


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1144/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.10.2024	<p>The implementation petition of Mr. Muhammad Uzair Ali submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 11.10.2024. 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</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. 11744 / 2024
In
Appeal No. 2005/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16459

Dated 08-10-24

MUHAMMAD UZAIR ALI

VS

EDU: DEPTT:

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THROUGH:

Petitioner
Muhammad Uzair Ali

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Execution Petition No. 1144 /2024
In
Appeal No. 2005/2022

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 16459
Dated 08-10-24

Mr. Muhammad Uzair Ali, Management Cadre Officer (BPS-19)
Posted at District Education Officer (Male) District Khyber
..... **Petitioner**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
- 2- The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 5- The Secretary Khyber Pakhtunkhwa Public Service Commission.
- 6- Mr. Jafar Mansoor abbasi (DEO) (BPS-19) presently at the disposal of the Directorate of E&SE Khyber Pakhtunkhwa, Peshawar.
- 7- Mst: Samina Altaf, DEO(F) (BPS-19) presently posted as Chairperson Board of Intermediate & Secondary Education, Kohat

..... **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 29/07/2024 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the appellant filed service appeal bearing No. 2005/2022 before this august Service Tribunal against the impugned final seniority list dated 12/10/2021 issued on 31/03/2022, whereby the junior colleagues of the appellant has been placed/shown senior to the appellant.
- 2- That the appeal of the appellant was finally heard on dated 29/07/2024 and as such the ibid appeal is accepted as follows:-

"7. In case, the PSB has considered.....it shall not declare the result of its meeting until the issue of seniority if finalized....."

10. In view of the above, it is once against mentioned that promotions should only be made based on a finalized seniority list, which has been thoroughly reviewed, corrected, and confirmed. Using a tentative seniority list for promotion is premature and may lead to legal and administrative issues. The finalized seniority list provides a reliable and accurate basis for making promotion decisions.

11. Disposed of accordingly. Costs shall follow the event. "Consigned." Copy of the judgment dated 29/07/2024 is attached as annexure.....A

- 3- That after obtaining copy of the judgment dated 29/07/2024 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 29/07/2024 passed in Appeal No. 2005/2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.


Petitioner
Muhammad Uzair Ali

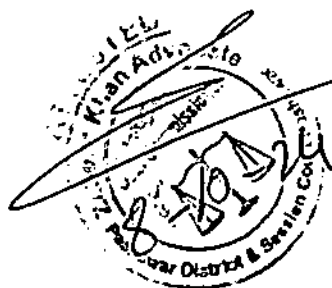
THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Muhammad Uzair Ali (petitioner) 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



Annex A

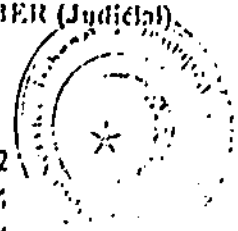
Service Appeal No 2005/2022 filed: Muhammad Uzair Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and others, decided on 29.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa District Tribunal, Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.2005/2022

Date of presentation of Appeal.....27.12.2022
Date of Hearing.....29.07.2024
Date of Decision.....29.07.2024



Mr. Muhammad Uzair Ali, Management Cadre Officer (BPS-19),
Posted as District Education Officer (Male) District Khyber
.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department, Khyber Pakhtunkhwa Peshawar.
4. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
5. The Secretary Khyber Pakhtunkhwa Public Service Commission.
6. Mr. Jafar Mansoor Abbasi (DEO BS-19) presently at the disposal of the Directorate of E&SE Khyber Pakhtunkhwa, Peshawar.
7. Mst. Samina Altaf, DEO (F) (BPS-19), presently posted as Chairperson Board of Intermediate & Secondary Education, Khat.....(Respondents)

ATTESTED
[Signature]
Khalid Rehman
Secretary

Present:
Mr. Noor Muhammad Khattak, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney ..For official respondents No.1 to 5
Mr. Zahid Waqar Khan, Advocate.....For private respondent No.6
Mr. Khalid Rehman, Advocate.....For Private respondent No.7

.....
APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE FINAL SENIORITY LIST DATED 12.10.2021 ISSUED ON 31.03.2022 WHEREBY THE JUNIOR COLLEAGUES OF THE APPELLANT HAVE BEEN PLACED/SHOWN SENIOR TO THE

[Signature]

ATTESTED
[Signature]

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Service Appeal No. 2003/2017 titled "Muhammad Umar Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and others", decided on 22.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Iqbal, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

APPELLANT AND AGAINST THE INACTION OF THE RESPONDENT BY NOT DECIDING THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as per memo and grounds of appeal is that he was initially appointed as Lecturer Political Science (BPS-17); that the respondent department advertised 26 posts of EDOs on 04.06.2009 through Khyber Pakhtunkhwa Public Service Commission; that the appellant applied and was appointed accordingly; that later on, he was appointed as Associate Professor Political Science (BPS-19) in the Higher Education Department through lien; that the appellant vide Notification dated 30.10.2011, was relieved from the post of EDO and he took charge of the post of Associate Professor (BPS-19); that the respondent department (Elementary & Secondary Education) changed the nomenclature of the post from EDO, E&SE to DEO, E&SE vide Notification dated 28.12.2012; that the respondent department recalled the services of the appellant from the Higher Education Department through requisition in 2013, in pursuance to the requisition of respondent Department, the Higher Education through letter dated 11.09.2023 placed the services of the appellant at the disposal of the respondent Department and vide Notification dated 30.09.2013, the appellant was

ATTESTED

[Signature]
Secretary, Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
ATTESTED

(5)

Service Appeal No 2013/2012 titled "Muhammad Usan Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", decided on 29.07.2021 by Division Bench comprising of Mr. Kalam Arshad Khan, Chairman, and Mr. Karimuddin, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

allowed to rejoin the Elementary & Secondary Education Department as District Education Officer (Male) BPS-19 in the Management Cadre; that the Khyber Pakhtunkhwa Public Service Commission sent the inter-se merit of the EDOs/DEOs to the E&SE Department in 2013 for the purpose of inter-se seniority vide letter dated 02.12.2013, wherein, the appellant's name stood at Serial No.16; that some of the officers, senior to him in the seniority list, had retired while two of them were promoted to BPS-20, therefore, the appellant ought to have been placed at Serial No.2, however, he was placed at Serial No.8 in the tentative seniority list; that he filed appeal for correction in the said tentative list; that vide impugned seniority list dated 12.10.2021, appellant was placed at serial No.5; that feeling aggrieved, he filed departmental appeal for placing him at Serial No.2, but the same was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant, learned Deputy District Attorney for official respondents and learned counsel for private respondents.

ATTESTED
[Signature]
Member Judicial
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]
ATTESTED

(6)

Service Appeal No 2003/2022 titled "Muhammad Usay Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", decided on 29.07.2022 by Division Bench comprising of Mr. Kulim Arshad Khan, Chairman, and Mrs Rashida Hana, Member Justice, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

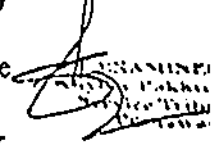
04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy District Attorney assisted by learned counsel for private respondents, controverted the same by supporting the impugned order(s).

05. While controverting the arguments of the learned counsel for the appellant, the learned Deputy District Attorney and learned counsel for the private respondents referred to letter No.533 dated 11.03.2022 on the subject of Revised and Updated (Final) Seniority list of Additional Directors/District Education Officer BPS-19 Male (Management Cadre) as stood on 12.10.2021 E&SE Department, and contended that although, a list was revised and updated which was given the name of final seniority list, but that was not actually the final, rather that was sent to the competent authority for its approval and further process. So that was not yet final list.

06. The facts above stated by the Deputy District Attorney as well as learned counsel for the private respondents have also been ratified by Mr. Rizwanullah, Assistant Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

07. In such a situation, when both, official and private respondents are categorically and unequivocally saying that there was no final seniority list, we would like to direct the

ATTESTED


Assistant Director
Elementary & Secondary Education Department
Khyber Pakhtunkhwa
Peshawar


ATTESTED

(7)

Service Appeal No 2003/2022 titled "Muhammad Usay Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", decided on 19.07.2024 by Division Bench comprising of Mr. Kulum Arsalan Khan, Chairman, and Mr. Kashif Ali Khan, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

official respondents to finalize the seniority list within 60 days of receipt of this judgment and issue notified final seniority list; duly circulate and ensure communication of the same to all concerned, within shortest possible time. Learned counsel for the appellant submitted that meeting of the Provincial Selection Board was scheduled for today, wherein, promotion of Management Cadre Officers from BPS-19 to BPS-20 in the Elementary & Secondary Education Department, was at Serial No.2 of the Agenda and that the promotion was being considered on the basis of disputed tentative seniority list. He expressed apprehension that if the seniority list was tentative or not yet finalized, any promotion on the basis of such list was not justified. The contention of the learned counsel appears to be valid, therefore, we direct that in case the PSB has considered and taken decision on Item No.2 of the Agenda, it shall not declare the result of its meeting until the issue of seniority is finalized because the tentative seniority list does not confer any right or basis for cause of action.

08. We are fortified by the judgment of the Supreme Court of Pakistan reported as 1998 PLC CS 871 titled "Khalid Rashid Shahbaz, Vs. Federation of Pakistan", relevant portion of the judgment is reproduced as under:

"It is well-settled that tentative seniority list is issued only for ascertaining the position and

ATTESTED

Signature
Chief Justice
Khyber Pakhtunkhwa
Service Tribunal

ATTESTED

(8)

Service Appeal No 2005/2011 titled "Muhammad Umar Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar, and others", decided on 29.01.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Kashida Nisa, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

considering objections, if any, raised by the persons being affected so that a final list, which has element of reliability, be prepared and circulated. Tentative seniority list, except inviting attention for seeking correction, does not create any legitimate basis for conferring right or basis for cause of action."

09. Therefore, promotions cannot be made solely on the basis of a tentative seniority list. A tentative seniority list is issued to invite objections and corrections, and it does not confer any substantive rights or finalize an individual's seniority. It is a preliminary step towards preparing a final seniority list. Because a tentative seniority list is subject to changes and corrections based on objections and feedback, and it does not reflect the final and accurate seniority position of individuals. Besides, promotions require a finalized seniority list to ensure fairness, transparency, and accuracy, therefore, relying solely on a tentative seniority list for promotions may lead to injustices and disputes.

10. In view of the above, it is once again mentioned that promotions should only be made based on a finalized seniority list, which has been thoroughly reviewed, corrected, and confirmed. Using a tentative seniority list for promotions is premature and may lead to legal and

ATTESTED

[Signature]
Chief Secretary
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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ATTESTED

(9)

Service Appeal No 2033/2022 titled "Muhammad Usam Ali versus The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and others", decided on 29.07.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

administrative issues. The finalized seniority list provides a reliable and accurate basis for making promotion decisions.

11. Disposed of accordingly. Costs shall follow the event.

Consign.

12. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 29th day of July, 2024.

KALIM ARSHAD KHAN
Chairman

RASHIDA BANO
Member (Judicial)

Muzam Shah

ATTSTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar 30/7/24

Date of Presentation of Application ... 30/7/24
Number of Pages ... 7 P
Copying Fee ... 35/-
Urgent ...
Total ...
Date of ... 30/7/24
Date of Delivery of Copy ... 30/7/24

ATTSTED

PAGE 7

(10)
Annex "B"



DISTRICT EDUCATION OFFICE
DISTRICT KHYBER AT JAMRUD (MALE)
PHONE: 091-5820584 FAX 091-5820584
NO: 23565 DATED: 31/07/2024

E&AD KP

[Handwritten signature]
31-7-24

To

The Chief Secretary,
Government of Khyber Pakhtunkhwa, Peshawar.

29766/10/8
30-07-2024

Subject: REQUEST FOR IMPLEMENTATION OF JUDGMENT RENDEDRED BY THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO.2005/2022 DATED 29/7/2024 TITLED MUHAMMAD UZAIR ALI VS THE GOVT OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY & OTHERS.

Enclosed please find herewith an original judgment of the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar on subject noted above with the following directions that :

1. "in case the PSB has considered and taking decision on Item No.2 of the Agenda; it shall not declare the result of its meeting until the issue of seniority is finalized because the tentative seniority list does not confer any right or basis for cause of action". Para No. 07.
2. "promotion should only be made based on a finalized seniority list, which has been thoroughly reviewed, corrected, and confirmed. Using a tentative seniority list for promotions is premature and may lead to legal and administrative issues. The finalized seniority list provides a reliable and accurate basis for making promotion decisions".

Keeping in view, the above quoted directions in the service appeal No.2005/2022 Dated:29/07/2024 the undersigned is requesting to implement within stipulated time of sixty days please.

[Handwritten signature]
Muhammad Uzair Ali
Appellant (MC BS-19 Officer)
District Education Officer (M)
District Khyber.

Endst: No.23566-72

Dated:31-07-2024

Copy for the information is forwarded to the: -

1. Secretary E&SE Khyber Pakhtunkhwa (Respondent No.2).
2. Secretary Establishment Department Khyber Pakhtunkhwa (Respondent No.03)
3. Additional Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
4. Director E&SE Khyber Pakhtunkhwa. (Respondent No.04). — D No 2070
31/7/24
5. Secretary Public Service Commission (Respondent No.05)
6. Mr. Jafar Mansoor Abbasi (BS-19 MC) at the Disposal of the Directorate of E&SE KP (Respondent No.06)
7. PS to Secretary Law Department Khyber Pakhtunkhwa.

[Handwritten signature]
Appellant (MC BS-19 Officer)
District Education Officer (M)
District Khyber.



SB 4389
31/7/24

[Handwritten signature]
c/o Jafar Mansoor Abbasi
31/07/24
ATTSTED

(11)

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EP No /2024

M. Uzair Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS


Gout

(RESPONDENT)
(DEFENDANT)

I/we M. Uzair Ali

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. / /202



CLIENT

ACCEPTED

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

WALEED ADNAN

UMAR FAROOQ MOHMAND

&


**KHANZAD GUL
ADVOCATES**

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)