


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 611/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.10.2022	<p>The execution petition of Mr. Adnan Sami submitted today by Syed Noman Ali Bukhari 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  REGISTRAR</p>

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

Execution Petition No. 611 /2022
In Service Appeal No.5789/2021

Adnan Sami

V/S

Police Deptt:

I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-06
3.	Copy of order	-B-	07
4.	Vakalat Nama	-----	08

Adnan Sami
PETITIONER
Adnan Sami

THROUGH:

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT
&
Uzma Syed
(UZMA SYED)
ADVOCATE, PESHAWAR

Cell No: 0306-5109438

(1)

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

Execution Petition No. 611 /2022 Khyber Pakhtunkhwa
Service Tribunal
In Service Appeal No.5789/2021

Diary No. 1000

Dated 14-10-2022

Adnan Sami, EX- Constable, 6654,
SSU (CPEC), CCP Peshawar.

petitioner

VERSUS

1. The Inspector General of Police, KPK, Peshawar.
2. The Deputy Inspector General of Police, Operation & SSU (CPEC) KP, Peshawar.
3. The Superintendent of Police Admin/HQrs, SSU (CPEC), KP, Peshawar.
4. The Superintendent of Police HQrs, KP Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 22/11/2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No.5789/2021 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 22-11-2021. The Honorable Tribunal is kind enough to accept the appeal vide judgment dated 22-11-2021 as prayed for. **(Copy of judgment is attached as Annexure-A).**
3. That the respondent deptt reinstated the appellant in to service but not as per spirit of judgment. **Copy of the order is attached as annexure-B.**

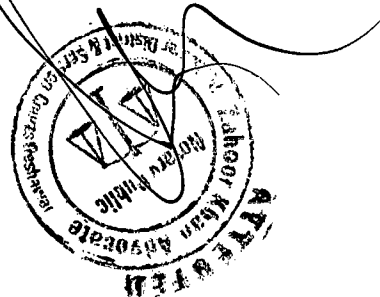
4. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 22-11-2021.
5. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implemented the same in letter and spirit.
7. 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 22-11-2021 this august Tribunal in letter and spirit. Further be directed to modify the order dated 17/02/2022 as per judgment. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

Adnan Sami
PETITIONER
Adnan Sami

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.



AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

Adnan Sami
DEPONENT

4 (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5789/2021

Date of Institution ... 20.05.2021

Date of Decision ... 22.11.2021



Adnan Sami, Ex-Constable, 6654, SSU (CPEC), CCP Peshawar.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and three others. ... (Respondents)

Syed Noman Ali Bukhari,
Advocate

... For Appellant

Mr. Noor Zaman Khattak,
District Attorney

... For Respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant, while serving as constable was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 01-01-2021. Feeling aggrieved, the appellant filed departmental appeal dated 26-01-2021 to Provincial Police Officer, which was returned vide order dated 03-02-2021 with remarks to prefer such appeal to the first appellate authority. The appellant filed another appeal dated 03-02-2021, but the same was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 01-01-2021 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

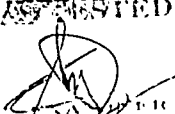
MEMBER (EXECUTIVE)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

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02. Learned counsel for the appellant has contended that the impugned order dated 01-01-2021 is against law as it has been passed by an incompetent authority, therefore not tenable in the eye of law. Reliance was placed on 2007 PLC (CS) 85 and 2007 PLC (CS) 132; that no reason whatsoever, was recorded to dispense with regular inquiry, which is violation of law and rule; that the appellant was dismissed without observing the mandatory provisions of law as the appellant was not afforded opportunity of personal hearing, thus the appellant was kept deprived of the right to defend his cause; that absence of the appellant was once treated by accepting his medical certificates and his two months absence was treated as leave on medical grounds, whereas the remaining two months were treated as leave without pay vide order dated 31-12-2020; that inspite of treatment of his absence the appellant was dismissed from service on 01-01-2021 under the lame excuse that the order dated 31-12-2020 was not received well in time, which is evident from record; that the appellant has been condemned in violation of Audi Alterum Paltrum and has not been treated in accordance with law.

03. Learned District Attorney for the respondents has contended that the appellant was proceeded against on account of his willful absence from duty; that a proper inquiry was conducted by the competent authority; that admittedly his absence period was treated on medical grounds by Superintendent of Police Headquarters on 31-12-2021, but the appellant was dismissed from service by SP CPEC vide order dated 01-01-2021, a day after treatment of his leave by SP Headquarter due to the reason that such order of SP Headquarters had not been received in the office of SP CPEC; that the appellant was on the roll of CPEC, hence he was rightly proceeded against by SP CPEC; that the appellant has been treated in accordance with law.


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

ASSTANT

 ASSTANT
 SECRETARY
 SERVICE TRIBUNAL
 DELHI



05. Record reveals that the appellant recruited on the strength of CPEC, but was posted in police lines Peshawar. The appellant was proceeded against on the charges of absence by SP Headquarters and to this effect, charge sheet/statement of allegations as well as show cause notice was served upon the appellant as well as an inquiry officer was also ordered, who also conducted an inquiry and a result thereof, the absence period of the appellant was treated as leave on medical grounds vide order dated 31-12-2020. Simultaneously DIG CPEC also initiated action against the appellant on the same charges and served a simple charge sheet upon the appellant and on the strength of such charge sheet, the appellant was dismissed from service vide order dated 01-01-2021.

06. We have observed that the appellant recruited on the strength of CPEC, but was serving under SP Headquarters. Somehow the appellant was proceeded against by SP Headquarters but his reply was found convincing and his absence was treated on medical grounds, which goes in favor of the appellant; that stance of the appellant was correct and he was actually ill during the absence period. On the other hand, if stance of the respondents is accepted to the effect that the appellant was required to be proceeded against by CPEC authorities, is such a situation, law requires that his case was required to be sent by SP Headquarter to SP CPEC, who was the competent authority for constable, but instead DIG CPEC proceeded against him and issued his dismissal order, who however was not a competent authority for constable and due to the reason, the appellant had filed his departmental appeal to the next higher authority i.e. Provincial Police Officer and upon return of his application, the appellant filed another departmental appeal to the same authority, who had issued his dismissal order, hence the order issued **ATTESTED** to this effect by an incompetent authority comes under the category of Coram non iudice, which is void ab initio and on this score alone, the impugned order is liable to be set at naught. Reliance is placed on 2015 PLC(C.S) 151 Stance of the appellant regarding his illness was already accepted by SP Headquarters, so the

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

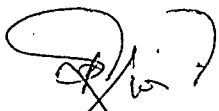
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respondents were required to take sympathetic consideration in his case, which however was not done in case of the appellant. Even otherwise absence on medical grounds without permission of competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214. The appellant was removed from service on a simple charge sheet without conducting a regular inquiry and adopting proper procedure. The Supreme Court of Pakistan in its judgment reported in 2008 SCMR 1369 has 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 and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, 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.


07. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

22.11.2021


 (ROZINA REHMAN)
 MEMBER (J)


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

Certified to be true copy

 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Date of Presentation of Application: 03/12/21
 Number of Words: 1600
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 Date of Completion of Copy: 03/12/21
 Date of Delivery of Copy: 03/12/21



**COMMANDANT
SPECIAL SECURITY UNIT (SSU)
KHYBER PAKHTUNKHWA POLICE**



CENTRAL POLICE OFFICES, S.A.Q ROAD, PESHAWAR CANTT (PH: 0919214056)

No. 1161 - 64 /P.A/SSU,

dated Peshawar the 17 / 02 /2022.


ORDER

Ex-Constable Adnan Sami No.6654 of Special Security Unit (CPEC), Khyber Pakhtunkhwa, Peshawar was awarded major punishment of dismissal from Service by SP Admin & HQrs. For the Commandant SSU (CPEC), KP, vide Order No.06-10/HQrs: SSU, dated 01.01.2021 on the charge of absence from duty.

In this regard the FC filed Department Appeal which was rejected on 06.08.2021.

Being aggrieved with the order Ex-Constable Adnan Sami instituted a Service Appeal No.5781/2021 titled Adnan Sami VS. Provincial Police Office, Khyber Pakhtunkhwa, Peshawar & 03 Other before the Khyber Pakhtunkhwa, Service tribunal, Peshawar was accepted and the court ordered that the impugned order dated 01.01.2021 is set aside and as prayed for the appellant is re-instated into Service. It was ordered by CPO vide No. 640/Legal, dated 31.01.2021 and the Commandant SSU (CPEC), Security of the Worship Places of Minorities) KP, to implement the judgment dated 22.11.2021.

I Zaib Ullah Khan being the competent authority in exercise of powers conferred on me by Police Rules 1934 (amended 2014) hereby reinstate the appellant in service from the date of dismissal (However about his previous absence of 4 months, the order of SP HQrs. Peshawar OB No.3589 dated 31.12.2021 is upheld i.e. Two months are treated as medical leave & two months are treated as leave without pay, similarly his absence period from active service in his platoon is also treated as leave without pay) with immediate effect.


(ZAIB ULLAH KHAN)^{PSP}
Deputy Commandant SSU (CPEC)
Khyber Pakhtunkhwa.

Copy of the above is forwarded for the information to:

1. P.A to Commandant SSU (CPEC), Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa.
3. SP Admin & HQrs, SSU (CPEC), Khyber Pakhtunkhwa.
4. SRC & to all Concerned.

VAKALATNAMA

NO. _____ /20

IN THE COURT OF KP Service Tribunal, Peshawar

----- Adnan Sami -----

Appellant
Petitioner
Plaintiff

VERSUS

----- Police de Ptd -----

Respondent (s)
Defendants (s)

✓
I/WE Adnan Sami

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 14-10/2022

Adnan Sami

(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari

SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC-15-5643

Uzma Syed
Uzma Syed
Advocate