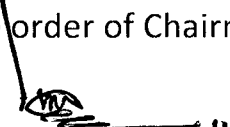


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 671/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.11.2022	<p>The execution petition of Mr. Adnan Khan submitted today by Mr. Mir Zaman Safi 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>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 671 /2022
In

Appeal No.458/2018

ADNAN KHAN

VS


POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	1- 2.
2-	Affidavit	3.
3-	Judgment	A	4- 7.
4-	Order dated 22.06.2022	B	8.
5-	Order sheet	C	9- 10.
6-	Vakalat nama	11.

PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE
MOBILE NO.0333-9991564
0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 671 /2022
In

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1899

Appeal No.458/2018

Dated 10-11-2022

Mr. Adnan Khan S/O Mumtaz Ali,
R/O Mohallah Saleem Khan Dheri, Village Saleem Khan, Mardan.

.....APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer, Mardan Region, District Mardan.
- 3- The District Police Officer, District Mardan.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 14.01.2022 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 458/2018 before this august Service Tribunal against the impugned dismissal order dated 30.01.2015.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 14.01.2022 and was decided in favor of the petitioner vide judgment dated 14.01.2022 with the view that *"In view of the situation, we are inclined to partially accept the appeal. The appellant is re-instated in service by converting the major penalty of his dismissal into minor penalty of stoppage of two increments. The intervening period is treated as leave of the kind due"*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 14.01.2022 the petitioner submitted the same alongwith an application before the respondents for implementation but the respondents were not willing to do so.
- 4- That the petitioner feeling aggrieved filed execution petition before this august Tribunal and during the pendency of aforementioned execution petition the respondent department partially implemented the judgment of this Honorable Tribunal by conditionally re-instated the petitioner vide order dated 22/06/2022

while the remaining portion regarding back benefits has not been implemented. Copy of the order dated 22/06/2022 and order sheet are attached as annexure.....**B & C.**

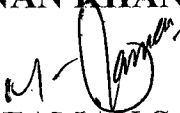
- 5- That it is pertinent to mention that the respondent department issued the order dated 22/06/2022 only to the extent of reinstatement which is against the spirit of the judgment of this august Tribunal dated 14.01.2022.
- 6- That the petitioner has no other remedy but to file this implementation petition.

It is, therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to also implement the remaining portion of the judgment regarding back benefits passed by this august Tribunal vide dated 14.01.2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER


ADNAN KHAN .

THROUGH:


**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2022

In

Appeal No.458/2018

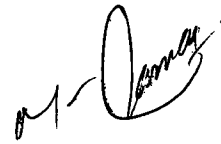
ADNAN KHAN

VS

POLICE DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



MIR ZAMAN SAFI
ADVOCATE

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



Service Appeal No. 458 /2018

Adnan Khan S/o Mumtaz Ali
R/o Mohallah Saleem Khan Dheri,
Village Saleem Khan, Tehsil & District Mardan
Ex-Constable Police Department, K.P, District Mardan

Dist. No. 187
Date 9-2-2018

.....Appellant

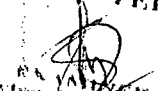
VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Inspector General of Police, Police Department, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Mardan/
Regional Police Officer, Mardan.
4. District Police Officer, Mardan.

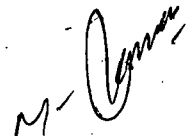
.....Respondents

**SERVICE APPEAL U/S 4 OF SERVICE
TRIBUNAL ACT, 1974 AGAINST FINAL
APPELLATE ORDER DATED
26.01.2017, PASSED BY RESPONDENT
NO.2 (RECEIVED ON 24.01.2018
THROUGH HIS OWN EFFORTS)
PASSED ON DEPARTMENTAL APPEAL
UNDER RULE 11-A OF KP POLICE
RULES, 1975 AND ORDER DATED
13.02.2015 PASSED BY RESPONDENT
NO.3 AND ORDER DATED 30.01.2015
PASSED BY RESPONDENT NO.4,**

ATTESTED


KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

ATTESTED



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 458/2018

Date of Institution ... 09.02.2018

Date of Decision ... 14.01.2022



5

Adnan Khan S/o Mumtaz Ali R/o Mohallah Saleem Khan Dheri, Village Saleem Khan, Tehsil & District Mardan Ex-Constable Police Department, K.P, District Mardan. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others. ... (Respondents)

Naila Jan, Advocate ... For Appellant.

Muhammad Rasheed, Deputy District Attorney ... 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 was appointed as Constable vide order dated 02-08.2009. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 30-01-2015, against which the appellant filed departmental appeal, which was also rejected vide order dated 12-03-2015. The appellant filed revision petition, which was also rejected vide order dated 26-01-2017 communicated to the appellant on 24-01-2018, hence the instant appeal with prayers that the impugned orders dated 12-03-2015 and 30-01-2015 and 26-01-

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal

ATTESTED

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2017 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 the appellant has not been treated in accordance with law, as the appellant has not been associated with proceedings of the inquiry; that absence of the appellant was not intentional, rather due to compelling reason of illness of his wife, which was not taken into consideration; that the appellant has been proceeded against ex-parte, thus was deprived of the opportunity to defend his cause; that absence on medical ground does not constitute gross misconduct entailing major penalty of dismissal from service.

03. Learned Deputy District Attorney for the appellant has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority; that plea of the sickness of his wife is baseless, non-reliable and is false, hence denied; that proper departmental inquiry was conducted against the appellant and the appellant was afforded opportunity to prove his innocence but the appellant did not join the inquiry proceedings; that departmental appeal as well as revision petition of the appellant were considered but were rejected being devoid of merit; that the instant appeal of the appellant being devoid of merit may be dismissed.

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

05. Record reveals that the appellant was served with charge sheet/statement of allegation dated 02-12-2014, to which he responded and presented medical prescription in respect of his wife, who reportedly was having issue in her spinal cord. The inquiry officer in his report has taken into consideration illness of his wife and also checked medical prescriptions, but he neither termed it fake nor sent it for verification but reiterated that the appellant was supposed to inform

ATTESTED

M. Bama

ATTESTED
EXAMINER
K. S. Srinivasan
Deputy District Attorney
Service Tribunal
Chennai

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the authorities well in time about such illness, hence his absence amounts to misconduct, which deserve to be awarded with major punishment. It is a well settled legal proposition that leave on medical grounds even without permission of the competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR-214. The inquiry officer was supposed to take a lenient view, instead he recommended him for major punishment, which appears to be harsh. We have observed that the appellant has not been treated in accordance with law, as no final show cause notice was served upon him, thus deprived him of the opportunity to prove his innocence. The disciplinary proceedings were also conducted in absence of the appellant and the appellant was not associated with proceedings of the inquiry, thus the respondents skipped a mandatory step prescribed in law.

06. We are of the considered opinion that absence of the appellant was not willful but due to illness of his wife and stance of the appellant was considered to some extent by the inquiry officer, but neither such stance of the appellant was regretted nor the medical prescriptions were sent for verification, despite he was recommended for major penalty, which to our opinion appears to be harsh.

07. In view of the situation, we are inclined to partially accept the appeal. The appellant is re-instated in service by converting the major penalty of his dismissal into minor penalty of stoppage of two increments. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.01.2022

ATTESTED
M. Qureshi

(Signature)
(AHMAD SULTAN TAREEN)
CHAIRMAN

(Signature)
TIQ-UR-REHMAN WAZIR)
MEMBER (E)

EMAD DINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Certified to be true copy

**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0917-9230109 & Fax No. 0917-9210111
Email dpo_mardan@yahoo.com

2022

ORDER

Consequent upon the filing of execution petition No. 293/2022 by Ex-Constable Adnan No. 3081 for the implantation of the order of Honorable Service Tribunal, KP announced on 27.01.2022 in service appeal No. 458/2018, "the major penalty of dismissal from service awarded to Ex-Constable Adnan No.3081 vide this office OB No. 188 dated 30.01.2015 is set aside and he is conditionally re-instated in service on acquisition of bail bonds and treating his intervening period as leave of the kind due with immediate effect subject to the outcome of CPLA after the Scrutiny Committee of Law department has determined the instant case fit for filing CPLA in the meeting held on 27.04.2022".

Case No. 1352

Dated. 22/06/2022

District Police Officer
A Mardan

⁵⁶⁴
No. 3595-1/EC, dated 23/6/2022.

Copy for information to the:-

1. Superintendent of Police, Operations, Mardan.
2. District Accounts officer, Mardan.
3. DSP/Legal
4. DSP/HQr:
5. PO.
6. PA.
7. OSI

ATTESTED

M. Javed

WAKALAT NAMA

BEFORE THE Khyber Pakhtunkhwa Service
Tribunal, Peshawar

OF 2022

Adnan Khan

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt:

(RESPONDENT)
(DEFENDANT)

I/We Adnan Khan

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, High Court, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. / /2022


CLIENT


ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0333-9991564
0317-9743003