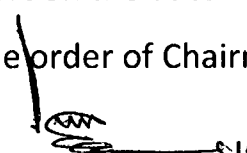


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 709/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.12.2022	<p>The execution petition of Mr. Ehtisham Nawaz submitted today by Mr. Muhammad Arshad Khan Tanoli Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____.</p> <p>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 PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

E. P. No. 709/2022

CM No. _____ -A/2022

IN

Service Appeal No.12097/2020

Ehtisham Nawaz son of Muhammad Nawaz, resident of House No.1455,
Mohallah Khota Kehal, Tehsil & District Abbottabad.

...PETITIONER

VERSUS

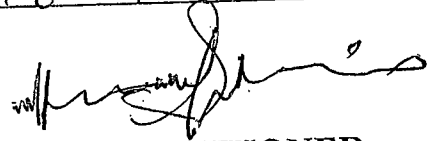
Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal
Affairs, Khyber Pakhtunkhwa, Peshawar & Others.

...RESPONDENTS

APPLICATION

INDEX

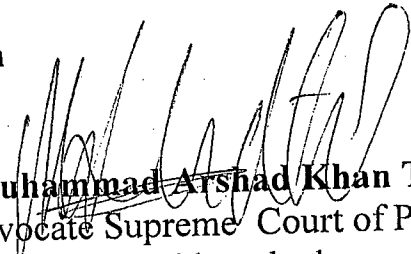
S.#	Description	Page No.	Annexure
1.	Implementation Application	1 to 4	
2.	Copy of Service Appeal	5-12	"A"
3.	Copy of judgment dated 23/09/2022 of this Honourable Tribunal	13-16	"B"
4.	Copy of application of appellant	17	"C"
5.	Wakalatnama	18	



...APPLICANT /PETITIONER

Dated: _____/2022

Through


(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
Abbottabad

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

CM No. _____ -A/2022

IN

Service Appeal No.12097/2020

Ehtisham Nawaz son of Muhammad Nawaz, resident of House No.1455,
Mohallah Khota Kehal, Tehsil & District Abbottabad.

...PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Prison Pakhtunkhwa, Peshawar.
3. Additional Inspector General Prison Pakhtunkhwa, Peshawar.
4. Superintendent Circle (Eastern) Headquarter Prison, Haripur.

...RESPONDENTS

SERVICE APPEAL

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 23/09/2022 IN SERVICE
APPEAL NO.2097-A/2022 FOR REINSTATEMENT IN
SERVICE OF THE PETITIONER/APPELLANT.**

Respectfully Sheweth:-

That the facts forming the backgrounds of the instant
application are arrayed as under;-

1. That respondents' department illegally removed the appellant from service on 24.08.2020 which was challenged by the petitioner before this Honourable tribunal through service Appeal No.12097/2020. Copy of Service Appeal is annexed as Annexure "A".

2. That, this Honourable Tribunal accepted the service appeal of the appellant and set-aside impugned order of major penalty and converted the major penalty into minor penalty of stoppage of one annual increment of one year vide judgment dated 23/09/2022. Copy of judgment dated 23/09/2022 of this Honourable Tribunal is annexed as Annexure "B".

3. That the appellant handed over the judgment dated 23.09.2022 to respondent No.3 vide application dated 05.11.2022. Copy of application of appellant is annexed as Annexure "C".

4. That, respondents' department did not implement judgment dated 23.09.2022 of this Honourable Tribunal which amounts to the contempt of this Honourable Tribunal.

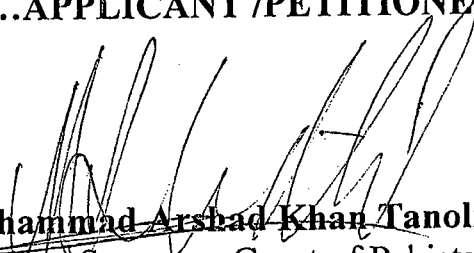
In view of above, it is prayed that respondents may be directed to re-instate the petitioner/appellant, failing which, contempt of court proceedings may be initiated to punished them.



...APPLICANT /PETITIONER

Through

Dated: _____/2022



(Muhammad Arshad Khan Tanoli)
Advocate Supreme Court of Pakistan
Abbottabad

BEFORE THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH

CM No. _____-A/2022
IN
Service Appeal No.12097/2020

Ehtisham Nawaz son of Muhammad Nawaz, resident of House No.1455,
Mohallah Khota Kehal, Tehsil & District Abbottabad.

...PETITIONER

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal
Affairs, Khyber Pakhtunkhwa, Peshawar & Others.

...RESPONDENTS

APPLICATION

AFFIDAVIT

I, *Ehtisham Nawaz son of Muhammad Nawaz, resident of House No.1455,
Mohallah Khota Kehal, Tehsil & District Abbottabad*, do hereby solemnly
affirm and declare that the contents of foregoing application are true and
correct to the best of my knowledge and belief and nothing has been
concealed therein from this Honourable Court.



DEPONENT

P-5

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

Appeal No. _____/2020

Ehtisham Nawaz son of Muhammad Nawaz, resident of House No. 1455
Mohallah Khola Kehal Tehsil and District Abbottabad.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Prison KPK, Peshawar.
3. Additional Inspector General Prison KPK, Peshawar.
4. Superintendent Circle (Eastern) Headquarter Prison Haripur.

...RESPONDENTS

**SERVICE APPEAL UNDER SECTION 4 OF
KPK SERVICE TRIBUNAL ACT, 1974.**

=====

**PRAYER: ON ACCEPTANCE OF THE
INSTANT SERVICE APPEAL, IMPUGNED
REMOVAL FROM SERVICE ORDER NO. 2549
DATED 24/08/2020 AND REJECTION ORDER
NO. 2858/WE DATED 15/09/2020 MAY
GRACIOUSLY TO BE SET ASIDE AND
RESPONDENTS MAY BE DIRECTED TO RE-**

Ehtisham Nawaz

INSTATE THE APPELLANT IN SERVICE WITH EFFECT FROM THE DATE OF REMOVAL FROM SERVICE WITH ALL SERVICE BACK BENEFITS. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE ALLOWED.

Respectfully Sheweth;-

The facts, giving rise to the instant service appeal are arrayed as under;-

1. That the appellant got appointment in the respondent prison as warder, vide appointment order dated 22/01/2015. Copy of appointment order is attached as Annexure "A".
2. That the appellant served the department with complete devotion, dedication and left no stone unturned in the smooth functioning of the prison.

*Amek
Alil*

3. That the appellant was suffering from kidney disease due to severe infection, as a result, the appellant filed application for leave as the appellant was physically unable to serve the prison due to kidney pain. The competent authority did not sanction leave of appellant, therefore. The appellant after verbally informing the concerned officials went to the hospital for his treatment. Copy of discharged certificate of the hospital is attached as Annexure "B".
4. That the appellant resumed duty on 09/04/2020 and submitted his medical description chits for grant of medical leave.
5. That as per revised leave rule 1981, competent authority was supposed to forward the bill to the next higher medical authority to see as to whether the medical treatment/ prescription chits are genuine or otherwise. If this procedure is not adopted then no authority can refuse medical leave.

Attal
MLL

6. That the respondent department without considering the medical certificate, declared the applicant absent from service w.e.f 24/03/2020 to 29/03/2020.
7. That the respondent department conducted a so called inquiry against the appellant regarding his absence from duties. Copy of inquiry report is attached as Annexure "C".
8. That the appellant has been removed from service vide impugned removal from service order No. 2549 dated 24/02/2020. Copy of impugned removal from service order is attached as Annexure "D".
9. That the appellant filled departmental appeal against the impugned order dated 24/08/2020 which has also been rejected by the appellate authority vide impugned rejection No. 2855/WE dated 15/09/2020. Copy of impugned rejection letter is attached as Annexure "E". Hence, the instant service appeal is filled, inter-alia on the following grounds.

*Atticus of
All*

GROUNDS:-

P-9

- a. That the impugned removal from service order of the appellant has been issued without observing legal formalies i.e. without charge sheet and statement of allegations.
- b. That the competent authority only issued show cause notice which was properly replied by the appellant, but the competent authority did not consider the reply to the show cause notice of the appellant and issued removal from service order No. 2549 dated 24/02/2020, which is illegal, against the law and based on conjectures, hypothesis and malafide.
- c. That the period of absence from 24/03/2020 to 29/03/2020 has been converted into into leave with out pay. Therefore, the appellant caused no loss to the public exchequer. The

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punishment of removal from service is harsh and pungent.

- d. That it is settled principle of law that the no employee can be removed from service due to his absence. It is further submitted that the appellant was admitted in Hospital and he cannot be marked absent from duty.
- e. That appeal of the appellant is within the period of limitation. The matter in issue relates to the terms and conditions of service. Hence the Honourable Tribunal has jurisdiction to entertain the instant service appeal.

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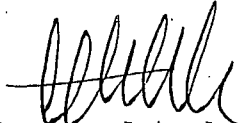
It is, therefore, humbly prayed that on acceptance of the instant service appeal, impugned removal from service order No. 2549 dated 24/08/2020 and rejection order No. 2858/WE dated 15/09/2020 may graciously to be set aside and respondents may be directed to re-instate the

appellant in service with effect from the date of removal from service with all service back benefits. Any other relief which this Honourable tribunal deem appropriate in the circumstances of the case may also be allowed.


...APPELLANT


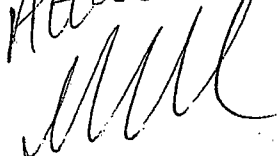
Dated: 14/10 /2020

Through


(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal


Attested



...APPELLANT

P-12

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

Appeal No. _____/2020

Ehtisham Nawaz son of Muhammad Nawaz, resident of House No. 1455
Mohallah Khola Kehal Tehsil and District Abbottabad.

...APPELLANT

VERSUS

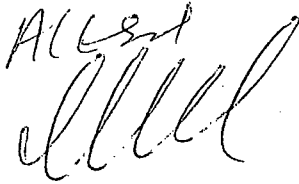
Govt. of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs,
Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Ehtisham Nawaz son of Muhammad Nawaz, resident of House No. 1455
Mohallah Khola Kehal Tehsil and District Abbottabad, do hereby solemnly
affirm and declare that the contents of forgoing appeal are true and correct to
the best of my knowledge and belief and nothing has been concealed therein
from this Honourable Court.

Accepted


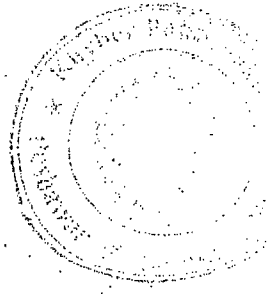
DEPONENT



14/10/2020

Annex-B P-13

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
CAMP COURT AT BOTTABAD



Service Appeal No. 12097/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS. FAREEHA PAUL ... MEMBER(E)

Ehtisham Nawaz S/o Muhammad Nawaz, R/o House No. 1455, Mohallah
Khola Kehal, Tehsil & District Abbottabad.

... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Prison Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General Prison Khyber Pakhtunkhwa, Peshawar.
4. Superintendent Circle (Eastern) Headquarter Prison, Haripur.

... (Respondents)

Mr. Muhammad Arshad Khan Fanoli
Advocate

... For appellant

Mr. Kabir Ullah Khattak
Additional Advocate General

... For respondents

Date of Institution.....15.10.2020
Date of Hearing:.....23.09.2022
Date of Decision.....23.09.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The appeal in hand is instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the impugned order dated 24.08.2020 whereby appellant was removed from service and order dated 15.09.2020, whereby his departmental appeal was rejected. The appellant has prayed that on acceptance of his service appeal, both the impugned orders might be set aside and respondents might be directed to reinstate him in

ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

service from the date he was removed with all back benefits and any other relief this tribunal deems appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as prison warder vide order dated 22.01.2015. He was suffering from kidney disease and hence filed an application for leave as he was unable to serve due to kidney pain. The competent authority did not sanction the leave and therefore the appellant after verbally informing the concerned officials went to the hospital for his treatment. He resumed his duty on 09.04.2020 and submitted his medical descriptions for grant of medical leave. As per revised leave Rules 1981, competent authority was supposed to forward the bill to the next higher medical authority to ascertain whether the medical treatment and prescription documents were genuine or otherwise, but it was not done. The respondent department without considering his medical certificate, declared the appellant absent from duty w.e.f 24.03.2020 to 29.03.2020. An inquiry was conducted and he was removed from service vide impugned order dated 24.08.2020. His absence period from 09.06.2020 to 13.07.2020 was considered as extra ordinary leave without pay. He filed departmental appeal which was rejected by the appellate authority vide impugned order dated 15.09.2020; hence this service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the case and argued that the impugned removal order was issued without observing legal formalities of issuing the charge sheet and statement of allegations. He further argued that the competent authority only issued a show cause notice which was properly responded by the

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appellant but it was not considered and he was removed from service. According to him the appellant was under treatment and admitted in hospital and hence could not be marked absent from duty. He requested for setting aside the impugned orders and reinstating the appellant from the date of his removal from service with all back benefits.

5. The learned Additional Advocate General contended that the appellant absented himself from duty several times without permission of competent authority. He informed that in the present case he had not applied for medical leave. On the question of inquiry he argued that a charge sheet and statement of allegations was issued and a proper inquiry was conducted. The appellant was involved in the inquiry proceedings and when he could not provide satisfactory response, he was removed from service.

6. After hearing the arguments and going through the record presented before us, it is clear that the appellant got ill and remained under treatment at DHQ Hospital Abbottabad. Record presented before us further indicates that he was admitted in the Benazir Bhutto Shaheed Teaching Hospital, Abbottabad on 27.03.2020. In the light of Khyber Pakhtunkhwa Prison Rules 2018, he was bound to give notice to the Superintendent of Jail about the reason of his absence but no such notice or application is available on the record. The statement of allegations attached with the reply of respondents indicates that the appellant deserted himself from duty w.e.f 09.06.2020 till 13.07.2020, which comes to thirty three days. There is a "muafi-nama" (written apology) from the appellant also which is available with the reply in which he has requested for a chance to mend his ways. Instead of giving a thought to it, the competent authority not only imposed major punishment of removal from service but treated the absence period as leave without pay.

APPROVED
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[Signature]

[Signature]

P-16

7. In the light of above discussion, we feel that the punishment of removal from service was too harsh on the appellant keeping in view the fact that he remained under treatment in hospital for his kidney disease. The appeal is, therefore, allowed and the impugned order of major penalty is set aside, with the direction to the respondents to convert the major penalty to minor penalty of stoppage of one annual increment for one year and the absence period to be treated as leave of the kind due. Parties are left to bear their own costs. Consign.

8. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 23rd day of September, 2022.



(KALIM ARSHAD KHAN)
Chairman
Camp Court Abbottabad



(FARDEHA PAUL)
Member (E)
Camp Court Abbottabad

Certified in the true copy
FARDEHA PAUL
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 20/9/22
Number of Words 1600
Filing Fee 48/-
Honorarium 48/-
Date of Receipt of Copy 03/11/22
Date of Delivery of Copy 04/11/22

خدمت جناب سپرنٹنڈنٹ سکرل (المنی) حیدرآباد
درسن ٹریٹمنٹ سینٹر

حرفاً استفسار عالی سرور سے منسلک اہتمام فراہم
حضرہ نوازہ وارثہ در طلبات مندرجہ عدالت سرورس ٹریٹمنٹ سینٹر
ایبٹ آباد حصرہ 2028-29-9-29

جناب عالی، درخواست منسلک عرض ہے

گذشتہ صفحہ منسلک جناب جج عدالت کے مافقت بطور وارڈر ٹریٹمنٹ
حضرہ وارثہ جج عدالت آباد سرورس فراہم در تمام تقاضا منسلک
گردے کی بیماری ترقی ہوئی جو منسلک ایبٹ آباد اور کولمبیا
کے ڈسپنسری میں جو منسلک عدالت مندرجہ صفحہ ٹریٹمنٹ
اور منسلک مندرجہ وارثہ اور منسلک ٹریٹمنٹ درخواست ہے

یہ کہ منسلک اس نسبت ایبٹ آباد جو منسلک ایبٹ آباد
حضرہ وارثہ ایبٹ آباد مندرجہ منسلک ٹریٹمنٹ
حضرہ 2028-29-15-15-15 ایبٹ آباد سرورس و مندرجہ
سرورس ٹریٹمنٹ منسلک ایبٹ آباد مندرجہ منسلک
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لہذا بذریعہ درخواست مندرجہ مندرجہ مندرجہ
مندرجہ ایبٹ آباد حصرہ 2028-29-23-23-23
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0315-5593329
Handwritten signature and date 5/11/2022

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وکالت نامہ

کورٹ فیس

Before The Service Tribunal KPK Peshawar بعدالت

Govt of KP & others نام Pt. Sham Nawaz عنوان:

Applicant منجانب:

Implementation نوعیت مقدمہ:

باعث تحریر آئندہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آن مقام

M. Ashad Khan Taneli Atv (2 Atv)

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل

صاحب موصوف کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے اقبال دعویٰ اور بصورت دیگر ڈگری

کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت

ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی

بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا

ساختہ پر داختمہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے

مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا

حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں

کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست براد

استجارت نالاش بصیغہ مفلس کے دائرہ کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کیا تاکہ سند رہے۔

المرقوم:

بمقام وکیل