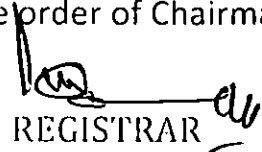


Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 578/2022

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1     | 27.09.2022                | <p>The execution petition of Mr. Hazrat Younas submitted today by Mr. Janat Hussain Advocate. It is fixed for implementation report before touring Single Bench at Swat on <u>2-1-2023</u>. 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><br/>REGISTRAR</p> |

*no. led*  
*24.11.2022*

BEFORE THE HON'BLE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

B.P. No. 578/2022

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1450

Hazrat Younas S/o Muhammad Rahim

R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla

Dated 27/9/2022

Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla

(Appellant)

V E R S U S

District Officer,

Elementary & Secondary Education, District Shangla

(Respondent)

Application for implementation of order and  
judgment dated 20.01.2022 of this hon'ble  
tribunal.

Respectfully Sheweth,

- 1) That the appellant had filed the above noted service appeal before this honorable tribunal.
- 2) That above mentioned Service Appeal bearing No. 14223/2020 was dispose of by this hon'ble tribunal vide order and judgment dated 20.01.2022. (Copy of order dated 20.01.2022 is attached)
- 3) That on 20.05.2022 an application vide Diary No. 1430 dated 01.06.2022 the appellant provided the order of this hon'ble tribunal to the District Officer, Elementary &

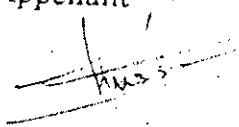
Secondary Education, District Shangla for the implementation the order of this hon'ble court and release of pension and other pensionary benefits to the appellant / petitioner.

- 4) That again on 09.06.2022 vide Diary No. 1519 the appellant provided the order of this hon'ble tribunal to the District Officer, Elementary & Secondary Education, District Shangla for the implementation the order of this hon'ble tribunal, but of no avail.
- 5) That the respondent / District Officer, Elementary & Secondary Education, District Shangla with malafide intention turned deaf ear to the request of the appellant.
- 6) That the appellant is left with no option but to approach this hon'ble tribunal for implementation of the order of this hon'ble tribunal.

It is, therefore, very humbly requested on acceptance of this petition, the above said order may kindly be implemented. Any other relief which this hon'ble tribunal deems fit may also be granted additionally in favour of the petitioner.

Appellant

Through

  
Janat Hussain  
Advocate High Court,  
Peshawar

Dated: 27.09.2022

BEFORE THE HON'BLE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

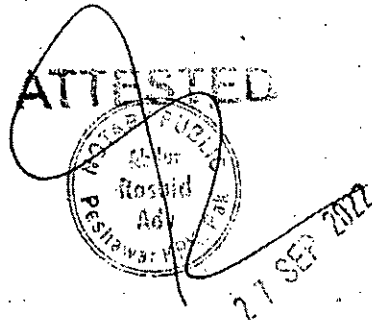
AFFIDAVIT

I, Hazrat Younas S/O Muhammad Rahim R/O Jamra Lilawnai, Tehsil Alpuri District Shangla, do hereby solemnly affirm and declare on oath that the contents of this implementation application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable tribunal.

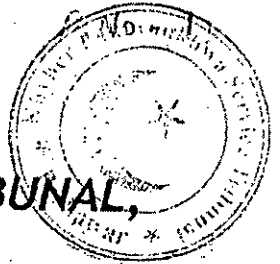


Hazrat Younas

1550144837819



BEFORE THE HONOURABLE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR



Service Appeal No. 14223 / 2020 Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 13960

Dated 3/11/2020

Hazrat Younas S/o Muhammad Rahim

R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla

Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla

(Petitioner)

**V E R S U S**

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar
- 2) Director Elementary & Secondary Education, Peshawar
- 3) ~~Joint~~ Coordination Officer / DC District Shangla
- 4) District Officer, Elementary & Secondary Education, District Shangla

(Respondents)

Appeal Under Section 4 of the KP  
Service Tribunal Act, 1974 against  
the order dated 25.01.2010, whereby  
the order of dismissal from service  
has been passed against the  
appellant and against the order  
dated 16.10.2020 passed by  
respondent No. 2 whereby the  
departmental appeal of the  
appellant was dismissed.

Filed to-day


Registrar

3/11/2020

Registrar

Re-submitted to-day

ATTESTED

  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 14223/2020

Date of Institution ... 03.11.2020

Date of Decision ... 20.01.2022



Hazrat Younas S/o Muhammad Rahim R/o Jamra Lilawnai, Tehsil Alpuri, District Shangla Ex-T.T. BPS-07 at GMS Sheshan Lilawnai District Shangla.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar and others.

(Respondents)

Appellant

In Person

Muhammad Adeel Butt,  
Additional Advocate General

For respondents

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

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

ATTESTED

*[Signature]*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

JUDGMENT

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

that the appellant while serving as a Theology Teacher in Education Department, was proceeded against on the charges of misconduct and was ultimately dismissed from service vide order dated 25-01-2010. The appellant filed departmental appeal followed by Service Appeal No. 1411/2019, which was decided vide judgment dated 14-07-2020, whereby case of the appellant was remanded to the respondents to dispose of his departmental appeal within two months. The respondents dismissed his departmental appeal vide order dated 16-10-2020, hence the instant service appeal with prayers that the impugned orders dated 25-01-2010 and 16-10-2020 may be set aside and the appellant may be reinstated in service with all back benefits OR as an alternative, the appellant may be awarded pensionary benefits.


02. The appellant argued the case in person and 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 has not been treated in accordance with law, as such, the respondents violated the relevant provisions of the Constitution; that no showcause notice was served upon the appellant nor any inquiry has been conducted into the matter; that the appellant has been deprived of the opportunity to be heard in person; that the allegations so leveled is not supported by any evidence nor the appellant is nominated in any criminal case.

03. Learned Additional Advocate General for the respondents has contended that the appellant was brother of the local Taliban commander Muhammad Alam, who was actively involved in anti-state activities; that the appellant reportedly was also involved in anti-state activities as well as absconding from duty; that the appellant reportedly provided shelter to Taliban and was active supporter of Taliban; that as per policy of the provincial government, all government employees, who were involved in anti-state activities were proceeded against and were dismissed from service; that appellant was also one amongst those, who was also proceeded against and was ultimately dismissed from service; that the appellant was properly proceeded against by issuing him charge sheet/statement of allegation, but he failed to prove his innocence; that upon direction of this tribunal, departmental appeal of the appellant was examined but was found meritless; hence was rejected.

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

05. Record reveals that a meeting was held in home department on 11-12-2009, whereupon, it was decided that based on the available data collected by the agencies regarding government employees, who reportedly were in anti-state activities, such information shall be forwarded to concerned offices for carrying out departmental proceedings against defaulting officials and such instructions

ATTESTED

  
ATTESTED  
11-12-2009

were circulated vide letter dated 15-12-2009. The respondent department vide its letter dated 23-12-2009 endorsed such instructions to their lower formations and in case of the appellant to Executive District Officer Education Shangla. Placed on record is charge sheet/statement of allegation containing the allegations, that the appellant being brother of commander Muhammad Alam and supported Taliban in district Shangla by providing them shelter and presently absconding. Based on such allegations, the appellant was dismissed from service vide order dated 25-01-2010 without conducting any inquiry and without proving such allegations leveled against him. The respondents only relied on the information provided by intelligence agencies. Mere being brother of a Taliban commander is not enough for awarding major punishment of dismissal, as the appellant in his departmental appeal as well as in service appeal has categorically denied such allegation that the appellant had neither any relation with his brother nor was associated with him in anti-state activities, rather he has submitted his attendance register that the appellant was regularly attending to his duty, but upon receipt of his name from home department, the appellant was declared as absconder, the appellant however was performing his duty. These were the points, which would have been resolved by holding a regular inquiry, but the respondents proceeded him without adhering to the method prescribed in law. It was inalienable right of the appellant to be given a chance to defend his cause, which however was denied to the appellant. The Supreme Court of Pakistan in its judgment reported as 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.

06. The allegations so leveled against the appellants are mainly based on source report, but it was responsibility of the inquiry officer to prove the charges



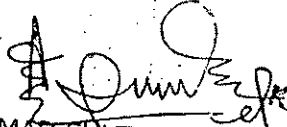
levelled by the complainant, but no such inquiry was conducted, nor proper charges were framed to be served upon the appellant as per law. The authorized officer failed to frame the proper charge and communicate it to the appellant's alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743.


07. The appellant was not afforded opportunity to defend his cause, hence he was condemned unheard. It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer merely relied on the report submitted by intelligence agencies to home department and no solid evidence against the appellant. Mere reliance on hearsay and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law.

08. We are of the considered opinion that the appellant has not been treated in accordance with law, hence keeping in view the above discussion, the instant appeal is accepted and the impugned order is set aside and the appellant is allowed pensionary benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
20.01.2022

Certified to be true copy

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

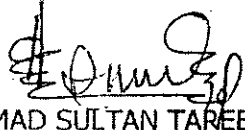
Hyderabad  
Service Tribunal  
Peshawar

ORDER  
20.01.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted and the impugned order is set aside and the appellant is allowed pensionary benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
20.01.2022



(AHMAD SULTAN TAREEN)  
CHAIRMAN



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




# REGISTER OF LETTER RECEIVED

رجسٹرڈ اک وصولی

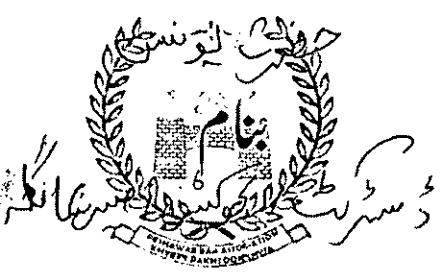
| Serial No. | Month & Date  | Letter | From Whom Received | Subject             | File No.                               | Remarks      |
|------------|---------------|--------|--------------------|---------------------|--|--------------|
| نمبر       | مہینہ و تاریخ | نمبر   | تاریخ              | بھیجے والے کا نام   | مضمون                                  | فائل نمبر    |
| 1429       | 11/12         | 1431   | 25/5               | SDED (M) Pawan      | Application E/leave                    | SAK          |
| 1430       | cb            | NIL    | NIL                | نیوٹیفیکیشن سائڈ 71 | Relievement/Pension                    | عزیز علی خان |
| 1431       | cb            | 1930   | 31/5               | DED (F) Shogla      | Appointment As P.S.T.                  | گورنر        |
| 1432       | cb            | 9253   | 26/5               | DC Shogla           | non Availability Certificate           | (Per)        |
| 1433       | cb            | 3896   | 30/5               | SDED (M) Pawan      | proposed for Adjustment/transfer, P.S. |              |
| 1434       | cb            | 3997   | 30/5               | SDED (M) Pawan      | Enquiry Report, P.S. Shogla            | Chak         |
| 1435       | cb            | 4004   | 3/5                | SDED (M) Chak       | Inquiry Report                         | Chak         |
| 1436       | cb            | 4020   | 31/5               | SDED (M) Pawan      | Explanation                            | گورنر        |
|            |               |        | 31/5               | SDED (M) Pawan      | Warning                                | گورنر        |

... D.A. ...



|   |   |  |   |
|---|---|--|---|
| 41580                                   |  |  |  |
| ایڈوکیٹ:                                | پشاور بار ایسوسی ایشن، خیبر پختونخواہ   |  |   |
| بار کونسل / ایسوسی ایشن نمبر: Be 167222 |   |  |   |
| رابطہ نمبر: 0313-9605353                |   |  |   |

بعدالت جناب: سروس ٹریبونل پشاور

|  |                      |
|--|----------------------|
| مخاطب: اسرار علی   | دعوی: Implementation |
|  | علت نمبر: —          |
|  | مورخہ: 27-9-2022     |
|  | جرم: —               |
|  | تھانہ: —             |
| <b>باعث تحریر آنکہ</b>   |                      |

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
آن مقام پر کیلئے جنت حسین ایڈووکیٹس کو دیل مقرر  
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی 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 تقدیق  
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مستوفی، نیز  
دائرہ کرنے اپیل نگرانی 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 یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
مقرر شدہ کو کوئی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا سہاختہ پر داخلہ 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 یا بندہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سدر ہے

المقوم: 

العراق: پشاور کے لیے منظور ہے

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