

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 466/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.08.2022	The execution petition of Mr. Muhammad Sohail submitted today by Roecda Khan Advocate may be entered in the relevant register. This execution petition be put up before Single Bench at Peshawar on _____ . Original file be requisitioned. <p style="text-align: right;">REGISTRAR</p>

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

Execution Petition No. 466 /2022

In Service Appeal: 687/2017

Mohammad Sohail Ex-Constable No.87/Computer Operator
Investigation Wing Central Police Office, Peshawar

..... Appellant

VERSUS

- (1) Additional Inspector General of Police KPK, Peshawar.
- (2) Deputy Inspector General of Police Headquarters
(Investigation) KPK Central Police Officer, Peshawar.
- (3) Senior Superintendent of Police Investigation Wing
Central Police Office, Peshawar.

..... Respondents

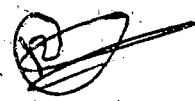
INDEX

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-8
3.	Wakalat Nama		

Dated 04/08/2022


Appellant

Through


Rooeda Khan
Advocate High Court,
Peshawar

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

Execution Petition No. _____/2022

In Service Appeal: 687/2017

Mohammad Sohail Ex-Constable No.87/Computer Operator
Investigation Wing Central Police Office, Peshawar

..... **Appellant**

VERSUS

- (1) Additional Inspector General of Police KPK, Peshawar.
- (2) Deputy Inspector General of Police Headquarters
(Investigation) KPK Central Police Officer, Peshawar.
- (3) Senior Superintendent of Police Investigation Wing Central
Police Office, Peshawar.

..... **Respondents**

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 03/06/2022 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.**

.....

Respectfully Sheweth:

1. That the appellant/Petitioners filed Service Appeal No. 678/2017 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 03/06/2022. (Copy of Judgment is annexed as Annexure-A).

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mentioned Judgment however they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

Dated 04/08/2022


Appellant/Petitioner

Through


Rooeda Khan
Advocate High Court Peshawar

AFFIDAVIT

I, Mohammad Sohail Ex-Constable No.87/Computer Operator Investigation Wing Central Police Office, Peshawar do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.


DEPONENT

1. (3)

BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR

Service Appeal 687 /2017



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 736

Dated 30-6-2017

Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar.

.....Appellant

VERSUS

1. Additional Inspector General of Police KPK, Peshawar.
2. Deputy Inspector General of Police Headquarters
(Investigation) KPK Central Police Office, Peshawar.
3. Senior Superintendent of Police Investigation Wing Central
Police Office, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST THE IMPUGNED ORDER
DATED 02/03/2017, PASSED BY THE
RESPONDENT NO. 01 WHEREBY THE
APPELLANT HAS BEEN DISMISSED FROM
SERVICE AGAINST WHICH THE
APPELLANT FILED DEPARTMENTAL
APPEAL AGAINST THE ORDER DATED
27/03/2017 WHICH WAS REJECTED ON
DATED 01/06/2017 ON NO GOOD GROUNDS.

Filed to-day

Sohail
Registrar

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 687/2017

Date of Institution ... 30.06.2017

Date of Decision ... 03.06.2022



Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar. ... (Appellant)

VERSUS

Additional Inspector General of Police Khyber Pakhtunkhwa,
Peshawar and two others. ... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant, who was appointed as Constable, was serving as Computer Operator in the office of DSP (Legal) CPO Peshawar. Departmental action was taken against the appellant on the allegations of absence from duty with effect from 29.05.2013 and he was eventually dismissed from service vide order dated 03.04.2014. The appellant after exhausting of departmental remedy, filed Service Appeal No. 1069/2014 in this Tribunal, which was allowed vide judgment dated 06.09.2016 with the directions to the department for conducting of de-novo inquiry in the matter. De-novo inquiry was thus conducted against the appellant and he was again dismissed from service vide order

ATTESTED

CLERK
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

dated 02.03.2017. The departmental appeal of the appellant was declined vide appellate order dated 01.06.2017, hence the instant service appeal.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

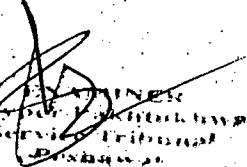
03. Learned counsel for the appellant has contended that no charge sheet or summery of allegations was issued to the appellant during the de-novo inquiry proceedings and whole of the inquiry proceedings were conducted in haphazard manner; that the charge as was previously leveled against the appellant was absence from duty, however it is crystal clear from the record that as the appellant was being illegally arrested in a concocted case, therefore, he was unable to attend his duty; that during the de-novo inquiry proceedings, no witness was examined in support of the allegations leveled against the appellant; that the appellant has already been acquitted in case FIR No. 463 dated 03.06.2013 under Sections 419/420/468/471/411 PPC Police Station Chamkani Peshawar; that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

04. On the other hand, learned Deputy District Attorney for the respondents, while controverting the arguments of learned counsel for the appellant, has contended that the appellant had not only remained absent from duty but was also charged in various criminal cases pertaining to theft of vehicles; that stolen vehicles were recovered from possession of the appellant and he was also arrested and put behind the bars; that the appellant being involved in cases of theft of vehicles and sufficient material was available against him, therefore, he has rightly been dismissed from service.

05. Arguments heard and record perused.

06. A perusal of the record would show that the appellant had previously filed service appeal No. 1069/2014, which was decided

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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

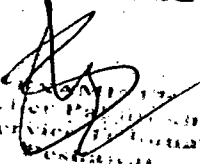
vide judgment dated 06.09.2016. Para-6 of the afore-mentioned judgment is reproduced as below:-

"We have carefully perused the record and have heard pro & contra arguments. A careful perusal of the enquiry report would show that the subject of inquiry is not in conformity with the allegations of the charge leveled against the appellant which charge is about absence from duty. To this charge reply of the appellant is that he was maliciously involved in a criminal case and his plea is that he was behind the bar in that case. The enquiry report does not show that the appellant was summoned from the judicial lockup to participate in the inquiry proceedings. It is thus clear that no chance of the defense has been given to the appellant. This is also worth mentioning that the criminal case against the appellant has not yet been decided. When the subject of enquiry is not in conformity with the charge of absence leveled against the appellant nor it was the charge that the appellant was involved in the offense of having possession of the stolen car which is the subject of inquiry, it is thus obvious that the proceedings against the appellant are not in accordance with rules and further that full opportunity of defense was not available to the appellant. In such a situation, the Tribunal is constrained to set aside the impugned orders. The same are set aside. The respondents are directed to put appellant to face proceedings de-novo in which full opportunity of defense be provided to the appellant. For the purpose of fresh proceedings, the appellant is reinstated into service. The proceedings shall be completed within a period of one month after receipt of this judgment. The matter of back benefits will be subject to the outcome of the de-novo proceedings. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room".

07. While going through the record we have observed that during the de-novo inquiry proceedings, vide office order dated 26.09.2016, Senior Superintendent of Police Investigation Khyber Pakhtunkhwa Peshawar had constituted an inquiry committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP for de-novo inquiry into the matter. The relevant portion of the afore-mentioned office order dated 26.09.2016 is reproduced as below:-

"A committee comprising of Mr. Tahir-ur-Rehman and Mr. Shah Hassan DSPs Investigation of

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 Officer Peshawar
 Service Tribunal

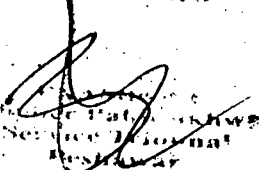
this unit is hereby constituted to initiate de-novo proceedings against the above named official in the light of charge sheet and summery of allegations already issued as well as in the light of the decision of the Honourable Provincial Service Tribunal".

08. It is thus evident from the contents of the above mentioned office order dated 26.09.2016 that no fresh charge sheet or summery of allegations were issued to the appellant and he was proceeded against on the same charge sheet and summery of allegations as were issued to him in the previous inquiry proceedings. Moreover, in his reply to the final show-cause notice, the appellant has categorically mentioned therein that no charge sheet and summery of allegations were issued to him during the de-novo inquiry proceedings. The charge sheet which was issued to the appellant in pervious inquiry proceedings is reproduced as below:-

"That you were posted in the office of DSP/Legal CPO, to work as computer operator, wherefrom you absented yourself without seeking any permission with effect from 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly",

09. In view of the charge sheet issued to the appellant, the inquiry committee was required to have probed and submitted findings regarding absence of the appellant from duty but while going through the inquiry report, we have observed that main focus of the inquiry committee was on the allegations of involvement of the appellant in criminal cases pertaining to theft of vehicles. As far as the allegations of absence of the appellant is concerned, the appellant has mentioned in his reply to the show-cause notice that he rely on the reply submitted in response to charge sheet previously issued to him. In his reply to the charge sheet, the appellant has categorically mentioned that he was falsely implicated in case FIR No. 463/2013 of Police Station Chamkani and was confined in Central Jail Peshawar. The absence of the appellant was thus not willful, rather the same was due to his arrest in a criminal case, in which the appellant was later on acquitted vide judgment dated 10.03.2020 passed by Learned Judicial Magistrate-II Peshawar. During the previous inquiry proceedings, the fact of arrest of the appellant in a

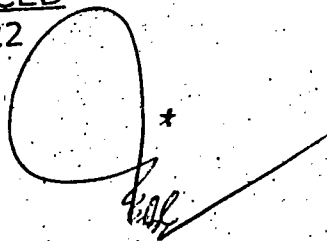
ATTESTED


 District Judge
 Peshawar

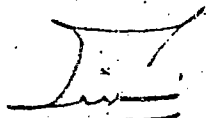
criminal case, was well within the knowledge of the inquiry officer but even then the proceedings were kept continued which culminated into dismissal of the appellant from service vide order dated 03.04.2016. In view of material available, on the record, it is evident that the inquiry proceedings were not conducted in the prescribed manner but carried out in a haphazard and slipshod way. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

10. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Findings in this judgment shall, however have no bearing upon the inquiry, if any, initiated against the appellant on the alleged allegations of his involvement in the concerned criminal cases. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.06.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

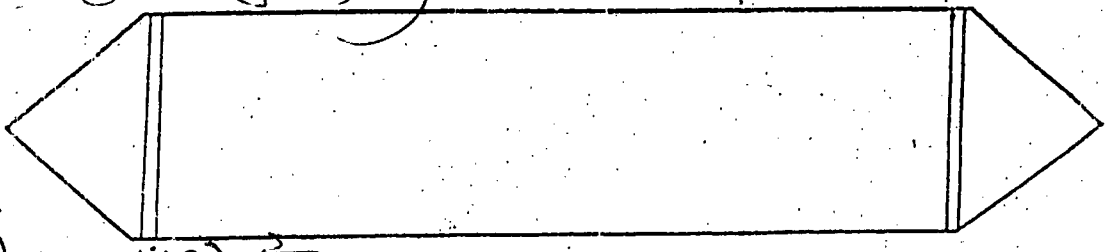


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 21-7-22
Number of Words 2400
Copying Fee 26/-
Urgent 4/5
Total 30/-
Name of Copyist _____
Date of Completion of Copy 21-7-22
Date of Delivery of Copy 21-7-22

بعدالت جناب سے درخواست



سائل
بنام
موسس

سورجہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آن مقام کے لیے دو سالہ کے لیے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء در صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائنہ التوائے مقدمہ کے سب سے وہ ہوگا۔
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 سندر ہے۔

المرقوم ۱۲
ماہ الہب ۲۰۲۰

وہ الع

لئے منظور ہے۔

ACCEPTED BY

بمقام