


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1002/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2024	<p>The implementation petition of Mr. Jehanzeb Khan submitted today by Ashraf Ali Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 23.09.2024. 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  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Jahanzeb Khan v/s The district education office

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: _____	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Ashraf Ali Khattak

Signature: Asi [Signature]

Dated: 13/9/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 1002/2024

In

Service Appeal No.177 /2022

Jahanzeb Khan S/o Mir Akbar,
Sweeper, Govt. Middle School,
R/o Ghari Mumtaz, Village Badaber, District Peshawar.... Applicant / Appellant.

Versus

The District Education Officer (Male),
District Peshawar & others..... Respondents.

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Petition for execution with Affidavit.			1-3
2.	Copy of order / Judgment passed by this Hon'ble Tribunal.	27-06-2024	A	4-7
3.	Copy of application.		B	8
4.	Wakalat Nama.			9



Applicant/Petitioner

Through

Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

Ali Bakht Mughal
Advocate,
High Court, Peshawar

Dated: _____ / 09/ 2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 1002 /2024

(1)

In

Service Appeal No.177 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15774

Date: 13-09-2024

Jahanzeb Khan S/o Mir Akbar,
Sweeper, Govt. Middle School,
R/o Ghari Mumtaz, Village Badaber,
District Peshawar.....

Applicant / Petitioner.

Versus

1. The District Education Officer (Male),
District Peshawar.
 2. The Director Education,
Elementary & Secondary Education (E&SE) Department,
Khyber Pakhtunkhwa, Peshawar.....
- Respondents.

**EXECUTION PETITION UNDER SECTION 7(d) OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.**

Respectfully Sheweth,

Facts giving rise to the present execution petition are as under:-

1. That the applicant / petitioner filed the above titled service appeal which was disposed of by this Hon'ble Tribunal on 27-16-2024. The operative part of the Judgment is reproduced as under for easy reference;-
8. *For what has been discussed above, we partially accept the appeal in hand on the above mentioned terms by treating absence / intervening period from 13-12-2013 to 02-08-2017 as leave of the kind due with direction to give anticipatory i.e. to count till preparation of source for it. Cost shall follow the event.*

Copy of Order / Judgment dated 27-06-2024 passed by this Hon'ble Tribunal is attached as **Annexure-A**.

2. That applicant in the light of order of this Honorable Tribunal dated 27-06-2024, approached the respondents and submitted application for implementation of the aforesaid Judgment (**Annexure-B**) but they are reluctant to implement the Judgment in letter and spirit.
3. That the acts and actions of the respondents squarely fall within the ambit of the Contempt of this Hon'ble Tribunal and as such are liable to be proceeded for the Contempt and for the punishment under the law.

It is therefore, humbly prayed that on acceptance of this application, this Hon'ble Tribunal may graciously be pleased to take action and initiate Contempt of Tribunal proceedings against the respondents and directs them implement the Judgment in letter and spirit.



Applicant/Petitioner

Through

Ashraf Ali Khattak

Ashraf Ali Khattak
Advocate,
Supreme Court of Pakistan

Ali Bakht Mughal

Ali Bakht Mughal
Advocate,
High Court, Peshawar

Dated: _____ / 09/ 2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. _____/2024

In

Service Appeal No.177 /2022

**Jahanzeb Khan S/o Mir Akbar,
Sweeper, Govt. Middle School,
R/o Ghari Mumtaz, Village Badaber, District Peshawar....Applicant / Appellant.**

Versus

**The District Education Officer (Male),
District Peshawar & others..... Respondents.**

AFFIDAVIT

I, Jahanzeb Khan S/o Mir Akbar, Sweeper, Govt. Middle School, R/o Ghari Mumtaz, Village Badaber, District Peshawar do hereby solemnly affirm and declare on oath that the contents of this petition are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal. It is further declare on Oath that applicant has not moved any execution petition previously for the same matter.

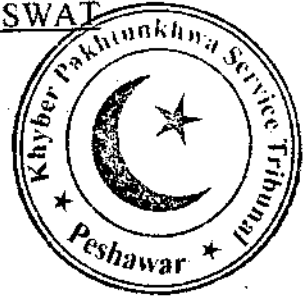


Deponent

**CNIC #17301-1479554-9
Mob #03189146928**

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT

Service Appeal No: 177/2022



BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Jahanzeb khan S/O Mir Akbar, Sweeper, Government Middle School Ghari
Mumtaz, Village Badaber District Peshawar.

.... (Appellant)

VERSUS

1. District Education Officer (Male), Peshawar.
2. Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar

.... (Respondents)

Ashraf Ali Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution..... 26.01.2022
 Date of Hearing..... 27.06.2024
 Date of Decision..... 27.06.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

"That on acceptance of appeal, this Hon'ble Tribunal may graciously be pleased to declared the impugned order dated 01.03.2019 of respondent No. 1 to the extent of the denial of back benefits is illegal, ab-initio void and without lawful authority and set aside the same. Reinstate the appellant with all back benefits. Any other relief deems fit and appropriate not specifically been prayed for may also be granted in favor of the appellant."

1850
30/8/24


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30/8/24
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2 Precise facts as gleaned from the record are that the appellant was appointed as Sweeper in respondent department vide order dated 05.12.2012. During service he was removed from service on the allegation of willful absence vide impugned order dated 15.05.2015, which was challenged by the appellant in service appeal No. 961/2015. The impugned order was set aside and the appellant was reinstated into service. The respondents were placed at liberty to conduct denovo inquiry within a period of 90. In compliance of judgment, the appellant was reinstated into service but he was not associated with the inquiry proceedings. Then appellant filed execution petition, which was withdrew by the appellant in light of denovo inquiry ordered by the authority vide notification dated 21.03.2019 as fresh cause of action, hence the instant service appeal.

3. Respondents were put on notice who submitted their para-wise 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 has argued that the appellant has not been treated in accordance with law and respondents violated Article 4 & 10-A of the Constitution of Islamic Republic of Pakistan: that no charge sheet and statement of allegation was served upon the appellant before imposition of major penalty, that no opportunity of personal hearing was afforded to the appellant and he was condemned unheard; that the charges of willful absence has not been proved against the appellant, therefore, in the absence of evidence to the contrary, he is entitled for reinstatement with all

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

back benefits. Lastly, he requested that instant appeal might be accepted as prayed for.

5. Conversely, learned Deputy District Attorney for the respondents has contended that the appellant has been treated in accordance with law and rules; that the appellant has willfully absented himself from duty without prior permission, hence he was rightly proceeded against and removed from service vide order dated 09.06.2014. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant serving in the respondent department as Sweeper when he was dismissed from service vide order dated 15.05.2015, which order was challenged by the appellant in service appeal No. 961/2015. This Tribunal vide judgment dated 02.08.2017, reinstated the appellant with direction to conduct denovo inquiry within a period of 90 days with further direction to associate the appellant with the inquiry proceedings in accordance with rules. The issue of back benefits was made subject to the outcome of denovo inquiry. Respondent although reinstate the contacting appellant without contacting him for the purpose of denovo inquiry. Therefore, appellant file execution petition before this Tribunal wherein respondent submitted reply by annexing copy of inquiry report without passing any formal order on it. Appellant filed application for providing copy of formal order passed, as a result of denovo inquiry and also requested this Tribunal which was given to the appellant on 12.01.2022 which is evident from order sheet of the same date. When order of reinstatement of appellant dated 21.03.2019 was given to appellant, he filed departmental appeal for back benefits vide order dated 21.03.2019 period

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30/8/22
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

from date of his absence/intervening period from 13.12.2013 to 02.08.2017 was treated as extra ordinary leave under FR 85.

7. Perusal of inquiry report reveals that appellant was not absent rather he was compelled by the land owner not to perform duty due to which he requested SDEO and DEO for his posting to a station where he can perform his duty normally. But without redressing his grievances, DEO removed him from service which means that appellant was not absent and want to perform his duties but was compelled by the DEO to remain out of duty. So absence of the appellant after dismissal was not on his part rather it was due to the act of the authority. Therefore, absence intervening/period from 13.12.2013 to 02.08.2017 was treated as leave of the kind due with direction to the respondents to count all leave of the kind due available in the account of the appellant which is on his credit till the time of preparation of source because anticipatory leave of the kind due is admissible under the rules.

8. For what has been discussed above, we partially accept the appeal in hand on the above mentioned terms by treating absence/intervening period from 13.12.2013 to 02.08.2017 as leave of the kind due with direction to give anticipatory i.e to count it till preparation of source for it. Cost shall follow the event. Consign.

9. Pronounced in camp court at Swat and given our hands and seal of the Tribunal on this 27th day of June, 2024.

(MUHAMMAD AKBAR KHAN)
Member (E)

*M.Khan

(RASHIDA BANO)
Member (J)

ATTESTED
30/8/24
EXAMINER
Shaher Pahtukhwa
Service Tribunal
Peshawar

Date of Presentation of Application 30/8/24

Number of Words 4-8

Copying Fee 20/-

Urgent 8/-

Total 28/-

Name of Copyist

Date of Completion 30/8/24

Date of Delivery of Copy 30/8/24

To

5

8

The District Education Officer (Male),
Distirict Peshawar.

Subject: APPLICATION FOR GRANT OF BACK BENEFITS.

Respected Sir,

With due respect, it is humbly submitted that applicant have filed Service Appeal No.177/2022 before the Khyber Pakhtunkhwa Service Tribunal on 26-01-2022 which was disposed of by the Hon'ble Service Tribunal on 27-06-2024 with the direction to Department to treat his absence / intervening period from 13-12-2013 to 02-08-2017 as leave of the kind due.

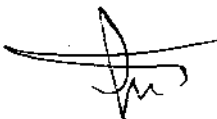
In view of the above, it is humbly requested that the absence period of the applicant (from 13-12-2013 to 02-08-2017) may kindly be considered as leave of the kind due and grant the applicant the proceed of the calculation in accordance with Leave Rules, 1981.


Applicant

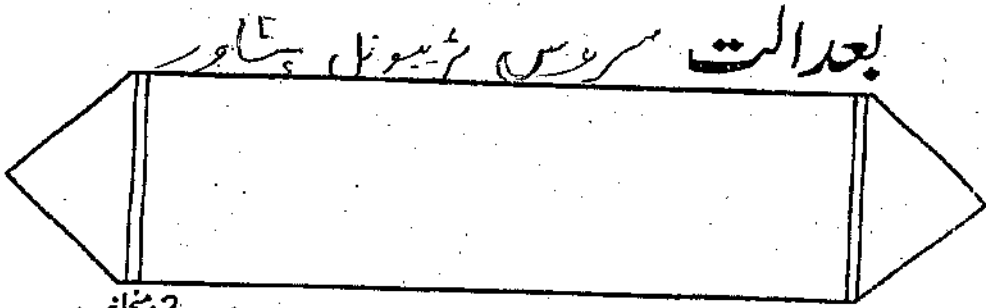
Jahanzeb Khan S/o Mir Akbar,
Sweeper, Govt. Middle School,
R/o Ghari Mumtaz, Village Badaber,
District Peshawar



03/7/24



~~ATTESTED~~



صاحب نام حکومت

موضوع
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام پشاور کیلئے اسٹریٹ علی حدیث

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو فرچہ ہر جائزہ التوائے مقدمہ کے سبب سے وہ ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
ذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔
Attested and
accepted by

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AsL 111
واہ العی

BC# 10-4605
CNIC# 14201-7228655-3
Mob# 0332-9931676

بہ مقام پشاور