Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No. 539/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2022	The execution petition of Mr. Naeem Khan submitted today by Mr. Muhammad Arif Jan 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. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Execution Petition No. 539/2022

IN Re:

S.Appeal No.15901/2020

Naeem Khan.....Petitioner/appellant

VERSUS

District Police Officer and others.....Respondents

INDEX

S.No	Description of Documents	Annex	Pages
1.	Grounds of application with affidavit		1-2
2.	Copy of Judgment dated 25-07-2022	A	3-10
3.	Wakalat Nama		11

Petitioner/Appellant

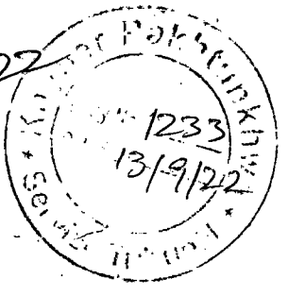
Through

Muhammad Arif Jan
Advocate Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 539/22



IN Re:

S.Appeal No.15901/2020

Naeem Khan Ex-Constable No-276 District Police, Nowshera presently at Azakhel Payan District,Nowshera..

.....Petitioner/Appellant

Versus

1. District Police Officer Nowshera.
2. Regional Police Officer, Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
4. Assistant Superintendant of Police (Inquiry Officer) Circle Cantt, Nowshera.

.....Respondents

APPLICATION FOR IMPLEMENTATION OF JUDGMENT DATED 25-07-2022 OF THIS HON'BLE TRIBUNAL.

Respectfully Sheweth,

Applicant humbly submits as under:-

1. That this Hon'ble Tribunal passed judgment dated 25-07-2022 by accepting the appeal of the appellant reinstated him into his services with all back benefits. (Copy of Judgment is attached as Annex-A).

2. That the petitioner himself provided the attested copy of the judgment dated above to the respondents concerned well within time, but the respondents are badly failed to honor the same and to issue compliance order, hence the present petition.

3. That the clear cut directions been made in the judgment passed by this Hon'ble Tribunal, wherein appellant is reinstated into his service, whereas the disinterest of respondents is even establish from the non-provision of the reinstatement order nor implemented and honor the judgment in favour of

appellant till date, hence invites consideration of this Hon'ble Tribunal.

4. That the respondents are duty bound to abide by law and to honor the judgment of this Hon'ble Court in its later and spirit, but even then and despite to clear direction, the respondents intentionally avoiding to implement the same for no any good reason or the reason best known to them.

5. That the judgment mentioned above also attained finality as no any further appeal has been filed before the august Supreme Court of Pakistan against the appellant.

6. That appellant now approaches this Hon'ble Tribunal for implementation of judgment of this Hon'ble Tribunal.

It is, therefore, humbly requested to please direct respondents to implement the judgment dated 25-07-2022 of this Hon'ble Tribunal without any further delay reason and justification.

Dated 09-09-2022

Petitioner/appellant

Through

Muhammad Arif Jan
Advocate High Court

AFFIDAVIT

I do hereby affirm and declare as per instructions of my clients that the contents of this **Application** are true and correct and nothing has been concealed from this honorable court.

DEPONENT

KHALID MAHMOOD ADVOCATE NOTARY PUBLIC PESHAWAR HIGH COURT

(3) Annex 'A'

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 15901 /2020

Naeem Khan Ex-Constable No-276 District Police Nowshera presently at Aza Khel Payan District Nowshera.

.....Appellant

VERSUS

1) District Police Officer, Nowshera.
2) Regional Police Officer, Mardan.
3) Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
4) Assistant Superintendent of Police (Inquiry officer) circle Cantt, Nowshera.

.....Respondents

Filedto-day
Registrar

SERVICE APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 02-10-2020 PASSED BY RESPONDENT NO-1, AGAINST WHICH THE DEPARTMENTAL APPEAL PREFERRED AND THE SAME WAS TOO REJECTED BY THE RESPONDENT NO-2 MAINTAINING THE DISMISSAL ORDER OF THE APPELLANT.

ORDER
25.07.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand as well as connected Service Appeals bearing Nos. 15902/2020, 15903/2020, 15904/2020, 15905/2020, 15906/2020, 15907/2020, are allowed by setting-aside the impugned orders and the appellants are reinstated in service with all back benefits. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
25.07.2022

(KALIM ARSHAD KHAN)
CHAIRMAN

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

09/09/22

09/09/22

09/09/22

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 15901/2020

Date of Institution ... 14.12.2020

Date of Decision ... 25.07.2022

Naeem Khan Ex-Constable No. 276 District Police Nowshera presently at Aza Khel Payan District Nowshera.

... (Appellant)

VERSUS

District Police Officer, Nowshera and three others.

... (Respondents)

MR. ARIF JAN, Advocate --- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL, Assistant Advocate General --- For respondents.

MR. KALIM ARSHAD KHAN --- CHAIRMAN

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)

CONSOLIDATED JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment, we intend to dispose of instant as well as connected Service Appeal bearing No. 15902/2020 titled "Amir Ali Khan Versus District Police Officer, Nowshera and three others", Service Appeal bearing No. 15903/2020 titled "Kamran Khan Versus District Police Officer, Nowshera and three others", Service Appeal bearing No. 15904/2020 titled "Saeed Ullah Shah Versus District Police Officer, Nowshera and three others", Service Appeal bearing No. 15905/2020 titled "Muhammad Kamran Khan Versus District Police Officer, Nowshera and three others", Service Appeal bearing No. 15906/2020 titled "Amir Khan Versus District Police Officer, Nowshera and three others" and Service Appeal bearing No. 15907/2020 titled "Tariq Ahmad Versus District

(6)

Police Officer, Nowshera and three others", as common questions of law and facts are involved in all the appeals.

2. Precise facts necessary for disposal of instant as well as connected service appeals are that in light of order dated 09.09.2020 passed by august Peshawar High Court, Peshawar, the appellant alongwith other Police Officials were present on the spot alongwith SHO Police Station Akbarpura, in order to provide security to one Mst. Neelam Farid, who wanted to shift her household articles from the house situated in Mohalla Afghan Village Ali Shah District Nowshera due to the reason that her brothers were charged in a murder case and she was apprehending risk to her life at the hands of opposite party. In the meanwhile, family members of the opposite party came to the spot and started firing, resulting in death of Lady Constable Safia as well as causing of injuries to her sister Mst. Naleem Farid. Departmental action was taken against the appellants on the allegations that when the firing started, they decamped from the spot by leaving the SHO alone, which amounted to misconduct. On conclusion of the inquiry, each one of the appellants were awarded major penalty of dismissal from service. The appellants filed separate departmental appeals, which were also dismissed. The appellants have now approached this Tribunal by way of filing of instant as well as connected service appeals for redressal of their grievance.

3. Respondents contested the appeals by way of submitting replies, wherein they refuted tne stance taken by the appellants in their appeals.

4. Learned counsel for the appellants has contended that the SHO was having prior information that houses of the opposite party were also located in the same neighborhood but he acted in a casual manner, which resulted in taking place of the unfortunate incident; that no proper deployment of police officials was made by the SHO and the attack of the opposite party created panic due to which, the response of the police officials was not a coordinated one, resulting in decamping of the accused from the spot; that the inquiry officer did not record statements of any of the witnesses as well as the

(7)

appellants, therefore, it appears astonishing as to how he came to the conclusion that the appellants were guilty of the allegations leveled against them; that on same set of allegations, case FIR No. 278 dated 10.09.2020 under section 118-B Police Act, 2017 was registered against the appellants at Police Station Akbarpura, however they have been acquitted in the same by the competent court of law. Reliance was placed on 2008 SCMR 1369, 2003 SCMR 215, 2015 PLC (C.S) 381 and 2006 SCMR 1641.

5. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellants had shown cowardice by decamping from the spot by leaving the SHO alone, which resulted in death of Lady Constable Safia as well as causing of injuries to Mst. Neelam Farid; that a regular inquiry was conducted in the matter by providing ample opportunity of self defense to the appellants but they have been unable to produce anything in their defense; that final show-causes notices were also issued to the appellants and they were provided opportunity of personal hearing; that the appellants were well aware of the facts that they were deployed for providing security to Mst. Neelam Farid but they displayed cowardice and ran away from the spot, which act of the appellants has brought bad name to the Police Department.

6. We have heard arguments of learned counsel for parties and have perused the record.

7. A perusal of the record would show that Mst. Neelam and Lady Constable Mst. Safia were sisters of the accused, who were involved in case FIR 112 dated 11.04.2020 registered under Sections 302/324/34 PPC Police Station Akbarpura, Nowshera. On the other hand, one Nazar Muhammad was also serving as Police Constable and belonged to the complainant party of the above mentioned criminal case. It is also evident from the inquiry report that the houses of both the parties were located in the same street. The inquiry officer has categorically mentioned in his report that Abdul Latif ASI Incharge Police Post Wapda Colony had reached the spot earlier, who saw that the accused Nazar Muhammad alongwith other family members including

women were present there and had warned him to stay away as they were having plan to take to task Lady Constable Safia; that as the SHO as well as Mst. Neelam and Lady Constable Safia had not yet reached the spot, therefore, Abdul Latif ASI informed the SHO through cell phone about the whole scenario and nefarious designs of the accused party. The inquiry officer has opined that after getting the knowledge about nefarious designs and aggressive mood of the accused party, it was fault of the SHO that he came to the spot alongwith Mst. Neelam and Lady Constable Safia. While going through the inquiry report, it can be observed that in back drop of blood feud enmity between the parties, the matter of shifting of household articles of Mst. Neelam from her house was sensitive in nature, therefore, it required taking of proper security measures but the matter was dealt with in a casual manner, which resulted in [redacted] the unfortunate incident

8. The question as to whether the appellants had remained present on the spot or had run away upon starting of firing, is factual in nature and the same could have been properly resolved after recording of statements of the witnesses, who were present on the spot at the relevant time. The inquiry officer has, however not bothered to record statement of any of the eye witnesses and conducted the inquiry proceedings in a perfunctory manner. It is not understandable as to how the inquiry officer came to the conclusion that the charges leveled against the appellants were proved, when he had not at all recorded statement of any of the eye witnesses in support of the allegations leveled against the appellant. The findings of the inquiry officer against the appellants thus could not be taken into consideration for awarding major penalty to the appellants. Moreover, on the same set of allegations, case FIR No. 278 dated 10.09.2020 under section 118-B Police Act, 2017 was registered against the appellants at Police Station Akbarpura District Nowshera and they have been acquitted in the same by the competent court of law vide judgment dated 27.07.2021.

9. In view of the above discussion, the appeal in hand as well as connected Service Appeals bearing Nos. 15902/2020,

(9)

15903/2020, 15904/2020, 15905/2020, 15906/2020, 15907/2020, are allowed by setting-aside the impugned orders and the appellants are reinstated in service with all back benefits. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
25.07.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(KALIM ARSHAD KHAN)
CHAIRMAN

09/09/22

09/09/22
09/09/22

(10)

WAKALATNAMA

BEFORE THE HON'BLE KP Service Tribunal Peshawar

Naeem Khan — Plaintiff(s)a / Petitioner(s) / Complainant(s)

VERSUS

District Police Officer — Defendant(s) / Respondent(s) / Accused(s)

By this, power-of-attorney I/we the said Petitioner in the above case, do hereby constitute and appoint **MUHAMMAD ARIF JAN** **Advocate** as my attorney for me/us in my/our name and on my/our behalf to appear, plead, give statement, verify, administer oath and do all lawful act and things in connection with the said case on my/our behalf or with the execution of any decree or order passed in the case in my/our favour/ against which I/we shall be entitled or permitted to do myself/ourselves, and, in particular, shall be entitled to withdraw or compromise the case or refer it to arbitration or to agree to abide by the special oath of any person and to withdraw and receive documents and money from the Court or the opposite party and to sign proper receipts and discharges for the same and to engage and appoint any other pleader or pay him as his fee irrespective of my/our success or failure in case, provided that, if the case is heard at anyplace other than the usual place of sitting of the Court the pleader shall not bound to attend except on my agreeing to pay him a special fee to be settled between us.

Signature of Client

Naeem Khan

Accepted.

Muhammad Arif Jan
Advocate High Court
Peshawar
Office No.210, Mumtaz Plaza
G.T Road, Hashtnagri Stop,
Peshawar City.
CNIC No.17201-2275748-7
Bc No.10-6663
Cell: 0333-2212213