Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No. 1103/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.09.2024	The implementation petition of Mr. Sajjad Ali submitted today by him. It is fixed for implementation report before Single Bench at Peshawar on 27.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to the petitioner. By order of the Chairman REGISTRAR

The C.M in appeal no. 2008/2022 received today i.e. on 22-8-2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Two more copies sets along-with annexures be provided.

No. 678 /S.T,

Dt. 9/9 /2024

ASSISTANT
to REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Mr. Sajjad Ali,
Former Assistant Labour Officer
Labour Department, Peshawar.

Resubmitted after need ful done.
Provide 02 No. Additional Sets.

Sajjad Ali

Original

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Implementation Petition NO. 1103 /2024 in Service Appeal No. 2008/2022

Addresses of the Parties:

Sajjad Ali, Former Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate, Peshawar.

---------- Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa
   through Secretary Labour Department, Peshawar.

2. Deputy Secretary, Labour Department, Peshawar.

3. The Departmental Promotion Committee through its Chairman, Labour Department, Peshawar.

4. Director Labour Department, Khyber Pakhtunkhwa,
   3rd Floor, F.C Trust Building, Peshawar Cantt.

5. Amir Khaliq farmer Labour Officer,
   Labour Department, Peshawar.

---------- Respondents

PETITIONER

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COMPLETE AND CORRECT

Sajj. Ali

PETITIONER

ORIGINAL

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Implementation Petition NO.1103 /2024 in Service Appeal No. 2008/2022

Sajjad Ali, Former Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate, Peshawar.

---------- Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt.
5. Amir Khaliq farmer Labour Officer, Labour Department, Peshawar.

---------- Respondents

IMPLEMENTATION PETITION AS THE RESPONDENTS NO. 1 TO 4 ARE NOT READY TO IMPLEMENT THE JUDGMENT OF THE HONOURABLE SERVICE TRIBUNAL DATED 03/05/2024, GIVEN IN APPEAL OF THE PETITIONER, WHEREBY THE RESPONDENTS HAVE BEEN ORDERED TO GRANT PROMOTION TO THE PETITIONER AS LABOUR OFFICER IN BPS-16 FROM THE DATE WHEN HIS JUNIOR COLLEAGUE (RESPONDENT NO.5) WAS PROMOTED AS LABOUR OFFICER IN BPS-16.

Sheweth,

The Petitioner respectfully submits as under:

1. That the Petitioner had filed an Appeal (No.2008/2022) in this Honourable Tribunal on 25/08/2023. The said Appeal was accepted by the Honourable Tribunal vide their judgment dated 03/05/2024, whereby the Respondent department was ordered to grant promotion to the Appellant as Labour Officer in BPS-16 from the date when his junior colleague (Respondent No.5) had been promoted as Labour Officer (Copy of the judgment dated 03/05/2024 is annexed as A).

2. That as soon as the Petitioner received the above said judgment from the Honourable Tribunal, he wrote an application to the Respondents on 10/07/2024 for the grant of Promotion to him in BPS-16 with effect from 26/02/2009, when his junior colleague (Respondent No.5) had been promoted as Labour Officer. The copy of the Judgment was also provided to the Respondent Department through the said Application (Copy of the Application dated 10/07/2024 is annexed as B).

3. That the Respondents are not ready to grant promotion to the Petitioner, therefore, the Respondents are violating the Judgment of the Honourable Tribunal. As usual the Respondents are dilly dallying and applying rough methods to keep the Petitioner deprived of his legal valid right.

4. That the Respondents No. 1 to 4 without any lawful authority have been creating hurdles in way off Petitioner's right. So the act on the part of the Respondent Department is a glaring case of Contempt of Court.

5. That all the Legal forums have given decisions in favour of the Petitioner but the Respondents are not ready to provide his legal right to the Petitioner. Therefore, this implementation Petition have been submitted for necessary action.

It is humbly prayed that the Respondents may kindly be strictly ordered to implement the judgment of the Honourable Tribunal dated 03/05/2024, in Letters and their true Spirit and grant promotion to the Petitioner as Labour Officer in BPS-16 with effect from 26/02/2009, and drastic action against the Respondent No. 1 to 4 may also be taken who have been badly violating the orders of this Honourable Tribunal.

Dated: 22/08/2024

Sajjad Ali
Petitioner in Person

AFFIDAVIT

I, Sajjad Ali, Petitioner do hereby solemnly affirm that the contents of the accompanied implementation Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from the notice of this Honourable Tribunal.

Dated: 22/08/2024

ATTESTED
Zahoor Khan Advocate
Peshawar District & Sessions Courts Peshawar

DEPONENT

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2008/2022

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

Sajjad Ali, Former Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Resident of Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, Outside Lahori Gate, Peshawar. .....*(Appellant)*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor F.C Trust Building, Peshawar Cantt.
5. Amir Khaliq former Labour Officer, Labour Department, Peshawar.

.....*(Respondents)*

Barrister Adnan Saboor Rohaila, Advocate ... For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney ... For respondents

Date of Institution..... 25.08.2023
Date of Hearing..... 03.05.2024
Date of Decision..... 03.05.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 02.12.2022 whereby request of the appellant to grant promotion in BPS- 16 was denied/rejected. Prayer in the appeal is as follows:-

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"A. *That the appellant has the right to be promoted as Labour Officer BPS- 16 from 26.02.2009 i.e the date of promotion of respondent No. 5/Amir Khaliq by issuing antedated promotion in BPS- 16 in accordance with the tentative seniority list of Assistant Labour Officers BPS- 11 circulated as stood on 22.11.2008 with all consequential, financial, entire privileges and other benefits attached with the post of Labour Inspector BPS 16 and back benefits of seniority and refusal of the respondent Labour Department is illegal, without lawful authority and liable to be quashed.*

B. *That the order and refusal of the respondent contained in letter No. SOL/LD/1-49/2022/Sajjad Ali/6853 dated 2.12.2022 to promote the appellant is illegal, discriminative, against law, rules and dicta laid by the superior courts thus the appellant is entitled for proforma notional promotion from 26.02.2009, the date when respondent No. 5 being junior to the appellant was promoted.*

C. *That the appellant's promotion has been suspended, prolonged and blocked due to malafide intention of the official respondents with no fault of the appellant whereas the stance of the appellant has been concurred by apex Supreme Court of Pakistan and this honourable Tribunal and expunged all the adverse remarks recorded in ACRs of the appellant vide order and judgments dated 04.01.2010 and 17.09.2020 respectively.*

D. *Any other appropriate remedy not specifically mentioned may also be granted.*

E. *Costs."*

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined Labour Department on 01.08.1975 and had unblemished record at his credit. The appellant through letter dated 26.12.2008 was conveyed that two posts of Labour Officers (BPS- 16)

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were vacant which were required to be filled in by promotion from amongst the Assistant Labour Officers, in accordance with the Departmental Service Rules, 2005. The letter further stipulated for willingness for acceptance of promotion as Labour Officer in BPS- 16 anywhere in Khyber Pakhtunkhwa where the posts of Labour Officer were lying vacant. The appellant accepted the proposal and extended his willingness through written letter dated 02.01.2013. Respondents, earlier through letter dated 01.12.2008, also enquired and asked for option to be promoted and posted on one vacant post of Labour Officer BPS- 16 at D.I.Khan and the appellant immediately, through letter dated 04.12.2008, conveyed his consent. Tentative seniority list of Assistant Labour Officer (BPS- 11) was circulated on 22.11.2008 whereby the appellant was ranked at serial No. 1 and Mr. Amir Khaliq, respondent No. 5, was ranked junior to the appellant which was not challenged and attained finality. Through letter dated 18.02.2009, the appellant was conveyed adverse remarks recorded in his ACRs for the year 2004 to 2008. He approached the Service Tribunal through appeal No. 1018 of 2009 which was partially accepted and the adverse remarks recorded in his ACRs for the years 2004 to 2007 were expunged. Since no findings relating to ACR for 2008 were made therefore, the appellant preferred Civil Appeal No. 320-P/2010 in the august Supreme Court of Pakistan which was accepted on 17.09.2020 and adverse remarks recorded for 01.01.2008 to 31.12.2008 were expunged. Respondent department did not promote the appellant and his junior Amir Khaliq (respondent No. 5) was promoted as Labour Officer BPS- 16 on 26.02.2009. The appellant and respondent No. 5 retired from service after

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attaining the age of superannuation. The appellant soon after the judgment of august Supreme Court of Pakistan, approached the Director Labour through representation dated 17.09.2020 with the request that since entire adverse remarks recorded against the appellant were expunged, therefore, he had the right to be promoted to the post of Labour Officer from the date when his junior (respondent No. 5) was promoted as Labour Officer (BPS-16). No response was communicated to the appellant, therefore, a reminder dated 06.05.2021 was also addressed to Director Labour but with no reply. The appellant filed Writ Petition No. 504-P/2022 in the Honourable Peshawar High Court. The respondents were issued notices and they filed parawise comments. The writ petition finally came up for hearing on 30.08.2022 and following order was passed:

> *"Keeping in view the peculiar facts and circumstances of the case, this petition is converted into representation and sent to Secretary Labour Department "respondent No. 01" with direction to decide it in accordance with law within shortest possible time after providing the petitioner an opportunity of due hearing. The petition is disposed of accordingly. Office shall retain copies of the petition for the purpose of record."*

The appellant, through letter dated 06.09.2022, provided the copes of the Writ petition and judgment dated 30.08.2022 of the honourable Peshawar High Court to respondent No. 1 for the needful and compliance. Subsequently, the appellant through letter dated 19.09.2022 was called for personal hearing on 21.09.2022 where he explained the entire factual and legal aspect of the case with the request that he might be notionally promoted as Labour Inspector

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from 26.02.2009, the date on which respondent No. 5 was promoted. After personal hearing, no response was conveyed therefore, COC No. 417-P/2022 was filed in the Peshawar High Court on 08.10.2022 which came up for hearing on 06.12.2022. During the hearing it was disclosed that the representation of the appellant was decided on 02.12.2022. In the circumstances, the COC was decided. The appellant through letter dated 02.12.2022 was conveyed, "the Labour Department through Departmental Promotion Committee considered your representation. Since no provision was available for promotion with retrospective effect, as per promotion policy in vogue, hence this department is unable to accept your representation"; 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, after presenting the case in detail, argued that refusal of the respondent through letter dated 02.12.2022 to promote the appellant as Labour Officer was illegal and without lawful authority. The appellant's promotion was blocked due to malafide intention with no fault on his behalf. Stance of the appellant was concurred by the Apex Court and the Service Tribunal and all the adverse remarks recorded in his ACR had been expunged. He further argued that the stance of the respondents, that since appellant had already retired, therefore, he could not be promoted retrospectively was uncalled for. According to him, there were plethora of

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instances and rulings of superior courts that promotion could be made from the date when a person was illegally deprived of his lawful promotion. He referred to the seniority list circulated on 22.11.2008, vide which the appellant was ranked at serial no. 1 while respondent No. 5 was ranked junior to him and such seniority list was not challenged and thus it attained finality. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that according to the tentative seniority list attached as annexure-B with the appeal, Mr. Khawaja Muhammad was at serial no. 1, the appellant was at serial no. 2 and respondent No. 5 was at serial no. 3. Case of the employees of the Directorate of Labour was sent to the Departmental Promotion Committee for consideration. The committee promoted respondent No. 5 and superseded the appellant and Khawaja Muhammad due to adverse remarks and poor performance indicated in their ACRs. He argued that although the adverse remarks were communicated to him in the year 2009 formally, the appellant was well aware about his conduct and competence which was evident from his letter of acceptance/willingness. He further argued that on receipt of application from the appellant, in compliance of the order dated 17.09.2020 of the august Supreme Court of Pakistan, adverse remarks from ACRs of the appellant were expunged and communicated to him vide letter dated 03.02.2022. So far as his claim regarding promotion since 2009 was concerned, the same was sent for opinion to the Law Department and Establishment Department. Opinion from both the forums was received and it was clarified that the Hon'ble Court had not issued

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any direction regarding promotion of the appellant from the back date. In compliance of the Hon'ble Peshawar High Court's order dated 30.08.2022 the appellant was provided with the opportunity to explain his position and after due deliberation, his case was declined. He requested that the appeal might be dismissed.

6. An order dated 02.12.2022 has been impugned before us vide which the respondent department has conveyed to the appellant that in the light of judgment dated 30.08.2022 of the Honourable Peshawar Court, his representation was referred to the Departmental Promotion Committee but as there was no provision for promotion with retrospective effect, as per promotion policy in vogue, hence his representation could not be accepted. Arguments and record presented before us show that the appellant, who was Assistant Labour Officer (BPS- 11), was at serial no. 2 of the seniority list as on 31.12.2007. At that time, one vacant post of Labour Officer (BS- 16) was available to be filled by promotion, on which an official, junior to the appellant was promoted in 2009 and he was ignored on the ground that he had adverse remarks in his ACRs. The appellant had earned adverse remarks in ACRs for the years 2004 to 2007 and 2008, which were expunged by this Tribunal vide its judgment daed 04.1.2010 and the honourable Supreme Court of Pakistan vide its judgment dated 17.09.2020 respectively.

7. It has been noted here that the adverse remarks in his ACRs were conveyed to the appellant vide a letter dated 18.02.2009 and the meeting of DPC was held on 26.02.2009. This means that the appellant had no time to challenge the adverse remarks before the meeting of DPC was convened and

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private respondent no. 5, who was junior to him, was promoted. If he had not been given those adverse remarks, he was eligible for promotion at that time when his junior colleagues was promoted.

8. In view of the above discussion, there is no second opinion that the appellant was eligible for promotion in 2009 but was superseded because of adverse remarks in his ACRs, which were latter on expunged. This shows that he was deprived of promotion because of some fault of others and hence he should not be punished for it. The service appeal is, therefore, allowed and the respondent department is directed to promote the appellant to the post of Labour Officer (BS- 16) from the date when his junior colleague, i.e respondent No. 5, was promoted, with all back and consequential benefits. Cost shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 03rd day of May, 2024.

(FARIHA PAUL)
Member (E)

(RASHIDA BANO)
Member(J)

FazleSubhan P.S

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09-7-24
Number of Words 670
Copying Fee 40/-
Urgent 80/-
Total 120/-
Name of Copyist
Date of Completion of Copy 09-7-24
Date of Delivery of Copy 09-7-24

SA 2008/2022

03rd May, 2024 01. Barrister Adnan Saboor Rohaila, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 08 pages, there is no second opinion that the appellant was eligible for promotion in 2009 but was superseded because of adverse remarks in his ACRs, which were later on expunged. This shows that he was deprived of promotion because of some fault of others and hence he should not be punished for it. The service appeal is, therefore, allowed and the respondent department is directed to promote the appellant to the post of Labour Officer (BS- 16) from the date when his junior colleague, i.e respondent No. 5, was promoted, with all back and consequential benefits. Cost shall follow the event. Consign.

03. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of May, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member(J)

Fazal Subhan PS

Secy: Labour
Dy. No. 1325
Dated 10/7/24

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To

1. The Secretary to the Govt. of Khyber Pakhtunkhwa,
   Labour Department, Peshawar.

2. The Director Labour Department, Khyber Pakhtunkhwa,
   3rd Floor, F.C Trust Building, Peshawar Cantt, Peshawar.

Subject: **APPLICATION FOR THE GRANT OF PROMOTION TO THE APPLICANT AS LABOUR OFFICER (BPS-16) W.E.F 26/02/2009, AS PER ORDER OF THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR DATED 03/05/2024.**

Sir,

Enclosed please find herewith a copy of the Judgment of Service Tribunal dated 03/05/2024 given in Appeal of the Applicant bearing No. 2008/2022, whereby the Applicant has been allowed to avail promotion as Labour Officer in (BPS-16) w.e.f 26/02/2009 (copy annexed).

It is humbly prayed that the Applicant's case of promotion may kindly be processed in the light of Judgment of the Tribunal so that the Applicant could get his promotion w.e.f 26/02/2009.

Received
Abdul Jabbar
10.7.24

Yours obediently

Dated: 10/07/2024

(SAJJAD ALI)
EX ASSISTANT LABOUR OFFICER
Contact No. 0345-9124020

N.B: A copy of this application alongwith Judgment is submitted to KPK Service Tribunal Peshawar.

s/c

ان یوسف سبزل

تاریخ پیدائش:

نظر جسٹرار جنرل

دستخط مالک کارڈ

17301-7125460-5 خاندان نمبر U6Q33K

بیرون لاہوری گیٹ، پشاور

تاحیات

لیٹر بکس میں ڈال دیں