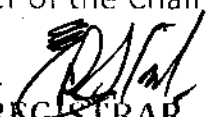


Form- A  
FORM OF ORDER SHEET

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

Implementation Petition No. 971/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.08.2024	<p>The implementation petition of Mr. Asadullah Khan submitted today by Mr. Amjid Ali 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 KP SERVICE TRIBUNAL  
PESHAWAR

Execution/Petition No = 971/2024

In re:  
Service Appeal No 946/2018

Asad Ullah Khan, PMS (BS-19)  
Additional Secretary, Board of Revenue KP,  
Civil Secretariat Peshawar .....Applicant/Appellant

VERSUS

Provincial Govt of Khyber Pakhtunkhwa through  
Secretary Establishment Department, Civil Secretariat,  
Peshawar and others ..... Respondents

INDEX

S.No	Description of Documents	Annexure	Page
1	Application for implementation along with affidavit		1-3
2	Attested copy of judgment dated 27.07.2021	A	4-12
3	Copy of the letter dated 30.08.2021 and registry slip	B	13-14
4	Copy of the application for implementation/Execution	C	15-16
5	Copy of the notification dated 12 <sup>th</sup> January 2023	D	17
6	Copy of the objection petition along with reply	E	18-20
7	Copy of the order dated 21.11.2023	F	21
8	Copy of the order dated 12 <sup>th</sup> June 2024	G	22-23
9	Wakalat Nama		24

Through Appellant/Applicant

Amjad Ali (Mardan)  
Advocate  
Supreme Court

Dated: 29.08.2024

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

**BEFORE THE KP SERVICE TRIBUNAL  
PESHAWAR**

*Execution petition No: 971/2024*

1  
Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 15251

Date: 29.08.2024

In re:  
Service Appeal No 946/2018

Asad Ullah Khan, PMS (BS-19)  
Additional Secretary, Board of Revenue KP,  
Civil Secretariat Peshawar ..... Applicant/Appellant

**VERSUS**

1. Provincial Govt of Khyber Pakhtunkhwa through  
Secretary Establishment Department, Civil  
Secretariat, Peshawar
2. Chief Secretary, Khyber Pakhtunkhwa, Civil  
Secretariat, Peshawar
3. Chief Minister, Khyber Pakhtunkhwa/Competent  
Authority, Chief Minister Secretariat Peshawar  
..... Respondents

---

**APPLICATION FOR IMPLEMENTATION  
OF JUDGMENT OF THIS HON'BLE  
SERVICE TRIBUNAL, PESHAWAR  
DATED 27.07.2021 PASSED IN SA NO  
946/2018 IN ITS TRUE LETTER AND  
SPIRIT.**

---

**RESPECTFULLY SHEWETH;**

1. That this Hon'ble Tribunal has passed  
judgment dated 27.07.2021 in Service Appeal  
No 946/2018 (Attested copy of judgment dated  
27.07.2021 is enclosed as Annexure A)
2. That attested copy of the judgment dated  
27.07.2021 was sent to the respondent vide  
letter dated 30.08.2021 through registered

post (Copy of the letter dated 30.08.2021 and registry slip is enclosed as Annexure B)

2

3. That respondents were not implementing the said judgment.
4. That after announcement of order dated 27.07.2021, the appellant approached the Department/respondents time and again for the implementation of order passed by this Hon'ble Tribunal, but in vain.
5. That having no alternate remedy, appellant approached this Honorable Tribunal in Execution Petition No 238/2022 in SA No 946/2018 (Copy of the application for implementation/Execution is enclosed as Annexure C)
6. That during the course of execution/implementation, respondents produced Notification dated 12<sup>th</sup> January 2023 wherein appellant is granted proforma promotion from PMS BS-17 to PMS BS-18 w.e.f 13.01.2017 instead of 10.05.2016 (Copy of the notification dated 12<sup>th</sup> January 2023 is enclosed as Annexure D)
7. That respondents filed objection petition before this Hon'ble Tribunal which was contested by the appellant by submitting written reply (Copy of the objection petition along with reply is enclosed as Annexure E)
8. That this Hon'ble Tribunal vide order dated 21.11.2023 dismissed the objection petition with direction to the respondents to submit proper implementation report by implementing the judgment in true letter and spirit (Copy of the order dated 21.11.2023 is enclosed as Annexure F)
9. That strangely enough, in violation of the earlier judgment dated 27.07.2021 and order dated 21.11.2023 passed by this Hon'ble

Tribunal, the execution is filed vide order dated 12<sup>th</sup> June 2024 which is illegal against the own orders/judgments of this Honorable Tribunal (Copy of the order dated 12<sup>th</sup> June 2024 is enclosed as Annexure G)

3

10. That appellant has been declared entitled for proforma promotion from PMS (BS-17) to PMS (BS-18) w.e.f 10.05.2016 whereas respondents have partially implemented the judgment w.e.f 13.01.2017, therefore the judgment under implementation/execution has not been substantially implemented in true letter and spirit.
11. That when this Hon'ble Tribunal rejected the objection petition and directed the respondents to submit proper implementation report, therefore, there was no occasion to file the execution petition.

It is therefore humbly requested that, on acceptance of this application, the respondents may kindly be directed to implement the judgment dated 27.07.2021 passed by this Hon'ble Tribunal in true letter and spirit by giving effect to the proforma promotion notification w.e.f 10.05.2016 instead of 13.01.2017.

Appellant/Applicant

Through

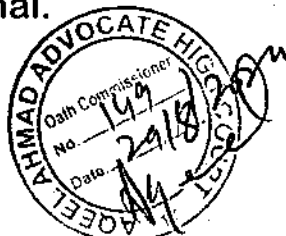
Amjad Ali (Mardan)  
Advocate

Dated: 29.08.2024 Supreme Court

Amjad Ali  
ADVOCATE  
SUPREME COURT

### AFFIDAVIT

I, Asad Ullah Khan (appellant), affirm and declared on oath that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

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



Service Appeal No. 946 /2018

Annex A  
4

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1113

Dated 31-7-2018

Asad Ullah Khan  
Section Officer Home Department,  
Civil Secretariat, Peshawar .....Appellant

**VERSUS**

1. Provincial Govt. of Khyber Pakhtunkhwa, through Secretary Establishment Department, Civil Secretariat, Peshawar.
2. Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Chief Minister Khyber Pakhtunkhwa/ Competent Authority, Chief Minister Secretariat, Peshawar.

....Respondents

**SERVICE APPEAL U/S 4 OF SERVICE  
TRIBUNAL ACT, 1974 FOR SETTING  
ASIDE THE IMPUGNED FINAL  
APPELLATE ORDER DATED 18.07.2018  
AND PS ORDER DATED 28.12.2016  
CONSIDERATION OF APPELLANT FOR  
PROMOTION FROM BPS-17 TO BPS-18**

Filed to-day

Registrar  
31/7/18

**Respectfully Sheweth:-**

- 1) That appellant is a PMS Officer vide letter dated 03.03.2009. (Copy of appointment letter is Annex "A")
- 2) That the respondents never offered any mandatory training for promotion to BPS-18 w.e.f. 03.03.2009 to 04.08.2016 to the appellant.
- 3) That the respondents called meeting of Provincial Selection Board on 10.05.2016 and deferred the promotion to the appellant to BPS-18, due to lack of

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(5)

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



Service Appeal No. 946/2018

Date of Institution ... 31.07.2018

Date of Decision ... 27.07.2021

AsadUllah Khan, Section Officer Home Department, Civil Secretariat, Peshawar. ... (Appellant)

**VERSUS**

The Government of Khyber Pakhtunkhwa, through Secretary Establishment Department, Civil Secretariat, Peshawar and two others. ... (Respondents)

**Present:**

MR. AMJAD ALI, Advocate --- For Appellant.

MUHAMMAD ADEEL BUTT, Additional Advocate General --- For respondents.

AHMAD SULTAN TAREEN --- CHAIRMAN  
ROZINA REHMAN --- MEMBER(Judicial)

**JUDGEMENT**

**AHMAD SULTAN TAREEN, CHAIRMAN:-**The appellant named above

invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby the recommendation of Provincial Selection Board (PSB) as to deferment of his promotion and purporting the same being against the facts and law on the subject.

02. The facts precisely include that appellant was serving as Section Officer (BS-17). The PSB met on 10.05.2016 and as result of this meeting, the promotion case of the appellant to the post of BS-18 was deferred due to lack of mandatory training.

The respondents offered 14 weeks training for promotion to BS-18 to the appellant which he successfully completed vide letter dated 06.12.2016. On 28.12.2016, meeting of PSB was held but again promotion of the appellant was deferred due to

**ATTESTED**  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar

6

pending inquiry against him. Feeling aggrieved, he filed departmental appeal on 16.01.2017 which was rejected vide order dated 18.07.2018. As a matter of next remedy, present service appeal was preferred and admitted for full hearing with notice to the respondents. They on attending the proceedings have filed written reply/comments refuting the claim of appellant for the relief as sought by him in the memorandum of appeal.

03. We have heard the arguments and perused the record.

04. It was argued on behalf of the appellant that the facts and grounds brought to fore in the memorandum of appeal were sufficient for setting aside the recommendation of P.S.B as to deferment of appellant's promotion but in view of the changed circumstances, no need is left to argue the appeal on its facts and ground; when the appellant has been promoted during pendency of this appeal. The learned counsel for the appellant extended his arguments for amendment of the appeal. He argued that this Tribunal is competent to allow the amendment in appeal and in case of the particular amendment as sought for this appeal, it will shorten the course of litigation. However, learned A.A.G opposed the arguments of the appellant's counsel with submissions that the appeal has become infructuous when the main relief as sought has been granted to the appellant out of court. It was further submitted that the appellant is not entitled to press for proforma promotion by seeking amendment in present appeal.

05. In view of the facts noted herein above, it is an undeniable fact that name of the appellant was included in the working paper for promotion from BS-17 to BS-18 for consideration of PSB in its meeting held on 10.05.2016. His name is listed at serial No.12 of the table containing the recommendation of the PSB as part of the minutes of said meeting of PSB on the subject of promotion of PMS (BS-17) Officer to BS-18. Copy of the said minutes is available on file. According to

ATTESTED

BY  
 NAME  
 DATE

*[Handwritten signature]*



recommendation of PSB against name of the appellant at serial No. 12 in the said table, it is there that the Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he hadnot undergone training mandatory for promotion. PSB further noted that he has now undergone mandatory training for promotion, however, an enquiry against him is pending. PSB recommended to defer his promotion. The appellant became aggrieved from the said recommendation and preferred departmental appeal obviously in vain and thereafter, he is here through service appeal at hand. During the course of pendency of this appeal, he submitted a civil miscellaneous application which was put up to the court with relevant appeal on 08.03.2021, as yet awaiting the formal order as to its fate. We have noticed that a copy of notification dated 21.01.2021 has been annexed with the said application as annexure-K at page 23. Accordingly, the appellant on recommendations of the PSB in its meeting held on 3.12.2020 has been promoted among others on regular basis with immediate effect. Certainly, this is a new event having taken place during pendency of this appeal, which by its impact has changed the course of Appellant impelling him to seek amendment in the memorandum of appeal. Therefore, it has become expedient to consider this changed situation for its fitness to application of molding relief principal to prevent the likelihood of multiplicity of proceedings. It The fitness for application of said principle dependent upon existing of certain prerequisites. Accordingly, if there is a subsequent occurrence of an event, which has the potential of impacting the relief sought by the parties to the suit, the court can take cognizant of this charge to mold the relief in the interest of justice even though it is not strictly in consonance with the relief sought by the parties. This approach adopted by the court is known as "molding relief". This principle is applicable in civil matters and if we go back to history of its application, the mother judgment on its application is in the case of *Mst. Amina Begum Vs. Meher Ghulam Dastagir* (PLD 1978 SC

ATTESTED

EXAMINER  
 Syed Fakhrulhaq  
 Service Tribunal  
 Peshawar



recommendation of PSB against name of the appellant at serial No. 12 in the said table, it is there that the Board in its meeting held on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 recommended to defer his promotion as he had not undergone training mandatory for promotion. PSB further noted that he has now undergone mandatory training for promotion, however, an enquiry against him is pending. PSB recommended to defer his promotion. The appellant became aggrieved from the said recommendation and preferred departmental appeal obviously in vain and thereafter, he is here through service appeal at hand. During the course of pendency of this appeal, he submitted a civil miscellaneous application which was put up to the court with relevant appeal on 08.03.2021, as yet awaiting the formal order as to its fate. We have noticed that a copy of notification dated 21.01.2021 has been annexed with the said application as annexure-K at page 23. Accordingly, the appellant on recommendations of the PSB in its meeting held on 3.12.2020 has been promoted among others on regular basis with immediate effect. Certainly, this is a new event having taken place during pendency of this appeal, which by its impact has changed the course of Appellant impelling him to seek amendment in the memorandum of appeal. Therefore, it has become expedient to consider this changed situation for its fitness to application of molding relief principal to prevent the likelihood of multiplicity of proceedings. It The fitness for application of said principle dependent upon existing of certain prerequisites. Accordingly, if there is a subsequent occurrence of an event, which has the potential of impacting the relief sought by the parties to the suit, the court can take cognizant of this charge to mold the relief in the interest of justice even though it is not strictly in consonance with the relief sought by the parties. This approach adopted by the court is known as "molding relief". This principle is applicable in civil matters and if we go back to history of its application, the mother judgment on its application is in the case of *Mst. Amina Begum Vs. Meher Ghulam Dastagir* (PLD 1978 SC



ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

9

220). Reliance upon the said judgment in the precedent law is quite constant, where the application of moulding of relief in view of changed circumstances is deemed necessary by the superior courts. However, application of this principle is subject to certain conditions as deducible from the jurisprudence having so far developed under the precedent law relating to the said principle and may be enumerated as follow:-

1. That the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted.
2. That taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and
3. That such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.


06. Testing the case of the appellant on touchstone of the condition necessary for application of moulding relief, the relief as sought by the appellant originally in his present appeal has, by reason of his promotion through notification dated 21.01.2021, has become infructuous. On the other hand, the Appellant is still aggrieved believing that he should have been granted promotion from the date when his case was submitted to PSB for the first time and deferred.

07. Taking notice of Appellant's promotion by the said notification dated 21.01.2021 coupled with his grievance, we are constrained to observe that this subsequent event if taken in to account for the sake of justice, a question is made out whether the appellant was entitled for promotion from the date when his case for the

**ATTESTED**

first time was deferred by PSB or from the immediate effect as given to him vide notification dated 21.01.2021. If this question is left undetermined and the appellant appeal at hand is dismissed having become infructuous, it will result into

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



multiplicity of proceedings including that the appellant has to file departmental appeal for seeking proforma promotion from the date of his first deferment, and if he fails to get redressal of his prayer in departmental appeal; he will have to file the service appeal which consequently will engage the department for written reply/comments and then it will engage this Tribunal to decide the said appeal ultimately by determination of the same question having no come up here before us. So, we are of the considered opinion that if the stated question is taken for determination here in this appeal, it will necessarily result in shortening of the litigation and enabling complete justice being done to the parties. Moreover, the respondents are also not being taken by the surprise for determination of the said question when the appellant has already moved civil miscellaneous application for amendment of the service appeal in pursuance to the subsequent event of promotion notification dated 21.01.2021 of the appellant. Again it will result in to multiplicity of the proceedings if we go after disposal of the said application asking the respondents to file their reply, hearing the arguments then passing the order certainly at risk of challenge by either party feeling aggrieved. Therefore, we deem it in interest of the parties and to avoid multiplicity of proceedings to restrain ourselves from disposal of the application for amendments of appeal albeit it will remain part of the main file; and we will prefer to take up the question formulated above for determination as to justifiable date of promotion of the appellant.

08. It is an undeniable fact that the concerned department extended the benefit to the appellant by including his name firstly in the working paper presented before PSB on 10.05.2016, 29.06.2016, 27.07.2016 and 29.08.2016 but his promotion was deferred mainly for the reason that he had not undergone training mandatory for

**ATTESTED**

promotion. However, the appellant was found fit for promotion in meeting of PSB held on 28.12.2016 after his having undergone the training which previously resulted in to deferment of his promotion but at this time, his promotion was again

EXAMINER  
of Pakhtukhwa  
Civil Tribunal  
Peshawar

deferred due to pendency of an enquiry against him. The given account of deferment of appellant's promotion successively leads to an inference that the same in his case was owing to the circumstances beyond his control. However, when the circumstances changed, he now has been promoted to the higher post with immediate effect on 21.01.2021. It is a matter of law in light of second explanation to Rule-17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 that the supersession of a senior person strips him off from the right of his seniority over a junior person promoted in consequence of supersession of the former notwithstanding the effect that he i.e. former was also subsequently promoted but there is a rider in the same explanation that the junior person have not been deem to have superseded a senior person, if the case of a senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributed to his fault or demerit. When juxtaposing case of the appellant to the said rider, the nomination of a government servant for mandatory training for promotion is a matter of discretion of the competent authority and a civil servant cannot compel the department for his nomination. In this eventuality, the reason of absence of the mandatory training is not attributable to the civil servant. However, there can be another eventuality that a civil servant is nominated for training but he fails to avail the chance; he in case of such eventuality is at risk of attribution of lacking of the necessary training for promotion and if in the matter of such eventuality, the promotion of a civil servant is deferred; he may not be able to claim proforma promotion. Anyhow, the case of appellant before us is one attracting the first eventuality that he was not nominated for training. Therefore, his deferment on such count is not workable to deprive him

**ATTESTED**

from the right of seniority at his right place with those colleagues who got promotion when the promotion of the appellant was for the first time deferred for

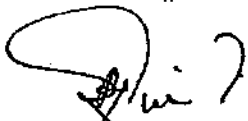
his mandatory training. As far as the deferment of appellant promotion,

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

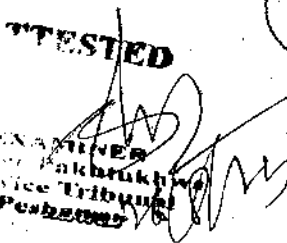
12

linked with enquiry pending against him, is concerned; his exoneration from the same obviously paved the way for his promotion made vide notification dated 21.01.2021. Henceforth, the reason of pendency of enquiry, if was attributable to the appellant in deferment of his promotion on 28.12.2016., has now vanished. As cumulative effect of the said discussion, the appellant is held entitled for proforma promotion from 10.05.2016 when his name reflected in the working paper for the first time came under consideration before PSB necessitating its actualization of his proforma promotion under due course. This appeal stands disposed of in the given terms with direction to the respondents to issue necessary corrigendum of the notification dated 21.01.2021 accordingly. There is no order as to costs. File be consigned to the record room.

ANNOUNCED  
27.07.2021

  
(ROZINA REHMAN)  
MEMBER(J)

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

**ATTESTED**  
  
EXECUTIVE  
Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 26/8/21  
 Number of Words 8-2  
 Copying Fee 40/-  
 Urgent 5/-  
 Total 45/-  
 Name of Copyist \_\_\_\_\_  
 Date of Completion 26/8/21  
 Date of Delivery of \_\_\_\_\_ 26/8/21

ADVOCATE  
SUPREME COURT  
Mr. Shyamprasad  
Date: 30/8/2021

ADc (EAP) Shyamprasad  
PMS (BS-18)  
Asstt. Sd. K. Khan  
Yours faithfully  
Sd. Shyamprasad

Date: 30/8/2021

II \_\_\_\_\_

It is, therefore, humbly requested that the judgment dated 27/7/2021 may kindly be implemented in its true letter and spirit please.

R/Sr,  
with due respect it is stated that the KPK Service Tribunal has issued judgment dated 27/7/2021 in my Service appeal No. 946/2018. Attached copy of the judgment which is enclosed.

Subject: Implementation of  
KPK Service Tribunal  
judgment dated 27/7/2021

The worthy chief minister  
KPK Peshawar.

Mr. B

2  
No. 1560

RGL58149890

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50

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(0)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE  
TRIBUNAL, PESHAWAR**

In re:  
SA No.946/2018

Asad Ullah Khan, Section Officer  
Home Department, Civil Secretariate, Peshawar

Ans. (C)  
(15)  
.....Appellant

**VERSUS**

The Government of Khyber Pakhtunkhwa, through  
Secretary Establishment Department, Civil Secretariat,  
Peshawar and 02 others

.....Respondents

---

**APPLICATION FOR IMPLEMENTATION OF  
JUDGMENT OF THIS HON'BLE SERVICE  
TRIBUNAL, PESHAWAR DATED 27.07.2021  
PASSED IN SA NO.946/2018 IN ITS TRUE  
LETTER AND SPIRIT.**

---

**Respectfully Sheweth**

Sir,

Appellant humbly submits as under:-

1. That this Hon'ble Tribunal has passed judgment dated 27.07.2021 in Service Appeal No.946/2018. (Attested copy enclosed as Annex "A")
2. That attested copy of the judgment dated 27.07.2021 was sent to the respondent vide letter dated 30.08.2021 through registry. (Copy of letter dated 30.08.2021 and registry slip are enclosed as Annex "B")
3. That the said judgment has not yet been implemented.
4. That after announcement of order dated 27.07.2021, the appellant approached the Department / respondents

  
ADVOCATE  
SUPREME COURT

16

time and again for the implementation of order passed by this Hon'ble Tribunal, but in vain.

- 5. That the respondents are willfully avoiding act upon the order passed by this Hon'ble Tribunal.
- 6. That the appellant have right as per Article-4 of the Constitution to be dealt with accordance with law and is also entitled to be re-instated in service with all back benefits.

It is, therefore, humbly requested that, on acceptance of this application the respondents may kindly be directed to implement/ act upon the order of this Hon'ble Tribunal in its letter and spirit.

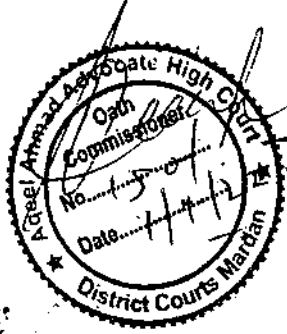
Appellant *Amjad Ali*  
 through *Amjad Ali* ADVOCATE  
 SUPREME COURT  
**Amjad Ali (Mardan)**  
 Advocate  
 Supreme Court of Pakistan

**AFFIDAVIT**

I, do hereby affirm and declare on oath that the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble court.

Deponent

*Amjad Ali*  
 ADVOCATE  
 SUPREME COURT





GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

And (D)

(17)

Dated Peshawar, the January 12, 2023

**NOTIFICATION**

**NO.SO(E-I)E&AD/5-1/2023.** In pursuance of the Judgment passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in a Service Appeal No. 946/2018 dated 27.07.2021 and on the recommendations of the Provincial Selection Board, in its meeting held on 18.11.2022, proforma promotion is hereby granted to Mr. Asadullah Khan (PMS), Additional Secretary/Secretary (NMAs), Board of Revenue, Khyber Pakhtunkhwa, from PMS BS-17 to PMS BS-18 w.e.f 13.01.2017, subject to final decision of the CPLA pending in the Supreme Court of Pakistan.

**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

**ENDST. OF EVEN NO. & DATE**

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Additional Chief Secretary, P&D Department
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries In Khyber Pakhtunkhwa (concerned).
6. Accountant General, Khyber Pakhtunkhwa
7. Director General, Information & PRS Department.
8. PS to Chief Secretary, Khyber Pakhtunkhwa.
9. PS to Secretaries, Establishment & Administration Department.
10. PS SS(E)/SS(Reg)/AS(HRD)/AS(E)/ DS(E.)/SO(E.II)/SO(E.V) E&AD.
11. PA to DS(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy. Director (IT) and Director Protocol Administration Department.
12. Officer concerned. *Additional Secretary (NMAs) BOR.*
13. Controller, Govt. Printing Press, Peshawar.

**IMRAN KHAN**

*Amjad Ali*  
ADVOCATE  
SUPREME COURT

*Zia ul Haq*  
(ZIA UL HAQ)  
SECTION OFFICER (E.I.)  
PH: No # 091-9210529

12/01/23

Need date: 15-6-2023

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

**Execution Petition No 238/2022 In Service Appeal No. 946/2018**

Asad Ullah Khan.....Appellant

Government of Khyber through Chief Secretary & others.....Respondents

**VERSUS**  
**APPLICATION FOR CORRECTION OF DATE OF PROMOTION W.E.F 13.01.2017 INSTEAD OF 10.05.2016 IN RESPECT OF MR. ASAD ULLAH KHAN IN JUDGMENT DATED 27.07.2021 IN SERVICE APPEAL NO. 946/2018**

Respectfully Sheweth:

1. That the above titled E.P is fixed before this forum on 15.06.2023
2. That the respondents Inter alia submit correction of Decree/ Judgment dated 27.07.2021 (Annex-A) passed in Service Appeal NO. 946/2018 on following, amongst the other grounds;
  - a. The case of appellant was earlier processed and placed before PSB in its meeting held on 18.11.2022, wherein the PSB recommended to grant proforma promotion to Mr. Asad Ullah Khan (PMS), Additional Secretary/ Secretary (NMA's) Board of Revenue, Khyber Pakhtunkhwa to PMS BS-18 w.e.f 13.01.2017 (i.e. the date upon which his erstwhile juniors were promoted) subject to final decision of the CPLA pending in the Supreme Court of Pakistan. Consequently, Establishment & Administration Department issued necessary notification on 12.01.2023 (Annex-B).
  - b. That as per Para-III of the Promotion Policy, 2009 a panel of two senior most officer shall be placed before the PSB for each vacancy in respect of promotion to BS18 & 19. Therefore, the panel of officer was comprised of the officers of double number of the available vacancies, and the name of the appellant was reflected in working paper for consideration before PSB on 10.05.2016, however, the appellant's case was deferred due to his seniority position in seniority. Moreover, he had not undergone mandatory training at that time which is an important provision for promotion. Mere reflection of someone's name in working paper does not make him entitled for promotion. It is for the DPC or PSB as the case may be to determine his suitability keeping in view availability of vacancies, his seniority position, service record & training evaluation report (in case of mandatory training).
  - c. That the respondents have already submitted implementation report (Annex-C).
  - d. That the respondents have already restored his seniority position, thus the orders of this Hon'ble Tribunal are implemented. No injustice whatsoever has been done with petitioner.

In view of above, it is most humbly prayed that decree/ judgment dated 27.07.2021 may be corrected to the extent of date of promotion w.e.f 13.01.2017 instead of 10.05.2016. Because on 10.05.2016 the decree holder had not completed the mandatory training being prerequisite for promotion alongwith other mandatory conditions.



*Muhammad Mustafa*  
ADVOCATE  
SUPREME COURT

Through

*[Signature]*  
(Respondent No. 01 to 03)  
Additional Advocate General  
12.6.23

(10)  
(19)

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

In re;  
Execution petition No.238/2022  
IN  
Appeal No.946/2018

Asad Ullah Khan .....Appellant

Versus

Govt. of Khyber Pakhtunkhwa through  
Chief Secretary and others..... Respondents

**REPLY ON BEHALF OF APPELLANT TO**  
**THE APPLICATION SUBMITTED BY**  
**RESPONDENTS IN EXECUTION PETITION**  
**NO.238/2022 IN SERVICE APPEAL**  
**NO.946/2018.**

*Respectfully Sheweth:*

- 1) That the above titled Execution Petition is fixed before this hon'ble Tribunal on 16.10.2023.
- 2) That Para-2 (a, b, c & d) of the application is incorrect on following grounds, hence denied specifically.

a. That Para 2(a) is incorrect, hence denied. The name of appellant was first reflected in the working paper for consideration before P.S.B on 10.05.2016 and promotion of the appellant from BS-17 to BS-18 was deferred due to lack of mandatory training and not due to seniority position. (Copy of the working paper dated 10.05.2016 is enclosed as Annexure "A")

Juniors to the appellant such as Muhammad Rehman, Fazal Khan, Syed Abdul Ali Shah, Muhammad Junaid Siddiqui, Javid Khan etc were promoted from BS-17 to BS-18 on regular basis vide notification dated

  
ADVOCATE  
SUPREME COURT

20  
2

17.06.2016. (Copies of Notification and seniority list are enclosed as Annexures "B")

- b. That Para-2(b) of the application is incorrect, hence denied specifically. The working paper dated 10.05.2016 shows that the appellant's promotion was deferred due to lack of minatory training and not due to seniority position.
- c. That Para-2(c) of the application is incorrect, hence denied. This hon'ble Tribunal has directed the respondents to issue Notification of promotion w.e.f 10.05.2016, but they did not act accordingly.

In light of the above the application of the respondents may kindly be rejected and they may kindly be directed to implement the judgment of this hon'ble Tribunal dated 27.07.2021 in its true letter and spirit please.

Dated: 11.10.2023

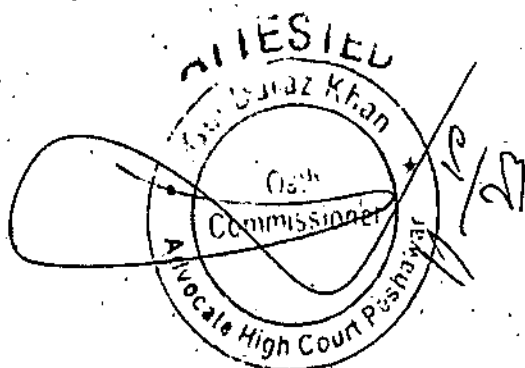
Through

Appellant *Amjad Ali*  
ADVOCATE  
SUPREME COURT  
Amjad Ali (Mardan)  
Advocate  
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the accompanying **REPLY** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Deponent

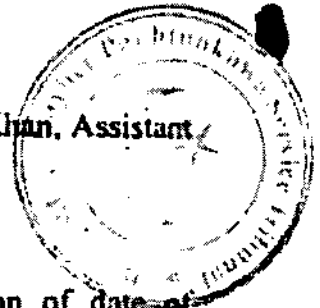


*Amjad Ali*  
ADVOCATE  
SUPREME COURT

A No. 946/2018  
Abdullah vs Govt

21.11.2023

1. Learned counsel for the petitioner present. Mr. Asad Ali Khan, Assistant Advocate General for the respondent present.



2. Arguments on objection petition heard for correction of date of promotion w.e.f 13.01.2017 instead of 10.05.2016 mentioned in judgment dated 27.07.2021 delivered in service appeal bearing No. 446/18 filed by petitioner on the ground that although name of the petitioner was reflected in working paper for consideration before PSB on 10.05.2016, however, case of the petitioner was deferred due to seniority position and not going through training mandatory for promotion. Perusal of judgment reveals that, at the time of submitting reply by petitioner has mentioned in their reply as well as in arguments that promotion case of the petitioner was deferred for the reason that he had not undergone training mandatory for promotion which is also evident from minutes of PSB held on 10.05.2016 annexed with reply filed by petitioner. This Tribunal has held in judgement dated 27.07.2021 that nomination for training is the prerogative of authority and civil servant cannot compel department for nomination, therefore, to defer case of promotion of a civil servant for not going through mandatory training cannot be hurdle in way of his promotion when he was not sent by the authority despite being in line having regard to his seniority. This Tribunal after evaluating each and every aspect including objections raised by the objectors now in clear cut manner directed the respondent to consider petitioner for proforma promotion from 10.05.2016. This court being executing will have to execute/implement order of the Tribunal in its true letter and spirit and cannot go beyond it, therefore, objection petition is hereby dismissed. Respondents are directed to implement judgement of this Tribunal in its true letter and spirit and submit proper implementation report on 12.12.2023

Aux (F)

21

before S.B. P.P given to the parties.

Asjad Ali  
ADVOCATE  
SUPREME COURT

Certified to be true copy  
Rashida Bano  
Member (J)

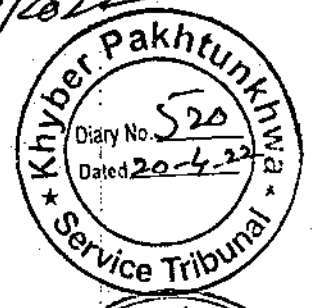
Aux (6) 22 (10)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition No. 238/2022*

In re:  
SA No.946/2018

Asad Ullah Khan, Section Officer  
Home Department, Civil Secretariate, Peshawar



....Appellant

**VERSUS**

The Government of Khyber Pakhtunkhwa, through  
Secretary Establishment Department, Civil Secretariat,  
Peshawar and 02 others



.....Respondents

**APPLICATION FOR IMPLEMENTATION OF  
JUDGMENT OF THIS HON'BLE SERVICE  
TRIBUNAL, PESHAWAR DATED 27.07.2021  
PASSED IN SA NO.946/2018 IN ITS TRUE  
LETTER AND SPIRIT.**

**Respectfully Sheweth**

Sir,

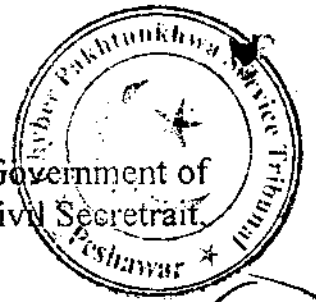
Appellant humbly submits as under:-

1. That this Hon'ble Tribunal has passed judgment dated 27.07.2021 in Service Appeal No.946/2018. (Attested copy enclosed as Annex "A")
2. That attested copy of the judgment dated 27.07.2021 was sent to the respondent vide letter dated 30.08.2021 through registry. (Copy of letter dated 30.08.2021 and registry slip are enclosed as Annex "B")
3. That the said judgment has not yet been implemented.
4. That after announcement of order dated 27.07.2021, the appellant approached the Department / respondents

ATTESTED  
*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



Execution Petition No. 238/2022 titled "Asad Ullah Khan versus The Government of Khyber Pakhtunkhwa, through Secretary Establishment Department, Civil Secretariat, Peshawar and others".



23


**ORDER**

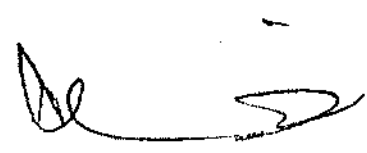
12<sup>th</sup> June, 2024 **Kalim Arshad Khan, Chairman:** Learned counsel for the petitioner

present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. As per implementation report submitted by the Establishment Department, in pursuance of the judgment of the Tribunal, the case for proforma promotion of the petitioner was placed before the PSB in its meeting held on 18.11.2022 and the board decided to recommend granting of proforma promotion to the petitioner Asad Ullah PMS BS-17 to BS-18 with effect from 13.01.2017 when his erstwhile juniors were promoted to BPS-18. This being so, the judgment has substantially been implemented. The application is thus filed. Consign.

3. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal on this 12<sup>th</sup> day of June, 2024.*

ATTESTED  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

  
(Kalim Arshad Khan)  
Chairman

\*Nasim Amin\*

Date of Presentation of Application ..... 26/8/23  
Number of Words ..... 2-11  
Copying Fee ..... 10/-  
Urgent ..... 5/11  
Total ..... 15/-  
Name of Copyist .....  
Date of Completion ..... 26/8/23  
Date of Delivery of Copy ..... 26/8/23

قسم کیٹوخواہ سروس ٹریڈ سونل سہاؤ

24

Applicant/Appellant 2024

28/8/2024

مقدمہ: اسد اللہ خان  
دعویٰ: Execution  
جرم:

بنام: سوبانجی حکومت KP نزد سید سگرری اسٹیشن و عین

باجت تحریر (فک)

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے بیروی و جواب دہی وکل کاروائی منطلقہ  
آن مقام ساور کیلئے امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ  
بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر  
دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم بیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی کرنے کا  
اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے اقرار کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پروا خستہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ و جاتہ  
التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیروی مذکور کریں۔  
لہذا حکایت نامہ لکھ دیا کہ سنظرہ

2024

28

المرقوم: 28

Accepted by:

Amjad Ali  
ADVOCATE  
SUPREME COURT

اسد اللہ خان  
(Appellant)