



Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 548/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2022	<p>The execution petition of Mr. Javed Iqbal submitted today by Uzma Syed Advocate. It is fixed for implementation report before Single Bench at Peshawar 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>By the order of Chairman</p> <p> REGISTRAR </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

E. P. No. 548/2022

In Service Appeal No. 63/2018

Javed Iqbal Ex-Constable, No. 1449 FRP
Kohat

..... Appellant

VERSUS

1. The AIG Establishment for Inspector General of Police KPK, Peshawar.
2. The commandant Frontier Reserve Police KPK, Peshawar.
3. The Superintendent of Police FRP Kohat, Region Kohat.

..... Respondents

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Dated 13/09/2022

Javed Iqbal

Petitioner

Through:

Uzma Syed

UZMA SYED
ADVOCATES HIGH COURT

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 548 /2022

In Service Appeal No. 63/2018

Khyber Pakhtunkhwa
Service Tribunal

Entry No. 1250

Dated 13-9-2022

Javed Iqbal Ex-Constable, No. 1449 FRP
Kohat

..... Appellant

VERSUS

1. The AIG Establishment for Inspector General of Police KPK, Peshawar.
2. The commandant Frontier Reserve Police KPK, Peshawar.
3. The Superintendent of Police FRP Kohat, Region Kohat.

..... Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 20/05/2022 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No. 63/2018 against the impugned order dated 31/05/2017 where by the appellant was dismissed from service.
2. That the said appeal was finally heard by the Honorable Tribunal on 20/05/2022. The Honorable Tribunal is kind enough to accept the appeal

partially. The Appellant is reinstated and absence period as well as intervening period shall however be treated as lieu without pay.

- 3. 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 release the salary of the appellant.
- 4. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 20.05.2022 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 favor of applicant/appellant.

Dated 13/09/2022

[Handwritten signature]

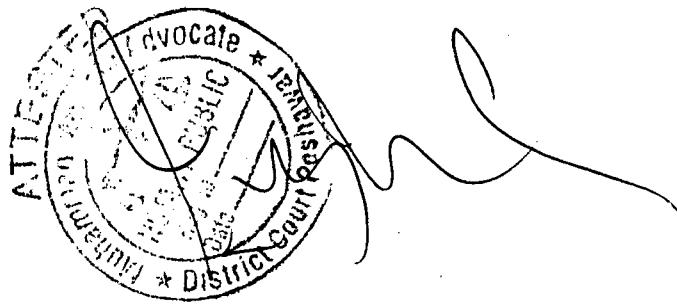
PETITIONER

THROUGH:

43 →

(UZMA SYED)

ADVOCATE HIGH COURT.



(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Service Appeal No. 63/2018

Date of Institution ... 10.01.2018

Date of Decision ... 20.05.2022

Javed Iqbal, Ex-Constable No. 1449/FRP Kohat.

... (Appellant)

VERSUS

The AIG Establishment for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

MISS. UZMA SYED,
Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

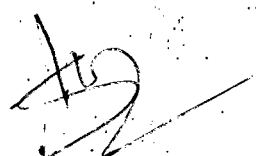
For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant while posted in FRP Platoon 116 at Karak, was deputed for special Duty in Police Station Doaba District Hangu, however he was reported absent from duty vide daily diary No. 5 dated 31.03.2017, therefore, disciplinary action was taken against the appellant. On conclusion of the inquiry, the appellant was dismissed from service vide order dated 31.05.2017 passed by Superintendent of Police FRP Kohat Range Kohat. The departmental appeal of the appellant

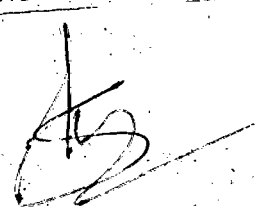


was also rejected vide order dated 17.07.2017; hence the instant service appeal.

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

3. Learned counsel for the appellant has contended that absence of the appellant was due to the reason that he had fell down from motorcycle and had received severe injuries; that after gaining knowledge of the departmental action against him, the appellant had appeared before the competent Authority and had submitted reply mentioning therein the reason of his absence from duty but the same was not taken into consideration and he was dismissed from service in a hasty manner without complying mandatory requirements of Police Rules, 1975; that after submission of reply, the appellant was not at all informed of any proceedings in the matter and was immediately dismissed from service vide impugned order dated 31.05.2017; that absence of the appellant from duty was not willful and the penalty of dismissal awarded to the appellant is too harsh in the given circumstances; that the appeal of the appellant was rejected vide order dated 17.07.2017 but copy of the same was not communicated to the appellant and as he received the copy on 20.12.2017, therefore, the delay in filing of service appeal is condonable; that the impugned orders wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits. Reliance was placed on 2009 PLC (C.S) 151, PLD 2002 Supreme Court 84, 2009 SCMR 339, 2007 SCMR 834, 2015 SCMR 795, 2009 SCMR 412, 2008 SCMR 214 and 2008 SCMR 1369.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had willfully remained absent from duty without sanctioned leave or permission of the competent Authority, therefore, he was proceeded against departmentally; that the appellant appeared in the inquiry proceeding and submitted reply but



again absented himself, which indicates that he was not interested in performing of his duty; that the departmental appeal of the appellant was rejected on 17.07.2017, copy of which was received by the appellant on 25.07.2017, while he filed service appeal on 10.01.2018, which is badly time barred; that a regular inquiry was conducted in the matter by complying all legal and codal formalities, therefore, the impugned orders may be kept intact and the appeal in hand may be dismissed.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that departmental action was taken against the appellant on the allegations that the appellant was found absent from duty vide daily diary No. 31.03.2017 and did not report back till submission of findings report by the inquiry officer on 24.04.2017. On receipt of report of the inquiry officer, final show-cause notice was issued to the appellant through publication in two newspapers and in response thereof, the appellant appeared on 24.05.2017 and submitted reply, alleging therein that as he had fell down from motorcycle, therefore, he was unable to attend his duty. The appellant had also produced medical prescription showing that the doctor had advised him bed rest for one and a half month. The available record does not show that what proceedings were carried out by the competent Authority after submission of reply by the appellant on 24.05.2017, however according to the impugned order dated 31.05.2017, the appellant was again found absent on 30.05.2017, therefore, he was dismissed from service on the following day i.e 31.05.2017. In his reply so submitted to the competent Authority, the appellant had taken the plea that he had fell down from motorcycle and had got injured, therefore, he was unable to attend his duty. The plea so taken by the appellant regarding his absence from duty, was required to have been proved for reaching a just

and right conclusion, however as per the available record, no such probe was made either by the competent Authority or by the appellate Authority. Moreover, the appellant was not issued any final show-cause notice before awarding him major penalty of dismissal from service. August Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176 has graciously held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. The appellant was not even afforded an opportunity of personal hearing before passing of the impugned order dated 31.05.2017. There are numerous rulings of worthy apex court, wherein it has been held that an adverse order made without affording opportunity of personal hearing to an employee is to be treated a void order.

7. The competent Authority has mentioned in the impugned order dated 31.05.2017 that on previous occasion, the appellant had remained absent from duty for 07 days, however while awarding him punishment vide order dated 28.04.2017, lenient view was taken for the reason that the appellant had made commitment with the competent Authority that he will not make any absence from duty in future. Although copy of the aforementioned order dated 28.04.2017 has not been submitted by the respondents, however from the contents of the impugned order dated 31.05.2017, it appears that the appellant was present before the competent Authority at the time of passing of order dated 28.04.2017. According to the available record, the absence of the appellant was with effect from 31.03.2017, however according to contents of impugned order dated 31.05.2017, the appellant was present before the competent Authority on 28.04.2017.

8. The impugned appellate order dated 17.07.2017 was passed by Commandant FRP Khyber Pakhtunkhwa, Peshawar in absence of the appellant and copy of the same was ordered to be forwarded for information and necessary action to Superintendent of Police FRP Kohat Region, Kohat with further direction to inform the appellant accordingly. Respondents



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have not annexed any documentary proof to show that the impugned order dated 17.07.2017 was communicated to the appellant. The appellant has alleged that he received copy of the aforementioned order on 20.12.2017 and has filed Service Appeal on 10.01.2018. Respondents have though alleged that the appellant had received copy of the impugned order dated 17.07.2017 through submission of written application on 25.07.2017, however the copy of the application so annexed by the respondents would show that it does not bear any signature of the appellant. The respondents have not annexed any documentary proof that copy of the impugned order dated 17.07.2017 was handed over to the appellant on 25.07.2017. In these circumstances, the delay in filing of service appeal stands condoned.

9. 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. The absence as well as intervening period shall however be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.05.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ROZINA REHMAN)
MEMBER (JUDICIAL)

13/9/22

22/9/22
4/10/22
26/10/22

13/9/22
13/9/22

بعدالت

KP Service Tribunal, Peshawar

2022ء منجانب

جاوید اقبال بنام

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی صاحب سے کل کارہائے متعلقہ

آن مقام میں اور کیلئے عظیمی مدد اور مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و 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 مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی 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 مذکورہ باختیارات حاصل ہوں گے۔ اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے 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۔

2022ء

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ماہ

13

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

Peshawar

مقام