


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 609/2022

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. Husnain Ali Khan submitted today by Syed Noman Ali Bukhari Advocate. It is fixed for implementation report before touring Single Bench at A.Abad 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. 609 /2022
In Service Appeal No.6310/2021

Husnain Ali Khan

V/S

Prison Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-08
3.	Vakalat Nama	-----	09

Husnain
PETITIONER
Husnain Ali Khan

THROUGH:

Syed Noman
SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

Cell No: 0306-5109438

(1)

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

Execution Petition No. 609 /2022
In Service Appeal No.6310/2021

Khyber Pakhtunkhwa
Service Tribunal

Diney No. 1602

Dated 14-10-2022

Mr. Husnain Ali Khan S/o Abdur Rehman
R/o Village Darwaish District Haripur.

petitioner

VERSUS

1. The Inspector General Of Prison Khyber Pakhtunkhwa, Peshawar.
2. The Deputy, Inspector General Of Prison, Khyber Pakhtunkhwa Peshawar.
3. The Superintendent Circle Head Quarter Prison Haripur.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 09.12.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No.6310/2021 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 09/12/2021. The Honorable Tribunal is kind enough to accept the appeal vide judgment dated 09/12/2021 and the appellant was re-instated into service from the date of removal and the intervening period is treated as leave without pay. **(Copy of judgment is attached as Annexure-A).**
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 09/12/2021.

- 4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. 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 pass formal appropriate order.
- 6. 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 09/12/2021 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

Husnain
PETITIONER
 Husnain Ali Khan

THROUGH:

Syed Noman
(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.

Husnain
DEPONENT

ATTESTED

[Signature]
 Azmat Ali Advocates
 Notary Public
 Judicial Complex
 10-10-2021

A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 6310/2021

Date of Institution ... 18.06.2021

Date of Decision ... 09.12.2021

Hasnain Ali Khan S/O Abdur Rehman R/O Village Darwesh District Haripur.
... (Appellant)

VERSUS

The Inspector General Prisons Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

Present:

SYED NOMAN ALI BUKHARI,
Advocate.

--- For Appellant.

MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

AHMAD SULTAN TAREEN
SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER(Judicial)

JUDGEMENT.

AHMAD SULTAN TAREEN, CHAIRMAN:- The appellant invoked the jurisdiction of this Tribunal through the service appeal described above in the heading with the prayer that on acceptance of this appeal, order, dated 10.12.2020 and 18.03.2021 may kindly be set aside and the respondents may further be directed to reinstate the appellant into service with back/consequential benefits.

2. The factual account of appeal in nutshell is that the appellant was appointed as Warder in BS-05 vide order dated 03.10.2019 in the respondent-department; that he was performing his duty and in the mean-time, he was issued an erroneous show cause notice on 03.11.2020 for remaining absent from duty and jail premises; that he was kept in state of lurch with regard to initiation of proceedings brought under



Contd
18.06.21

4

respondents come up with cogent reason supported by tangible material about existence of the impugned order and its having been issued in compliance with due process, the appellant has got a good arguable case, necessitating admission of appeal for regular hearing. The Departmental Appellate authority rejected the departmental appeal on 18.03.2021 which was communicated to the appellant vide Endst. No. 8785-87, dated 18.03.2021, hence the present appeal on 18.06.2021. In term of normal procedure, the appeal appears to be time barred but in view of Section 30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law shall remain frozen. This appeal having been filed after promulgation of the said Act, is not affected by bar of limitation.

The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 01.09.2021 before the D.B.

Appellant Deposited
Security & Process Fee

18/6/21


Chairman

question and as such no order pertaining to his removal from service was communicated to him till filing of the service appeal; that he preferred departmental appeal/representation on 02.03.2021 seeking reinstatement into service, which stood rejected on 18.03.2021. The service appeal was preferred on 18.06.2021. Obviously, the service appeal was not preferred within 30 days after rejection of the departmental appeal on 18.03.2021 and as such it is time barred in the usual course. However, the question of limitation was dealt with in the order passed in pursuance to the preliminary hearing. The findings in this respect as given in order dated 18.06.2021 are copied below:

“The departmental appellate authority rejected the departmental appeal on 18.03.2021 which was communicated to the appellant vide Endst. No. 8785-87, dated 18.03.2021, hence, the present appeal on 18.06.2021. In terms of normal procedure, the appeal appears to be time barred but in view of Section-30 of the Khyber Pakhtunkhwa Pandemic Control and Emergency Relief Act, 2020, the limitation period provide under any law shall remain frozen. This appeal having been filed after promulgation of the said act, is not affected by bar of limitation”

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

04. The respondents in their joint para-wise comments precisely asserted that the appellant from the very beginning of his appointment was not interested in his duty and violating the law and rules as elaborated in Rule No. 1082/1083 of Khyber Pakhtunkhwa Prison Rules, 2018; that in terms of the condition No.7 in his appointment letter, his services are liable to be terminated if his work and conduct remain unsatisfactory during period of probation and his service were found unsatisfactory; that the respondent No.3 issued show cause notice to the appellant due to willful absence from duty for 118 days; that the appellant willfully absented

①

and also avoided appearance during his personal hearing. The final show cause notice dated 13.11.2020, impugned office order dated 10.12.2020 and the letter dated 03.12.2020 addressed to the Superintendent Central Prison Haripur, by respondent No.3 about personal hearing of the individual, enumerated in the said letter, as annexed with the comments of the respondents are available on record. As far as impugned order dated 10.12.2020 is concerned, the same as per averment of the appellant vide para-7 of the service appeal was not communicated to him till filing of the service appeal. The respondents in their reply to the said para did not admit the same as correct and added that the appellant willfully absented and also avoided appearance during his personal hearing. The stance of the respondents if viewed in light of the letter dated 03.12.2020 issued by respondent No.3 for personal hearing of thirteen (13) individuals including the appellant at serial No. 12, there is no remark against the name of appellant whether he was served with the letter of personal hearing or not. Contrary to the stance of respondents in their reply to para-7, it is mentioned in the impugned order issued by respondent No.3 that he passed the said order having considered the charges, evidence of record and report submitted by the Superintendent Central Prison Haripur, the explanation of the accused officials and after affording opportunity of personal hearing. The impugned order in its particular style is also defective as the same pertains to imposition of penalty on thirteen (13) officials by the single order. All other individuals enumerated in the impugned orders except the appellant were censured but the appellant was imposed with the punishment of removal from service and his absence period was treated as Extra Ordinary Leave without pay. We are mindful of the fact that the respondents took the plea of probation period of the appellant but at the same time we are clear in our mind that the appellant has not been proceeded against under the provision of rules relating to probation on account of his purported



7

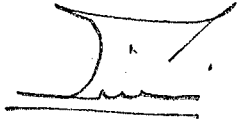
unsatisfactory performance. Rather, the proceedings in their particular style seem to have nexus with efficiency and disciplinary rules. The Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 provide particular mode and manner of the proceedings regarding misconduct etc and also in the matter of willful absence from duty. Needless to say that according to the reply of the respondents, the charge against the appellant was about his willful absence from duty. The disciplinary action in case of willful absence is regulated by Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011. Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 provides a self-contained procedure for action on account of wilful absence as well as the penalty in pursuance to the action taken there-under. Accordingly, it is provided that in case of willful absence from duty by a government servant for seven days or more days, a notice shall be issued by competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of the issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall be published in at least two 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 that absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such government servant. The appellant has been condemned with major penalty of removal from service otherwise then due course of law. Therefore, the impugned order is not tenable under the facts and law as discussed herein above.

05. For what has gone above, the impugned order dated 10.12.2020 is set aside and the appellant is reinstated into service from the said date. The period of absence

⑧

from duty and remaining period till date of this judgment be treated as leave without pay in order to bridge the gap in service. The appeal is accepted in the above term. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.12.2021



(SALAH UD DIN)
MEMBER(J)



(AHMAD SULTAN TAREEN)
CHAIRMAN

9

VAKALATNAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Jehanpur

----- Husnain Ad Khan ----- Appellant
Petitioner
Plaintiff

VERSUS

----- Prison Dept ----- Respondent (s)
Defendants (s)

✓
I/WE Husnain Ad Khan

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 ~~_____~~

Husnain
(CLIENT)

ACCEPTED

Uzma Syed
Advocate

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC-15-5643