Form- A

FORM OF ORDER SHEET

Court of _____

**Implementation Petition No. 803 /2024**

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|---|---|---|
| 1 | 2 | 3 |
| 1 | 29.07.2024 | The implementation petition of Mr. Hameed ur Rehman submitted today by Uzma Syed Advocate. It is fixed for implementation report before Single Bench at Peshawar on 31.07.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner.<br><br>By the order of Chairman<br><br>REGISTRAR |

The execution petition in appeal no. 256/2015 received today i.e. on 12.06.2024 is returned to the counsel for the petitioner with the following remarks.

1- A copy of application moved by the petitioners to competent authority for the implementation of judgment is not attached with the petition. If the application has already been preferred and reasonable period of 30 days has been expired be placed on file, If not, the same process be completed and then after approach to this Tribunal for the implementation of Judgment.
2- In the memo of petition some texts are missing.

No. 470 /Inst./2024 KPST,

Dt. 26/07 /2024.

OFFICE ASSISTANT
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

UZ

Uzma Syed Adv.
High Court Swat.

Sir,

all objection 1 to 2 were removed & re-submitted again.

UZ

Uzma Syed
Advocate
29-7-2024

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

**EXECUTION PETITION No. 803 /2024**
**IN**
**SERVICE APPEAL NO.256/2015**

**Hameed-Ur-Rehman** **VS** **Education Deptt etc**

## INDEX



**Petitioner**

Hameed ur rehman

**THROUGH:**

**(UZMA SYED)**
Advocate, High Court
Peshawar

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

**EXECUTION PETITION No. 803 /2024**
**IN**
**SERVICE APPEAL NO.256/2015**



Hmaeed-Ur-Rehman STT,
GHS, Ikram Pur Mardan..

**(APPELLANT)**

**VERSUS**

1. The Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Civil Secretariat, Peshawar.
2. Director Elementary & Secondary Education, Peshawar.
3. District Education Officer (M), Mardan.

**(RESPONDENTS)**

**EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 22.11.2023 OF THIS HONORABLE TRIBUNAL IN LETTER AND SPIRIT.**

.....

**RESPECTFULLY SHEWETH:**

1. That the applicant/appellant filed Service Appeal No. 256/2015 in this august Tribunal whereby appellant claimed antedated promotion from the date junior was promoted.

2. That the said appeal was finally heard by the Honorable Tribunal on dated 22.11.2023 and the Honorable Tribunal was kind enough to accept the appeal and the respondents were directed to effect to the promotion of the appellant from 28/05/2013, when his junior colleague was promoted. The respondent are further directed to place him at his appropriate position in the seniority list of STT also. **(Copy of judgment is attached as Annexure-A).**

3. That the appellant filed application to the competent authority for implementation of the judgment of Honorable Tribunal, in the above mentioned appeal but the respondent failed to take any action in this regard. **(Copy of the application is attached as annexure-B).**

4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court

5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.

6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 22.11.2023 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

**Petitioner**

Hameed Ur Rehman

**THROUGH:**

**(UZMA SYED)**
Advocate, High Court
Peshawar

**AFFIDAVIT:**

It is affirmed and declared that the content of the execution petition is true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Tribunal.

**DEPONENT**

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

25/12/23

(2) (3)

Khyber Pakhtunkhwa Service Tribunal Peshawar

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

## Service Appeal No. 256 /2015

K.W.F Province
Service Tribunal
Diary No. 289
Dated 31-3-2015

Hameed-ur-Rahman,
Senior Theology Teacher,
GHS Ikram Pur, Mardan.....*Appellant*

Versus

1. The Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Dabgari Garden, Peshawar.
3. The District Education Officer (Male) District Mardan. .....*Respondents*

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 18.04.2014 COMMUNICATED ON 08.08.2014 WHEREBY APPELLANT WAS THOUGH UPGRADED TO THE POST OF STT (BPS-16) BUT WITH IMMEDIATE EFFECT INSTEAD OF THE DUE DATE I.E. 28.05.2013 AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL REPRESENTATION TO THE APPELLATE AUTHORITY ON 11.11.2014 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

Fee to be deposited
31/3/15

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PRAYER:

On acceptance of the instant appeal, the impugned Notification dated 18.04.2014 may graciously be modified by effecting the upgradation of the appellant w.e.f. the due date i.e. 28.05.2013 with all consequential back benefits.

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ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 256/2015**

BEFORE: **MR. SALAH-UD-DIN** ... **MEMBER (J)**
**MISS FAREEHA PAUL** ... **MEMBER (E)**

Hameed-ur-Rahman, Senior Theology Teacher, GHS Ikram Pur, Mardan. ..... *(Appellant)*

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar.
2. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (Male) District Mardan.

.....*(Respondents)*

Mr. Muhammad Amin Ayub, ... For
appellant
Advocate

Mr. Muhammad Jan, ... For respondents
District Attorney

| | |
|---|---|
| Date of Institution..... | 31.03.2015 |
| Date of Hearing..... | 22.11.2023 |
| Date of Decision..... | 22.11.2023 |

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned notification dated 18.04.2014, communicated on 08.08.2014, whereby the appellant was though promoted to the post of STT (BPS-16) but with immediate effect instead of the due date i.e 28.05.2013, against which his departmental representation dated 11.11.2014 was not disposed of within the statutory period of ninety days. It

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

dated 18.04.2014 might be modified by effecting promotion of the appellant w.e.f. the due date i.e 28.05.2013 with all consequential back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant qualified the Bachelor of Arts from Allama Iqbal Open University, Islamabad and obtained Shahadat-ul-Alia and Shahadat-ul-Alamia from Wifaq-ul-Madaris. He joined the Education Department as Theology Teacher vide order dated 26.03.1998. As per the Notification dated 13.11.2012, as amended vide Notification dated 24.04.2013, 1/3rd of the total strength of T.T. i.e. 67 number, should be promoted to BPS-16 on the basis of seniority-cum-fitness with at least five years service and having the qualification for initial recruitment or having Bachelor's degree or equivalent qualification with Shahadat-ul-Alia from a recognize Institution to be designated as Senior Theology Teacher. As per the Seniority List, appellant was at Serial No. 98, while one Mr. Zawar Hussain was at Serial No.124 and thus junior to the appellant, but inspite of the same vide Notification dated 28.05.2013 he was promoted to the next higher grade while appellant was not considered for promotion. Aggrieved of the order, appellant after the departmental Representation, preferred Service Appeal No.1487/2013, before the Service Tribunal but during the pendency of the appeal, vide impugned Notification dated 18.04.2014, communicated on 08.08.2014, respondents promoted the appellant to the post of SST (BPS-16) but with immediate effect instead of the due date. The Service Appeal was then withdrawn with the permission to file a fresh one vide order dated 26.03.2015. Appellant preferred a departmental representation on

ATTESTED

Khyber Service Tribunal Peshawar

(6)

11.11.2014 through proper channel but the same was not disposed of within the statutory period of 90 days; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that appellant, inspite of his seniority and eligibility for promotion, was not promoted and instead a junior person was promoted. He informed that his Sanad of Shahadat-ul-Alia was referred for verification by Respondent No. 3 to the concerned quarter which was duly verified and communicated to him vide letter received on 18.12.2012, but even then the appellant was not considered for promotion to the next higher grade on due date. The non-promotion of the appellant, inspite of his eligibility and seniority, was due to the lapse on the part of the department and the appellant could not be made to suffer on account of any omission on the part of the Department, the learned counsel argued He requested that the appeal might be accepted.

5. Learned District Attorney while rebutting the arguments of learned counsel for the appellant, argued that the Government of Khyber Pakhtunkhwa had promoted/upgraded the post of T.T to STT in BPS-16 on the basis of seniority of 1/3rd of the total strength with at least 05 years qualifying service with at least B.A/B.Sc in 2nd Division from recognized university alongwith the additional qualification of Shahadat-ul-Alia from

(7)

the institution recognized by the Wafaqul Madaris Pakistan for the grant of promotion/upgradation against the SST post in the light of the policy issued vide notification dated 13.11.2012. He further argued that the appellant was treated as per upgradation policy. He was promoted vide notification dated 08.08.2014 against the STT post in BPS-16 with immediate effect. So far as the case of Zawar Hussain was concerned, the learned District Attorney argued that he was senior to the appellant on the basis of his date of birth. According to him, the date of birth of the appellant was recorded in the seniority list as 07.02.1974 with qualification of B.A as against the academic qualification of MA that was required for promotion for the post of STT (BPS-16), whereas the date of birth of Mr. Zawar Hussain was 14.04.1972, therefore, the impugned notification dated 08.05.2013 and 08.08.2014 were in accordance with law, rules and upgradation policy. He requested that the appeal might be dismissed.

6. Appellant was appointed on the post of Theology Teacher in 1998. A copy of his service book provided by the respondents shows that he was holding the degree of Shahadatul Aalamia from Wifaqul Madaris Multan at the time of his appointment. Later on in the year 2009, he passed the B.A exam from Allama Iqbal Open University and necessary entry was made in his service book. It is an understood fact that his appointment in 1998 was made on the basis of some service rules that were in place at that time and the same have not been produced before us. The appellant has annexed a seniority list of Theology Teachers with his service appeal according to which he stands at Sr. No. 98, whereas Respondent No. 4 is at Sr. No. 124.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(8)

The plea taken by the appellant in his service appeal before us is that respondent No. 4 was promoted, despite the fact that he was junior and hence he has prayed that the promotion order dated 28.05.2013 might be set aside to the extent of respondent No. 4 and official respondents be directed to promote the appellant from the date when respondent No. 4 was promoted.

7. Record presented before us shows that the service rules notified on 13.11.2012 were amended vide a notification dated 24.04.2013. Theology Teacher BS-15, was to be promoted to Senior Theology Teacher, BS-16. The service rules for Senior Theology Teacher, issued vide notification dated 13.11.2012 were amended through notification dated 24.04.2013 as follows:-

| Service Rules dated 13.11.2012 | Amended Service Rules dated 24.04.2013 |
|---|---|
| 3. Senior Theology Teacher<br><br>By promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher. | (ii) Against Sr. No. 3, in column No. 5, for the existing entry, the following shall be substituted, namely:-<br>"By promotion, on the basis of seniority-cum-fitness, from amongst the Theology Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher or having Bachelor's Degree or equivalent qualification from a recognized University with Shahadatul Alia Fil Uloomul Arabia wal Islamia from Tanzimatul Wafaqul Madaris/Masdaris recognized by Higher Education Commission or Darul Uloom |

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

| | |
|---|---|
| | Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time, as the case may be. |

As stated by the appellant, he was qualified for the promotion to the post of Senior Theology Teacher because he fulfilled the criteria mentioned in the service rules. The copy of service book provided during the course of hearing shows that he was holding the degree of Bachelor from AIOU alongwith Shahadatul Alia. Record further shows that he was holding the degree of Shahadatul Aalamia also, based on which he had applied for his initial appointment. In view of that, he was, no doubt, qualified for promotion. When confronted that when he was qualified for promotion in 2013, then why was he not considered and why a junior colleague was promoted, the respondents were of the view that as per working paper prepared at that time, he was "less qualified". They produced a working paper dated 31.12.2012. Upon that, the learned District Attorney was asked whether the promotion of Respondent No. 4 was made on the basis of amended service rules, his reply was in affirmative. The service rules notified in 2013 are extremely clear when they state that a Theology Teacher is qualified for promotion to the post of Senior Theology Teacher on the basis of seniority-cum-fitness, with at least five years service and having:

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(i) Qualification as prescribed for initial recruitment of Theology Teachers or

(ii) Having Bachelor's Degree or equivalent qualification from a recognized University with Shahadatul Alia Fil Uloomul Arabia wal Islamia from Tanzimuatul Wafaqul Madaris/Madaris recognized by Higher Education Commission or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time, as the case may be."

The learned District Attorney while presenting his arguments insisted that as the appellant passed his SSC examination in third division, therefore he was not qualified for promotion, as the service rules of 2012 mentioned second class SSC for Theology Teacher and for promotion to the post of Senior Theology Teacher, the qualification as prescribed for initial recruitment of Theology Teacher was the required criteria. From the arguments presented by the learned District Attorney it appears that he miserably failed to interpret the amendment in the rules as narrated above. The criteria given in the amended service rules has treated the prescribed qualification at the time of initial recruitment as Theology Teacher separately from the second part of the rule where it states, "having Bachelor's Degree or equivalent qualification from a recognized university with Shahadatul Alia." Another argument given by the official respondents in their reply at para 3 of the facts that private respondent No. 4 is senior to the appellant on the basis of his date of birth is not acceptable because the seniority list of Theology Teachers issued by Executive District Officer (Mardan) itself clearly mentions the date of entry into service of the appellant as 26.03.1998 and

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

that of private respondent as 22.02.2007, and there is no dispute on the principle that seniority is to be reckoned from the date of appointment.

8. In view of the above discussion, it is evident that there was a serious lapse on the part of official respondents when they did not consider the name of the appellant for promotion in May 2013 when they promoted a junior colleague of him to the post of Senior Theology Teacher. Although they promoted him at a later stage, under the same rules and based on the same qualification he was having in 2013, they did not produce any cogent reason of their delayed action. We are of the view that why should the appellant suffer of any wrong doing of the official respondents? The appeal in hand is, therefore, allowed and respondents are directed to give effect to the promotion of the appellant from 28.05.2013, when his junior colleague was promoted and he was left out for no fault of his own. The respondents are further directed to place him at his appropriate position in the seniority list of Senior Theology Teachers also. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 22nd day of November, 2023.*

**(FAREEHA PAUL)**
**Member (E)**

**(SALAH-UD-DIN)**
**Member (J)**

**Fazle Subhan, P.S**

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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بخدمت جناب ڈی، پی، او (میل) مردان

درخواست برائے عمل درآمد
فیصلہ ٹریبونل

جناب عالی:- گزارش کی جاتی ہے کہ سائل نے پروموشن
کے لیے سروس اپیل سروسز ٹریبونل میں اپیل دائر کی تھی۔
جو کہ سائل کے حق میں 22-11-2023 کو فیصلہ ہوا
تھا۔ جسمیں سائل کو پروموشن اور بقایہ سارے لوازمات
2013 سے دیئے گئے ہیں لہذا، آپ صاحبان سے گزارش
کی جاتی ہے۔ کہ ٹریبونل کے فیصلہ پر عمل درآمد کرتے
سائل کو 2013 سے پروموشن اور بقایہ Back benifit
دے دیئے جائیں۔

عین گزارش ہوگی

Hameed ur Rehman

حمید الرحمن

STT, GHS. Ikram Pur Mardan

3-1-2024

# بعدالت

## سروس سپریم کورٹ

مورخہ 2021ء منجانب

مقدمہ

دعویٰ عبدالرحمن بنام اکبر

جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کیلئے عظمیٰ سرور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے کے تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

ACCEPTED

المرقوم 7 ماہ 2021ء

العبد گواہ العبد