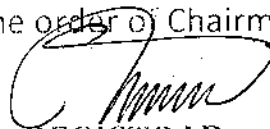


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 810/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	31.07.2024	<p>The implementation petition of Mr. Muhammad Hmayun submitted today by Mr. M.Asif Yousafzai Advocate. It is fixed for implementation report before Single Bench at Peshawar on 02.08.2024. 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  REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 810 /2024

In

Service Appeal No. 7751/2021

Muhammad Hamayun,

V/S

KP. Government.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	----	01-03
2.	Copy of Judgment dt: 12.09.2023	-A-	04-09
3.	Copy of the application dt:10.10.2023	-B-	10
4.	Copy of order dt: 28.2.2024	-C-	11
5.	Copy of order sheet	-D-	12-14
6.	Copy of application	-E-	15
7.	Vakalat Nama		16

APPLICANT

Muhammad Hamayun

THROUGH:

(M. ASIF YOUSAFZAI)
Advocate Supreme Court
Of Pakistan.

(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

(HILAL ZUBAIR)
Advocate Peshawar.

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. _____/2021

In

Service Appeal No.7751/2021

Muhammad Hamayun, Ex-Junior Clerk (BPS-11),
Khyber Pakhtunkhwa Public Service Commission, Peshawar.

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
4. The Assistant Director (Admn), Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED: 12.09.2023 OF THIS HONORABLE TRIBUNAL IN LETTER AND SPIRIT.

RESPECTFULLY SHEWETH.

1. That the applicant/appellant filed Service Appeal No. 7751/2021 in this august Tribunal against the order dated 02.08.2021 & rejection order dated 27.09.2021 whereby the appellant was removed from Service.
2. That the said appeal was finally heard by the Honorable Tribunal on dated 12.09.2023 and the Honorable Tribunal was kind enough *to allow the appeal and direct the respondents to conduct de-novo inquiry associating the appellant with the proceeding and*

affording him opportunity of self defence at every stage of the proceedings as per law order dated 02.08.2021 and 27.09.2021 are set aside and appellant is reinstated into service for the purpose of de-novo inquiry. The matter of back benefit subject to outcome of the de-novo inquiry.)

(Copy of judgment is attached as Annexure-A).

3. That the appellant filed application to the competent authority on dated 10.10.2023 for implementation of the judgment of Honorable Tribunal Khyber Pakhtunkhwa, in the above mentioned appeal but in vain. **(copy of the application dated 10.10.2023 is attached as annexure B.)**
4. That the respondent department during the pendency of Execution Petition produce the order dated 28.04.2024 wherein the respondent department reinstate the applicant/petitioner, the honorable Tribunal on the basis of said order annulled the execution petition of the applicant/petitioner. **Copy of order dated 28.04.2024 and order sheet dated _____ are attached as Annex-C & D.**
5. That the reinstatement order of the applicant/petitioner has been passed on 28.02.2024 but till date the monthly salary of the petitioner has not been released the petitioner /applicant filed application to release his monthly salary but the department kept mum himself on the said request despite that the appellant regularly perform his duty from the date of his reinstatement. **Copy of application is attached as Annex-**
6. 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.
7. 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.
8. 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 12.09.2023 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.

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APPLICANT

Muhammad Hamayun

THROUGH:

Amir Zai
(M. ASIF YOUSAFZAI)
Advocate Supreme Court
Of Pakistan.

Noman
(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

Hilal
&
(HILAL ZUBAIR)
Advocate Peshawar.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Tribunal.

MH
ms
DEPONENT



4

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

Service Appeal No. 7751/2021

BEFORE: KALIM ARSHAD KHAN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Hamayun Ex-Junior Clerk (BPS-11) Khyber
Pakhtunkhwa Public Service Commission, Peshawar.....(*Appellant*)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission Peshawar.
4. The Assistant Director (Admn), Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:-

MUHAMMAD ASIF YOUSAFZAI,
Advocate --- For Appellant

FAZAL SHAH MOHMAND,
Additional Advocate General --- For respondents.

Date of Institution.....12.11.2021
Date of Hearing.....12.09.2023
Date of Decision..... 12.09.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

ATTESTED

"That on acceptance of this appeal the impugned order dated 02.08.2021 and rejection order dated 27.09.2021 may be set aside and the appellant may be reinstated into service with all

5

back and consequential benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant."

02. Brief facts of the case are that the appellant was serving as Junior Clerk in the Khyber Pakhtunkhwa Public Service Commission. That during the month of November, 2020 he was attached with the Inspection Supervisor as staff driver at the examination center Kohat and allegation was leveled against him regarding taking snap of the question papers during the screening test on 27.11.2020 for the post of Tehsildar/Naib Tehsildar. His mobile phone was checked by the Inspection Supervisor of the examination hall; that the appellant's phone after being checked, no pictures of any sort of the said test/examination were found in his mobile phone; that the Chief Supervisor reported against the appellant to the Director Examination. That he was charge sheeted on the basis of aforementioned allegations which he denied in the reply. That an inquiry was conducted and a show cause notice was issued to the appellant. Resultantly, the appellant was removed from service vide order dated 02.08.2021. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 27.09.2021, hence preferred the instant service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

ATTESTED

 ATTESTING OFFICER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

04. Learned counsel for the appellant contended that the impugned orders dated 02.08.2021 and 27.09.2021, are against the law, rules and material on record, therefore, liable to be set aside. That the appellant has been condemned unheard and has not been treated according to law and rules. He further contended that no codal formalities were fulfilled by the department before imposing the penalty which is violation of Article 10-A of the Constitution of Islamic Republic of Pakistan; that the inquiry was not conducted as per mandate of law, as no opportunity of defense was afforded to the appellant; that neither statement of witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses, which is violation of law and rule; that no report of the inquiry and other documents related to the case were given to the appellant by the department even after repeated requests before imposing major punishment of removal from service which is also violation of law and rules. In the last, learned counsel for the appellant argued that the penalty of removal from service is very harsh because the appellant have along considerable service about 24 years which is passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law.

05. Learned Additional Advocate General on the other hand contended that the appellant was deputed as driver with Inspection Supervisor vide order dated 19.11.2020 and he was found involved taking snap of the question papers during the screening test on 27.11.2020 for the post of Tehsildar/Naib Tehsildar. Therefore, his mobile phone was checked by the Inspection Supervisor of the examination hall; That the inquiry was conducted into the matter has duly proved that the appellant had taken

ATTESTED



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pictures of the question papers and forwarded to other people; that the inquiry officer in her inquiry report confirmed the presence of pictures of certain MCQs paper readable on the screen. Moreover, a hand written answer key was also noticed in his mobile phone and the appellant did not cooperate with the inquiry officer regarding the provision of security codes of his mobile phone. He further contended that the appellant was provided with the opportunities of cross examination of the witnesses and personal hearing under the rules but he failed to prove himself innocent. He further contended that the penalty was awarded after fulfilling all the codal and legal formalities as laid down in the Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011.

06. The appellant, as is evident from record available on case file, has 24 years service to his credit in the Khyber Pakhtunkhwa Public Service Commission. He was being deputed for exams duty on various occasions. On 26.11.2020 he was deputed as Deputy Supervisor at examination center in Kohat City. The next date i.e. 27.11.2020 he was deputed as Driver with Inspection Supervisor of the Commission namely Mr. Abdul Bari, Assistant Director, I.T on the date of the screening test for the post of Tehsildar/Naib Tehsildar at Kohat. The Principal/Chief Supervisor of the exam center, vide letter dated 27.11.2020, addressed to Director Examination Khyber Pakhtunkhwa Public Service Commission, reported that the appellant tried to take out question paper from the examination hall. He took picture of the question paper from his mobile phone, which was confiscated and handed over to Mr. Abdul Bari, Inspection Supervisor, with whom the appellant was performing duty as a driver, for that particular day. The Chief Supervisor

[Handwritten scribbles]

ATTESTED

[Signature]
CHIEF SUPERVISOR
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION

recommended for forensic analysis of the cell phone. The aforementioned episode led to initiation of disciplinary proceedings by the competent authority against the appellant labeled guilty of misconduct under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 201, on the following grounds as narrated in the charge sheet/statement of allegations;

(a) That during screening test for the posts of Tehsildar/Naiib Tehsildar held on 27.11.2020, he tried to take the question paper out of the examination hall several times which was foiled by the supervisory staff.

(b) During the same test, he took snaps of question paper and rushed out of the hall the examination.

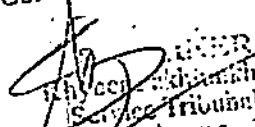
07. Legal scrutiny of the inquiry proceedings reveals that the findings of the inquiry report are entirely based on the statement of supervisory staff of exam center Kohat who are otherwise complainants in the case. Their statements have not been recorded in presence of the appellant nor the appellant granted opportunity to cross examine them. The report conveyed by the Chief Supervisor of the exam center Kohat dated 27.11.2020 clearly recommended for forensic analysis of cell phone of the appellant. Similarly the inquiry officer also recommended that mobile camera data of the cell phone of the appellant be retrieved and analyzed with help of professional service provides or get it probed through specialized investigation agency. Therefore, we believe that without authentication of the charge imposition of major penalty of removal from service imposed upon the appellant does not seem fair and just.

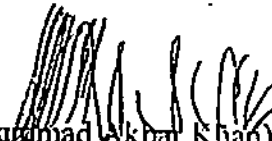
ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Government Servants
 (Efficiency & Discipline)
 Rules, 201

08. In view of above discussion we allow the appeal and direct the respondents to conduct *de-novo* inquiry associating the appellant with the proceedings and affording him opportunity of self defense at every stage of the proceedings as per law. The orders dated 02.08.2021 and 27.09.2021 are set aside and the appellant is reinstated into service for the purpose of *de-novo* inquiry. The matter of back benefits shall be subject to the outcome of *de-novo* inquiry. Costs shall follow the event. Consign.

09. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 12th day of September, 2023.


 (Kalim Arshad Khan)
 Chairman

Certified to be true copy

 (Muhammad Akbar Khan)
 Member (E)


 (Muhammad Akbar Khan)
 Member (E)

Date of Presentation of Application 18/9/23
 Number of page 6
 Copying Fee 30/-
 Urgent 30/-
 No 30/-
 Date 09/10/23
 Date of Delivery of Copy 09/10/23

TO

B
10

Secretary

Khyber Pakhtunkhwa Public Service

Commission, Peshawar

Subject:

Order of Reinstatement:

Respected Sir,

That the service appeal NO: 7751/2021 was pending before the Honorable Service Tribunal Peshawar, which was accepted on 12-8-2023 & order of de-novo inquiry.

Therefore the applicant requested for implementation of judgment & reinstatement the undersigned according to judgment.

Muhammad Hanayun
Joni, Clerk (P-SPK)
Peshawar

10-10-2023

Aufai



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KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION

OFFICE ORDER

In compliance with the decision of the Khyber Pakhtunkhwa Services Tribunal Peshawar in Service Appeal No.7751/2021 dated 12.09.2023, Mr. Muhammad Hamayun Junior Clerk (BPS-11) is hereby re-instated into service with immediate effect for the purpose of de-novo inquiry.

2. Charge Sheet and Statement of Allegation to follow in due course of time.

--sd--

Secretary PSC

Dated: 28/02/2024

No.KP/PSC/Admn/Lt-1287 SA.7751/2021/03425

Copy to:-

1. PS to Chairman Khyber Pakhtunkhwa PSC.
2. PS to Secretary, Khyber Pakhtunkhwa PSC.
3. PA to SLO, Khyber Pakhtunkhwa PSC.
4. The Cashier, Khyber Pakhtunkhwa PSC..
5. Personal file of the official.
6. Office order file.
7. Master File.

Deputy Director (Admn)

Atul Jadhav
ATTENDED

P
12

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 817 /2023
In
Service Appeal No.7751/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8941

Dated 10-11-2023

Muhammad Hamayun, Ex-Junior Clerk (BPS-11),
Khyber Pakhtunkhwa Public Service Commission, Peshawar.

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Chairman, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
4. The Assistant Director (Admn), Khyber Pakhtunkhwa Public Service Commission, Peshawar.
5. The Accountant General Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

As per
ATTACHED

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 12.09.2023 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:


1. That the applicant/appellant filed Service Appeal No. 7751/2021 in this august Tribunal against the order dated 02.08.2021 & rejection order dated 27.09.2021 whereby the appellant was removed from Service.
2. That the said appeal was finally heard by the Honorable Tribunal on dated 12.09.2023 and the Honorable Tribunal was kind enough *(to allow the appeal and direct the respondents to conduct de-novo inquiry associating the appellant with the proceeding and affording him opportunity of self defence at every stage of the*

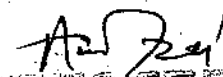
29.02.2024

1. Junior to counsel for the petitioner present. Mr. Habib Anwar, Additional Advocate General alongwith Mr. Mehtab Khan, Law Officer for the respondents present.

2. Representative of the respondents submitted copy of office order dated 28.02.2024 whereby the petitioner has been reinstated into service with immediate effect for the purpose of de-novo inquiry. Copy of the same is placed on file as well as provided to junior of learned counsel for the petitioner. Since the judgment of this Tribunal has been complied with, therefore, the instant execution petition is filed.

3. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal on this 29th day of February, 2024.*


(Muhammad Akbar Khan)
Member (E)


ATTESTED

14

To

The Secretary,
Khyber Pakhtunkhwa Public Service Commission.

Subject: ARRIVAL REPORT

In compliance with Secretary, Khyber Pakhtunkhwa Public Service Commission Office Order No.KP/PSC/Admn/LF-1287 SA.7751/2021/03425 dated 28.02.2024, I hereby submit my arrival report for duty as Junior Clerk (BPS-11) in office of Khyber Pakhtunkhwa Public Service Commission today on 29.02.2024 (F.N).

Yours faithfully,

Muhammad Hamayun
Junior Clerk PSC

Dated: 29.02.2024.

29 FEB 2024
2024

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ATTESTED

To

The Secretary
Khyber Pakhtunkhwa Public Service
Commission, Peshawar.

15

Subject: Release of Salary.

Respected Sir,

That the undersigned has been reinstated by Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar, on dated 12-09-2023, for the de novo inquiry.

That undersigned received his Reinstatement order on date 28-2-2024, & give his annual report on date 29-2-2024, it is pertinent to mention here that, undersigned is performing his duty from day of his reinstatement.

Therefore it is requested that release the salary of undersigned.

Muhammad Hameez

Joniwal, Clerk, KP-PS
Peshawar.

29-3-2024.

Attest
ATTESTED

بعدالت

سروس ٹرن اوور بنیاد

2 منجانب
بنام

سماں کون خان

سماں

PSC

باعث تحریر آنکے

مورخہ

مقدمہ

دعویٰ

جرم

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

آن مقام

کیلئے پیرال زبیر لوہنسون اینڈ ریلے

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 دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی بزدگی 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 پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جاہ 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 لکھ دیا کہ سندر ہے۔

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ماہ

المرقوم

واہ العباد