


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 791/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.07.2024	<p>The implementation petition of Mr. Saif ur Rehman submitted today by Mr. Fazal Shah Mohmand Advocate. It is fixed for implementation report before Single Bench at Peshawar on 29.07.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Implementation Petition No 791 /2024

In

Service Appeal No.893 /2023

Saif Ur RehmanApplicant/Appellant.

V E R S U S

PPO and OthersRespondents

I N D E X

S.No	Description of documents	Annexure	Pages
1.	implementation Petition with Affidavit		1 - 2
2.	Copy of the Order and Judgment dated 28.02.2024	A	3-9
3.	Copies of Applications	B	10-12
4.	Wakalat Nama		13

Dated:-25.07.2024


Applicant/Petitioner

Through


Fazal Shah Mohmand ASC

Baseer Ahmad Shah
&

Ibad Ur Rehman Khalil

Advocates High Court. 

**OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell #
0301-8804841**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

①

PESHAWAR

Implementation Petition No 791 /2024

**Khyber Pakhtunkhwa
Service Tribunal**

In

Diary No. 14530

Service Appeal No.893 /2023

Dated 25-07-2024

Saif Ur Rehman, Sub Inspector, No. 368, Presently Posted to Investigation,
Capital City Police, Peshawar Peshawar Range, Peshawar.

.....**Appellant**

V E R S U S

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Chief Secretary, Govt. Of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar.

.....**Respondents**

**IMPLEMENTATION PETITION UNDER SECTION 7 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR
THE IMPLEMENTATION OF ORDER/JUDGMENT DATED 28-02-
2024 PASSED BY THIS HONORABLE TRIBUNAL IN THE ABOVE
TITLED SERVICE APPEAL.**

Respectfully Submitted:-

1. That the applicant/appellant earlier filed Service Appeal No. 893/2023 before this honorable Tribunal for his confirmation as sub inspector w.e.f 22.09.2022 from the date when his colleagues/juniors were confirmed with all back benefits which was allowed with directions to respondents to consider the appellant for ante dated promotion w.e.f the date when his promotion was deferred for the first time and his juniors colleagues were promoted with all back benefits vide order/judgment dated 28-02-2024. **(Copy of the Order/Judgment dated 28.02.2024 is enclosed as Annexure A).**
2. That the appellant time and again approached respondents for the implementation of the order/judgment dated 28-02-2024 of this honorable Tribunal but of no use, Even he submitted applications for the purpose but of no avail. **(Copies of Applications are enclosed as Annexure B).**

- 3. That the respondents are not ready to implement the Order/ Judgment of this honorable Tribunal dated 28-02-2024 in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 28-02-2024 of this honorable Tribunal.
- 4. That noncompliance of the order of this honorable Tribunal, speaks malafide on part of the respondents and they are bent upon to lower the position of the judiciary in the eyes of the public at large.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 28-02-2024 passed in Service Appeal No 893/2023 in its true letter and spirit.

Dated:-25.07.2024

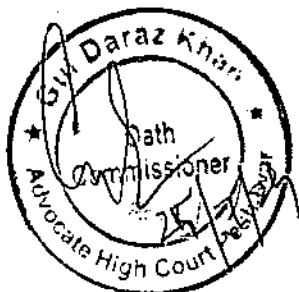
Saif Rehman
Applicant/Petitioner

Through

Fazal Shah
Fazal Shah Mohmand ASC
Baseer Ahmad Shah
&
Ibad Ur Rehman Khalil
Advocates High Court

AFFIDAVIT

I, Saif Ur Rehman, Sub Inspector, No. 368, Presently Posted to Investigation, Capital City Police, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and believe.



Saif Rehman
DEPONENT

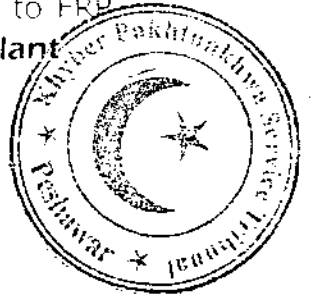
"A" (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 893 /2023

Khyber Pakhtunkhwa
Service Tribunal
Roll No. _____
Date: _____

Saif Ur Rehman, Sub Inspector, NO 368/P, Presently Posted to FRP
Peshawar range PeshawarAppellant



V E R S U S

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
 2. Capital City Police Officer, Peshawar.
 3. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
-Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 FOR THE MODIFICATION OF NOTIFICATION DATED 08-12-2022 TO THE EXTENT OF CONFIRMATION OF THE APPELLANT AS SUB INSPECTOR W.E.F 22-09-2002 WITH HIS COLLEAGUES AND FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED DESPITE THE LAPSE OF STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal, the impugned Notification dated 08-12-2022 to the extent of the appellant may kindly be modified thereby confirming the appellant as Sub Inspector W.E.F, 22-09-2002 i.e from the date when his other colleagues/juniors were confirmed with due place in ~~Promotion/Seniority List~~ from due date in all the Seniority Lists thereby placing the name of the appellant above the name of Nisar Ahmad No 27/P. with all back benefits.

Respectfully Submitted:-

ATTESTED
[Signature]
NAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

1. That the appellant along with others was appointed through Khyber Pakhtunkhwa Public Service Commission as Probationer ASI including his juniors namely Nisar Ahmad Khan No 27/P, Tariq Habib No 31/P and Tariq Habib No 32/P on 21-12-1994. The appellant qualified Lower School Course on 20-09-1995 underwent Inter School Course on 20-03-1996 from Police Training College Hangu. The appellant was confirmed as ASI from the date of his initial appointment along with his stated colleagues vide Notification dated 05-01-1998. (Copy of Order

Filed on day _____
Page: _____

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 893/2023

BEFORE: MRS. RASHIDA BANO
MISS FAREEHA PAUL

MEMBER (J)
MEMBER (E)



Saif Ur Rehman, Sub Inspector, No.368/P, presently posted to FRP Peshawar Range, Peshawar.

..... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

..... (Respondents)

Mr. Hilal Zubair
Advocate

... For appellant

Mr. Muhammad Jan.
District Attorney

... For respondents.

Date of Institution..... 27.04.2023

Date of Hearing..... 28.02.2024

Date of Decision..... 28.02.2024

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:

“On acceptance of this appeal, the impugned notification dated 08.12.2022 to the extent of the appellant may kindly be modified thereby confirming the appellant as Sub Inspector w.e.f 22.09.2002 i.e. from the date when his other colleagues/juniors were confirmed with due place in

ATTESTED

EXAMINER
Khyber Pakhtunkhwa Service Tribunal
Peshawar.

promotion/seniority lists from due date in all the seniority lists thereby placing the name of the appellant above the name of Nisar Ahmad No.27/P, with all back benefits." (5)

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, alongwith others, was appointed as probationer Assistant Sub-Inspector through Khyber Pakhtunkhwa Public Service Commission. The appellant qualified lower school course on 20.09.1995 and underwent Inter School Course on 20.03.1996 from Police Training College, Hangu. He was confirmed as ASI from the date of initial appointment alongwith his colleagues vide notification dated 05.01.1998. He was promoted as officiating Sub Inspector w.e.f 22.09.2000 vide notification dated 27.09.2000. Junior/colleagues of the appellant were confirmed as Sub-Inspectors w.e.f 19.11.2003 vide order dated 07.03.2005, while the appellant was deferred and not recommended due to incomplete SHO period besides non availability of his ACRs. The appellant was not confirmed as Sub Inspector due to incomplete mandatory period till 2022. He was transferred to Frontier Reserve Police for one year mandatory period on 27.08.2021 and was confirmed Sub Inspector alongwith others vide notification dated 08.12.2022. Feeling aggrieved, he filed departmental appeal, which was not responded, hence the instant service appeal.

3. 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 District Attorney and perused the case file with connected documents in detail.

ATTESTED

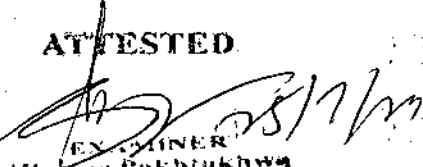
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4. Learned counsel for the appellant argued that appellant was not treated in accordance with law and rules, and respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further argued that the impugned notification dated 08.12.2022 to the extent of not confirming the appellant as Sub Inspector from the date of his colleagues were confirmed and not promoting him is illegal, unlawful and void ab-initio. He further argued that the appellant has completed the mandatory period but he was not confirmed as Sub Inspector, Inspector, as DSP and as SP with his colleagues, which is discrimination. (6)

5. Learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that confirmation in the rank of Sub-Inspector is subject to seniority-cum-fitness basis and fulfilling the requisite criteria envisaged in Rule 13-10(2) of Police Rules 1934. Equal opportunities are available to all members of Police to undergo their mandatory courses or periods through proper channel application and if member of police is deficient in some mandatory period the same rules do not allow his confirmation or promotion in violation of that rule. He submitted that respondent department has made promotion purely on seniority-cum-fitness basis by adopting proper procedure and no one's rights have been violated.

6. Perusal of record reveals that the appellant was appointed through Khyber Pakhtunkhwa Public Service Commission as Probationer ASI including his juniors namely Nisar Ahmad Khan No.27/P, Tariq Iqbal No.31/P and Tariq Habib No.32/P on 21.12.1994. The appellant qualified Lower School Course on 20.09.1995 and underwent Inter School Course on

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

20.03.1996 from Police Training College, Hangu. The appellant was confirmed as ASI from the date of his initial appointment alongwith his stated colleagues vide notification dated 05.01.1998. As the appellant underwent Upper College Course on 10.10.1998 and was brought on promotion list "E" and was also promoted as ASI Selection Grade vide notification dated 14.12.1998 and was promoted as officiating Sub Inspector w.e.f. 22.09.2000 vide notification dated 27.09.2000. The colleagues/juniors of the appellant were confirmed as Sub Inspectors w.e.f 19.11.2003 vide order dated 07.03.2005, while the appellant was deferred and not recommended due to incomplete SHO period besides non availability of his ACRs which was already submitted by the appellant. The appellant was awarded the penalty of stoppage of two years annual increments vide order dated 24.09.2007, which increments were restored on appeal vide order dated 13.11.2007. The appellant was transferred to Frontier Reserve Police for one year mandatory period on 27.08.2021 and finally confirmed as Sub Inspector along with others vide notification dated 08.12.2022 with immediate effect. Appellant preferred departmental appeal which was duly forwarded however the same has not been responded so far.

7. Perusal of record further reveals that appellant through instant appeal seek antedation of his confirmation/promotion as Sub Inspector from 22.09.2002 instead of 08.12.2022 i.e. from the date when his colleagues and juniors were confirmed and promoted as Sub Inspector. Appellant was considered along with his colleagues and juniors on 22.09.2002 but he was not confirmed and promoted due to incomplete mandatory period for completion of which appellant was transferred to F.R.P for one year period vide order dated 27.08.2021 by the respondents which means that posting of

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appellant for completion of mandatory period is within domain of the authority, and is out of control of appellant. So, there is no fault at his part due to which he was not promoted/confirmed. Hence appellant can't be penalized for an act which can't be attributed to him.

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8. Moreover when on 22.09.2002 appellant was considered and was not confirmed, he was deferred then in such situation his case was covered under Rule-V (d) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, which deals with deferment of promotion and determination of seniority of deferred employee/civil servant which reads as follows:

"If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion come to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and is declared fit for promotion to the next higher scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance the proviso of Sub-section (4) of Section 8 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior"


ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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So, according to above referred rule of promotion policy, appellant have fit case for antedated promotion. We allow the appeal of the appellant and direct the respondents to consider the appellant for antedated promotion with effect from the date when his promotion was deferred for the first time and his junior colleagues were promoted with all back benefits. Parties are left to bear their own costs. Consign.


9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 28th day of February, 2024.


(FAREENA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*M.Khan

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 25/7/23
Number of Words 7 pages
Copying Fee 35/-
Urgent 5/2
Total 40/-
Name of Copyist _____
Date of Completion of Copy 25/7/23
Date of Delivery of C. _____

ATTENDED
108E

05-04-24
Duty Superintendent

Su M K

forwarded for favour of
consideration please.

P/S

04/4/2024
314
Forwarded by

04/4/2024

تعمیراتی کاموں کی پیشرفت کی اطلاع کے لئے

368/B

[Signature]

Batch Mates) کے لئے اور ان کی موجودگی کی اطلاع کے لئے

تعمیراتی کاموں کی پیشرفت کی اطلاع کے لئے

(Batch Mates)

تعمیراتی کاموں کی پیشرفت کی اطلاع کے لئے

تعمیراتی کاموں کی پیشرفت کی اطلاع کے لئے

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تعمیراتی کاموں کی پیشرفت کی اطلاع کے لئے

08-04-2024
970
Date

"B" (10)

تعمیراتی کاموں کی پیشرفت کی اطلاع کے لئے

05-04-24

050/27

Office of SP Invt. Control
Date 05-04-24

Page 250/54
No 26/04/24



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR.

Telephone No.091-9210641 Fax No. 091-9212597

No: 7062 /EC-I, dated Peshawar the 22 / 04 /2024.

To: - The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. OFFICE OF THE SSP, INVESTIGATION PESHAWAR

12

Subject: APPLICATION. DY: No. 1058
Memo: DE: 27/4/24
Enclosures: Nil.

Enclosed please find herewith a self-explanatory application preferred by Inspector Saif-Ur-Rehman No.368/P OII PS Shah Qabool Peshawar, duly forwarded by SSP Investigation Peshawar regarding Implementation of decision of Service Tribunal, which is submitted herewith for kind perusal and further necessary action, please.

For CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 7063 /EC-I.

Copy for information is sent to SSP/Investigation CCP, Peshawar your office letter No.1185/PA, dated 15.04.2024.

DSP Gno City
for info 20/4

OII Shah Qabool
for info 21/4

ATTESTED
TO BE TRUE COPY

SSP Lin
22/4/24

SP A. P.
D.S.P. city
m.

VAKALATNAMA

13

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Saif ur Rehman

.....Petitioner/Appellant

VERSUS

PPO & others

.....Respondents/Defendants

I, Saif ur Rehman do hereby appoint and constitute,

Fazal Shah Mohmand, Ibad Ur Rehman Khalil & Baseer Shah Advocates
To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I also hereby agree not to hold the advocate or his substitute responsible for the result of the said matter in consequence of his absence from the court when the said matter is called up for hearing. I further hereby agree that in the event for the whole or any part of the fee to be paid to the advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 25/7/2024.



Client (s)

SALIF UR REHMAN

ACCEPTED BY:

Fazal Shah Mohmand ASC

Ibad Ur Rehman Khalil

&

Baseer Shah

Advocates, High Court.