


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1016 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.09.2024	<p>The implementation petition submitted today by Mr. Noor Muhammad 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 style="text-align: right;">By order of the Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICED TRIBUNAL,
PESHAWAR.

EP
SERVICE TRIBUNAL NO. 1016 /2024

Abdul Hameed VS GOVT OF KPK & OTHERS:

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

Respectfully Sheweth:

1. That the above mentioned appeal 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 court.

It is therefore prayed that on acceptance of this application the appeal may please be fixed at principal seat Peshawar for the Convenience of parties and best interest of justice.

Applicant

Dated: - 01/9/2024

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. 1016 /2024
In
Appeal No. 2391/2023

MR. ABDUL HAMEED

VS

EDU: DEPTT:

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Petitioner
Abdul Hameed

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. 1066 /2024

In

Appeal No. 2391/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15551

Dated 09-09-2024

Mr. Abdul Hameed, PST BPS-12,
GPS Girgat, District Dir Upper.

..... Petitioner

VERSUS

- 1- The Secretary Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Peshawar
- 2- The Director Elementary & Secondary Education Khyber
Pakhtunkhwa, Peshawar
- 3- District Education Officer (Male) District Dir Upper.

..... **RESPONDENTS**

**EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP
SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE
TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF
THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON
THE SUBJECT FOR THE IMPLEMENTATION OF THE
JUDGMENT DATED 16/02/2024 IN LETTER AND SPIRIT.**

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 2391/2023 before this august Service Tribunal, against the impugned seniority list dated 31/12/2022, whereby the seniority of the appellant has been determined on the basis of merit position and not on the basis of Clause 9 of the terms and conditions of Regularization Notification dated 21/03/2018 and Sub Section (2) of the Section 4 of the Khyber Pakhtunkhwa Employees of the E&SE Department appointment and Regularization Act, 2017.
- 2- That the appeal of the petitioner was finally heard on dated 16/02/2024 and as such the ibid appeal is allowed as follows:

"11. In view of the above discussion, it is directed that the inter-se-seniority of those PSTs, who were regularized through notification bearing Endorsement No 1561-67-F. No 158/DEO(M)/ADO(P)Estb dated 21/03/2018, shall be determined on the basis of Clause-9 of terms and conditions of regularization

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Notification dated 21/03/2018 as well as Sub Section 2 of the Section 4 of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment & Regularization of Services) Act, 2017 by placing the names of the appellants at correct seniority position with all consequential benefits. The appeals in the said terms. Costs shall follow the event. Consign". Copy of the consolidated judgment dated 16/02/2024 is attached as annexure.....**A**

- 3- That after obtaining copy of the judgment dated 16/02/2024 the same was submitted with the respondents for implementation of his grievance coupled with an application, but the respondents/ department failed to do so, which is the violation of the judgment supra. Copy of application is attached as annexure.....**B**
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 16/02/2024 passed in Appeal No. 2391/2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.


Petitioner
Abdul Hameed

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Abdul Hameed, (appellant) do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT



-U- "A" (3)

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

APPEAL NO. 2391 /2023



Mr. Abdul Hameed, PST BPS-12,
GPS Girgat, District Dir Upper.

..... APPELLANT

VERSUS

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa Peshawar
- 2- The Director Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar
- 3- District Education Officer (Male) District Dir Upper.

.....RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, 1974 AGAINST THE IMPUGNED SENIORITY LIST DATED 31/12/2022, WHEREBY THE SENIORITY OF THE APPELLANT HAS BEEN DETERMINED ON THE BASIS OF MERIT POSITION AND NOT ON THE BASIS OF CLAUSE 9 OF THE TERMS AND CONDITIONS OF REGULARIZATION NOTIFICATION DATED 17/03/2018 AND SUB SECTION (2) OF THE SECTION 4 OF THE KHYBER PAKHTUNKHWA EMPLOYEES OF THE E&SE DEPARTMENT APPOINTMENT AND REGULARIZATION ACT, 2017 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD.

Prayer:-

That on acceptance of the instant service appeal, the impugned seniority list dated 31/12/2022 may kindly be corrected/rectified to the extent that the appellant's seniority may be determined on the basis of clause 9 of the terms and conditions of Regularization Notification dated 17/03/2018 as well as Sub Section (2) of Section 4 of Khyber Pakhtunkhwa Employees of E&SE Department (Appointment & Regularization of Services) Act, 2017 by placing the name of the appellant at correct seniority

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Service Tribunal
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 2361/2023

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



Muhammad Iqbal PST, BPS-12, GPS Bedamai, District Dir Upper
... (Appellant)

VERSUS

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. District Education Officer, (Male), District Dir-Upper.
... (Respondents)

Mr. Noor Muhammad Khattak
Advocate For appellants

Mr. Asif Masood Ali Shah
Deputy District Attorney For respondents

Date of Institution.....16.11.2023
Date of Hearing.....16.02.2024
Date of Decision.....16.02.2024

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 as copied below:

“On acceptance of instant appeal, the impugned seniority list dated 31.12.2022 may kindly be corrected/rectified to the extent that the appellant’s seniority may be determined on the basis of clause 9 of the terms and conditions of Regularization Notification dated 21.03.2018 as well as Sub Section (2) of Section 4 of the Khyber Pakhtunkhwa Employees of E&SE Department (Appointment & Regularization of Services) Act,

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2017 by placing the name of the appellant at correct seniority position with all consequential benefits. Any other remedy which this august Tribunal deem fit may also be awarded in favour of appellant."

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals, which are mentioned below as in all these appeals common questions of law and facts are involved.

1. Service Appeal No. 2362/2023
2. Service Appeal No. 2363/2023
3. Service Appeal No. 2364/2023
4. Service Appeal No. 2365/2023
5. Service Appeal No. 2366/2023
6. Service Appeal No. 2367/2023
7. Service Appeal No. 2368/2023
8. Service Appeal No. 2369/2023
9. Service Appeal No. 2370/2023
10. Service Appeal No. 2371/2023
11. Service Appeal No. 2372/2023
12. Service Appeal No. 2373/2023
13. Service Appeal No. 2374/2023
14. Service Appeal No. 2375/2023
15. Service Appeal No. 2376/2023
16. Service Appeal No. 2377/2023
17. Service Appeal No. 2378/2023
18. Service Appeal No. 2379/2023
19. Service Appeal No. 2380/2023
20. Service Appeal No. 2381/2023
21. Service Appeal No. 2382/2023
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31. Service Appeal No. 2392/2023
32. Service Appeal No. 2393/2023
33. Service Appeal No. 2394/2023
34. Service Appeal No. 2395/2023
35. Service Appeal No. 2396/2023
36. Service Appeal No. 2397/2023
37. Service Appeal No. 2398/2023
38. Service Appeal No. 2399/2023
39. Service Appeal No. 2400/2023
40. Service Appeal No. 2401/2023
41. Service Appeal No. 2402/2023

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42. Service Appeal No. 2403/2023
43. Service Appeal No. 2404/2023
44. Service Appeal No. 2405/2023
45. Service Appeal No. 2406/2023
46. Service Appeal No. 2407/2023
47. Service Appeal No. 2408/2023
48. Service Appeal No. 2409/2023
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54. Service Appeal No. 2415/2023
55. Service Appeal No. 2416/2023
56. Service Appeal No. 2417/2023
57. Service Appeal No. 2418/2023
58. Service Appeal No. 2419/2023
59. Service Appeal No. 2420/2023

3. Brief facts giving rise to the service appeals are that, the appellants were initially appointed as PSTs on contract basis vide Notification dated: 05.03.2016, 07.03.2016 and 03.05.2016 by the DEO (M) Dir Upper. During course of their service, Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was promulgated and in light of the same, their services were regularized vide Notification bearing Endorsement No. 1561-67/No. 158/DEO(M)ADO (P) PES/Estab dated 21.03.2018 with effect from the date of their initial appointment. The seniority list of the appellants, as well as other adhoc appointees whose services were regularized on the strength of Regularization Act, 2017 vide order dated 21.03.2018, was drawn on the basis of score obtained by them in test conducted by National Testing Service (NTS). The appellants are of the view that their inter-se-seniority was required to have been fixed date-wise in view of Clause-9 of terms and conditions of the regularization Notification dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment and Regularization of Services) Act, 2017, therefore, they filed objection on the seniority list on 17.08.2019,

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(7)

however the same was not responded. The appellants, thereafter, submitted departmental appeal on 26.07.2023 but the same was also not responded, constraining them to file appeals before this Tribunal for redressal of their grievance.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that appellants have not been treated in accordance with law and rules on the subject and as such respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that impugned seniority list issued by the respondents, whereby the seniority of the appellant has been determined on the basis of merit position and not on the basis of clause 9 of the terms and condition of Regularization of Notification dated 21.03.2018 and Sub-Section 2 of the Section 4 of the Khyber Pakhtunkhwa Employees of the E&SE Department Appointment and Regularization Act, 2017 are against the law, facts, norms of natural justice and material on the record, hence not tenable and liable to be modified. He further argued that appellants are fully entitled for seniority, being eligible in all respect, therefore, he requested that instant appeal might be accepted.

6. Conversely learned Deputy District Attorney contended that the appellants have been treated in accordance with law and rules. He further contended that after promulgation of the Khyber Pakhtunkhwa Employees of Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 appellants have been placed in the seniority list on the basis of merit, accordingly as per section 17 (part-vi)

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Seniority of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. Furthermore, terms and condition No.9 of the regularization notification dated 21.03.2018, is for those candidates who are having same merit position in their first appointment order.

7. Perusal of record reveals that the appellants were appointed as PSTs (BPS-12) on contract basis vide Notification dated 05.03.2016, 07.03.2016 and 03.05.2016. During the course of their service, Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 was enacted and vide Notification bearing Endorsement No.1561-67-F.No. 158/DEO(M)/ADO(P)Estb dated 21.03.2018, their services were regularized with effect from the date of their initial appointments. Clause-9 of Terms and Conditions as mentioned in the afore-mentioned regularization Notification dated 21.03.2018 is regarding determination of seniority, which is reproduced as below:-

"Their Seniority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous service in the case of two or more employees is the same, the employees older in age shall rank senior to the younger one."

8. Moreover, the criteria for determination of inter-se-seniority of the employees regularized under Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 has been provided in Sub-Section 2 of Section-4 of the said Act, which is reproduced as below:-

"4. Determination of seniority.---(1)The employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank



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junior to all other employees belonging to the same Cadre, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission made before the commencement of this Act, or to be appointed to the Cadre, irrespective of their actual date of appointment.

(2) The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre, shall be determined on the basis of their continuous service in Cadre:

Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one."

9. It is also worth mentioning that according to Section-5 of the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the provisions of the said act shall have an overriding effect and the provisions of any such law or rules to the extent of inconsistency with the said Act shall cease to have effect.

10. In view of Clause-9 of regularization notification bearing Endorsement No. dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017, the inter-se-seniority of the regularized PSTs was to be determined on the basis of their continuous service in cadre provided that if the date of continuous service in the case of two or more employees was the same, the employee older in age shall rank senior to the younger one. While going through the impugned seniority list attached by the appellants with their appeals, the inter-se seniority of the PSTs regularized through Notification dated 21.03.2018 has been determined, on the basis of score obtained by them in written test conducted through NTS, which was not a correct criteria for determining their

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inter-se-seniority. The NTS score was relevant for appointment and not for determining inter-se-seniority of the regularized PSTs.

11. In view of the above discussion, it is directed that the inter-se seniority of those PSTs, who were regularized through notification bearing Endorsement No. 1561-67-F.No. 158/DEO(M)/ADO(P)Estb dated 21.03.2018, shall be determined on the basis of Clause-9 of terms and conditions of regularization Notification dated 21.03.2018 as well as Sub-Section-2 of Section-4 of Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education Department (Appointment and Regularization of Services) Act, 2017 by placing the names of the appellants at correct seniority positions with all consequential benefits. The appeals are allowed in the said terms. Costs shall follow the events. Consign.

12. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 16th day of February, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

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Peshawar

Date of Presentation of Application 21-8-24
Number of Words 71
Copying Fee 35/-
Urgent _____
Total 35/-
Name of Copyiest _____
Date of Completion of Copy 22-8-24
Date of Delivery of Copy 22-8-24

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحب (مردانہ)، ضلع دیر بالا

عنوان: درخواست بمراد عمل درآمد کرنے حکم و فیصلہ محررہ 16/02/2024 جاری کردہ ازاں
خیبر پختونخواہ سروس ٹرایبونل، پشاور

جناب عالی! مؤدبانہ گزارش کی جاتی ہے کہ ہم نے (محمد اقبال و 59 دیگر) سکور بیس سیناریٹی اور پچھلے 99 ساتھ کرام جو سکور بیس سیناریٹی پر 30/05/2022 کو پروموٹ ہو چکے تھے سروس ٹرایبونل خیبر پختونخواہ میں چیلنج کر کے عمر کے لحاظ سے سیناریٹی اور پروموشن، بقایا جات اور 99 پروموٹ شدہ ساتھ کرام سے سیناریٹی کی استدعا کی تھی۔ جس پر معزز عدالت سروس ٹرایبونل خیبر پختونخواہ نے ہمارے حق میں فیصلہ سناتے ہوئے سیناریٹی، پروموشن اور بقایا جات دینے کا حکم جاری کیا ہے۔ (حکم و فیصلہ محررہ 16/02/2024 سروس ٹرایبونل خیبر پختونخواہ لف ہمارا درخواست ہذا ہے)۔

اس لئے آپ کی خدمت اقدس میں التماس کی جاتی ہے کہ ہمیں سیناریٹی اور بقایا جات حکم و فیصلہ محررہ 16/02/2024 سروس ٹرایبونل خیبر پختونخواہ کی روشنی میں دینے کے احکامات صادر فرمائے جائے۔

عین نوازش ہوگی۔

المرقوم: 14/05/2024

الحارض

محمد اقبال و 59 دیگر درخواست کنندگان کے دستخط درخواست کے ساتھ لف ہیں

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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EP No /2024

Abdul Hameed (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Edy degh (RESPONDENT)
(DEFENDANT)

I/We Abdul Hameed
Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. / /2024

Abdul Hameed

CLIENT

Abdul Hameed

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

WALEED ADNAN

UMAR FAROOQ MOHMAND

KHANZAD GUL

&

**ABID ALI SHAH
ADVOCATES**

OFFICE:
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Deans Trade Centre, Peshawar Cantt.
(0311-9314232)