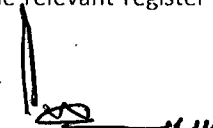



Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 386/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.07.2022	<p>The execution petition of Mr. Muhammad Ismail 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> REGISTRAR</p>
2	5.7.2022	<p>This execution petition be put up before Single Bench at Peshawar on <u>18/10/2022</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>

**BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,**  
**PESHAWAR.**

Execution Petition No. 386 /2022

**In Service Appeal: 1074/2017**

Muhammad Ismail Constable, Mardan Police R/o Mayer,  
District Mardan.

Appellant/Petitioner

VERSUS

(1) District Police Officer Mardan.

(2) District Inspector General of Police Mardan.


(3) Inspector General of Police Khyber Pakhtunkhwa Peshawar.

Respondents

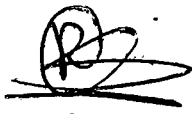
Index

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-8
3.	Wakalat Nama		

Dated 01/07/2022

  
Appellant/Petitioners

Through

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

(11)

**BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,**  
**PESHAWAR.**

Execution Petition No. 386 /2022



**In Service Appeal: 1074/2017**

Muhammad Ismail Constable, Mardan Police R/o Mayer,  
District Mardan.

Appellant/Petitioner

VERSUS

- (1) District Police Officer Mardan.
- (2) District Inspector General of Police Mardan.
- (3) Inspector General of Police Khyber Pakhtunkhwa  
Peshawar.

Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE**  
**JUDGMENT DATED: 13/01/2022 OF THIS**  
**HONOURABLE TRIBUNAL IN LETTER AND**  
**SPIRIT.**

.....

**Respectfully Sheweth:**

1. That the appellant/Petitioners filed Service Appeal No. 489/2019 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 13/01/2022. (Copy of Judgment is annexed as Annexure-A).


- (2)
2. That the Petitioner 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 Petitioner 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 letter and spirit.

Dated 01/07/2022

  
Appellant/Petitioner


Through

  
Rooeda Khan  
Advocate High Court Peshawar

AFFIDAVIT

I, Muhammad Ismail Constable, Mardan Police R/o Mayer, District Mardan. 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.



  
DEPONENT

(1) (31)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**



In Re S.A No. 389 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 374

Dated 21-3-2019

Muhammad Ismail Ex-Constable No.2125 Mardan  
police R/O Mayer, District Mardan.

....Appellant

**VERSUS**

1. District Police Officer Mardan.
2. District Inspector General <sup>of Police</sup> Mardan
3. Inspector General of Police Khyber Pakhtunkhwa  
Peshawar.

....Respondents

Filed to-day

Registrar

21/3/19

APPEAL U/S-4 OF THE KHYBER  
PAKHTUNKHWA SERVICES TRIBUNAL ACT  
1974 AGAINST THE ORDER DATED 09/05/2017  
WHEREBY THE APPELLANT HAS BEEN  
AWARDED MAJOR PUNISHMENT OF  
DISMISSAL FROM SERVICE AND AGAINST  
THE APPELLATE ORDER DATED 06/03/2018  
COMMUNICATED TO THE APPELLANT ON  
04/03/2019 PASSED BY RESPONDENT NO.3  
HAS BEEN REJECTED ON NO GOOD  
GROUND

Prayer:-

ON ACCEPTANCE OF THIS APPEAL  
THE IMPUGNED ORDER DATED

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No.389 of 2019

Date of Institution ... 21.03.2019

Date of Decision ... 13/01/2022



Muhammad Ismail Ex-Constable NO. 2125 Mardan Police R/O Mayar, District Mardan. ... (Appellant)

VERSUS

District Police Officer, Mardan and others

...(Respondents)

Present.

Roeeda Khan, Advocate

... For appellant.

Muhammad Rasheed,  
Deputy District Attorney

... For respondents.

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

... CHAIRMAN  
... MEMBER(E)

JUDGMENT

**AHMAD SULTAN TAREEN, CHAIRMAN:-** The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading with the prayer as copied below:-

“On acceptance of instant service appeal, the impugned order dated 09/05/2017 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits. Any other remedy which deems this august tribunal fit that may also be awarded in favour of appellant”

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(S)

2. Briefly stated the facts of the appeal are that the appellant was initially appointed as Constable in Police Department on 21/10/2008; that the appellant performed his duty regularly with full devotion and no complaint whatsoever has been made against him; that he while posted at police station Per Hoti Mardan unfortunately fell seriously ill and due to severe illness he was unable to perform his duty; that the Respondent department dismissed the appellant from service on 09/05/2017 on the ground of absence; that the appellant filed departmental appeal on 05/06/2017 which was rejected on 16/11/2017; that the appellant submitted petition under Rule 11-A which was rejected 06.03.2018, hence the present appeal.

3. The appeal was admitted for regular hearing on 08.04.2019. 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.

4. We have heard the arguments and perused the record.

5. The appellant is aggrieved from the order dated 09.05.2017, whereby major punishment of dismissal from service was imposed upon him w.e.f. 20.12.2016 in exercise of powers under Police Rules, 1975. It is there in the impugned order that a departmental enquiry under Police Rules, 1975 was got conducted against the appellant on account of his continuous absence from duty without any leave/permission of the competent authority. Although previous conduct of the appellant has been discussed in the impugned order but as a matter of relevant fact he was proceeded against only on account of his willful absence from duty. The grounds of punishment as provided under Police Rules, 1975 among others include the ground of being habitual absentee. However, the charge against the appellant was as to continuous

*[Handwritten signature]*

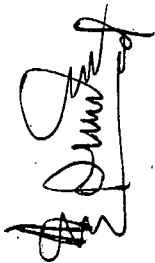
**ATTESTED**

*[Handwritten signature]*  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

(b)


absence from duty without leave/permission of the competent authority is not of his being habitual absentee. Needless to say that the appellant notwithstanding his status as enrolled police officer is also a government servant. Where the special rules i.e. Police Rules 1975 are silent about grounds of punishment on account of willful absence, the general rules would have become applicable. The procedure for disciplinary action on account of willful absence is provided under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011, which is copied below:-

**"Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government servant for seven or more days, a notice shall be issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an *ex-parte* decision shall be taken against the absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such Government servant."**



6. The respondents have not been able to furnish in their reply any proof of proceedings conducted under Rule 9 of the said rules. The appellant has submitted that he filed departmental appeal on 05.06.2017 against the

**ATTESTED**

  
**EXAMINER**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**



(7)

dismissal order dated 09.05.2017 which according to given date was within limitation of thirty days. The said departmental appeal was rejected on 16.11.2017 with no good ground. Then the appellant submitted petition under Rule 11-A of Police Rules, 1975 on 20.11.2017. According to appellant, he submitted an application on 04.03.2019 to the respondent No. 3 regarding Rule 11-A Petition and he got the response that the same was rejected vide order dated 06.03.2018. The appellant in grounds of appeal in this respect stated that the impugned order is *void ab-initio*. So no limitation runs against the void order. As already mentioned before, the appellant was dismissed from service on account of willful absence which was not punishable within the meaning of Police Rules, 1975. He should have been removed from service by *ex-parte* decision within meaning of Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 which was not done in case of the appellant. So, the ground urged by the appellant about limitation is workable.

*[Handwritten signature]*

7. The appellant stated that he while posted at P.S Parhoti Mardan had fallen seriously ill and due to severe illness he was unable to perform duty in respondent department. He annexed the copy of medical documents with his memorandum of appeal. Similar ground was taken by the appellant in his departmental appeal preferred before respondent No. 2. The order of rejection of departmental appeal as annexed with the appeal is silent about any view of the appellate authority on the cause of absence shown as medical ground by the appellant. Same is the case in order dated 06.03.2018 of the revisional authority as annexed with the appeal. With the given position, the appellant has got force in his appeal necessitating its acceptance.


8. For what has gone above, the instant appeal is accepted. The impugned order of dismissal of the appellant from service is set aside and he

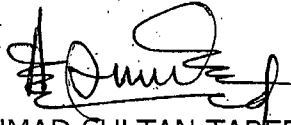
ATTESTED

*[Handwritten signature]*  
 JUDICIAL OFFICER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar


(81)

is reinstated into service. The intervening period shall be treated leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

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

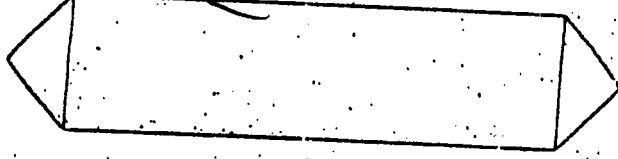
  
(AHMAD SULTAN TAREEN)  
Chairman

ANNOUNCED  
13.01.2022

Certified to be true copy  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 31-3-22  
Number of Words 2000  
Copying Fee 22/-  
Urgent 4/-  
Total 26/-  
Name of Copyist r  
Date of Completion of Copy 31-3-22  
Date of Delivery of Copy 31-3-22

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



اسلام آباد  
لوہیہ

2022ء منجانب

محمد اسماعیل بنام

مورخہ  
مقدمہ  
دعویٰ  
جرم

### باعث تحریر آنکہ

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

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق و این پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز وائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار 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 ہمذ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جہات 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 لکھد یا کہ سندر ہے۔

الرقوم 4 ماہ جولائی 2022ء

کے لئے منظور ہے۔

عدلیہ سٹیٹری مارت  
پتہ: سٹیٹری پتہ، پٹی پون 2220193  
Mob: 0345-9223239

اسماعیل  
BY  
[Signature]

مقام

"A"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

No.

EP No. 386

SB

APPEAL No. .... of 20 22

Muhammad Ismail

Appellant/Petitioner

Versus

DPO Mandan

RESPONDENT(S)

Report (3) Inspector General of Police

Notice to Appellant/Petitioner

KPK Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 05/09/2022 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

For Imp-ment-ion  
Report

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Copy of EP  
is Attached