


Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 1259/2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.10.2024	<p>The application for restoration of Service appeal No.1069/2022 received today by registered post through M. Arshad Khan Tanoli Advocate. It is fixed for hearing before touring Division Bench at A.Abad on 30.10.2024. 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 KPK
PESHAWAR

RA 1259
C.M No. _____/2023/1

IN

Service Appeal No. 1069/22

Muhammad Rasheed.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education KP, Peshawar & others.

...RESPONDENTS

RESTORATION APPLICATION

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T. Rashid

...APPELLANT

Through;

Dated; _____/2024

(Signature)
(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan

&

(Signature)
(Muhammad Ibrahim Khan)
Advocate High Court

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

R.
GM No. 1259 /2024
IN

Service Appeal No. 1069/22

Muhammad Rasheed.

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Govt. of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education KP, Peshawar & others.

...RESPONDENTS

**APPLICATION FOR RESTORATION OF SERVICE
APPEAL NO. 1069/22, WHICH WAS DISMISSED ON
DEFAULT.**

Respectfully Sheweth;-

1. That the captioned Service Appeal was pending adjudication before this Honourable Tribunal on 23/04/2024.

2. That the case of the petitioner was clubbed with Service Appeal No. 618/22 & 618/2022 which was decided on 23/09/2024 but petitioner/appellant was not found clubbed with Service Appeal No. 618 & 619 on 23/09/2024. Therefore, the petitioner went to Service Tribunal Peshawar and found that his service appeal was dismissed due to non prosecution vide order dated 23/04/2024. Copy of order dated 23/04/2024 is annexed as Annexure "A".


3. That the petitioner/appellant then and there obtained Copy of dismissal order dated 23/04/2024 and the instant application has been filed within period of 30 days.
4. That application for restoration of the Service Appeal is within the period of limitation required for filing of restoration petition. The valuable rights of the petitioner regarding counting of his service under KP sacked employee appointment Act, 2022 and involved.

In view of above, it is prayed that service appeal No. 1069/22 of the petitioner may graciously be ordered to be restored.

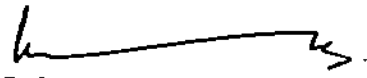
Dated; _____/2024

Through;


...APPELLANT


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan

&


(Muhammad Ibrahim Khan)
Advocate High Court

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

C.M No. _____/2023

IN

Service Appeal No. 1069/22

Muhammad Rasheed.

...APPELLANT

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Govt. of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education KP, Peshawar & others.

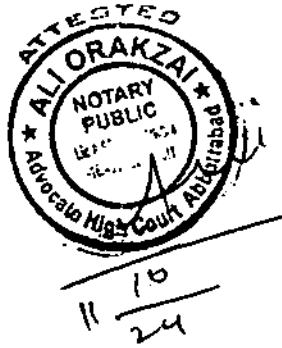
...RESPONDENTS

RESTORATION APPLICATION

AFFIDAVIT

I, *Muhammad Rasheed son of Abdul Khaliq, resident of Jhand Pain Tehsil Oghi District Mansehra*, do, hereby solemnly affirm and declare that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Tribunal.

M. Rasheed
DEPONENT



ANNEX A

Service Appeal No.1069/2022 titled "Muhammad Rasheed Vs. Education Department"



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ORDER

23rd Apr. 2024

Kalim Arshad Khan, Chairman: Nobody is present on behalf of appellant. Mr. Shoaib Ali, Assistant Advocate General for the respondents present.

2. This case was called several times but nobody put appearance on behalf of the appellant till rising of the Court. Therefore, the appeal in hand is dismissed in default. Consign.

3. *Pronounced in open Court at Abbottabad given under our hands and seal of the Tribunal on this 23rd day of April, 2024.*

(Muhammad Akbar Khan)
Member (E)
Camp Court, A/Abad

(Kalim Arshad Khan)
Chairman
Camp Court, A/Abad

Mutazem Shah

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
02-10-2024

Date of Presentation of Application	02-10-2024
Number of Words	1-1
Copying Fee	5/-
Urgent	5/-
Total	10/-
Name of Copy	—
Date of Copy	02-10-2024
Date of Receipt	02-10-2024

وکالت نامہ

کورٹ فیس

بعدالت سرین سرنیٹل عاقلہ گیتا و

عنوان: محمد رشید بنام سکھو پھنر و

مخانب: سیدنا سہیل

نوعیت مقدمہ: دروہا سرنیٹل

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آں مقام

محمد رشید خاں نے سر محمد رشید کو مقدمہ کورٹ کے لئے مقرر کیا

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہونیا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد

استجارت ناش بیضہ مغلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

Accepted

الرقوم:

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No. 1069/2022.

Muhammad Rasheed S/O Abdul Khaliq,
R/O Jhand Payen, Karori, Tehsil Oghi, District Mansehra.

.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through the Secretary,
Elementary and Secondary Education Department, Civil Secretariat
Peshawar.
2. Director Elementary and Secondary Education Khyber Pakhtunkhwa,
Peshawar.
3. District Education Officer (Male) Haripur.

.....Respondents

**APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL ACT, 1974 AGAINST THE DECISION
OF RESPONDENT NO: 3 ISSUED VIDE HIS OFFICE
LETTER NO: 4408-10 DATED 11/06/2020, WHEREBY THE
APPELLANT HAS NOT BEEN HELD ENTITLED TO
PENSIONERY BENEFITS AND GRATUITY AND APPEAL IN
THIS RESPECT WAS DISMISSED.**

PRAYER:

On acceptance of this appeal, it may be declared and held that Section-5 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 (Act No: XVIII of 2012) does not exclude the claim of appellant for pensionery benefits on his retirement by superannuation as the fresh appointment of the appellant by virtue of Section 3 of the said

Attested

Muhammad Rasheed
Advocate S/O Abdul Khaliq
Office # 33, Jinnah Plaza Adjacent to
District Education Office Peshawar

subsequently terminated without any fault attributable to the appellant; and as such, the period from the date of termination of appellant's service after the original appointment till his fresh appointment by operation of law is countable in service for the purpose of pension. Consequently, the appellant having on his credit qualifying service for pension, is entitled for usual pensionary benefits on his retirement by superannuation; and impugned order is liable to be set-aside being against the facts and law.

Any other relief deemed fit according to circumstances of the case may also be granted.

Respectfully Sheweth:-

The facts giving rise to this appeal are as follows:-

FACTS:

1. That the appellant was appointed by the Respondent department according to the prescribed method of recruitment in the year 1995. (Copy of the appointment order is annexed as Annexure "A").
2. That, the services of the appellant were illegally terminated in the year 1996-97.
3. That in the year 2012, sacked employees (Appointment) Act, 2012 KPK was promulgated. Department was bound to reinstate/reappoint the appellant as per criteria mentioned in the said Act, but appellant was not appointed under the said Act.
4. That later on, in compliance with the judgment 24-05-2016 passed by Honourable Peshawar High Court and up held by the August Supreme Court of Pakistan vide order dated 24-05-2017, the appellant was reappointed/reinstated in service in the year 2017.
5. That after reappointment, appellant again served in the Department and was retired on having attained the age of superannuation in the

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 Advocate Supreme Court of Pakistan
 Office # 33 Jinnah Plaza Adjacent to

year 2021. (Copy of retirement certificate/order is annexed as Annexure "B").

6. That upon retirement, respondents were bound by law to pay all the pensionary benefits to the appellant, but they failed to pay pension to the appellant. He moved numerous applications for the grant of pensionary benefits, but respondent No. 3 vide order dated 11-08-2021 dismissed the applications of the appellant.
7. That feeling aggrieved from the impugned order, the appellant preferred the Departmental Appeal before Respondent No: 2, but in vain, inspite of passing a prolong period. It is pertinent to mention here that 90 days statutory period of Departmental Appeal has expired, hence the appellant in pursuit of the next remedy has to file this Service Appeal, inter alia on the following grounds:- (Copy of Department appeal is annexed as Annexure "C&D").

GROUNDS:

- A- That preamble of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 construes that very purpose of making said law is to provide relief to eligible sacked employees who were appointed in the Province of Khyber Pakhtunkhwa during the period from 1st day of November 1993 to 30th day of November 1996 and were dismissed, removed, or terminated from service on various grounds. In content of the said preamble, previous appointment of sacked employees was taken as basis for fresh appointment with certain exceptions as to their claim of seniority, promotion and other back benefits.
- B- That the appellant having been appointed in the year 1995 as CT Teacher had served in the respondent department and was terminated from service before 31st day of December 1998. As such, the original appointment of the appellant having been made after 1st

At the end
 Advocate Supreme Court of Pakistan
 Office # 33, Main Plaza Adjacent

day of November 1993 and his termination before 31st December 1998 was covered under the definition of 'sacked employee' given in Khyber Pakhtunkhwa Act No: XVII of 2012 and relief of appointment within meaning of section 3 of the said Act was also extended in appellant's favor.

C- That legally admissible nexus between previous and fresh appointment of sacked employees makes a good ground for treatment of intervening period between termination of service and fresh appointment in a beneficial manner for its counting towards qualifying service for pension of the appellant on his retirement by superannuation.

D- That Section 5 of the Act No: XVII of 2012 does not specifically or by implication excludes the counting of aforementioned intervening period towards qualifying service for pension and it does not warrant by law and principles of natural justice to interpret said section for supplying an omitted cause by departmental interpretation.

E- That in view of the forgoing grounds herein above, appointment of the appellant after termination of his original service was the outcome of operation of a remedial law.

That when the original appointment of the appellant was taken as paramount consideration for relief under Act XVII of 2012, the termination of said appointment during a particular regime without any fault of the appellant is not workable to disconnect his original appointment from the fresh appointment made under operation of law which in terms of its preamble is remedial law. As such, it is highly unjust, perverse, arbitrary, perfunctory, erroneous, wrong and unlawful to exclude the intervening period from termination of appellant after original appointment till his fresh appointment, from its counting towards the qualifying service for pension on Appellant's retirement by superannuation.

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Advocate Supreme Court of Pakistan
Office # 3/1, Manah Plaza Adjacent

G- That seniority and promotion are part of terms and conditions of service governed under the rules namely Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules, 1989 and claim of a sacked employee to this effect has been specifically excluded by Section 5 of the Act XVII of 2012 and the expression "other back benefits" does not logically and legally cover the exclusion of intervening period as above mentioned for the purpose of pension particularly when the august Supreme Court of Pakistan in the judgment dated 27-03-2020 passed in Civil Petition No: 468-P, 469-P, 471-P and 472-P of 2016 allowed the counting of protected period for payment of pensionary benefits. (Copy of judgment of august Supreme Court is annexed as **Annexure "E"**).

H- That in identical case, similarly placed employees have been given all the pensionary benefits but vide impugned order, appellant has been deprived of his pension totally on flimsy grounds. (Copy of the office order dated 16-07-2021 in identical cases is annexed as **Annexure "F"**).

I- That the right to pension is provided under the law and rules. There are a number of pronouncements of the august Supreme Court of Pakistan that grant of pension is not a bounty rather a vested right of a government servant after his retirement. The appellant was prevented from rendering service in the respondent department because of his termination from service and enactment of remedial law for relief to the sacked employees is not prone to the interpretation of the expression "other back benefits" to exclude the period of his absence from service in between his termination and appointment by operation of law.

J- That the impugned order is against the facts, against the law, random, arbitrary, erroneous, unfounded and suffers from misinterpretation and misunderstanding of the law. Hence not tenable

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Advocate Supreme Court of Pakistan
Office # [unclear] Plaza Adjacent

K- That the appeal at hand is not otherwise time barred for the reason of its caesura under Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020 and but as matter of precaution, an application for condonation of delay is accompanying this appeal.

L- That the matter in appeal is fit for adjudication in jurisdiction of this Hon'ble Tribunal.

With the forgoing facts and grounds it is respectfully submitted that the Appeal may graciously be accepted as prayed for.

Dated: 26/4/22

Through:

m. Rasheed
Appellant
(Muhammad Rasheed)
Inayat
(Inayat Ullah Khan Tareen)
Advocate High Court.

VERIFICATION

Verified that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated: 26/4/22

Through:

m. Rasheed
Appellant
(Muhammad Rasheed)
Inayat
(Inayat Ullah Khan Tareen)
Advocate High Court.

Attested

Supreme Court of Pakistan
Office # 35 Jinnah Plaza Adjacent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. _____/2022.

Muhammad Rasheed *V/S* Government of Khyber Pakhtunkhwa
through the secretary, Elementary and
Secondary Education Department, Civil
Secretariat Peshawar and others.

SERVICE APPEAL

AFFIDAVIT

I, Muhammad Rasheed S/O Abdul Khaliq R/O Jhand Payen, Karori, Tehsil
Oghi, District Mansehra, do hereby solemnly affirm and declare on oath
that the contents of accompanying Service Appeal are true and correct to
the best of my knowledge and belief and nothing has been suppressed
from this Honourable Tribunal.

Dated: 26/9/22

M. Rasheed
Deponent

Identified by:

Inayat Ullah Khan Tareen
(Inayat Ullah Khan Tareen)
Advocate High Court.



M. Rasheed
Advocate Supreme Court of Pakistan
Office # 33 Jinnah Plaza Adjacent

M. Rasheed