed on 2021 SCMR 1266.


8. For what has been discussed above, the appeal in hand is accepted as prayed for. Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of April, 2024.


(FAREEHA PAUL)
 Member (E)


(RASHIDA BANO)
 Member(J)

kaleemullah

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application 03-9-2024
 Number of Words 5-pages
 Copying Fee 25/-
 Urgent 5/-
 Total 30/-
 Name of Copyist _____
 Date of Completion 03-9-2024
 Date of Delivery of Copy 03-9-2024

To,

"B"

8

Diary no 4169

Date 11-7-2024

Secretary C&W Dept

The Honourable Secretary
C&W Department Peshawar

Subject: SERVICE APPEAL NO.7505/2021

R/Sir,

It is humbly submitted that the subject service appeal has been decided in my favour by Khyber Pakhtunkhwa Service Tribunal on 18/04/2024 (copy enclosed).

It is therefore requested that my promotion order w.e.f 13/10/2015 as SDO BPS-17 alongwith all service benefit may kindly be granted and obliged please.



Zia Jan

Sub Engineer (Retired)
Defunct C&W Division Charsada

ATTESTED



VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Zia Jan.

.....Petitioner/Appellant

VERSUS

Govt and others.

.....Respondents/Defendants

I, Zia Jan. do hereby appoint and constitute,

Fazal Shah Mohmand, Ibad Ur Rehman Khalil & Baseer Shah Advocates
To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I also hereby agree not to hold the advocate or his substitute responsible for the result of the said matter in consequence of his absence from the court when the said matter is called up for hearing. I further hereby agree that in the event for the whole or any part of the fee to be paid to the advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 5-8-24.

Zia Jan.
Client (s)

ACCEPTED BY:

Fazal Shah Mohmand ASC,

Ibad Ur Rehman Khalil

&

Baseer Shah

Advocates, High Court.

Zia Jan