
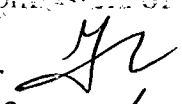


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 426/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28.07.2022	<p>The execution petition of Mr. Osama submitted today by Roaeda Khan Advocate may be entered in the relevant register and put up to the Court for proper order please. This execution petition be put up before Single Bench at Peshawar on <u>2-8-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p>
02.08.2022		<p style="text-align: right;">               Mr. Kabir Ullah              REGISTRAR  <i>Learned member (E) on leave</i>  <i>Therefore the case is adjourned</i>  <i>to 29-9-2022</i>                Registrar           </p> <p style="text-align: center;">             (Member (E))              (Member (E))           </p>

The Implementation petition of Mr. Osama Constable received today on 22.07.2022 is incomplete on the following scores which is returned to the counsel for the petitioner for completion and resubmission within 15 days.

- 1- Judgment attached with the petition is unattested and not visible.
- 2- Petition is not page marked.

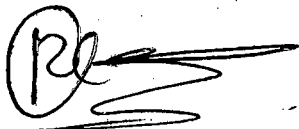
No. 2243 /S.T,

Dt: 22/07 /2022

**REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.**

Roeeda Khan Adv. Pesh.

objection has  
been removed

  
26-7-2022

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

Execution Petition No. \_\_\_\_\_/2022

In Service Appeal: 1240/2017

Osama Constable S/o Fazal Rabi R/o Dalazak Road Muhammad  
Zai Peshawar

Appellant/Petitioner

VERSUS

- (1) Inspector General of Police KPK.  
(2) Deputy Commandant Elate Force KPK Peshawar.

Respondents

Index

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



Appellant/Petitioner

Through



**Rooeda Khan**  
**Advocate High Court,**  
**Peshawar.**

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

Execution Petition No. \_\_\_\_\_/2022

**In Service Appeal: 1240/2017**

Osama Constable S/o Fazal Rabi R/o Dalazak Road Muhammad  
Zai Peshawar

Appellant/Petitioner

VERSUS

- (1) Inspector General of Police KPK.  
(2) Deputy Commandant Elate Force KPK Peshawar.

Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE JUDGMENT**  
**DATED: 10/01/2022 OF THIS HONOURABLE**  
**TRIBUNAL IN LETTER AND SPIRIT.**

.....

**Respectfully Sheweth:**

1. That the appellant/Petitioners filed Service Appeal No. 1240/2017 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 10/01/2022. (Copy of Judgment is annexed as Annexure-A).
2. That the Petitioners after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.

3. That the Petitioners 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.

*Osama*

Appellant/Petitioner

Through

*Rooeda Khan*

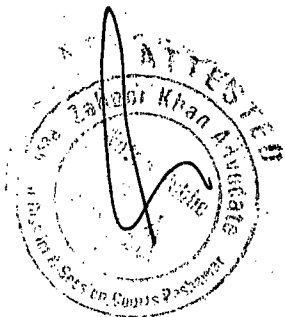
Rooeda Khan  
Advocate High Court Peshawar

AFFIDAVIT

I, Osama Constable S/o Fazal Rabi R/o Dalazak Road Muhammad Zai 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.

*Osama*

DEPONENT



(A)

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



Service Appeal No. 1240 /2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1285

Dated 09-11-2017

OSAMA EX-CONSTABLE NO. 1990,  
S/O FAZAL RABI R/O DALAZAK ROAD, MUHAMMAD ZAI, PESHAWAR.

... APPELLANT

**VERSUS**

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST  
THE ORDER DATED 13/02/2015 PASSED BY THE  
RESPONDENT NO.2, WHEREBY THE APPELLANT WAS  
AWARDED MAJOR PENALTY OF DISMISSAL FROM  
SERVICE AND ORDER DATED 09/10/2017 PASSED BY  
RESPONDENT NO. 1, WHEREBY THE APPEAL OF THE  
APPELLANT WAS DISMISSED ON TECHNICAL GROUND

ed-to-day

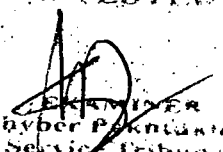
Registrar

11/11/17

Prayer in appeal:

BY ACCEPTING THE INSTANT APPEAL BOTH THE  
IMPUGNED ORDERS OF LEARNED RESPONDENTS MAY  
KINDLY BE SET ASIDE AND THE APPELLANT BE RE-  
INSTATED INTO SERVICE WITH ALL BACK BENEFITS

ATTESTED

  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(3)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1240/2017

Date of Institution ... 09.11.2017

Date of Decision ... 10.01.2022



Osama Ex-Constable No. 1990. S/o Fazal Rabi R/o Dalazak Road, Muhammad Zai,  
Peshawar. ... (Appellant)

**VERSUS**

Inspector General of Police Khyber Pakhtunkhwa, Peshawar and one another.  
... (Respondents)

Roeeda Khan,  
Advocate ... For Appellant

Javed Ullah,  
Assistant Advocate General ... For respondents

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


**JUDGMENT**

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

Brief facts of the

case are that the appellant joined Police Department as Constable in the year 2009. The appellant was proceeded against on the charges of his involvement in FIR U/Ss 302/324/148/149PPC Dated 06-09-2014 as well as absence from duty and was ultimately dismissed from service vide order dated 13-02-2015. During the course of trail, the appellant was acquitted of the charges vide judgment dated 10-01-2017. The appellant filed departmental appeal on the same day, which was rejected vide order dated 09-10-2017, hence the instant service appeal with prayers that the impugned orders dated 13-02-2015 and 09-10-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

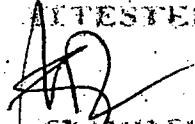
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(4)

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, rule, policy on the subject and acted in violation of Article 4 of the Constitution, therefore, the impugned orders are not sustainable in the eye of law; that respondent No. 2 was under statutory obligation to have served the appellant with a show cause notice before awarding major punishment but he failed to do so and again blatantly violated the law laid down by the august Supreme Court of Pakistan reported as 1989 SCMR 1690, hence the impugned orders are liable to be set aside on this count alone; that respondent No 1 was legally bound to have decided the departmental appeal of the appellant after application of mind on merits and not on technical grounds; that the respondents have passed the impugned orders in mechanical manner and the same is perfunctory as well as non speaking and also against the basic principle of administration of justice, therefore the impugned orders has no sanctity under the law; that the impugned orders are based on conjectures and surmises, hence the same are against the legal norms of justice.

03. Learned Assistant Advocate General for the respondents has contended that the appellant was found involved in a criminal case and an FIR U/Ss 302/324/148/149PPC dated 06-09-2014 was registered against him, due to which the appellant went in hiding and willfully absented from lawful duty without approval of the competent authority; that proper charge sheet/statement of allegation was served upon the appellant, to which he did not respond; that proper inquiry was conducted against the appellant and showcause notice dated 28-10-2014 to this effect was served upon the appellant; that the appellant responded to the showcause notice but could not prove his innocence; that the appellant was awarded major punishment of dismissal from service as per law and rule.

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

ATTESTED  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



65. Record reveals that the appellant joined police department as constable in 2009. The appellant was regularly performing his duty, but due to his enmity with his relatives, two of his brothers were killed and the appellant was also implicated in an FIR dated 06-09-2014, due to which he was unable to perform his duty. The appellant was also proceeded against departmentally and was ultimately dismissed from service vide order dated 13-02-2015. Being involved in a criminal case, the respondents were required to suspend the appellant 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. It was also observed that the appellant was not properly proceeded as per mandate of law and he was not afforded appropriate opportunity of defense. In case of imposing major penalty, principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of defense may be provided to civil servant proceeded against. Moreover, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076.


ATTESTED  
 06. The appellant was acquitted of the criminal charges vide judgment dated 10-01-2017 and the appellant immediately after his acquittal preferred


(b)

departmental appeal. The Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well-settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460

07. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 13-02-2015 and 09-10-2017 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

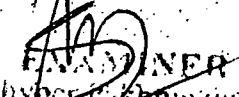
ANNOUNCED  
10.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

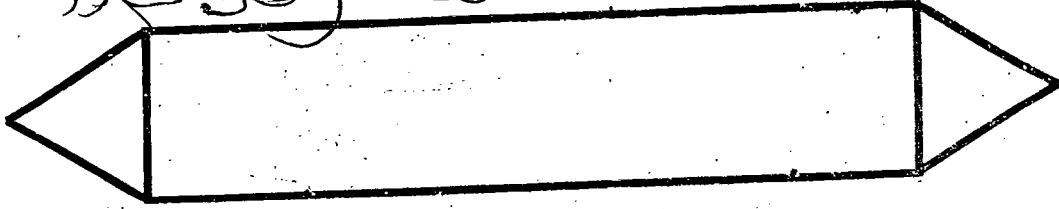
  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

Date of Presentation of Application 26/7/22  
 Number of Words 2000  
 Copying Fee 22/-  
 Stamp 5/-  
 Total 26/-  
 Name of Applicant \_\_\_\_\_  
 Date of Receipt of Copy 26/7/22  
 Name of Receiver, if any 26/7/22

Certified to be true copy

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

بعدالت حساب سے



مورخہ

مقدمہ

دعویٰ

جرم

22ء منجانب

بنام

اصحاب

## باعث تحریر آنکے

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

آن مقام کے لیے روکے ہوئے ہیں

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی 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 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 و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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۔

2022ء

ماہ

22

المرقوم

واہ العبد

By

مقام