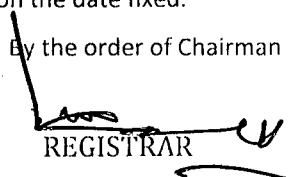


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 509/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.08.2022	<p style="text-align: center;">The execution petition of Mr. Rehman Ullah submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for implementation report before touring Single Bench at Swat on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Rehmanullah

v/s

Govt of KP and others


S#	CONTENTS	YES	NO
1	This Appeal has been presented by: _____	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Noor Muhammad Khattak

Signature: _____

Dated: _____



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Implementation/COC Petition No. 509 /2022
In
Appeal No. 225/2014

REHMANULLAH

VS

GOVT: OF KP & OTHERS

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation petition with affidavit	1-2
2.	Copy of Judgment	A	3-7
3.	Copy of Application	B	8
4.	Vakalatnama	9


PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

0334-5277323.

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation/COC Petition No. 509 /2022 Khyber Pakhtunkhwa Service Tribunal

In
Appeal No. 225/2014

Diary No. 1101

Dated 26/8/2022

Mr.Rehman ullah S/o Mateeullah, Ex-Sub Inspector, R/o Village Totakan, District Malakand**PETITIONER**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa, through Secretary Agriculture, Live Stoke and Co-operative Department, Khyber Pakhtunkhwa Peshawar.
- 2- The Executive District Officer Agriculture, District Dir Upper.
- 3- The Registrar, Co-operative Societies, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 24/01/2022 PASSED IN APPEAL NO. 225/2014 TITLED REHMANULLAH VS GOVT OF KP THROUGH AGRICULTURE LIVE STOKE AND CO-OPERATIVE DEPARTMENT PESHAWAR

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 225/2014 before this august Service Tribunal against the impugned order dated 18.12.2009.
- 2- That the appeal of the petitioner was finally heard on 24.01.2022 and as such the ibid appeal was allowed in favour of the petitioner by this august Service Tribunal with the direction to the respondents:

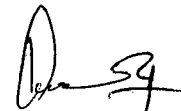
That the appellant is not treated in accordance with law , as he was condemned unheard and was not afforded opportunity of Defense. Keeping in view the dents in disciplinary proceeding and his long service of almost 26 years, we are inclined to partially accept the instant appeal by converting major penalty of Removal from service into compulsory retirement from service.

Copy of the judgment dated 24-01-2022 is attached as annexure **A.**

2

- 3- That after obtaining copy of the judgment dated 24-01-2022 the petitioner submitted the judgment mentioned above along with application for implementation to the Department concerned but the respondents are not willing to implement the judgment dated 24-01-2022 in letter and spirit.
Copy of Application is attached as annexureB.
- 4- That the petitioner time and again visited the respondent Department for the implementation of the judgment of this august Tribunal but of no avail.
- 5- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant implementation petition the respondents may kindly be directed to implement the Judgment dated 24-01-2022 passed in appeal No. 225/2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.



**PETITIONER
REHMANULLAH**

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

AFFIDAVIT

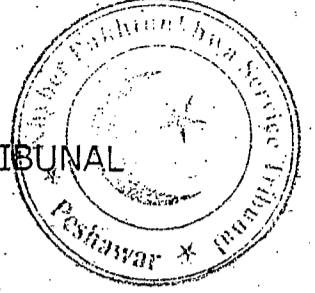
I Mr.Rehman ullah S/o Mateeullah, Ex-Sub Inspector, R/o Village Totakan, District Malakand, do hereby solemnly affirm that the contents of this **Implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



DEPONENT

"A"

3



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 225 /2014

231
19-2-14

Mr. Rehmanullah S/O Mateeullah, Ex-Sub Inspector,
R/O Village Totakan, District Malakand Appellant

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Agriculture, Live stock and Co-operative Department, Khyber Pakhtunkhwa Peshawar.
- 2- The Executive District Officer Agriculture, District Dir Upper.
- 3- The Registrar, Co-Operative Societies, Khyber Pakhtunkhwa, Peshawar. Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 18.12.2009 COMMUNICATED TO APPELLANT ON 15.11.2013 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE UNDER THE REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD

PRAYER:

That on acceptance of this appeal the impugned order dated 18-12-2009 communicated to appellant on 15.11.2013 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits OR the impugned order dated 18.12.2009 may very kindly be converted to compulsory retirement. Any other remedy which this august tribunal deems fit and may also be awarded in favor of the appellant.

19/2/14

R/SHEWETH:
ON FACTS:

ALLEGED TESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 1- That appellant was appointed as sub-Inspector in the respondent Department vide order 24-10-1985. That after the appointment the appellant performed his duties quit efficiently and up to the entire satisfaction of his superiors.

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 225/2014

Date of Institution ... 19.02.2014

Date of Decision ... 24.01.2022



Mr. Rehmanullah S/o Mateeullah, Ex-Sub Inspector, R/o Village Totakan, District Malakand. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, through Secretary Agriculture, Live Stock and Co-operative Department, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Kabirullah Khattak,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as Sub-Inspector in Cooperative Societies, was proceeded against on the charges of absence from duty and was ultimately removed from service vide order dated 18-12-2009 communicated to the appellant on 15-11-2013. Feeling aggrieved, the appellant filed departmental appeal dated 10-12-2013, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 18-12-2009 may be set aside and the appellant may be re-instated in service or the impugned order of removal from service may be converted into compulsory retirement.

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(S)

02. Learned counsel for the appellant has contended that the impugned order is 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 no charge sheet/statement of allegation has been served upon the appellant before imposition of the impugned order, which is illegal, unlawful and contrary to the norms of natural justice; that no show cause notice has been served upon the appellant nor any regular inquiry was conducted, it however is mandatory upon the respondents to conduct regular inquiry before imposition of major penalty of removal from service; that the impugned order has been issued with retrospective effect which amounts to double jeopardy.

03. Learned Additional Advocate General for the respondents has contended that the appellant has been treated in accordance with law and rule with no malafide on part of the respondents; that removal from service order in respect of the appellant was issued by competent authority after fulfilling all the codal formalities; that charge sheet/statement of allegation was issued to the appellant and proper inquiry was conducted; that the appellant was informed by the inquiry officer to appear before the inquiry officer, but the appellant neither responded to the charge sheet/statement of allegation nor joined the disciplinary proceedings; that the appellant was absent from lawful duty without permission of the competent authority hence he was proceeded against and was awarded with major punishment of removal from service in absentia.

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

05. Record reveals that the appellant was initially appointed as Sub-Inspector vide order dated 15-10-1985. While serving as Sub-Inspector in Cooperative Societies, he was granted extra ordinary leave without pay for two years vide order dated 10-04-2003. After expiry of the leave, the appellant reported arrival

ATTESTED

ATTESTED

EXAMINER
 Member, Pakhtunkhwa
 Service Tribunal
 Peshawar

⑥

on 14-12-2004. The appellant again requested for leave for another two years, which was also granted vide order dated 10-12-2005. After expiry of the leave, the appellant again reported arrival and started performing duty and in the meanwhile, the appellant was transferred from Chitral to District Dir Upper vide order dated 22-09-2007. After serving for some time, the appellant again requested for extra ordinary leave with effect from 01-08-2007 to 31-12-2012, but the respondents turn deaf ear over his request but the appellant proceeded on leave under the impression that such leave has been granted by the respondents and the respondents proceeded him under RSO 2000 in absentia on the grounds of willful absence.

06. Impugned order of removal from service would suggest that the appellant was proceeded against under RSO 2000, but neither any inquiry was conducted against the appellant nor the appellant was afforded opportunity of defense, instead absence notices were issued in newspapers and were considered as sufficient for removing him from service, such provision however, does not exist in RSO 2000. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has 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. The appellant was not afforded appropriate of opportunity of personal hearing, thus was condemned unheard. It is a cardinal principle of natural justice of universal

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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. Placed on record is charge sheet/statement of

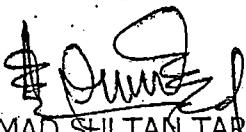
ATTESTED


7

allegation but record is silent as to whether such charge sheet was actually served upon the appellant or not and it can be construed that no charge sheet/statement of allegation was served upon the appellant as the respondents did not satisfy this tribunal about service of the charge sheet upon the appellant, hence in absence of service of charge sheet/statement of allegation on civil servant would be void and nullity in the eye of law as civil servant was not confronted with them and which also disposes of the question of limitation. Reliance is placed on 2008 SCMR 609.

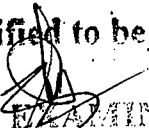
07. We are of the considered opinion that the appellant has not been treated in accordance with law, as he was condemned unheard and was not afforded opportunity of defense. Keeping in view the dents in disciplinary proceedings and his long service of almost 26 years, we are inclined to partially accept the instant appeal by converting major penalty of removal from service into compulsory retirement from service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

Date of Presentation of Application 21-04-22
Number of Words 2000
Copying Fee 22/-
Urgent 4/-
Total 26/-
Name of Copyist _____
Date of Completion of Copy 21-04-22
Date of Delivery of Copy 21-04-22

9

VAKALATNAMA

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

Implementation NO: _____ OF 2022

Rehmanullah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt of KPK

(RESPONDENT)
(DEFENDANT)

I/We Rehman ullah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022


CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK
(BC-10-0853)
15401-0705985-5


UMAR FAROOQ
&

WALEED ADNAN


M. AYUB
ADVOCATES

OFFICE:

Flat No.(TF) 291-292 3rd floor
Deans trade centre Peshawar cantt:
Mobile No. 0334-5277323