

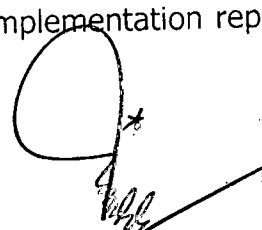


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 389/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.07.2022	<p>The execution petition of Mst. Haleema Zareef submitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2	7-7-2022	<p>This execution petition be put up before Single Bench at Peshawar on <u>13-7-2022</u>. 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> CHAIRMAN</p>
	13.07.2022	<p>Junior of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.</p> <p>Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 12.09.2022 before S.B.</p> <p> (Mian Muhammad) Member (E)</p>

Noted

6

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Misc Pett: No. 389 /2022

Haleema Zareef versus Superintendent & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-2
2.	Copy of Appeal dated 01-01-2021	"A"	3-6
3.	Copy of Judgment dated 02-02-2022	"B"	7-11
4.	Compliance letter dated 14-02-2022	"C"	12

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 01-07-2022

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR*Execution Petition No. 389/2022*

Misc Pett: No. _____ /2022

IN

S.A. No. 01/2021

Haleema Zareef D/O Zareef Khan,
 R/O Ghareeb Abad, Jghra Pesahwar,
 Lady Constable No. 4096,
 Capital City Police, Peshawar Appellant

646
 06-07-2022

VERSUS

1. Superintendent of Police,
Hqrs: Peshawar.
2. Capital City Police Officer,
Peshawar.
3. Provincial Police Officer,
Peshawar. Respondents

**APPLICATION FOR IMPLEMENTATION OF THE
 JUDGMENT DATED 02-02-2022 OF THE HON'BLE
 TRIBUNAL, PESHAWAR:**

Respectfully Sheweth:

1. That on 01-01-2021, applicant filed Service Appeal before this hon'ble Tribunal for reinstatement in service. (Copy as annex "A")
2. That the said appeal came up for hearing on 02-02-2022 and then the hon'ble Tribunal was pleased to hold that:-

"The appellant is reinstated in service and the impugned order of removal from service is converted into minor penalty of stoppage of two annual increment for two years without cumulative effect". (Copy as annex "B")

3. That on 01-06-2022 applicant remitted the same to respondents for compliance but so for no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 02-02-2022 of the hon'ble Tribunal be complied with hence forthwith.

OR

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.

Hadia

Applicant

Through

Saadullah Khan Marwat

Saadullah Khan Marwat

Arbab Saif-ul-Kamal

Arbab Saif-ul-Kamal

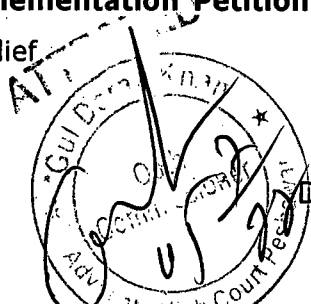
Amjad Nawaz

Amjad Nawaz
Advocates

Dated: 01-07-2022

AFFIDAVIT

I, Haleema Zareef D/O Zareef Khan, R/O Ghareeb Abad, Jghra, Peshawar, Lady Constable Police Line Peshawar (Appellant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief



DEPONENT

CERTIFICATE:

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellant before this Hon'ble Tribunal.

Saadullah Khan Marwat
ADVOCATE

A 3

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

121

S.A No. _____/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 01

Dated 01-01-2021

Haleema Zareef D/O Zareef Khan,
R/o Ghareeb Abad, Jghra Peshawar,
Ex-L/Constable. No. 4096,
Women Police Station,
Peshawar

Appellant

VERSUS

1. Superintendent of Police,
Hqr: Peshawar.
2. Capital City Police Officer,
Peshawar.
3. Provincial Police Officer,
KP, Peshawar. Respondents

◊<=>◊<=>◊<=>◊<=>◊

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST O.B NO. 2017 DATED 06-06-2013 OF R. NO.
01 WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE OR OFFICE ORDER NO. 65-70 / PA DATED
07-01-2019 OF R. NO. 02 WHEREBY
REPRESENTATION OF APPELLANT WAS REJECTED OR
OFFICE ORDER NO. 12-05-2020 OF R. NO. 03
WHEREBY REVISION PETITION OF APPELLANT WAS
REJECTED:**

Wahid
Registrar
01/11/2021

◊<=>◊<=>◊<=>◊<=>◊

Respectfully Sheweth;

1. That appellant was enlisted in service in the year 2008 as Constable and served the department till the date of removal from service.

Handwritten signature and scribble at the bottom of the page.

2. That on 22-10-2011, Zareef Khan S/O Sanab Gul made report in Police Station Chamkani that Iqbal alias Baley S/O Zameer Gul and Abid S/O Munir R/O Malogi being criminals made call on Cell No. 0321-9757170 threatened her that police arrested them at her instance, so she should hand over Rs. 6,50,000/- otherwise they will kidnapped her sisters or will kill them. Legal action shall be taken against them. (Copy as annex "A")
3. That on 01-01-2012, complainant Haji Zareef Khan lodge FIR in Police Station Chamkani to the extent that Iqbal alias Baley and Adnan Sons of Zameer Gul, Zameer Gul S/O Nazeer, Abid, Shahid & Tariq sons of Munir made firing for killing him but took shelter in the nearby mosque. (Copy as annex "B")
4. That thereafter Bibi Nazia No. 2265 Constable submitted application before R. No. 02 for action against accused Iqbal alias Baley of the said village, also made her phone to hand over Rs. 6,50,000/- otherwise he will pick up her sisters or kill them. On 01-01-2012 he opened firing to kill her. (Copy as Annex "C")
5. That in pursuance of the said complaint, Siffat Ullah Complainant lodged FIR in Police Station Chamkani on 25-02-2012 that he was present in his house when some knocked the door and no sooner he had come out, then Iqbal S/O Zameer Gul, Abid S/O Munir Khan, Iftikhar, Qari and Naseer sons of Malik sher duly armed with suspeciated weapons started firing at her yet escaped. (Copy as Annex "D")
6. That on 03-05-2012, appellant was served with Charge Sheet that while posted at Women Police Station, Peshawar absented from duty with effect from 21-12-2011 till 03-05-2012 without any permission or leave. (Copy as Annex "E")
7. That no enquiry was conducted as per the mandate of law, appellant was dismissed from service with immediate effect and absence period was treated without pay. (Copy as annex "F")
8. That on 20-11-2018, appellant submitted application for reinstatement in service which was rejected on 07-01-2019. (Copies as annex "G" & "H")

Sister of appellant

4 months of 15 days absence.

|||

Aunty

9. That on 05-02-2019, appellant submitted representation before the authority which met dead response till date. (Copy as annex "I")
10. That on 07-08-2019, appellant submitted application for supply of the documents mentioned therein but in vain. (Copy as annex "J")
11. That on 12-05-2020, Revision Petition of appellant for reinstatement in service was rejected but no copy of the same was endorsed to her. (Copy as annex "K")
12. That on 01-06-2020, appellant submitted reminder to the authority for disposal of the representation to set aside the order of dismissal from service but without any response. She received order of rejection on Revision Petition on 23-12-2020 from the office of R. No. 02 at her personal level (Copy as annex "L")

Hence this appeal, inter alia, on the following grounds:

GROUND S:

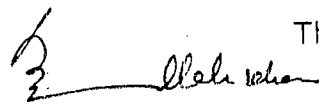
- a. That appellant served the department for more than 12 years with devotion.
- b. That appellant was dragged by the local enemies, treating her for dire consequences if she failed to not hand over money in Lacs.
- M c. That during this period, appellant got married and was forbidden by her husband to refrain from duty. //
- d. That on the other hand, appellant was also unable to perform duty at the hands of enemies which proof is available on the record.
- e. That no enquiry as per the mandate of law was conducted nor appellant was served with Final Show Cause Notice, so the impugned orders are of no legal effect. //
- f. That no opportunity of personal defense was provided nor appellant was associated with the enquiry proceedings, if any, nor any statement of any witness(s) was recorded in her presence, nor she was given opportunity of cross examination, so the whole proceedings were based on malafide.

Arts
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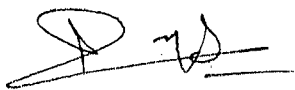
It is, therefore, most humbly prayed that on acceptance of appeal, orders dated 06-06-2013, 07-01-2019 and 12-05-2020 of the respondents be set aside and appellant be reinstated in service with all consequential / back benefits, with such other relief as may be deemed proper and just in circumstances of the case.


Appellant

 Through
Saadullah Khan Marwat


Arbab Saiful Kamal


Miss Rubina Naz
Dated: 31-12-2020


Amjad Nawaz
Advocates



B 7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1/2021

Date of Institution 01.01.2021
Date of Decision 02.02.2022



Haleema Zareef D/o Zareef Khan, R/o Ghareeb Abad, Jghra Peshawar, Ex-L/Constable. No. 4096 Women Police Station, Peshawar. (Appellant)

VERSUS

Superintendent of Police, Hqr: Peshawar and others. (Respondents)

Arbab Saiful Kamal,
Advocate

... For Appellant

Muhammad Adeel Butt,
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 Constable in Police Department was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 06-06-2013. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 07-01-2019. The appellant filed revision petition, which was also rejected vide order dated 12-05-2020, hence the instant service appeal with prayers that the impugned orders dated 06-06-2013, 07-01-2019 and 12-05-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

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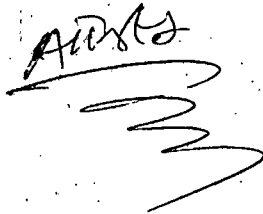
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

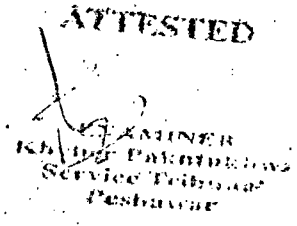
02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore, not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence her rights secured under the Constitution has badly been violated; that after serving for 12 years, the appellant was dismissed from service on frivolous charges; that no regular inquiry was conducted and the appellant was not afforded opportunity of defense nor any show cause was served upon the appellant and the appellant was condemned unheard; that neither statement of any witness was recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses, hence the respondents skipped a mandatory step in legal procedure as prescribed in law; that absence period of the appellant was treated as leave without pay, hence the respondents treated the absence period and there remains no ground to penalize the appellant for such absence.

W/M

03. Learned Additional Advocate General for the respondents has contended that the appellant was proceeded against on the charges of long absence from duty; that the appellant willfully absented herself from lawful duty without permission of the competent authority; that proper charge sheet/statement of allegation was served upon the appellant and proper inquiry was conducted, but the appellant did not bother to attend the disciplinary proceedings, hence the inquiry officer recommended her for ex-parte action against her; that as a final resort, absence notice was also published in newspapers; that after observing all the codal formalities, the appellant was dismissed from service vide order dated 06-06-2013.

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

ADG


ATTESTED

 EXAMINER
 Khairat Palanpur
 Service Tribunal
 Patna

05. Record reveals that the appellant remained absent from duty with effect from 21-12-2012 to 06-06-2013 without any prior permission of the competent authority. The appellant was proceeded against in absentia. The impugned order would suggest that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august supreme court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348.

06. We have observed that absence of the appellant was not willful, but she remained absent due to compelling reasons of enmity. Placed on record is a roznamcha report dated 22-10-2011 and two FIR dated 01-01-2012 and 25-02-2012 registered by father and brother of the appellant respectively against their enemy namely Iqbal alia balay, which would show that the appellant had received repeated threats from her enemies for dire consequences and in such situation, the appellant was unable to resume her duty. In the meanwhile, she got married and her husband did not allow her to resume duty, which too was beyond control of the appellant. Record would suggest that due to peculiar circumstances in case of the appellant, it appeals to prudent mind that the appellant being a poor woman, wanted to continue her job, but due to circumstances as explained above, she was unable to resume her duty, hence, absence of the appellant cannot be termed as willful. Now her husband has left her and she deserve to be treated on humanitarian grounds. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring

ATTESTED

EXAMINED
 RECORDS
 SERVICE TRIBUNAL

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an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60. Needless to mention that the appellant was proceeded against in absentia without affording her appropriate opportunity of defense. The inquiry so conducted is replete with deficiencies, which cannot be termed as a regular inquiry. 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. The appellant was condemned unheard as she was not afforded any opportunity of personal hearing. 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.

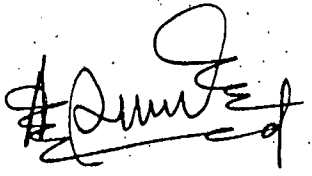
07. We are also mindful of the question of limitation, as the appellant filed departmental appeal after considerable delay, but the circumstances in the instant appeal are eccentric, which requires dealing in a distinguishable manner, if compared with numerous cases decided by this Tribunal as well as superior court, where government employees remain absent from duty for years, but in case of the appellant, major penalty was awarded for absence and charge against the appellant was not so grave as to propose penalty of

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removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. 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.

08. In view of the foregoing, the instant appeal is accepted. The appellant is re-instated in service and the impugned order of removal from service is converted into minor penalty of stoppage of two annual increments for two years without cumulative effect. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
02.02.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

Certified to be true copy

EXAMINER
Khyber Pakhtoonkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 31-5-22
Number of Words 2100
Copying Fee 26/-
Urgent _____
Faint 26/-
No. of Pages _____
Date of Completion of Copy 01-06-22
Date of Delivery of Copy 01-06-22



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- (1) Superintendent of Police,
HQ: Peshawar.
- (2) Capital City Police
Officer, Peshawar.
- (3) Provincial Police Officer,
KP, Peshawar.

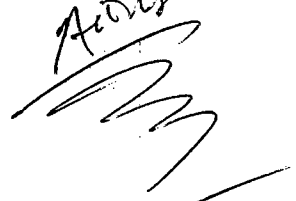
Subject: Application for Compliance of
Judgment dated 02-02-2022
Passed in Service Appeal No. 1/21

R/311


Please comply with the order/Judgment
dated 02-02-2022 Passed in the subject
appeal by the honorable Service Tribunal in
order and spirit and obeyed.

(Certified copy Attached)

Moreover, my wife's application is treated
as my personal report.

Arif


July - 01 - 06 - 22.

Appellant 

Habeemus Zorayf S/O Zorayf Khan
R/o Chhorek Abad, Jabra,
Peshawar.
Wah Cantt. C.O. Peshawar.

یعدالت چٹائی سسر کی ڈیوٹی کے لئے اور

مستجاب انٹرنیٹ
خلیفہ طریف بیتام
دعویٰ اپنی

باعتبار سسر انٹرنیٹ

© ————— ©

مقررہ سند جی عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کے لئے کاروائی مستعاضہ آل مقام لپٹا اور
کیسٹم سٹیکس انڈیا سٹیشن ہائیڈرو کیٹ، ہائی کورٹ کو وکیل مقرر کر کے انٹار کیا جاتا ہے کہ صاحب
موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا نیز وکیل صاحب کو کرنے پر رضی نامہ و آفٹر ثالث، واپس نامہ و تعاقب
یہ ہے جواب دہی اور اقبال دعویٰ اور لپٹا ڈگری کرنے پر رضی اور وکیل چیک و ریپیڈ اور رضی دعویٰ اور در خواست
ہر قسم کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز عدم پیروی یا ڈگری یک طرفہ یا اپنی کی برائگی
اور کسی بھی چیز پر دستخط اپنی نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور لپٹا اور رضی نامہ لپٹا
کے لئے یا تجویز کاروائی کے واسطے اور وکیل یا مقرر قانونی کو اپنے ہمراہ یا اپنی بجائے تہذیب کا اختیار ہوگا
اور وہ اپنے مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پر دستخط منظور
قبول ہوگا اور دوران مقدمہ میں جو خرچہ و تر جانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب
مقرر ہوں گے نیز بقایا دفر حسب کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی بتانم روزہ
پر ہو یا عدالت باہر ہو تو وکیل صاحب یا بند نہ ہوں گے کہ پیروی نہ ہو کر
لہذا کالت نامہ دیکھ دیا کہ سند ہے۔

۰۵۰۷۲۲ الرقوم

التعب التعب التعب

۱۱
ارباب نیگ انکمال
ایڈووکیٹ

سید الشہید
ایڈووکیٹ

Almir

امجد نواز
ایڈووکیٹ