


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1257/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.10.2024	<p>The implementation petition of Mr. Muhammad Rehman received today by registered post through Sardar Muhammad Irshad Advocate. It is fixed for implementation report before touring Single Bench at A:Abad on 30.10.2024. Original file be requisitioned. AAG has noted the next date. Counsel for the petitioner has been informed telephonically.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

**BEFORE KPK SERVICE TRIBUNAL,
PESHAWAR**

E.P. No. 1257/2024

Implementation
in
Service Appeal No.1118/2017

Muhammad Rehman Additional Assistant Commission/Registrar
Consumer Court Abbottabad.....Petitioner

V/s

Govt. of KPK and others..... Respondents

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Petitioner

Through:-



(Sardar Muhammad Irshad)
Advocate High Court
1A Gulistan Colony College Road Abbottabad
Cell:+92343-3326000
Email: Sardarmuhammadirshad7@gmail.com

①

**BEFORE KPK SERVICE TRIBUNAL,
PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16991

Dated 22-10-24

E.P. NO. 1257/2024

Implementation

in

Service Appeal No.1118/2017

Muhammad Rehman Additional Assistant Commission/Registrar
Consumer Court Abbottabad.....Petitioner

V/s

1. Govt. of KPK through Chief Secretary KPK Peshawar.
2. Secretary Establishment Department Regulation Wing KPK, Peshawar.
3. Secretary Finance KPK Peshawar
4. SMBR KPK Peshawar
5. Accountant General KPK Peshawar through District Accounts Officer Abbottabad
6. Commission Hazara Division, Abbottabad
7. Deputy Commissioner Kohistan..... Respondents

**APPLICATION FOR IMPLEMENTATION/
EXECUTION OF JUDGMENT/ ORDER DATED
18/11/2021 IN APPEAL NUMBER 1118/2017.**

Respectfully Sheweth:-

The petitioner submits as under:-

1. That the petitioner was appointed as Assistant Commissioner/ ilaqa Qazi on 29/05/2012 along with 7 other persons.
2. That the petitioner along with other 7 persons were regularized in pursuance of KPK Extra Assistant Commissioner cum ilaqa Qazi (Regularization of services) Act, 2012.
3. That all the other 7 persons regularized with petitioner were granted annual increments from date of their appointment to the

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date of their regularization in 2012 but no annual increment was granted to the petitioner and his salary was fixed in BPS-17 at its initial stage which obliged the petitioner to file Service Appeal No.1118/2017.

4. That this Honorable Tribunal has been pleased to accept petitioner's appeal with the following direction:-

"Needless to say that the service of the appellant being continuous since his appointment in the year 1995 till his regularization vide notification dated 29.05.2012 has not been denied by the respondents. The regularization of the appointment of the appellant has taken effect on 17.03.2012 in continuity of his contractual service which cannot be envisaged as lacking the benefits of pay protection and pension etc. simply on whim of the respondents otherwise that regularization notification is not speaking so expressly. The government departments are supposed to be vigilant about the ground policy matters settled through judicial pronouncements to give relief to the government servants accordingly without compelling them to have resort to litigation. Such a lack of vigilance on part of government departments ultimately result into multiplicity of proceedings before judicial forums at the cost of incontinence of employees on one hand and also unnecessarily result in increase of workload on the other hand. We therefore, hold that all the increments earned by appellant over period of his

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contractual service are countable as part of his salary at the time of regularization of the appointment made vide notification dated 29.12.2012. The appellant is held entitled for relief of increments in the given terms. The appeal stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room".

5. That the petitioner earlier filed implementation application but on assurance of respondents to redress his grievances the same was withdrawn. Respondents did not implement the order contained in aforesaid appeal hence the petitioner constrained to file this application afresh.

It is, therefore, prayed that this Honorable Tribunal may graciously be pleased to direct Respondents to implement/ execute judgment dated 18/11/2021 passed in Appeal No.1118/2017 in the interest of justice.


Petitioner

Through:-



(Sardar Muhammad Irshad)
Advocate High Court
1A Gulistan Colony College
Road Abbottabad
Cell#+92343-3326000
Email:Sardarmuhammadirshad7@gmail.com

**BEFORE KPK SERVICE TRIBUNAL,
PESHAWAR**

Implementation
in
Service Appeal No.1118/2017

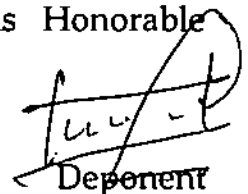
Muhammad Rehman Additional Assistant Commission/Registrar
Consumer Court Abbottabad.....Petitioner

V/s

Govt. of KPK and others. Respondents

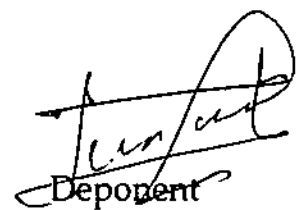
AFFIDAVIT

I, Muhammad Rehman Additional Assistant
Commission/Registrar Consumer Court petitioner do hereby
solemnly affirm and declare that the contents of the accompanying
application are true and correct to the best of my knowledge and
belief and nothing has been concealed from this Honorable
Tribunal.


Deponent

VERIFICATION

Verified on Oath at Abbottabad on ___day of October 2024 that
the contents of above affidavit are true and correct to the best of
my knowledge and belief.


Deponent

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BEFORE THE CHAIRMAN SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 1118 /2017

Muhammad Rehman Additional Assistant Commissioner District Kohistan.

...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1107

Dated 27-9-20

VERSUS

1. Govt. of KPK through Chief Secretary KPK Peshawar.
2. Secretary Establishment Department Regulation Wing KPK, Peshawar.
3. Secretary Finance KPK Peshawar.
4. SMBR KPK Peshawar.
5. Accountant General KPK Peshawar.
6. Commissioner Hazar Division, Abbottabad.
7. Deputy Commissioner, Kohistan.

...RESPONDENTS

Filed to-day

Registrar

27/9/17

Re-submitted to -day
and filed.

Registrar

11/10/17

SERVICE APPEAL UNDER SECTION 4 OF

KPK SERVICE TRIBUNAL ACT, 1974, FOR

DECLARATION TO THE EFFECT THAT THE

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
(Camp Court, Abbottabad)

Appeal No. 1118/2017

Date of Institution ... 27.09.2017

Date of Decision ... 18.11.2021



Muhammad Rahman Additional Assistant Commissioner District Kohistan.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and
others. ... (Respondents)

Present.

Mr. Muhammad Arshad Tanoli,
Advocate

... For appellant.

Mr. Muhammad Rasheed,
Deputy District Attorney,

... For respondents.

MR. AHMAD SULTAN TAREEN
ROZINA REHMAN,

... CHAIRMAN
... MEMBER(J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- The appellant through the
appeal prescribed above in the heading has invoked the jurisdiction of this
Tribunal seeking relief based on the prayer copied herein below:-

*"On acceptance of the instant service appeal, respondents may
graciously be directed to fix salary of the appellant as 28000/-
instead of 16000/-, and not to recover a sum of Rs. 77612/-
which has been recovered from monthly salary of the appellant
may also be refunded. Any other relief which this Hon'ble Court
deems appropriate in the circumstances may also be granted."*

2. The appellant in order to make out a case for the relief as per prayer
copied above stated in the factual part of the appeal that he was appointed
as Assistant Commissioner/Ilalqa Qazi vide notification No. SOS-

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

~~II(S&GAD)2(9)95-II, dated 23.07.1995. He annexed the copy of notification~~
~~No. SOE-II(ED)2(9)/2010/Vol-II, dated 29.05.2012~~ alongwith his memorandum of appeal. Accordingly appointment of the appellant among others was regularized in pursuance to Khyber Pakhtunkhwa Extra-Assistant Commissioner -cum-Illaqqa Qazi (Regularization of Services) Act, 2012. It was provided in the said Act that notwithstanding anything to the contrary in any law or rules or an order or judgment of a Court, employees appointed by Government, before the commencement of this Act, shall, for all intents and purposes, be deemed to have been validly appointed on regular basis with immediate effect on commencement of this Act and they shall be deemed to be Civil Servants for the purposes of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made there-under. According to the appellant, the respondent department allowed annual increments to seven other similarly placed employees followed by issuing of LPC to them with addition of annual increments from 2003 to 2012; whereas, LPC as issued to the appellant was missing annual increments w.e.f. 2003 to 2012. On the basis of LPC, monthly salary of the appellant was fixed in BPS-17 at its initial stage i.e. 16000/- Per Month whereas salary of other similarly placed employees were fixed in BPS-17 on running basis i.e Rs. 28000/- per month. Accordingly, the appellant was meted out with discriminatory treatment in violation of Article 25 of the Constitution of Islamic Republic of Pakistan. The appellant also referred to some recovery from his monthly salary vide order dated 15.08.2003. With the given factual account, the submissions made by the appellant in his appeal include among other that the law demand that similarly placed employees may be treated alike and no one may be discriminated; that qualifying service for pension starts from the beginning of initial service, which include period of service and annual increments; that the period of ad-hoc or contract service having 05 years or more at the credit of an employee, he is entitled to grant of pensionary benefits; That the benefits of annual

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ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

increments has been granted by the government w.e.f 2003 to 2012 to seven other employees and the appellant being similarly placed with them cannot be denied such benefit, and that the matter relates to terms and condition of service but the appellant has not been treated accordingly as far as the impugned action of the respondents is concerned which being against the facts and law on the subject is not tenable.

3. The respondents on notice of appeal have joined the proceedings and submitted their written reply, refuting the claim of the appellant with several factual and legal objections seeking dismissal of the appeal with costs.

4. Arguments have been heard and record perused.

5. The respondents in their written reply of the memorandum of appeal admitted the appointment of appellant as stated vide para-1 of the appeal. However, they while replying to para-2 of the appeal, asserted that the said notification only allowed the regularity of appointment of appellant alongwith

~~07 others erstwhile Illaqa Qazi/EAG-BS-17 w.e.f. 17.03.2012 but does not mention anything regarding increments. Undoubtedly, the appointment of the~~

appellant and its subsequent regularization w.e.f. 17.03.2012 is admitted on behalf of the respondents. Still, they seem to have taken a different view as to entitlement of the appellant for increments simply for the reason that the

notification dated 29.05.2012 regarding regularization of the appointment of 08 individuals including the appellant was silent regarding the increments.

With this position of the case before us, the point for determination having emerged is whether the appellant alongwith other similarly placed 07

individuals holding the post in government service on contractual

~~appointment is entitled for benefit of the period of service rendered on contract basis subsequent to regularization of their appointment made vide notification dated 29.05.2012. There seems no difficulty in determination of~~

~~said point in positive when the august Supreme Court of Pakistan through different pronouncements has held that the contractual employee is entitled~~

~~for counting of his service towards qualifying service for pension and the~~

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ATTESTED

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Secretary
Khyber Pakhtunkhwa
Government
Peshawar

salary protection. Wisdom in this respect is drawn from an unreported

judgment of the august Supreme Court of Pakistan passed on 08.02.2021 in

G.P.No. 1641-L/2018, titled "Chief Secretary, Government of the Punjab,

Lahore etc. Vs. Perveen Shad, etc. Para 4 of the said judgment is worth

reproduction herein below:-

"We have examined the said Notification and are of the view that clause 6 reproduced hereunder is not only harsh and unreasonable but also offends the right to livelihood and right to dignity ensured by the Constitution under Article 9 and 14 of the Constitution. It is absurd to imagine that a contractual employee who has served the department for over nine years and has earned increments, upon regularization is taken back in time and given the initial salary on which he started his contractual service career almost a decade back. Regularization is a step up and must provide better terms and conditions of service, if not the same. Regularization cannot make the employee worse off by reducing his salary and going back in time by almost a decade and making the employee start all over again on his initial salary."

6. Needless to say that the service of the appellant being continuous since his appointment in the year 1995 till his regularization vide notification dated 29.05.2012 has not been denied by the respondents. The regularization of the appointment of the appellant has taken effect on 17.03.2012 in continuity of his contractual service which cannot be envisaged as lacking the benefits of pay protection and pension etc. simply on whim of the respondents otherwise that regularization notification is not speaking so expressly. The government departments are supposed to be vigilant about the ground policy matters settled through judicial pronouncements to give relief to the government servants accordingly without compelling them to have resort to litigation. Such a lack of vigilance on part of government departments ultimately result into multiplicity of

ATTESTED

proceedings before judicial forums at the cost of incontinence of employees on one hand and also unnecessarily result in increase of workload on the other hand. We, therefore, hold that all the increments earned by appellant over period of his contractual service are countable as part of his salary at the time of regularization of his appointment. Accordingly, his pay is revisable to include into his salary all previously earned increments prior to regularization of the appointment made vide notification dated 29.12.2012. The appellant is held entitled for relief of increments in the given terms. The appeal stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

[Signature]

(AHMAD SULTAN TAREEN)
Chairman
(Camp Court, A/ABAD)

[Signature]

(ROZINA REHMAN)
Member(J)
(Camp Court, A/ABAD)

ANNOUNCED
18.11.2021

Certified to be true copy

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 24/3/22
 Number of Words 2600
 Copying Fee 26/-
 Urgent 5/-
 Total 30/-
 Name of Copyist -
 Date of Completion of Copy 24/3/22
 Date of Delivery of Copy 24/3/22

VAKALATNAMA

IN THE KPK SERVICE TRIBUNAL, PESHAWAR

Muhammad Rehman Additional Assistant Commission/Registrar Consumer Court Abbottabad.....Petitioner

VERSUS

Govt. of KPK and others.....Respondents

I Muhammad Rehman hereby appoint **Sardar Muhammad Irshad**, Advocate, in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above-mentioned case in this Court/Tribunal in which the same may be tried or heard, and any other proceedings arising out of or connected herewith.
2. To sign, verify and file appeals, petitions, suits, affidavits and applications for compromise or withdrawal or for referring to arbitration of the said case as may be deemed necessary or advisable by clients for the conduct, prosecution or defense of the said case at all its stages.

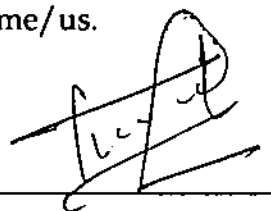
AND hereby agree:-

a. That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remained unpaid.

In witness whereof I/We have signed this Vakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us.

Accepted by:-

Signature of Executant



Sardar Muhammad Irshad
Advocate High Court
1A Gulistan Colony College Road, Abbottabad