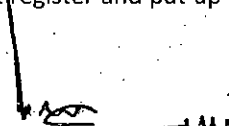




Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 289/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.05.2022	<p>The execution petition of Mr. Sajjad Iqbal submitted today by Roeda 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-	25-5-22	<p>This execution petition be put up before Single Bench at Peshawar on <u>15-6-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	5 <sup>th</sup> June 2022	<p>Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG present.</p> <p>Notices were directed to be issued to the respondents for today but the concerned Clerk had though prepared the notices but not sent. He is warned to be careful in future. Notices be issued to the respondents for the next date. To come up for implementation report on 03.08.2022 before S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

3<sup>rd</sup> August, 2022

1. Learned Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Ahmad Jan, SI for respondents present.

2. Representative of the respondents submitted copy of order OB No. 1938 dated 1.8.2022 bearing endorsement No. 2717-23/PA/SP dated 02.08.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated in service with all back benefits subject to the outcome of the CPLA in the august Supreme Court of Pakistan. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 3<sup>rd</sup> day of August, 2022.*



(Kalim Arshad Khan)  
Chairman

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

Execution Petition No. 289 /2022

In Service Appeal: 647/2018

Sajjad Ahmad Constable resident of Nasir Bagh Kenal Town  
House No. 8 Street No. 8 Tehsil and District Peshawar.

Appellant/Petitioner

VERSUS

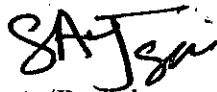
- (1) Capital City Police Officer Peshawar.
- (2) Superintend of Police Headquarter Peshawar.
- (3) Inspector General of Police Khyber Pakhtunkhwa  
Peshawar.

Respondents


Index

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

Dated 16/05/2022

  
Appellant/Petitioners

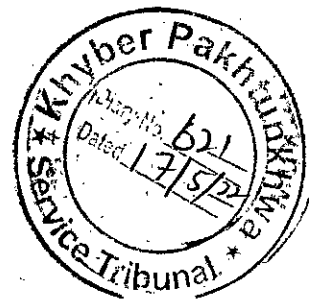
Through

  
Rooeda Khan  
Advocate High Court,  
Peshawar.

①

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

Execution Petition No. 289 /2022



In Service Appeal: 647/2018

Sajjad Ahmad Constable resident of Nasir Bagh Kenal Town  
House No. 8 Street No. 8 Tehsil and District Peshawar.

Appellant/Petitioner

VERSUS

- (1) Capital City Police Officer Peshawar.
- (2) Superintend of Police Headquarter Peshawar.
- (3) Inspector General of Police Khyber Pakhtunkhwa  
Peshawar.

Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE**  
**JUDGMENT DATED: 21/01/2022 OF THIS**  
**HONOURABLE TRIBUNAL IN LETTER AND**  
**SPIRIT.**

.....

**Respectfully Sheweth:**

1. That the appellant/Petitioners filed Service Appeal No. 647/2018 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 21/01/2022; (Copy of Judgment is annexed as Annexure-A).

2. That the Petitioners 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 Petitioners 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.

Dated 16/05/2022

Appellant/Petitioners

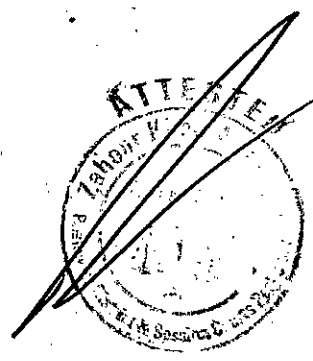
Through

Roeda Khan  
Advocate High Court Peshawar

AFFIDAVIT

Sajjad Ahmad Constable resident of Nasir Bagh Kenal Town House No. 8 Street No. 8 Tehsil and District Peshawar 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

③

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa  
Service Tribunal

In Re Service Appeal 647 /2018

Diary No. 674

Dated 09-5-2018

Sajjad Ahmad Ex-Constable No. 5568 R/o Nasir Bagh Road  
Kanal Town House No. 8, Street No. 8 Peshawar.

-----*(Appellant)*

**VERSUS**

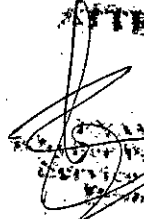
1. Capital City Police Officer Peshawar.
2. Superintendent of Police Head Quarters Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa Peshawar.

-----*(Respondents)*

APPEAL U/S 4 OF SERVICE TRIBUNAL 1974,  
AGAINST THE IMPUGNED ORDER DATED  
26/08/2015 PASSED BY THE RESPONDENT  
NO. 2 COMMUNICATED ON 20/01/2018  
WHEREBY THE APPELLANT WAS  
DISMISSED FROM SERVICE, AND AGAINST  
THE IMPUGNED ORDER DATED 12/04/2018,  
COMMUNICATED ON 14/04/2018, PASSED  
BY THE RESPONDENT NO. 1 WHEREBY  
THE DEPARTMENTAL APPEAL OF THE  
APPELLANT IS REJECTED WITHOUT ANY  
GOOD GROUND.

Filed to-day  
Registrar  
9/5/18

Re-submitted to-day  
and filed.  
Registrar  
16/5/18

**TESTED**  
  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal

(4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 647/2018

Date of Institution ... 09.05.2018

Date of Decision ... 21.01.2022

Sajjad Ahmad Ex-Constable No. 5568 R/o Nasir Bagh Road Kanal Town House No. 8, Street No. 8, Peshawar. ... (Appellant)

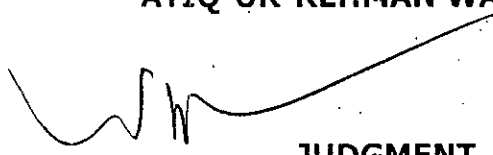
VERSUS

Capital-City Police Officer Peshawar and others. ... (Respondents)

Roeeda Khan,  
Advocate ... For Appellant

Muhammad Adeel Butt,  
Additional Advocate General ... For respondents


**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQ-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**



JUDGMENT

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are

that the appellant while serving as Constable in Police Department, was charged in FIR Dated 19-07-2014 U/S 17(3) Haraba in Police Station Mardan and was arrested. The appellant was proceeded departmentally and was ultimately dismissed from service vide order dated 26-08-2015. The appellant was acquitted of the criminal charges vide judgment dated 18-01-2018 and after acquittal, the appellant filed departmental appeal, which was rejected on 12-04-2018, hence the instant service appeal with prayers that the impugned orders dated 26-08-2015 and 12-04-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

**ATTESTED**  
  
Secretary  
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 was acquitted of the same charges, upon which he was dismissed from service, hence there remains no ground to maintain such penalty; that respondents were required to suspend the appellant as per Police Rules, 1934 and to wait for conclusion of the criminal case, but the respondents without waiting for conclusion of the criminal case, dismissed the appellant in an arbitrary manner; that the impugned order and attitude of the respondents department is in sheer violation of Article 4, 25 and 38 of the Constitution; that the impugned order was passed without fulfilling the requisite formalities; that the appellant was condemned unheard and has not been treated in accordance with law.

03. Learned Additional Advocate General for the respondents has contended that upon registration of FIRs against the appellant, the appellant went in hiding and remain fugitive from law for some time, who later on was arrested by police. The appellant was proceeded departmentally and was awarded with major punishment of dismissal from service; that proper procedure was adopted by issuing charge sheet/statement of allegation to the appellant; that proper inquiry was conducted against the appellant and the appellant was afforded appropriate opportunity of defense, but the appellant did not opt to be associated with departmental proceedings, hence he was proceeded ex-parte; that the appellant filed departmental appeal with delay of almost two years and six months, which is badly time barred; that the appellant though acquitted of the criminal charges but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other; that the appellant has been treated in accordance with law and was awarded with appropriate punishment after fulfillment of all the codal formalities.

ATTACHED  
BY  
Sd/-  
Joint Secretary to Government  
Service Tribunal



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

05. Record reveals that the appellant being involved in case FIR, was proceeded departmentally in absentia as the appellant was in jail and was acquitted from the criminal charges vide judgment dated 18-01-2018 but before his acquittal from criminal charges, the appellant was dismissed on 28-02-2014, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry, as he was proceeded against in absentia. To this effect, 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, 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.

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal

07. The criminal cases were decided in favor of the appellant and the appellant was acquitted of the criminal charges. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. Supreme Court of Pakistan in its judgment reported as PLD 2003 SC 187 have held that where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved by the competent court of law and resulted in acquittal, would be entitled to be re-instated in service. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed. Accused civil servant in case of his acquittal was to be considered to have committed no offense because the criminal court had freed/cleared him from the accusation or charge of crime – such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period. Reliance is placed on 1998 SCMR 1993 and 2007 SCMR 537.

ATTESTED

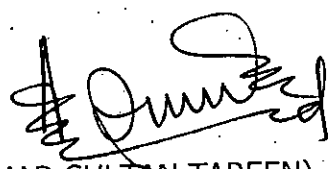
EXAMINER  
Cybernetics  
Service Tribunal


3

08. We are also mindful of the question of limitation, as the appellant filed departmental appeal with considerable delay after earning acquittal from the criminal charges leveled against him, The Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reasons including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

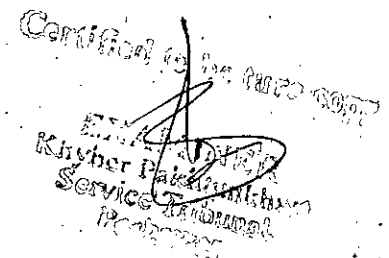
09. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.




ANNOUNCED  
21.01.2022

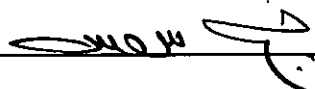
  
(AHMAD SULTAN TAREEN)  
CHAIRMAN


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

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بار کونسل / ایسوسی ایشن نمبر:				
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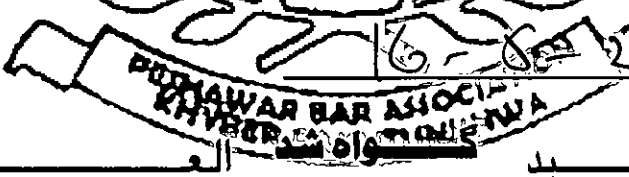
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	مورخہ:
	جرم:
	تھانہ:

**باعث تحریر آنکہ**

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

آن مقام  کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا مکمل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرمانے اور فیصلہ بر حثالث و فیصلہ بر خلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از جرم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل انگریزی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ مانگنے کے لئے اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور ان کا ساختہ پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانباً اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المقام  کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔



## ORDER

Ex-Constable Sajjad Ahmad No.5568 was awarded major punishment of dismissal from service by the then SP HQrs vide OB No.3213 dated 26.08.2015 on the charges of involvement in criminal case vide FIR No.752 dated 19.07.2014 u/s 17(3) Haraba PS City Mardan & absented from lawful duty w.e.f 05.09.2014 to 26.08.2015 (11-months & 14-days).

In this regard he was filed departmental appeal before W/CCPO against above punishment orders which was rejected/filed by the then CCPO, Peshawar vide No.429-34/PA dated 12.04.2018.

Ex-Constable Sajjad Ahmad No.5568 has submitted an application along-with court Judgment, wherein the Hon'able Service Tribunal ordered that **"The instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits."**

In light of the Tribunal Judgment, DSP Legal opinion & kind approval of W/CCPO, Ex-Constable Sajjad Ahmad No.5568 is hereby conditionally re-instated in service with all back benefits subject to the decision of CPLA which is still subjudice in the Apex Court.

  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

OB. NO. 1938 / Dated 1/18 /2022

No. 2717-23/PA/SP/dated Peshawar the 2/8 /2022

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. Pay Office,
4. OASI, CRC & FMC along-with complete departmental file.
5. Officials concerned.