


Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 1192/2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.10.2024	<p>The application for restoration of Service appeal No. 1139/2023 received today by registered post through Mr. Javed Iqbal Advocate. It is fixed for hearing before touring Division Bench at A. Abad on 31.10.2024. Original file be requisitioned. Counsel for the applicant has been informed telephonically.</p> <p>By order of the Chairman  REGISTRAR</p>

**BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR**

BA No 1192 of 2024

IN

Service Appeal No. 1139 of 2023

Gulzar.....Appellant

VERSUS

The Govt of KPK through Secretary Health
etc.....Respondents

RESTORATION APPLICATION

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4.	Wakalat Nama.	17 th

Dated: 09.10.2024

Gulzar
..... Appellant

Through


JAVED IQBAL
Advocate High Court

**BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16747

Dated 15-10-24

R.A.
S.I No 1192 of 2024

IN

Service Appeal No. 1139 of 2023

Gulzar son of Kala Khan, resident of
Shinkhari, Tehsil & District Manserha, Ex-
Ward orderly King Abdullah Teaching
Hospital Mansehra.....**Appellant**

VERSUS

- 1) The Government of Khyber Pakhtunkhwa
through Secretary Health KPK Peshawar.
- 2) The Director Health Department, KPK
Peshawar.
- 3) Medical Superintendent KATH Mansehra.
- 4) Medical Superintendent DHQ Hospital
Abbottabad.
- 5) District Account Officer, District Account
Office Mansehra.
- 6) Director General NADRA Islamabad.
- 7) Assistant Director NADRA Office Mansehra.
.....**Respondents**

**APPLICATION FOR RESTORATION OF
SERVICE APPEAL NO. 1139**

Respectfully shewith!

- 1). That, instant service appeal was pending
before this Honourable service tribunal.

and service appeal was fixed for 23.09.2024 and on the same very date the service appeal was dismissed and default.

(attested copy of the order dated 23.09.2024 is annexed as annexure "A").

- 2). That, on the date fixed appellant present before the court, on the same date the KP Bar council strike announced and due to strike the council of appellant not appeared before the tribunal, appellant informed the reader of court about the strike, the reader of court directed the appellant that he adjourned the case, but later on when appellant council check the next date through online the appeal of appellant dismissed with default.

(copy of strike notice is annexed as annexure "B").

- 3). That, the absence of counsel of the appellant is neither deliberate nor intestinally but to the above said reason therefore before this Honourable service tribunal.
- 4). That, it is the consensus of the superior court that the case most be decided on merit and technicalities be avoided, hence the service appeal is liable to be restore.

- 5). That, the dismissal of the service appeal due to non prosecution amounts to well settle principle of to that no person should be condemned unheard.
- 6). That, the valuable rights of the appellant are involved in the service appeal.
- 7). That, if the above mentioned service appeal is not restored then the appellant will suffer an irreparable loss.

PRAYER

IT IS THEREFORE MOST HUMBLY PRAYED that on acceptance of the instant application, the said service appeal may please be restore and same be decided on merit.

Dated: 09.10.2024

Gulzar
..... Appellant

Through



JAVED IQBAL
Advocate High Court

AFFIDAVIT

I, Gulzar son of Kala Khan, resident of Shinkhari, Tehsil & District Manserha, Ex-Ward orderly King Abdullah Teaching Hospital Mansehra, do hereby solemnly affirm and declare on oath the contents of the foregoing restoration application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable court.

Dated: 09.10.2024

(Deponent)

Gulzar

CNIC# _____

ATTESTED
Muhammad Adil
OATH Commissioner
Advocate Manserha

09/10/24

Annexure
(A) (5)




ORDER
23rd Sept, 2024


Kalim Arshad Khan, Chairman: Nobody present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Case was called after various intervals, however, neither appellant nor his counsel put appearance before the Tribunal, till its rising. Therefore, the appeal in hand is dismissed in default. Consign.

3. Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal this 23rd day of September, 2024.


(Farooq Ha Paus)
Member(I)

Camp Court Abbottabad


(Kalim Arshad Khan)

Chairman
Camp Court Abbottabad

Adnan Shah, P.A.

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
10-10-24

Khyber Pakhtunkhwa Service Tribunal, Peshawar	
Application No. <u>39</u>	Date <u>10-10-24</u>
Name of Applicant <u>Javed Gybal</u>	
Number of Words/Pages <u>1-P</u>	
Copying Fee <u>5/-</u>	
Urgent/Ordinary <u>5/-</u>	
Total <u>10/-</u>	
Name & Sign of Copyist <u>Zeeshan J</u>	
Date of Completion of Copy <u>10-10-24</u>	
Date of Delivery of Copy <u>10-10-24</u>	

**BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR**



Service appeal No 1139 of 2023

Gulzar son of Kala Khan, resident of Shinkiani, Tehsil & District Manserha, Ex-Ward orderly King Abdullah Teaching Hospital Manshra.....Appellant

VERSUS

- 1) The Government of Khyber Pakhtunkhwa through Secretary Health KPK Peshawar.
- 2) The Director Health Department, KPK Peshawar.
- 3) Medical Superintendent KATH Manshra.
- 4) Medical Superintendent DHQ Hospital Abbottabad.
- 5) District Account Officer, District Account Office Manshra.
- 6) Director General NADRA Islamabad.
- 7) Assistant Director NADRA Office Manshra.

.....Respondents

**APPEAL UNDER SECTION 4 OF KPK
SERVICE TRIBUNAL, ACT, 1974 AGAINST
THE IMPUGNED ORDER NO 11638-40
DATED 27.12.2022 PASSED BY**

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
10-12-24

RESPONDENT NO.03 WHEREBY THE APPELLANT RETIRED FROM SERVICE W.E.F 24.04.2021 ON THE GROUND OF WRONG AND ILLEGAL/ ALLEGED TEMPERED DATE OF BIRTH IN SERVICE BOOK AND AGAINST RESPONDENT NO. 02 WHEREBY NON ISSUING OF ANY ORDER IN THE SERVICE APPEAL OF THE APPELLANT.

PRAYER:-

On acceptance of the instant service appeal, the impugned order bearing No 11638-40 dated 27.12.2022 passed by respondent No. 03 may kindly be set-aside declaring as illegal, unlawful, without lawful authority, without jurisdiction and of having no legal effect. Consequently, appellant be re-instated into service with all back benefits and the respondent No. 03 to 07 be directed to modify/correct the service record as well as CNIC and account record of appellant with enter the correct date of birth as 25.04.1967. Or issue any other order/direction to the respondents as may be deemed necessary on the facts and in the circumstances of the service appeal

ATTESTED
 EX. MEMBER
 Khuzdar District Tribunal
 Khuzdar

Respectfully Sheweth:-

1. That, appellant is bona fide resident of Shinkhari Tehsil & District Manshra, his correct date of birth is 26.04.1967, but respondent No. 06 only entered the year of birth in CNIC.

(copy of CNIC annexed as annexure "A").

2. That, initially appellant was appointed by respondent No. 04 as Class-IV/ Ward Orderly in the year 1990. Later on appellant was transferred to KATH Manserha and since impugned order he perform his duty with great zeal and honestly, his previous service record is clear. Appellant is primary educated, during his whole service he unaware about his service record.

3. That, respondent No. 03 issued impugned order No. 11638-40 dated 27.12.2022 vide which the appellant retired from service w.e.f 24.04.2021 AN.

(copy of impugned letter dated 24.04.2021 annexed as annexure "B").

4. That, after knowledge of the impugned order appellant check his service record during the checking appellant found tempering with his date of birth

ATTESTED
pi
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

and the wrongly enter the date of birth
i.e 25.04.1961.

**(copy of service book record
is annexed as annexure "C").**

5. That, after the knowledge of cutting/tempering appellant move an application before the respondent No. 03/competent authority, the respondent No. 03 advice the appellant to move an appeal before the respondent No. 02 as higher forum.

**(copy of application is
annexed as annexure "D").**

6. That, being aggrieved appellant filed a departmental appeal before the respondent No. 02 vide appeal dated 10.01.2023 through registered AD, which was duly received by the respondent No. 02.


**(copies of appeal dated
10.01.2023 and receipt are
annexed as annexure "E").**

7. That, thereafter appellant also moved a reminder appeal on dated 03.04.2023 through registered AD, but respondent No. 02 not still no any order was issued.

**(copy of reminder appeal
annexed as annexure "F").**

8. That, respondent No. 05 also enter the wrong date of birth of appellant as 13.06.1966 and the name of the father also wrong enter "Ghulam Jelani"

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

which are result of the negligence of the respondents.

(copy of Pay Slip are annexed as annexure "G").


9. That, the appellant is youngest son of the Kala Khan according to wrong date of birth entered in the record of respondent record appellant is older than his brother Bani and sister Mava Jan. On this regard brother of appellant submitted an affidavit.

(copy of Affidavit annexed as annexure "H").

10. That, feeling aggrieved from the impugned order, appellant having no other remedy is filing the present service appeal before this Honourable Tribunal for interference inter alia, on the following amongst other grounds.


GROUND:-

- A) That, the impugned order is wrong, illegal, arbitrary, perverse, against the law and against the record hence liable to be set-aside.
- B) That, admittedly neither notice was issued to the appellant before passing the impugned order nor appellant

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


knowledge the wrong entry of date of birth before passing the impugned order, So, on this very sole ground, the impugned order is liable to be out rightly declared as illegal.

- C) That, appellant correct date of birth 25.04.1967, initially which was correctly entered in the service book but during the service of appellant respondents No. 03 and 04 subordinate/ clerical staff with mala-fide intention cutting/tempering the date of birth of appellant as 25.04.1961, the correct entry of year of birth also mentioned in the CNIC of the appellant and cutting also clear in service record.
- D) That, even appellant was not called for personal hearing by respondents before issuing his retirement order in the shape of the impugned orders. According to section 13 of Civil Servant (appointment, promotion and transfer) Rule 1973 respondent No. 03 is duty bound to issue a notice before retirement on the age of superannuation, but no notice was served upon the appellant.
- E) That, the impugned orders are patently illegal, void, unlawful, without lawful

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

- authority, without jurisdiction and of having no legal effect.
- F) That, the impugned orders are fraught with inherent illegalities in the light of the law applicable to the case in hand.
- G) That, the impugned orders are not only legally flawed but unjustified and unwarranted, in view of the facts and circumstances of the case in hand.
- H) That, appellant was never confronted with the alleged wrong entry of date of birth at any point of time, condemning him unheard which is not only illegal but against the principles of Natural Justice and fair play.
- I) That, before passing the impugned orders, appellant was not put on notice to present his view point/explanation under the Doctrine of **AUDI ALTERM PARTEM**, hence, the impugned orders are not sustainable and maintainable under the law on this very sole ground.
- J) That, in view of the aforesaid factual and legal aspects of the case, the impugned orders are seemingly perverse, arbitrary, fanciful and in contravention of the law, rules and principles of Natural Justice and as such liable to be set-aside.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- K) That, on the wrong, negligence varied entry of the respondents in the service record as well as CNIC the family of the petitioner also disturb and the petitioner have suffer irreparable service loss, it is pertinent to mentioned here that the above said correction is not suffer any other person; but the value able rights of the appellatnt involved in this service appeal.
- L) That, the appellatnt belong to poor family and the service is only source of income, impugned order on this stage without informing/notice as amount to financial murder of the appellatnt.
- M) The respondent No. 02 still now not issue any order hence the instant appeal is within time.
- N) That, the other grounds would be agitated at the time of arguments.

ATTESTED
[Signature]
 EXAMINED
 Officer Additional
 Service Tribunal
 Patiala

PRAYER:-

On acceptance of the instant service appeal, the impugned order bearing No 11638-40 dated 27.12.2022 passed by respondent No. 03 may kindly be set-aside declaring as illegal, unlawful, without lawful authority, without jurisdiction and of having no legal effect. Consequently, appellant be re-instated into service with all back benefits and the respondent No. 03 to 07 be directed to modify/correct the service record as well as CNIC and account record of appellant with enter the correct date of birth as 25.04.1967. Or issue any other order/direction to the respondents as may be deemed necessary on the facts and in the circumstances of the service appeal

Dated 08.05.2023

**Gulzar
(Appellant)**

Through:-


**JAVAIQ IQBAL
ADVOCATE HIGH COURT
MANSERHA**



VERIFICATION :

I, Gulzar son of Kala Khan, resident of Shinkhari, Tehsil & District Manserha, Ex-Ward orderly King Abdullah Teaching Hospital Manserha, do hereby solemnly affirm and declare that the contents of fore-going Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honorable Tribunal.

**Gulzar
(DEPONENT)**

ATTESTED

**COMMISSIONER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

BEFORE THE SERVICE TRIBUNAL
K.P.K PESHAWAR

Service appeal No _____ of 2023

Gulzar.....Appellant

VERSUS

The Govt of KPK through Secretary Health
KPK Peshawar etc.....Respondents

APPEAL

AFFIDAVIT

I, Gulzar son of Kala Khan, resident of Shinkiari, Tehsil & District Manserha, Ex-Ward orderly King Abdullah Teaching Hospital Mansehra, do hereby solemnly affirm and declare on oath that the no such subject matter appeal has ever been filed before this honorable court nor pending nor decided. That the contents of fore-going affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honourable tribunal.

Dated 08.05.2023

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

10-10-24

**GULZAR
(DEPONENT)**

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No. 39 Date 10-10-24

Name of Applicant Javed Gybal

Number of Words/Pages 10-P

Copying Fee 50/-

Urgent/Ordinary 51/-

Total 55/-

Name & Sign of Copyist Zeeshaan 19

Date of Completion of Copy 10-10-24

Date of Delivery of Copy 10-10-24



Amesour "B" (16)

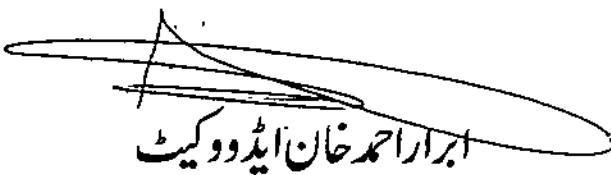
DISTRICT BAR ASSOCIATION MANSEHRA

Ref. No: DBAM/24-25

Date: 23/09/2024

نوٹس

تمام معزز ممبران ڈسٹرکٹ بار ایسوسی ایشن مانسہرہ کو بذریعہ نوٹس ہذا مطلع کیا جاتا ہے کہ بتاریخ 23-09-2024 بروز سوموار ہائی کورٹ بار ایسوسی ایشن ایبٹ آباد میں بسلسلہ سوگ افتخار افضل خان ایڈووکیٹ مرحوم ریفرنس منعقد کیا گیا ہے، معزز ممبران بار شرکت کر کے مرحوم افتخار افضل خان ایڈووکیٹ کی فیملی کے ساتھ اظہار یکجہتی کا ثبوت دیں۔
نوٹ: بوجہ ریفرنس وکلاء صاحبان مانسہرہ میں بھی عدالتی کارروائی میں حصہ نہیں لے سکیں گے اور عدالتوں میں پیش نہیں ہوں گے۔


ابرار احمد خان ایڈووکیٹ

جنرل سیکرٹری ڈسٹرکٹ بار ایسوسی ایشن مانسہرہ
IBRAR AHMED
Advocate (High Court)
General Secretary District Bar
Association Mansehra

