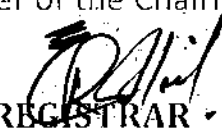


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1231/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.10.2024	<p>The implementation petition of Mr. Ajmal Khan submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 25.10.2024. 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

Implementation Petition No. 1231 /2024
In
Appeal No. 14048/2020

Mr. Ajmal Khan

VS

C&W Deptt:

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation Petition with Affidavit	1-2
2.	Copy of the order dated 03/07/2024	"A"	3-7
3.	Copy of application	"B"	8
4.	Vakalatnama		9

Applicant

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 1231 /2024 Khyber Pakhtunkhwa
Service Tribunal

In

Appeal No. 14048/2020

Diary No. 16907

Dated 17-10-24

Mr. Ajmal Khan, Ex-Superintendent (BPS-16)
C&W Department, Khyber Pakhtunkhwa, Peshawar

..... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar.
- 3- The Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

PETITION FOR IMPLEMENTATION 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 03/07/2024 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the appellant filed service appeal bearing No. 14048/2020 before this august Service Tribunal, seeking proforma promotion to the post of PMS-17 w.e.f. 03/04/2015 by modifying the impugned PSB meeting dated 17/03/2020 with all consequential benefits.

2- That the appeal of the appellant was finally heard on dated 03/07/2024 and as such the ibid appeal is allowed with direction to the respondents as follows:-

"9. Therefore, respondents are directed to consider appellant for antedated promotion. Costs shall follow the event. Consign." Copy of the judgment dated 03/07/2024 is attached as annexure.....**A**

3- That after obtaining copy of the judgment dated 03/07/2024 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

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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 03/07/2024 passed in Appeal No. 14048/2020 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Ajal
Petitioner
Ajmal Khan

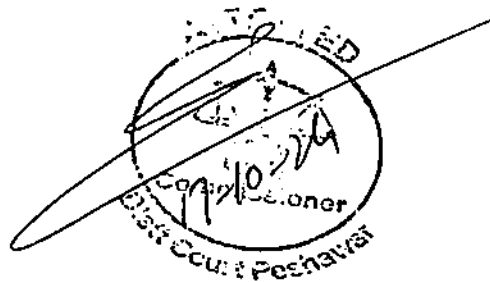
THROUGH:

Ajal
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Ajmal Khan (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.

Ajal
DEPONENT





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.14048/2020

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

Mr. Ajmal Khan, Ex-Superintendent (BPS-16), C&W Department, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary C&W Department, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

... For Appellant

Mr. Muhammad Jan
District Attorney

... For Respondents

Date of Institution.....09.10.2020
Date of Hearing.....03.07.2024
Date of Decision.....03.07.2024

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 acceptance of this appeal the impugned PSB minutes dated 17.03.2020 may very kindly be modified to the extent of appellant by allowing him pro-forma promotion to the post of PMS-17 w.e.f. 03.04.2015 with all consequential benefits. Any other remedy which this

ATTESTED

[Signature]
7-8-24
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Signature]

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august Tribunal deems fit that may also be awarded in favor of the appellant." reiterated

2. Brief facts of the case are that appellant was appointed as Junior Clerk cadre of Ministerial Staff (Secretariat Group) in the year 1979 and had served the department honestly. He was further promoted to the post of Superintendent (BPS-16). The appellant while serving as Superintendent BPS-16 has participated in the mandatory training course in office procedure and management which is requisite training for promotion to Provincial Management Service (PMS) group (BPS-17). Appellant after undergone the said requisite course and being senior most superintendent amongst his colleagues was eligible for the post of PMS group in the year 2012. That in the year 2012 total 30 (thirty) posts of PMS group became vacant in the quota reserved for the Superintendents (BPS-16). Provincial Selection Board meeting was held in which astonishingly the case of the appellant for promotion to the post of PMS has been deferred on the reason that the appellant did not fulfill the requisite qualification for the post of PMS notified on 11.05.2007. That on 03.04.2015 private respondents who were juniors to the appellant were promoted to the post of PMS officer (BPS-17) and the appellant was deferred. Feeling aggrieved, he filed departmental appeal followed by service appeal No. 841/2015 which was accepted by this august Tribunal vide judgment dated 10.12.2018. In light of the judgment passed by this Tribunal meeting of PSB was held on 17.03.2020 the appellant was again ignored. Feeling aggrieved, he filed departmental appeal which was not responded, hence the present service appeal.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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3. 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.

4. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

5. 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 controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was appointed as Junior Clerk in ministerial staff cadre of secretariat group on 20.08.1979, who was ultimately promoted to the post of Superintendent (BPS-16) on 16.04.2010. Appellant passed training course in office procedure and management mandatory for promotion to the Provincial Management Service (PMS) Group (BPS-17) on 28.04.2017. Appellant being senior qualified Superintendent was eligible for promotion to the post of PMS (BPS-17) in year 2012 when 30 (thirty) vacant posts of PMS were falling in the quota reserved for the Superintendents appellant cadre. Appellant

ATTESTED

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7-8-24
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Peshawar

requested respondent department for his promotion to the post of PMS upon which ACRs was called by department in 2012 but respondent despite submitting of the ACRs by appellant kept pending the matter of promotion.

7. Respondent/department ignored/deferred the appellant from promotion in PSB meeting as consequence of which promotion notification

[Signature]

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bearing No.SOE-11(ED)3(45)2012 dated 03.04.2015 issued after PSB, promoted juniors to the appellant and deferred the appellant on the ground of not having graduation degree and was F.A. Appellant was not promoted to the post of PMS (BPS-17) on the ground of not having graduation degree because as per Rules of the department notified on 11.05.2007 post of PMS (BPS-17) was required to be filled by;

"Fifty percent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in Schedule-VII.


(2)(b) Twenty percent from amongst superintendents/private secretaries on seniority cum fitness basis, who are graduate and have under gone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts.

8. Minimum qualification for it is given in column No. 3 as 2nd Division Bachelor Degree from a recognized University. Appellant produced copy of notification/rules dated 11.05.2007 of Provincial Management Service Rules "transitional" which says that;

"The condition of graduation as laid down in para 2(a) and (b) of column-5 against serial No.1 of Schedule-I shall not apply for a period of seven years from the date of coming into force of these rules to the existing incumbents for promotion against BPS-17 posts."

From which it is established that condition of graduation is not applicable to the appellant for promotion against the post of (BPS-17) as rules were

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notified on 11.05.2007 and period of seven years was to expire on 10.05.2014 while PSB was conducted in March, 2015 as a consequence of which promotion notification of colleagues and juniors to appellant was issued on 03.04.2015, 26 (twenty six) Superintendents including 10 (ten) juniors to the appellant were promoted. Although respondent in their reply and PSB in its meeting held on 24.05.2020 mentioned that 17 (seventeen) posts fall in the quota of appellant till expiry of cushion period of seven years and after deducting of time/period of 7 (seven) months consumed in due to stay order of Peshawar High Court, but they failed to show that after November, 2014, 9 (nine) seats/posts were created or 9 (nine) PMS officers retired during November, 2014 till March, 2015, because 26 (twenty six) Superintendents were promoted during a short span of 3 months. Therefore, this explanation holds no field and cannot be relied upon, Bachelor Degree is not mandatory for promotion to the post of PMS (BPS-17) till November, 2014 and posts were available but respondent did not consider the appellant for promotion upon wrong promises and thus this inaction deprived appellant from his legitimate hope of promotion.

ATTESTED

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 7-8-24
 EXAMINER
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 Service Tribunal
 Peshawar

9. Therefore, respondents are directed to consider appellant for antedated promotion. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of July, 2024.

[Signature]
 (KALIM ARSHAD KHAN)
 CHAIRMAN

[Signature]
 (RASHIDA BANO)
 Member (J)

Date of Presentation of Application 7-8-2024

*M.Khan

Number of Words 6

Printing Fee 5

Stamp 5

Other 35

[Signature]
 Date of Delivery of Copy 2-8-24

Date of Delivery of Copy 7-8-2024

To

The Secretary
C&W Department,
Khyber Pakhtunkhwa, Peshawar.

"B" (8)

Through Proper Channel

Subject:- **REPRESENTATION FOR IMPLEMENTATION OF JUDGMENT
DATED 03/07/2024 OF THE HONOURABLE SERVICE TRIBUNAL,
KP PESHAWAR IN SERVICE APPEAL NO 14048/2020**

Respected Sir

1. It is stated that the applicant was appointed as Junior Clerk cadre of ministerial staff (secretariat group) in the year 1979 and had served the department
2. That the applicant was promoted to the post of Superintendent (BPS-16) and the appellant while serving as Superintendent has participated in mandatory training course in the office procedure and management which is requisite training for promotion to the PMS group. That the appellant after undergone the said requisite course and being senior most Superintendent amongst his colleagues was eligible for the post of PMS group in the year, 2012 and total 30 posts of PMS Group become vacant in the quota reserved for the superintendent .
3. That PSB meeting was held in which astonishingly the case of the appellant for promotion to the post of PMS has been deferred, against which the applicant filed departmental appeal followed by Service Appeal No 841/2015, which was accepted vide judgment dated 10/12/2018 and in the light of judgment of KP Service Tribunal meeting of PSB was held on 17/03/2020 and the appellant was once again ignore .
4. That the applicant filed departmental appeal against the inaction of the respondents mentioned above, which was not decided within the statutory period of 90 days.
5. That feeling aggrieved, the applicant filed Service Appeal No 140482020, which was allowed vide order dated 03/07/2024 with certain observations mentioned therein.

It is, therefore, most humbly requested that on acceptance of this representation, the judgment dated 03/07/2024 of Services Tribunal KP, Peshawar in Service Appeal No 14048/2020 may please be implemented in letter and spirit.

Dated:- 09/08/2024

ATTACHED

Ajal
Ajmal Khan,
Ex-Superintendent (BPS-16)
C&W Department, Khyber
Pakhtunkhwa, Peshawar

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VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EP No 24 /2024

Ajmal Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Gout

(RESPONDENT)
(DEFENDANT)

I/We Ajmal Khan

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

Ajmal Khan
CLIENT

ACCEPTED

Noor Mohammad Khattak
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

Waleed Adnan
WALEED ADNAN

Umar Farooq Mohmand
UMAR FAROOQ MOHMAND

&

Khanzad Gul
KHANZAD GUL
ADVOCATES

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