



Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 443/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.08.2022	<p>The execution petition of Mr. Tariq Mehmood submitted today by Syed Noman Ali Bukhari Advocate may be entered in the relevant register. This execution petition be put up before Single Bench at Peshawar on <u>03-08-2022</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> REGISTRAR</p>
	3 rd August, 2022	<p>Nobody is present on behalf of the petitioner. Mr. Kabirullah Khattak, Addl: AG for respondents present.</p> <p>Notices be issued to the respondents for submission of implementation report on the next date positively through registered post. To come up for implementation report on 14.09.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

①

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 443 /2022
In Service Appeal No. 1439/2019

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 884
Dated 01/08/2022

Tariq Mehood, Ex-Driver Constable No. 271,
(Capital City Police Peshawar), R/o Yousaf Abad, Tube Well Chowk, Street
No.5, Dalazak Road, Peshawar.

PETITIONER

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Central Police Office, Peshawar and others.
2. The City Central Police Officer Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 19.01.2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the petitioner/appellant filed Service Appeal No. 1439/2019 in this august Tribunal against the orders dated 03.07.2019 and 25.09.2019 whereby the petitioner (then appellant) was awarded major penalty of dismissal from service and then his departmental appeal was rejected for no good grounds.
2. That the petitioner was initially dismissed from service through order dated 03.07.2019. The petitioner (then appellant) filed Service Appeal No. 1439/2019.
3. That the said appeal was finally heard by this Honourable Tribunal and the august Tribunal graciously set aside the impugned order and reinstated the petitioner (appellant) in service while the intervening period was treated as leave of the kind due. **(Copy of Judgment is attached as Annexure - A).**

2

4. That the petitioner also filed an application to the respondents for implementation of the judgment but the respondents have totally failed in taking any action regarding the judgment dated 19.01.2022 of this august Tribunal.
5. That the inaction and not fulfilling of the formal requirements by the respondents after passing of the judgment of this august Tribunal, is totally illegal and amounts to disobedience and contempt of this Tribunal/Court.
6. 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.
7. That the petitioner as having no other remedy, but to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 19.01.2022 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 favour of the petitioner/applicant.

Petitioner/ Applicant


Tariq Mahmood

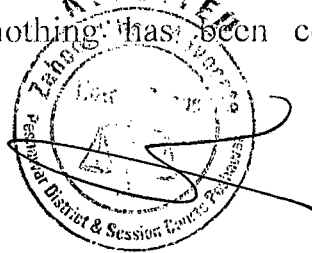
THROUGH:


(SYED NOMAN ALI BUKHARI)
Advocate, High Court

(SHAHKAR KHAN YOUSAFZAI)
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 Hon'able Tribunal.




DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1439/2019

Date of Institution ... 30.10.2019
Date of Decision ... 19.01.2022



Atiq Mehmood Ex-Driver Constable No. 271 (Capital City Police Peshawar) R/o
Kousaf Abad, Tube Well Chowk, Street No. 5, Dalazak Road, Peshawar.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Inspector General of Police Khyber
Pakhtunkhwa, Central Police Office, Peshawar and others.
... (Respondents)

Huzma Syed
Advocate ... For Appellant

M. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are
that the appellant while serving as Constable Driver, was charged in FIR U/S 9C
ONSA (SAA DATED 03-05-2019 and was arrested. The appellant was proceeded
against departmentally and was ultimately dismissed from service vide order
dated 03-07-2019. In the meanwhile, the appellant was released on bail; vide
judgment dated 09-05-2019. The appellant filed departmental appeal, which was
rejected vide order dated 25-09-2019, hence the instant service appeal with
prayers that the impugned orders dated 03-07-2019 and 25-09-2019 may be set
aside and the appellant may be re-instated in service with all back benefits.

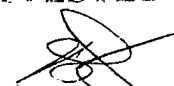
APPROVED
[Signature]
[Stamp]

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the appellant was dismissed from service in an arbitrary manner, it however was required to suspend the appellant and wait for conclusion of the criminal case but the respondents hastily proceeded the appellant and dismissed him from service; that trial in the criminal case is pending adjudication before the competent court of law and the appellant is yet to be proved guilty or innocent, however the respondents have condemned the appellant in the present case before conclusion of the criminal case, which is illegal and against the vested constitutional rights of the appellant.

03. Learned Assistant Advocate General for the respondents has contended that the appellant while serving as driver in police department, was charged in FIR U/S 9C CNSA Dated 03-05-2019; that the appellant was proceeded departmentally by serving charge sheet/statement of allegation upon him and inquiry was also conducted; upon findings of the inquiry report, the appellant was served with final showcause notice; that the appellant responded to the charge sheet as well as to the showcause notice but his reply was not found convincing, hence he was awarded with major punishment of dismissal from service vide order dated 03-07-2019; that criminal case is still pending adjudication against the appellant but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, hence the appellant was proceeded departmentally which culminated into his dismissal from service.

04. We have heard learned counsel for the parties and have perused the record.

ATTESTED


EXAMINER
Khuzdar District Office

5

05. Record reveals that the appellant was proceeded against on the charges of registration of FIR against him and was dismissed from service. Being involved in a criminal case, the respondents were required to suspend the appellants from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

06. The allegations so leveled against the appellants are registration of FIR against him, but it was responsibility of the inquiry officer to prove the charges leveled against him in the FIR, but the inquiry officer did not bother to conduct a proper inquiry and while sitting in his office, wrote a two page report, which is of no value in the eye of law. The authorized officer failed to frame proper charge and communicate it to the appellant alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743.

07. Report of the inquiry so conducted cannot be termed as a regular inquiry, as the same is replete with deficiencies. The inquiry officer did not bother to associate the appellants with the inquiry proceedings. No statement of any witness was recorded in presence of the appellant nor the appellant was afforded

ATTESTED



opportunity to cross-examine such witnesses, thus the respondents skipped a mandatory step as provided in law, which clearly shows that neither the appellant was associated with proceedings of the inquiry nor was he afforded any opportunity to defend his cause. Such an act on part of the inquiry officer is a clear manifestation of professional dishonesty and shirking responsibility, which raises a question as to what would be the evidentiary value of the contents of the inquiry report. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

08. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer mainly relied on FIR with no solid evidence against the appellant. Mere reliance on hearsay and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law.

09. The criminal case is still pending against the appellant, which will be decided on its own merits in due course of time, but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority, authorized officer and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had

7

been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. The allegations so asserted had not been proved. The appellant suffered for longer for a charge, which is not yet proved.

In circumstances, the instant appeal is accepted. The impugned orders dated 03-07-2019 and 25-09-2019 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
19.01.2022

Certified to be true copy

E. WAZIR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Date of Presentation of Application 25/04/2022
No. 2000
24-0
4-0
28-0
Date of Copy 25-04-2022
Date of Delivery of Copy 25-04-2022

(9)

VAKALATNAMA

Execution Petition NO. _____ /20

IN THE COURT OF KP SERVICE TRIBUNAL, PESHAWAR

----- Tariq, Mehmood -----

Appellant
Petitioner
Plaintiff

VERSUS

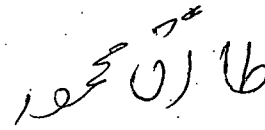
----- Govt. of KP and others. -----

Respondent (s)
Defendants (s)

I / WE Tariq Mehmood

do hereby appoint and constitute the *SYED NOMAN ALI BUKHARI Advocate High Court* for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20



(CLIENT)

ACCEPTED


SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT

CELL NO: 0306-5109438

S. Khan
SHAHKAR KHAN YOUSAFZAI
ADVOCATE PESHAWAR.

ORDER

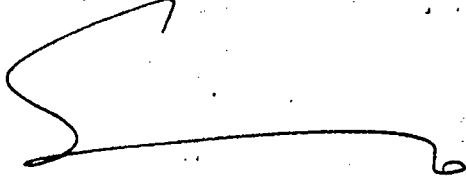
In compliance of the judgment dated 03.12.2021 passed in Service Appeal No. 7951/2020; order dated 29.06.2022 passed in Execution Petition No. 07/2022 by the Khyber Pakhtunkhwa Service Tribunal Peshawar and in the light of directions received vide CPO Memo: No. 19/legal dated 22.07.2022, appellant Head Constable Tariq Mehmood (PK-ASI) is hereby restored to his original rank of ASI conditionally and provisionally subject to the decision of CPLA by the August Supreme Court Pakistan.

OB No.

745

Dated

28-07-2022


MUHAMMAD SHOAIB KHAN (PSP)
District Police Officer
Swabi

No. 624-23/EC; dated Swabi the 28 / 7 / 2022

Copy of above for information to the:

Inspector General of Police, Khyber Pakhtunkhwa Peshawar,
please.

Regional Police Officer Mardan w/r to his Endst: No. 6781/ES
dated 02.11.2020, please.

Capital City Police Officer, Peshawar.

Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.

5. District Police Officer, Charsadda,

6. District Account Officer, Charsadda.

7. Inspector Legal Swabi.

8. Pay Officer.

Establishment Clerk/OHC Charsadda.

Official Concerned.

“A”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

SB

APPEAL No. EP No. 443 of 2022

Tariq Mahmood

Appellant/Petitioner

Versus

TGP KPK Peshawar

RESPONDENT(S)

Respondent (1)

Notice to Appellant/Petitioner

TGP of Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 14/09/2022 at 9:30 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Copy of EP Attached

Group - memo to Report

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

EP No. 443
~~APPEAL~~ No. of 2022.

Tariq Mehmood

Appellant/Petitioner

Versus

IGP of Police KPK Peshawar

RESPONDENT(S)

Report of City Central Police Officer
Peshawar

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 14/09/2022 at 9:00am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Implementation
Report

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Copy of report is attached