


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 975/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.09.2024	<p>The implementation petition of Mr. Muhammad Asim submitted today by Mr. Haroon Inayat 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  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Execution Petition No. 975 /2024

In Service Appeal No. 5748/2021

Muhammad Asim

VERSUS

Inspector General of Police Khyber Pakhtunkhwa
Peshawar 85 others.

In Service


INDEX

<i>S#</i>	<i>Description of Documents</i>	<i>Annex</i>	<i>Pages</i>
1.	Execution Petition.		1-2
2.	Affidavit		3
3.	Copy of judgment	"A"	4-9
4.	Wakalat Nama.		10

Dated: 03/09/2024


Applicant

Through


Haroon Inayat
Advocate, High Court

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Execution Petition No. 975 /2024

In Service Appeal No. 5748/2021

Khyber Pakhtunkhwa
Service Tribunal

Darcy No. 15388

Dated 03.09.2024

Muhammad Asim S/o Sami Ul Haq R/o Takhtbai Jalala
Mardan presently at serving at PASI at Mardan District
(Regional No.684/MR)

.....*Appellant*

VERSUS

Inspector General of Police Khyber Pakhtunkhwa
Peshawar 85 others.

.....*Respondents*

EXECUTION PETITION FOR DIRECTING
THE RESPONDENTS TO PROPERLY
IMPLEMENT THE JUDGMENT DATED
11.03.2024 PASSED IN SERVICE APPEAL
NO. 5748/2021 OF THIS HON'BLE
TRIBUNAL IN TRUE LETTER AND
SPIRIT OF LAW.

Respectfully Sheweth,

1. That the applicant/appellant filed Service Appeal No.5748/2021 in this August Tribunal which has been accepted on 11.03.2024. (Copy of judgment is annexed as annexure "A")
2. That this Hon'ble tribunal was pleased to accept prayer No.1 and 3 of the above mentioned appeals of the appellants.

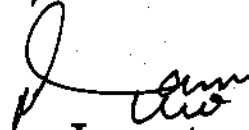
3. That the applicant/appellant submitted the judgment/order dated 26.03.2024 before the competent authority / respondents but no action has been taken by the department so far.
4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this August Tribunal in its true sense.
5. That the applicant/appellant has left no remedy except to file this execution petition.
6. That the respondent department are bound to properly obey and implement the order of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to properly implement the judgment of this August Tribunal dated 11.03.2024 passed in appeal No.5748/2021 in true letter and spirit of law.

Dated: 03/09/2024


Applicant

Through


Haroon Inayat
Advocate, High Court

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Execution Petition No. _____/2024

In Service Appeal No. 5748/2021

Muhammad Asim

VERSUS

Inspector General of Police Khyber Pakhtunkhwa
Peshawar 85 others


.....*Respondents*

Affidavit

I, Muhammad Asim S/o Sami Ul Haq R/o Takhtbai Jalala Mardan presently at serving at PASI at Mardan District (Regional No.684/MR), do hereby solemnly affirm and declare on oath that all the contents of the instant Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Verified by:
Haroon Inayat
Advocate High Court



Deponent
CNIC: 16102-7986785-3

ATTESTED



(4)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.5740/2021

BEFORE: MRS. RASHIDA BANO
MISS FAREEHA PAUL

... MEMBER (J)
... MEMBER (E)



Fawad Yousaf S/O Mian Nisar Yousaf R/O Takhtbhai Mardan presently serving as PASI at Mardan District (Regional No. 351/MR)

.... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa Peshawar and 85 others.

.... (Respondents)

Mr. Ali Gohar Durrani
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For official respondents

Mr. Noor Muhammad Khattak
Advocate

.... For private respondents

Date of Institution.....29.03.2021
Date of Hearing.....11.03.2024
Date of Decision.....11.03.2024

CONSOLIDATED 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:

1. That this Honorable Tribunal may please declare the approval/confirmation dated 13.11.2020 of 2016 supernumerary PASIs Shuhada wards against/contrary to the prescribed rules and law.
2. That this Honorable Tribunal may please direct the respondent no 1 and 2 to revise the list 'E' and shall consider the name of capable candidate appellant who has secured his

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
29/8/24

3

position by competing the exam and completed the probationary tenure as per rules and law.

Need to be confirmed immediately.

3. That this competent Tribunal may please direct and restrict the respondent authorities to adhere the criteria of supernumerary posts, gradual abolition, regularization rules and the rules laid down in consultation with the provincial government which is not victimizing the seniority rights of the commissioned officers if properly implemented.

4. That this Honorable Tribunal may please be direct to confirm the Services of the Appellants forthwith.

As any other relief which this Honorable Tribunal deems fit in favor of appellant may very graciously be granted.

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. 5741/2021
2. Service Appeal No. 5742/2021
3. Service Appeal No. 5743/2021
4. Service Appeal No. 5744/2021
5. Service Appeal No. 5745/2021
6. Service Appeal No. 5746/2021
7. Service Appeal No. 5747/2021
8. Service Appeal No. 5748/2021

3. Brief facts of the case as given in the memoranda of appeals are that the appellants were appointed as PASIs upon the recommendation of Khyber Pakhtunkhwa Public Service Commission in the year 2017 in terms of Chapter 12 of Rule 6 of the Police Rules, 1934. Finance Department vide letter dated 26.08.2015, created 300 Supernumerary posts of (ASI BPS-09) subject to the condition that with gradual retirement of ASIs holding permanent/regular posts, the senior most from 300 holders of the supernumerary posts would be adjusted against the posts falling vacant and the corresponding supernumerary posts would stand abolished accordingly in a gradual manner. On 12.01.2016,

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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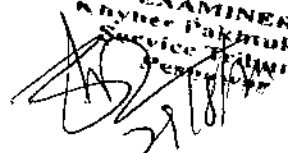
private respondents No. 4 to 85 were appointed on temporary basis against supernumerary posts (ShuhadaWards). In respect of seniority between deceased son quota and regular PASIs of Kohat Region, seniority is given to PASIs coming under direct recruitment through the Public Service Commission over those who come through deceased son quota. By implementing the aforementioned policy, the RPO, Mardan adjusted 10 supernumerary PASIs in 5% quota specified for the Shuhada wards in due manner and they were entitled for confirmation with reference from the date of their adjustment. The RPO Mardan confirmed 68 supernumerary PASIs in the rank of ASI from the date of their temporary appointment on supernumerary posts on the basis of rules meant for direct/regular PASIs which was against approved policy contained in the Finance Department letter dated 26.08.2015 mentioned above. Feeling aggrieved, the appellant filed departmental appeal on 30.11.2020, which was not responded, hence the instant service appeals.

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. He further argued that confirmation order passed by the RPO Mardan violates the law of natural justice, which is evident from the rules that supernumerary posts should be regularized on the subsequent adjustment upon the gradual retirement of ASIs and by issuance of such order, seniority of the appellant was affected. He further argued that the directly recruited PASIs through the Public Service Commission had undergone through the process of written and physical examination prescribed in the chapter 12 rule 6 of Police Rules, 1934; and they shall not be victimized

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar




by the appointees appointed through Shuhada Quota, who were not regularly appointed but rather appointed on supernumerary/temporary basis. He further argued that there must be clear criteria for the promotion and seniority and supernumerary/temporary PASIs should not be treated as regular employees from the date of temporary appointment.

6. Conversely, learned counsel for private respondents, assisted by learned Deputy District Attorney, contended that appellant has been treated in accordance with law and rules. He further contended that no one can be appointed as PASI against Deceased's Son Quota, therefore, seniority of PASIs appointed through Public Service Commission is immaterial as there is no concept of appointment as PASI against Deceased's Son Quota. He argued that the PASIs of Kohat Region have been assigned seniority with respect of age.

7. Perusal of record reveals that appellants in the instant service appeal challenged the confirmation order of supernumerary PASI of 2016 batch of Mardan Region dated 13.11.2020 which affect their seniority. The appellant were directly recruited as PASIs vide order dated 20.07.2017 upon the recommendation of Khyber Pakhtunkhwa Public Service Commission dated 08.02.2017 after completion of process of recruitment initiated on the basis of publication/advertisement No. 4/2014 dated 18.07.2014. Respondent No. 4 to 85 were appointed on 12.01.2016 on temporary basis against supernumerary post of Shuhada quota which were created and sectioned by the Finance Department's letter dated 26.08.2015. It is clearly mentioned that Finance Department agrees to the creation of the 300 supernumerary posts of PASI (BPS-09) subject to the condition that with gradual retirement of ASI holding permanent/regular post, the senior most of the 300 from the holders of the

supernumerary post and the supernumerary posts will be adjusted against the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Quota

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post will stand abolished accordingly in a gradual manner. Government had also notified vide notification dated 27.02.2005 that police shuhada sons will be place Junior from the ASIs who were appointed through Public Service Commission.

8. Regional Police Officer Mardan adjusted ten supernumerary PASI in 5 % quota of the Shuhada Son vide adjustment order dated 31.08.2017. Regional Police officer issued confirmation order of supernumerary PASI Mardan region on 13.11.2020 in accordance with which they were confirmed from the date of their temporary appointment including those who are not yet adjusted against regular posts on the basis of DPC meeting held on 09.06.2016 in accordance with 8(4) Civil Servant Act, 1973 where seniority on post, service or order to which a civil servant is promoted/appointed shall be determined from the date of appointment or promotion to a regular post, and in the instant case, it is clearly mentioned in the letter of Finance Department dated 26.08.2015 that supernumerary posts are temporary post. So confirmation of private respondents No. 4 to 84 from the date of their appointment i.e 12.01.2016 when they were appointed against temporary posts and not regular post they will have to be adjusted against regular post in accordance with rules. First, they will have to be adjusted against regular post and then they will be confirmed from the date of regular appointment as PASIs. When there was no regular post sanctioned by the Finance Department, then how, without converting these supernumerary posts to regular posts, committee considered it regular. Committee without giving due regard to the rules and clear directions of the Finance Department, considered all appointees of supernumerary posts as regular employees without citing any law on the basis of which they formed their opinion and took the decision, which is not in accordance with law on subject. Although respondent No 4 to 84 were


ATTESTED

EXAMINER
Punjab Public Service Commission
Lahore

appointed on 12.01.2016 but again on temporary post and not against regular post. Lets for the sake of arguments, if we presume that respondent No 4 to 84 were appointed against regular posts on 12.01.2016 and appellants were appointed on 20.02.2017 then too appellants will be senior to respondents No 4 to 84 because process of their selection started with publication of advertisement No 4/2014 on 18.07.2014, wherein posts of the appellants were advertised by Public Service Commission in response of requisition sent by the government in accordance with Rules 17(2) of (Appointment, Promotion and Transfer) Rules, 1989 on the principle of earlier selection process.

9. In view of the above discussion, we accept the instant appeal as well as connected service appeals to the extent of prayer No. 1 and 3. Cost shall follow the event. Consign.

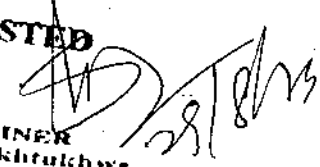
10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 11th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kaicemullah

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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IGP سرسٹریٹس ٹریڈنگ سٹور

مورخہ 31 ستمبر 2014ء 2 منجانب

مقدمہ راجن کلر (5748) (ا/ا/ی) محمد عامر نام IGP (KPK) کی

دعویٰ Execution Petition جرم

باعث تحریر آنکھ میں نے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام اللہ سنا دے ہوں کیلئے یا میں عنایت ایر فوکلہ صاحبہ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحبہ کو راضی نامہ کرنے کے تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی بڑائی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوا مقدمہ ہوں گے
سب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحبہ یا بند ہوں گے
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سنڈر ہے۔

محمد عامر

المرقوم 03 ماہ ستمبر 2014ء

محمد عامر ولد بیگم الہی کن بقاد صراط السیر