


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1121/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.09.2024	<p>The implementation petition of Mr. Muhammad Ismail submitted today by Syed Noman Ali Bukahri Advocate. It is fixed for implementation report before Single Bench at Peshawar on 03.10.2024. 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>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Execution Petition NO. 1121 /2024

Muhammad Ismail

VS

Agriculture Deptt

APPLICATION FOR FIXATION OF THE ABOVE TITLED AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned Execution is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the _____ may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 30-09-2024 Through

Syed Noman Ali Rulchani
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 1121 /2024

In

Service Appeal No.1200/2017

Muhammad Ismail

V/S

Agriculture Deptt:


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2.	Copy of Judgment	- A -	04-08
3.	Copy of application	-B-	09
4.	Vakalat Nama	-----	10



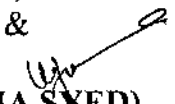
PETITIONER
Muhammad Ismail

THROUGH:



SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

&



(UZMA SYED)
ADVOCATE, PESHAWAR

Cell No: 0306-5109438

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

Execution Petition No. 112 /2024, Khyber Pakhtunkhwa
Service Tribunal

In
Service Appeal No.1200/2017

Diary No. 16186

Dated 30-09-2024

Muhammad Ismail, Senior Clerk,
District Officer Soil Conservation, Bannu.

(PETITIONERS)

VERSUS

1. The Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.
2. The Director Agriculture Engineering Department, Tamab Farm KPK, Peshawar.
3. The Director soil Conservation, Tamab Farm KPK, Peshawar.
4. Executive District officer, agriculture, tank.
5. District officer Soil Conservation Tank.
6. The Secretary Finance, KPK Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 04/04/2024/ OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the Petitioner filed Service Appeal No-1200/2017 for for salaries of intervening period with all back benefits including arrears to the appellant.
2. That the said appeal was finally heard by the Honorable Tribunal on 04/04/2024. The Honorable Tribunal is kind enough to accept the appeal of the appellant vide judgment dated 04/04/2024 and decided that, it would be appropriate that respondent may decide the matter at their own end having regard to peculiar circumstances of the appeal in hand with regard to salaries of intervening period as Senior Clerk. We remit the matter hack to respondents to decide

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it within sixty days. (Copy of judgment is attached as Annexure-A).

3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 04/04/2024.
4. That the appellant filed application for compliance of the judgment but the department totally failed to take any action which is amount to contempt of court. **Copy of the application is attached as annexure-B.**
5. That the petitioner has having no other remedy to file this Execution Petition.

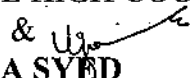
It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 04/04/2024 of this august Tribunal in letter and directed the respondent to decide and grant all arrears and back benefits to the appellant. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.


PETITIONER

Muhammad Ismail

THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.


& UZMA SYED
ADVOCATE HIGH COURT

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

Execution Petition No. _____/2024

In

Service Appeal No.1200/2017

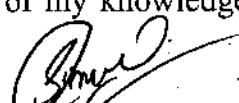
Muhammad Ismail

V/S

Agriculture Deptt:

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.


DEPONENT



30.9.24

A (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1200/2017

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)



Muhammad Ismail, Senior Clerk, District Officer Soil Conservation Bannu.

... (Appellant)

VERSUS

1. The Secretary Agriculture, Khyber Pakhtunkhwa, Peshawar.
2. The Director General Engineering Department, Tarnab Farm Khyber Pakhtunkhwa, Peshawar.
3. The Director Soil Conservation, Tarnab Farm, Khyber Pakhtunkhwa, Peshawar.
4. Executive District Officer Agriculture, Tank.
5. District Officer Soil Conservation, Tank.
6. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Syed Noman Ali Bukhari
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....31.07.2017
 Date of Hearing.....04.04.2024
 Date of Decision.....04.04.2024

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 the acceptance of this appeal, the impugned order dated 01.03.2017 communicated to the appellant on 03.03.2017 may be modified and period with effect from 01.11.2012 till

ATTESTED

 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar
 30-07-2024

arrival may be treated as period with full pay or leave of kind due with all back and consequential benefits. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favor of appellant.”

2. The appellant's case in brief is that he was appointed as Field Assistant in the On Farm Water Management Project on 19.07.1986; that on abolition of the post of Field Assistant, he was adjusted as Junior Clerk vide order dated 15.07.1987; that the appellant was transferred to the office of District Soil Conservator vide order dated 03.11.2001; that in the meanwhile, he was promoted as Senior Clerk vide order dated 31.07.2008; that on 31.10.2012 he was repatriated to his parent Department i.e. Water Management and was showed as Junior Clerk; that the parent department refused his arrival on the reason of non-availability of vacant post; that the appellant filed Service Appeal No.604/2013 before this Tribunal and in the meanwhile, he was allegedly working in the office of Soil Conservator, Tank; that his appeal was remanded back to the department for decision within 60 days vide order dated 11.02.2016; that for implementation of the judgment he filed Execution Petition No.100/2016 and during the pendency of the said petition, the respondents passed the impugned order dated 01.03.2017, wherein, he was adjusted against the post of Senior Clerk but the period w.e.f. 01.11.2012 till his date of arrival, was treated as without pay; that feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments. We have heard learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant submitted that the impugned order was

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 Service Tribunal
 Peshawar

against law, facts and norms of natural justice; that the appellant was not adjusted by the department which was not the fault of appellant and the appellant was fully entitled to full salaries; that if the grievance of the appellant was not resolved, then he would face huge financial loss; that the appellant served for more than four years which period was not counted; that the appellant was legally entitled for his pay under section-17 of the Civil Servants Act, 1973, hence, the impugned order was liable to be modified; that the relevant authorities restrained the appellant from performance of duty due to their improper exercise of official power, therefore, he could not be deprived from his legal rights of salaries; that the appellant had submitted arrival but the respondents had not submitted the same which was not the appellant's fault. Lastly, he submitted that the appellant being a cancer patient and fully entitled to salaries, the instant service appeal may kindly be accepted as prayed for.

5. As against that, District Attorney argued that the appellant had not performed his duties during the period, hence, appellant was not entitled for any pay or remuneration; that the appellant had not reported at the office of Director, Agriculture Engineering, hence, not entitled for pay. Further, submitted that the appellant was responsible for his financial loss as he had not performed his duties during that period; that no irregularity had been committed by the respondents. Lastly, he submitted that there was no proof that the respondents had restrained the appellant from performing his duties, therefore, he requested for dismissal for the instant service appeal.

6. Perusal of record reveals that appellant was appointed as Field Assistant in the office water management department and was transferred and promoted to the

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 Service Tribunal
 Peshawar

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post of Senior Clerk BPS-9 on 31.07.2008. On 31.10.2012 appellant was repatriated to his parent department i.e Agricultural Engineering as Junior Clerk, which order was challenged by him in service appeal No. 604/2013, wherein vide order dated 11.02.2016 respondents were directed to convene meeting of all the stakeholders in which the issue, including the outstanding salary, if any, may be properly discussed and resolved in accordance with law and rules within sixty days of receipt of the judgment. Respondent after receipt of judgment, convened a meeting on 16.07.2016, wherein the appellant was promoted to the post of Senior Clerk upon the recommendation of DPC meeting and was directed to be adjusted against the vacant post of Senior Clerk. Committee also held that no proof/record of absence was procured or found. therefore, order dated 31.10.2012 was illegal to the extent of long absence of the appellant from duty. Committee, in respect of withheld salary of the appellant from 01.07.2010 to 31.10.2013, directed to release it subject to return of short/missing items or it might be recovered from the salary of the appellant. Committee sought advice from Establishment Department on the point that appellant did not join as Junior Clerk due to wrong order of District Officer Soil Conservator Tank dated 30.04.2013 because he was senior Clerk from 11.05.2013 to date in respect of that whether this period from 01.05.2013 consider on duty or otherwise, but respondent vide order dated 01.03.2017 adjusted the appellant as Senior Clerk (BPS-14) with immediate effect by considering period w.e.f 01.11.2012 till his arrival in the concern office as extra-ordinary leave without pay.

8. It is admitted on record that in the committee meeting it was held that appellant was on duty till 30.04.2013 and he withdrew salaries till 30.04.2013 as Senior Clerk, which is evident from LPC annexed with the appeal. Appellant also approached respondents time and again for his adjustment as Senior Clerk even after

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 GOVT Pukhtukhwa
 Service Tribunal
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decision of the Tribunal and they adjusted him as Senior Clerk forcefully when execution petition was filed by the appellant then impugned order was passed by the respondents. Committee had referred to the short/missing items, details of which are not available on record. Moreover, without obtaining proper advice from the Establishment Department, the impugned order was issued by the respondents. Therefore, it would be appropriate that respondent may decide the matter at their own end having regard to peculiar circumstance of the appeal in hand with regard to salaries of intervening period as Senior Clerk. We remit the matter back to respondents to decide it within sixty days positively after receipt of copy of this judgment. Costs shall follow the events. Cosign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of April, 2024.



(Kalim Arshad Khan)
Chairman



(Rashida Bano)
Member (J)

*kaleemullah

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
30-09-2024

Date of Presentation of Application: 30-09-2024
 5-P
 25/-
 25/-
 30-09-2024
 30-09-2024

~~SECRET~~

25-7-2014 - B-C

Buonu
Book conservation
Bismarck office
Bismarck office

Dislike

3/11/14

1/11/14

Handwritten notes in German, including dates like 4-4-2014 and 12/10/14, and various illegible text fragments.

(9) B

وکالت نامہ

بعدالت جناب KP Service Tribunal, Aeshwar

محمد اسماعیل مقدمہ بعنوان
بنام امیر علی دھانسی

عنوان	Execution Petition No. / 2024
موضوع	منجانب دعوی
مقام	
تھانہ	

باعث تحریر آنکہ

مقدمہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ / جملہ

آن مقام شیماور کیلئے مسودہ نمائندگی کیلئے تنظیم ایڈوکیٹس

کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل گرانہ نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جواب دینے جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندر ہے

مقام کے لئے منظور ہے

دستخط ایڈوکیٹس

Amir Ali
Advocate