


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 452/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05.08.2022	<p>The execution petition of Mr. Falak Sher submitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the relevant register. This execution petition be put up before Single Bench at Peshawar on <u>10-08-2022</u> Original file be requisitioned.</p> <p style="text-align: right;"> REGISTRAR</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Implementation Petition No 459 /2022
In
Service Appeal No 3934/2020

Falak Sher.....Petitioner

V E R S U S

DEO and others.....Respondents

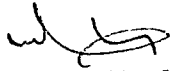
INDEX

S. No	Description of documents	Annexure	Pages
1.	Implementation Petition with Affidavit		1-2
2.	Copy of the Judgment/Order dated 01-02-2022	A	3-8
4.	Vakalat Nama		9

Dated:-04-08-2022

Through


Petitioner/Appellant


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Implementation Petition No _____/2022

In

Service Appeal No 3934/2020

Falak Sher, Physical Education Teacher, District Mohmand, Son of
Malak Rehmat Sher R/O Peer Qilla Shabqadar District Charsadda.

.....**Petitioner**

V E R S U S

1. District Education Officer (Male) Mohmand Tribal District.
2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Secretary, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.

.....**Respondents**

**IMPLEMENTATION PETITION UNDER SECTION 7 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
FOR THE IMPLEMENTATION OF JUDGMENT/ORDER
DATED 01-02-2022 PASSED BY THIS HONORABLE
TRIBUNAL IN THE ABOVE TITLED SERVICE APPEAL.**

Respectfully Submitted:-

1. That the Petitioner/appellant earlier filed Service Appeal No 3934/2020, before this honorable Tribunal for his reinstatement in service, which was accepted and the appellant was ordered to be reinstated in service, however he will not claim financial benefits & Salaries of his absence period since 2005 till his reinstatement vide Order/Judgment dated 01-02-2022. **(Copy of the Order/Judgment dated 01-02-2022 is enclosed as Annexure A).**
2. That the Petitioner/appellant after obtaining attested copy of the stated Order/Judgment of this honorable Tribunal approached respondents by conveying the same through written application which was duly forwarded but even then the appellant is not treated as per the Judgment ibid of this honorable Tribunal.
3. That the respondents are not ready to implement the Order/Judgment of this honorable Tribunal in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Order dated 01-02-2022 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 of this honorable Tribunal dated 01-02-2022 passed in Service Appeal No 3934/2020.

Dated:-04-08-2022

Through


Petitioner/Appellant


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

AFFIDAVIT

I, Falak Sher, Physical Education Teacher, District Mohmand, Son of Malak Rehmat Sher R/O Peer Qilla Shabqadar District Charsadda, 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 belief and nothing has been concealed from this honorable Tribunal.


DEPONENT

"A" 3 - 2

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 3934 /2020

Diary No. 1259
Dated 13/3/2020

Falak Sher, Ex Physical Education Teacher, District Mohmand, Son of Malak Rehmat Sher R/O Peer Qilla Shabqadar District Charsadda.
.....Appellant

V E R S U S

1. District Education Officer Mohmand Tribal District.
2. Director, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Secretary, Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 04-10-2019 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:-

On acceptance of this appeal the impugned Order dated 04-10-2019 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant was appointed as Physical Education Teacher on 01-10-1995 and since then he performed his studies with honesty and full devotion.
2. That due to militancy initially in the year 2005, the appellant while posted to Govt. Middle school Sagi District Mohmand was given serious threats and his family members were targeted even.
3. That in the year 2018, the appellant approached department for permission to join duty and release of salaries vide appeal dated 24-01-2018 but with no response where after he filed

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

Filed to-day
Registrar

19/3/2020

-4-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 3934/2020

Date of Institution ... 13/09/2020

Date of Decision ... 01/02/2022



Falak Sher Ex-Physical Education Teacher, District Mohmand son of Malak
Rehat Sher R/O Peer Qilla Shabqadar District Charsadda. ... (Appellant)

VERSUS

District Education Officer Mohmand Tribal District and others. ... (Respondents)

Present.

Mr. Fazal Shah Mohmand,
Advocate

... For appellant.

Mr. Muhammad Adil Butt,
Addl. Advocate General,

... For respondents.

MR AHMAD SULTAN TAREEN
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- The appellant named above in the heading has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:-

"On acceptance of this appeal the impugned order dated 04.10.2019 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefit."

2. Brief facts of the case as enumerated in the Memorandum of appeal are that the appellant was initially appointed as Physical Education Teacher on

-5-

01.10.1995 and since then he performed his duties with honesty and full devotion; that due to militancy initially in the year 2005, the appellant while posted at Government Middle School Sagi District Mohmand was given serious threats and his family members were targeted even; that in the year 2018, the appellant approached the department for permission to join duty and release of salaries vide appeal dated 24.01.2018 but with no response where-after he filed Service Appeal No. 878/2018 which was fixed for arguments and in the meanwhile show cause notice was issued to the appellant which he replied in detail refuting the allegations and then he was issued charge sheet but before submission of its reply, the appellant was removed from service on 16.10.2019; that the appellant had withdrawn earlier Appeal No. 878/2018 and submitted departmental appeal against the order dated 04.10.2019 before respondent No. 2 which was not responded despite lapse of statutory period of ninety days, hence the present.

3. After admission of the appeal for regular hearing, the respondents were put on notice. They submitted written reply/comments, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record.

5. Learned counsel for the appellant argued that the impugned order is illegal and *void abinitio*; that mandatory provision of law and rules have badly been violated by the respondents; that the appellant has not been treated in accordance with law; that the appellant was not provided opportunity of proper defence; that no proper enquiry was conducted in the matter; that the

[Handwritten signature]

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

-6-

appellant was never provided opportunity of personal hearing and that the appellant had 24 years of service at his credit with unblemished service record. Learned counsel for the appellant prayed that the appeal may be accepted as prayed for.

6. Learned Addl. Advocate General while rebutting the arguments of learned counsel for the appellant contended that the appellant remained absent for more than 13 years without any leave or prior permission of the competent authority; that the appellant went abroad without any authorization or leave from the respondents which show that the appellant was not a devoted official; that the appellant neither informed the respondents about threat received to him nor did he submit any report to any law enforcement agency; that charge sheet and show cause notice were served upon the appellant but he did not bother to submit reply to the same and that the appellant was removed from service after observing all the ccda formalities. Learned AAG requested that the appeal may be dismissed with costs.

7. The impugned penalty of removal from service has been imposed upon the appellant on the ground of his willful absence from duty. The appellant admitted his absence from duty from the year 2005 in the facts of his appeal with the reason that due to militancy initially in the year 2005 he was given serious threats and even his family members were targeted. Then in the year, 2018 the appellant approached the department for permission to join duty and release of salary vide letter dated 24.01.2018 and having received no response, he filed Service Appeal No.878/2018. It is there in the facts stated by the appellant that in the meanwhile show cause notice was issued to him which he replied and then a charge sheet was issued to him and before submission of its

Pravin D. D. D.

APPROVED

MINER
Member Panchkula
Office Panchkula

-7-

reply, he was removed from service on 04.10.2019. The copy of the notification issued for removal of the appellant as annexed with the appeal would reveal that the show cause notice due to willful absence from duty was served upon the appellant under registered post vide No.2700-02 dated 23.0.2019. From this fact it is not difficult to infer that the departmental authority for the first time embarked upon formal disciplinary proceedings against the appellant on 23.08.2019 despite the fact that he was absent from duty from the year, 2005 and the department remained mum about his absence. Obviously, the appellant approached to the department for resumption of duty in 2018 as per his statement in facts of the appeal. The department having been so advised started formal disciplinary action against the appellant during pendency of his service appeal No. 878/2018 which was withdrawn due to the passing of the impugned order presently challenged in the appeal at hands. To our view, both the parties are equally at fault. The department was under obligation to initiate disciplinary proceedings against the appellant on his admitted absence from the year 2005 but omitted. On the other hand, the appellant having admitted the absence though with the reason of his own did not perform the duty as part of his government service. Having become both the parties actually at fault, we deem it appropriate to meet with the ends of justice to settle the dispute in a way that the appellant will not claim the salary and financial benefits of the period of his absence from 2005 till passing of this judgment. The department shall treat the period of his aforementioned absence leave without pay to bridge the service gap.

8. With the foregoing observations, the impugned order is set aside. The appellant is reinstated into service but he shall not be entitled to claim the

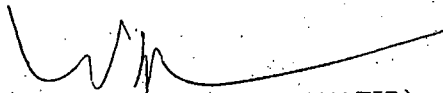
Handwritten signature

APPELLED

MEMBER
 State Tribunal
 Service Tribunal
 Bhopal

-8-

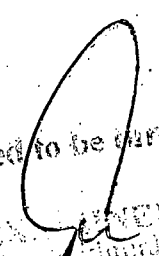
salary and financial benefits of his absence period since 2005 till his reinstatement. The appeal is partially accepted in the given terms. Parties are left to bear their own costs. File be consigned to the record room.


(ATIQ-UR-REHMAN WAZIR)
Member(E)


(AHMAD SULTAN TAREEN)
Chairman

ANNOUNCED
01.02.2022

Certified to be true copy


Officer
Services Tribunal
Guznagar

Date of the resolution of the Tribunal: 1-2-22
Number of Pages: 2400
Page: 26
Page: 26
Date of Copy: 7/6/2022
Date of Copy: 7/6/2022

-9-

VAKALATNAMA
BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Implementation No. _____/2022

Falak ShevAppellant

VERSUS

DEO & othersRespondent(s)

I, Falak Shev, do hereby appoint and constitute, **Fazal Shah Mohmand** Advocate Supreme Court &. 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 04-08-2022

CLIENT(s)
Falak Shev

ACCEPTED BY:


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

OFFICE:-Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
(Clerk) Cell# 03339214136
Email: - fazalshahmohmand@gmail.com.

-9-

VAKALATNAMA
BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Implementation No. _____/2022

Falak ShevAppellant

VERSUS

DEO & othersRespondent(s)

I, Falak Shev, do hereby appoint and constitute, **Fazal Shah Mohmand** Advocate Supreme Court &. 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 204-08-2022

CLIENT(S)
Falak Shev

ACCEPTED BY:

Fazal Shah Mohmand
FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.