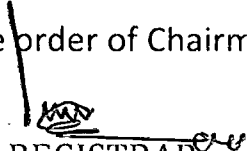


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 626/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.10.2022	<p>The execution petition of Syed Chan Badshah submitted today by Rashid Rauf Swati 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</p> <p> REGISTRAR</p>

①

BEFORE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Execution Petition no. 626/2022

Diary No. 1648

Dated 19-10-2022

Syed Chan Badshah Constable No 2281 District Police Peshawar

(Petitioner)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Capital City Police Officer Peshawar
3. Superintendent of Police Headquarters, Peshawar

(Respondents)

**APPLICATION FOR IMPLEMENTATION OF THE
DECISION/JUDGEMENT DATED 28/01/2022 PASSED
BY THIS HON'BLE TRIBUNAL IN APPEAL NO 742/2015**

Respectfully Submitted

1. That the petitioner has filed the Service Appeal No 742 of 2015 before this Hon'ble Tribunal, which was allowed, vide Judgment dated 28/01/2022. ***Attested Copy Is Annexed***
2. That this Hon'ble Tribunal directed for reinstatement of the petitioner into service.

2

3. That the petitioner has repeatedly approached the respondents and requested them to implement the Judgement of this Hon'ble Tribunal dated 28/01/2022 in Appeal No 742/2015, to reinstate the petitioner into service but of no use.
4. That petitioner is constrained to file the instant petition for implementation of the judgement

IT IS THEREFORE HUMBLY PRAYED THAT THE RESPONDENT'S MAY GRACIOUSLY BE DIRECTED TO IMPLEMENT THE JUDGEMENT OF THE HON'BLE TRIBUNAL AND TO REINSTATE THE PETITIONER INTO SERVICE.

Syed Chan Badshah (Petitioner)

Through

Rashid Rauf Swati

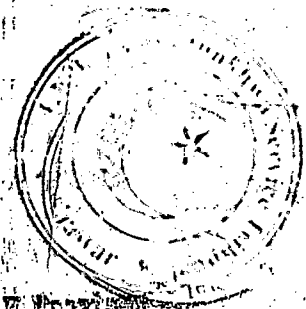
Syed Naveed Ali Shah and Zele Huma Advocates High Court *Rshawar*

Affidavit

Stated on oath that the contents of petition are true and correct. Nothing is misstated or concealed.

Syed Chan Badshah
(Petitioner)

(3)



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

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 774
Dated 15/7/2015

Appeal No. 742/2015

Syed Chan Badshah, Ex- Constable No.2281-District Police,
Peshawar. (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Capital City Police Officer, Peshawar.
 3. Superintendent of Police, Headquarters, Peshawar.
- (Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 07-11.2014, whereby the appellant has been awarded the major punishment of dismissal from service against which the Departmental Appeal of the appellant has not been responded despite the lapse of 90 days statutory period.

Prayer in Appeal: -

On acceptance of this appeal the orders dated 07.11.2014, may please be set-aside and the appellant may be re-instated in service with full back wages and benefits of service.

Handwritten signature and date: 6/7/15

Respectfully Submitted:

1. That the appellant was initially enlisted as constable in the respondents department in the year 2008. Ever since his enlistment the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance.

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Khyber Pakhtunkhwa
Service Tribunal

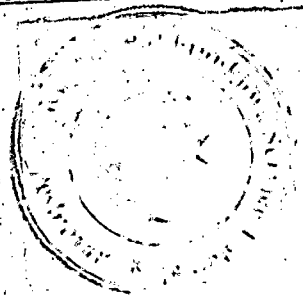
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 742/2015

Date of Institution ... 06.07.2015

Date of Decision ... 28.01.2022



Syed Chan Badshah, Ex-Constable No. 2281 District Police Peshawar. (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. (Respondents)

Rashid Rauf Swati,
Advocate

For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

For respondents

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

CHAIRMAN
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 proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 07-11-2014 and his absence period was treated as leave without pay. Feeling aggrieved, the appellant filed departmental appeal dated 03-03-2015, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 07-11-2014 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that that the appellant

STED has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that no proper procedure has been followed

[Signature]
Member (Executive)

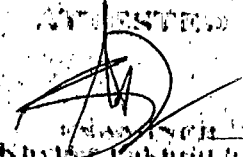
2 (5)

before imposition of major penalty of dismissal from service, as neither the appellant has been served with charge sheet/statement of allegation nor the appellant was associated with proceedings of the departmental inquiry and the whole proceedings were conducted ex-parte, thus the appellant was deprived of the opportunity to defend his cause; that the appellant was not afforded any opportunity of personal hearing, thus the appellant was condemned unheard; that absence of the appellant was treated as leave without pay, hence there remains no ground to maintain such penalty; that the charges leveled against the appellant were never proved against him and the inquiry officer relied on surmises and conjunctures; that the appellant never committed an act or omission which could be termed as misconduct; the absence of the appellant was not willful albeit he was penalized; that the appellant has more than five years spotless service at his credit and the penalty so imposed is harsh, which does not commensurate with gravity of the guilt.

03. Learned Deputy District Attorney for the respondents has contended that the appellant absented himself from lawful duty with effect from 13-01-2013 to 07-02-2013 without permission of the competent authority; that the appellant was served with charge sheet/statement of allegation on the charges of willful absence and proper inquiry to this effect was conducted and the inquiry officer found him guilty of misconduct and recommended him for award of major punishment; the appellant was also issued showcause notice and was called repeatedly to appear before the inquiry officer but the appellant failed to join the inquiry proceedings, hence ex-parte action was taken against the appellant.

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

05. The impugned order would suggest that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very


CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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ground, on the basis of which the appellant was proceeded against, has vanished away and on this score alone, the impugned order is liable to be set aside. Wisdom in this respect derived from the judgment of the august supreme court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. ✓

06. Record reveals that the appellant was dismissed from service on the allegation of absence from duty. The appellant filed departmental appeal, which was also rejected. The appellant has taken the stance that while traveling to PTC Hangu alongwith other staff members, the appellant alongwith 30 other constables were kidnapped by Taliban, who were released after a month on oath that they will quit police job. After release from the captivity of Taliban, the appellant resumed his duty but were again threatened by Taliban of dire consequences, if they did not quit the job and due to such reason the appellant went in hiding for some time and upon return, it was known to him that he has been proceeded against and dismissed from service. Such stance of the appellant has not been commented by the respondents, which can be presumed that stance of the appellant is based on fact, as such stance of the appellant has not been denied by the respondents. Record would suggest that the appellant was proceeded against in absentia and nothing is available on record to suggest that charge sheet/statement of allegation was served upon the appellant. Similarly, no regular inquiry was conducted against the appellant; hence, the appellant was kept deprived of the opportunity to defend his cause. Even otherwise, regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. 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 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

Signature
 Director, Police
 Service Tribunal
 Islamabad

7

be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

07. The appellart was not guilty of charges of gross misconduct or corruption, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

08. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. The appellant has admitted his absence but such absence was not willful, which does not constitute gross misconduct entailing major penalty of removal from service. In view of the foregoing discussion, the instant appeal is partially accepted. The penalty of removal from service is converted into minor penalty of stoppage of increment for one year and the intervening period is treated as leave without pay. Respondents however, are at liberty to conduct inquiry, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

Sd/- Ahmad Sultan Tareem, Chairman
Sd/- Atiq-ur-Rahman Wazir, Member

28/1/22

Khayal
Service Tribunal
Peshawar

2000
22/-
9/-
26/-
28/1/22
28/1/22

قیمت
50 روپے

44734



ایڈوکیٹ: *[Handwritten Signature]*

بار کونسل / ایسوسی ایشن برائے
پشاور Be-12-333
رابطہ نمبر: 85840300

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بجالات جناب: *[Handwritten Name]*

<p>منجانب: <i>[Handwritten Name]</i></p> <p><i>[Handwritten Signature]</i></p> <p>باعت تحریر آئکہ</p>	دعویٰ: <i>[Handwritten: Exclusion]</i>
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

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مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کا روٹی تھانہ
 آن مقام کیلئے *[Handwritten Signature]* کو وکیل مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منطوقی، نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساتھ پر دستخط منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے 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 کر لیں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: *[Handwritten Signature]*
 PESHAWAR BAR ASSOCIATION
 KHYBER PAKHTUNKHWA

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

[Handwritten Signature]