





Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 398/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.07.2022	<p>The execution petition of Mr. Muhammad Hasham submitted today by Roeeda Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	25/7/22	<p>This execution petition be put up before Single Bench at Peshawar on <u>26-07-2022</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 style="text-align: right;"> CHAIRMAN</p> <p>Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.</p> <p>Learned AAG has assured that he will coordinate with the respondents to get the judgment implemented and submit implementation report on the next date. To come up for implementation report on 23.09.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

26<sup>th</sup> July 2022  
Noted  
  
25-7-2022

Executive Petition No. 398 /2022

In Service Appeal No. 1172/2019

Mr. Muhammad Hasham

**VERSUS**

Government of Khyber Pakhtunkhwa and others

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5.	Wakalat Nama		

مردفانہ  
Applicant

Through

  
**Roeeeda Khan**

Advocate, High Court  
Peshawar

Dated: 13/07/2022

(1)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Executive Petition No. 398 /2022

Case No. 701

In Service Appeal No. 1172/2019

Date: 13-7-2022

Mr. Muhammad Hasham S/o Sanaullah R/o Dera Ismail Khan Ex-Warden attached to central prison Mardan.

*.....Petitioner*

**VERSUS**

Government of Khyber Pakhtunkhwa through

1. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
2. Superintendent of Circle Headquarter prisons Mardan.

*.....Respondents*

**EXECUTION PETITION FOR  
DIRECTING THE RESPONDENTS  
TO IMPLEMENT THE JUDGMENT  
IN SERVICE APPEAL NO.  
1172/2019 DATED 12.01.2022 OF  
THIS HON'BLE TRIBUNAL IN  
LETTER AND SPIRIT**

**Respectfully Sheweth,**

1. That the applicant/appellant filed Service Appeal No.1172/2019 in this August Tribunal which has been accepted by this Hon'ble Tribunal on 12.01.2022. (Copy of judgment is attached as annexure "A")
2. That the petitioner after getting of the attested copy approached to the respondents several time and properly moved an application for


( 2 )

implementation of the above mentioned judgment, however they using delaying and reluctant to implement the judgment of this Hon'ble Tribunal. (Copy of application is attached as annexure "B")

3. That the petitioner is no other option but to file the instant petition for implementation of the judgment of this Hon'ble Court.
4. That the respondents department is legally bound to obey the order of this Hon'ble Tribunal, the implementing the said judgment.

*It is, therefore, most humbly prayed that on acceptance of this Execution petition the respondents may kindly be directed to implement the judgment of this Hon'ble Tribunal in letter and spirit.*

  
Applicant

Through 

**Roeeda Khan**

Advocate, High Court  
Peshawar

Dated: 13/07/2022

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

Executive Petition No. \_\_\_\_\_/2022

In Service Appeal No. 1172/2019

Mr. Muhammad Hasham


**VERSUS**

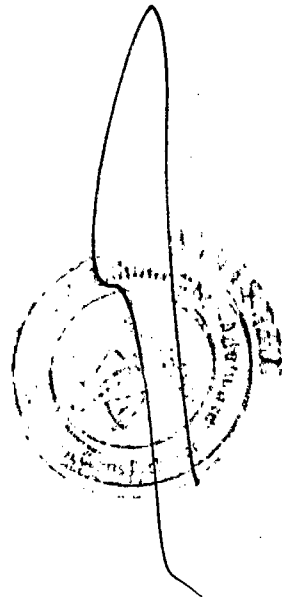
Government of Khyber Pakhtunkhwa and others

**Affidavit**

I, Mr. Muhammad Hasham S/o Sanaullah R/o Dera Ismail Khan Ex-Warden attached to central prison Mardan. do hereby solemnly affirm and declare on oath that all the contents of the instant Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

  
*Deponent*

*Identified by:*  
  
*Roeeda Khan*  
*Advocate High Court*  
*Peshawar*



(A) (1) (4)  
**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1297

Dated 24-9-2019

In Re S.A No. 1172 /2019

Mr. Muhammad Hasham S/O Sanaullah R/o  
Dera Ismail Khan. Ex-Warden attached to  
Central Prison Mardan.

Appellant

**VERSUS**

Government of Khyber Pakhtunkhwa through

1. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent, Circle HQRs, Prisons, Mardan.

Respondents

**APPEAL U/S-4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICES TRIBUNAL ACT**  
**1974 AGAINST THE ORDER DATED 03/06/2019**  
**WHEREBY THE APPELLANT HAS BEEN**  
**AWARDED MAJOR PUNISHMENT OF**  
**REMOVAL FROM SERVICE AND AGAINST**  
**WHICH THE APPELLANT FILED**  
**DEPARTMENTAL APPEAL ON 20/06/2019**  
**AGAINST THE ORDERS DATED 03/06/2019**  
**WHICH HAS BEEN REJECTED ON 16/09/2019**  
**ON NO GOOD GROUNDS**

*(Signature)*

1  
(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No.1172/2019

Date of Institution ... 24/09/2019

Date of Decision ... 12/01/2022

Muhammad Hasham son of Sanaullah R/O Dera Ismail Khan Ex-Warder  
Attached to Central Prison, Mardan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Inspector General of Prisons,  
Peshawar and others. ... (Respondents)

Present.

Mst. Roeeda Khan,  
Advocate

... For appellant.

Mr. Muhammad Riaz Khan Paindakhel,  
Asstt. Advocate General,

... For respondents.

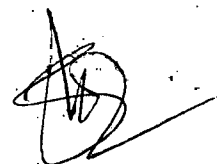
MR AHMAD SULTAN TAREEN  
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN  
... MEMBER(E)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above has  
invoked the jurisdiction of this Tribunal through above titled appeal with the  
prayer as copied below:-

"On acceptance of this appeal both the impugned orders dated  
03.06.2019 and 16.09.2019 may kindly be set aside and the  
appellant may kindly be reinstated in service alongwith all  
back benefits. Any other remedy which this August Tribunal  
Deems fit that may also be granted in favour appellant."



(b)

2. Brief facts of the case as enumerated in the Memorandum of appeal are that the appellant was appointed as Warden in Prisons department 11 years before and performed his duty regularly and with full devotion and no complaint whatsoever was made against him. While posted at District Prison Mardan, he fell seriously ill due to Hepatitis-C and was unable to perform his duties with effect from 06.04.2019; that the respondent department removed the appellant from service on 03.06.2019 on the ground of absence without fulfilling the codal formalities; that the appellant submitted departmental appeal on 20.06.2019 alongwith copies of medical prescriptions; that the departmental appeal was rejected on 16.09.2019, hence the present appeal on 24.09.2019.

3. After admission of the appeal for regular hearing, the respondents have submitted written reply/comments, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record

5. Learned counsel for the appellant argued that the impugned order is illegal and *void ab-inito*; that no charge sheet has been served upon the appellant nor regular enquiry was conducted; that no opportunity of personal hearing was afforded to the appellant; that no final show cause notice was served upon the appellant which were mandatory under the law; that absence of the appellant was not deliberate and intentional but due to serious illness of the appellant; and that the punishment awarded to the appellant was harsh

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Stamp:   
 24/09/2019  
 Service Tribunal  
 Peshawar

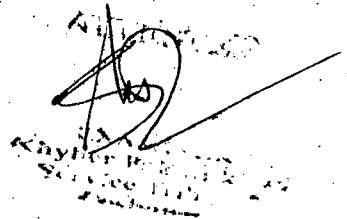


(7)

and not commensurate with the charge leveled against him. Learned counsel for the appellant requested that the appeal may be accepted as prayed for.

6. Learned Assistant Advocate General while rebutting the arguments of learned counsel for the appellant contended that the appellant remained absent at different intervals of his duties; that previously the appellant remained absent from his duties w.e.f. 07.12.2018 to 15.02.2019 and submitted medical rests which were sent to the concerned Hospital for verification and found bogus; that the appellant was proceeded against under the Khyber Pakhtunkhwa Government Servants(E&D) Rules, 2011 and for his willful absence, a notice was served upon him under Rule 9 of the Rules ibid on his home address and also a notice was published in the leading Newspapers of the province but the appellant did not respond to the said notices and then ex-parte decision was taken against him and he has rightly been removed from service. Learned AAG requested that the appeal may be dismissed with costs.

7. Having perused the comments of the respondents and copies of the record annexed there with, we are constrained to hold that the appellant was properly proceeded under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 with regard to willful absence of the appellant. At the same time it is observed that the proceedings having culminated against the appellant under Rule 9 ibid are ex-parte. When the appellant has turned up to challenge the said proceedings with the prayer for his reinstatement, we deem it appropriate to substitute the penalty of removal from service with that of reduction to the lower post of pay scale. This is for the reason that the appellant has got a considerable long service at his credit.

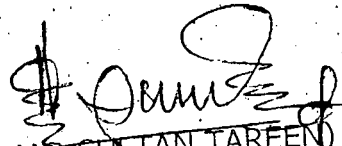
  
Khyber Pakhtunkhwa  
Service Rules  
2011

(3)

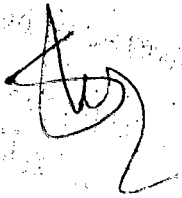
8. For what has gone above, the impugned order as to imposition of ex-parte major penalty of removal from service is substituted with the penalty of reduction of the post of appellant for pay scale from BPS-07 to BPS-06 for a period of three years. The respondents are directed to give effect to substitution of said penalty. The appeal stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.



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

  
(AHMAD SULTAN TAREEN)  
Chairman

ANNOUNCED  
12.01.2022



06/06/22

2000  
22/1  
4/1  
26/1

06/06/22  
06/06/22

To

The Inspector General Prisons,  
Khyber Pakhtunkhwa Peshawar.

Subject: **IMPLEMENTATION OF TRIBUNAL JUDGMENT IN SA NO. 1172/2019  
TITLED AS MR. MUHAMMAD HASHIM EX-WARDEN CENTRAL PRISON  
MARDAN**

Respected Sir,

With profound regards and best wishes it is submitted;

1. That the appellant was appointed as Warden in Prison department and regularly worked for 11 years, in this period no complaint was made against the undersigned.
2. That the appellant felts seriously ill and hospitalized in the month April 2019, due to my illness, I was hospitalized and unable to perform duty.
3. That due to absent from duty the Major Penalty of Removal from Service was imposed upon me vide order dated 03.06.2019.
4. That the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar vide judgment dated 12.01.2022 was pleased to accept my service appeal for reinstatement. The Honourable Khyber Pakhtunkhwa was pleased to reinstate me and substituted the Major Penalty of Removal from Service by Major Penalty of Reduction to the Lower Pay Scale for a period of 3 years. (Judgment is attached)

In view of above submission it is, therefore, requested to your kind honour that kindly implement the Honourable Service Tribunal Judgment and reinstate the appellant for the best interest of justice.

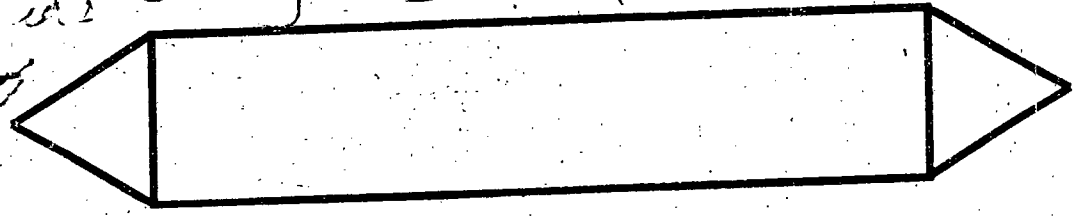
For this oblige I shall remain thankful to your good self.

Dated: 11.06.2022

**Muhammad Hashim S/O Sanaullah  
R/O Village Bund Kurai Tehsil Paharpur  
District DIKhan**

0304-5276006

بعدالت جہالت اور طرہٴ سؤل



مورخہ  
مقدمہ  
دعویٰ  
جرم

2022 منجانب

محمد عثمان بنام

### باعث تحریر آنکے

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

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز

کیلئے روک سکرے گا۔ 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 ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
نہیں کرانیں 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 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 مذکور با اختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داخستہ 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 سند ہے۔

المرقوم 13 ماہ جولائی 2022ء

واہ العبد

Handwritten signature and initials.