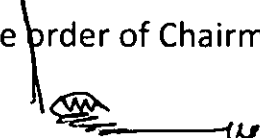


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 717/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.12.2022	<p>The execution petition of Mr. Atta-ur-Rehman submitted today by Roeeda Khan Advocate. It is fixed for implementation report before touring Single Bench at Swat 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>

The execution petition of Mr. Attaur-Rehman received to-day i.e. on 30-11-2022 is returned to the counsel for the petitioner with the direction to submit two more copies/sets of the petition along with annexures i.e. complete in all respect within 15 days.


No. 3431 /S.T.

Di. 01/12 /2022

Roeda Khan Adv.
High Court Pesh.


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Re-submitted
objection has
been removed


8-12-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 717 /2022

In Service Appeal: 1074/2017

Atta Ur Rehman S/o Said Rahim Ex Constable at District Lower
Dir R/o Village Palosadag Tehsil Munda District Lower Dir.

..... Petitioner

VERSUS

1. District Police District Dir.
2. Regional Police Officer Malakand Division.
3. Deputy Director General of Police, Malakand Division
Swat.

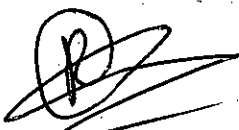
Index

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-6
3.	Copy of order dated 06/09/2022	B	7-
3.	Wakalat Nama		

Dated 30/11/2022


Appellant

Through


Roeda Khan
Advocate High Court,
Peshawar.

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 7/7 /2022

Khyber Pakhtunkhwa
Service Tribunal

In Service Appeal: 1074/2017

Diary No. 2090

Dated 30/11/2022

Atta Ur Rehman S/o Said Rahim Ex Constable at District Lower
Dir R/o Village Palosadag Tehsil Munda District Lower Dir.

..... Petitioner

VERSUS

1. District Police District Dir. Lower
2. Regional Police Officer Malakand Division.
3. Deputy Director General of Police, Malakand Division
Swat.
4. Inspector General of Police KPK Peshawar

..... Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENT TO IMPLEMENT THE JUDGMENT
DATED 28/01/2022 PASSED BY THIS HONORABLE
COURT WHICH HAS NOT BEEN PROPERLY
IMPLEMENTED BY THE RESPONDENT
DEPARTMENT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No. 1074/2017 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 28/01/2022. (Copy of Judgment is annexed as Annexure-A).

- (2)
2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
 3. That the Petitioner filed Execution Petition No. 395/2022 for implementation of the above mention Judgment of this Hon' able Tribunal in response of which the Petitioner has been reinstated on 06.09.2022 into service with immediate effect. (Copy of reinstatement order is attached as B).
 4. That the Petitioner has no other option but to file the instant execution petition for properly implementation of the Judgment of this Hon' able Tribunal.
 5. That the respondent Department is legally bound to obey the order of this Hon' able Tribunal by implementing properly the said Judgment.

It is therefore requested that on acceptance of the instant execution Petition the respondents may kindly be directed to implement properly the Judgment of this Hon' able Tribunal letter and the Petitioner may kindly be treated according to the Judgment passed by this Hon' able tribunal with effect from 28.01.2022 instead of 06.09.2022.

Dated 30/11/2022


Appellant/Petitioner

Through

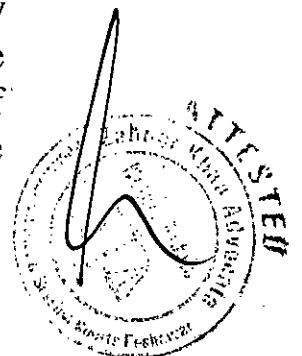

Rooeda Khan

Advocate High Court Peshawar

AFFIDAVIT

I, Atta Ur Rehman S/o Said Rahim Ex Constable at District Lower Dir R/o Village Palosadag Tehsil Munda District Lower Dir do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.


DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1074/2017

Atta Ur Rehman S/O Said Rehman
Ex-Constable at District Lower Dir
R/O Village Palosadag Tehsil Munda District Lower Dir.

Case No. 1075
Date: 15/9/2017

PETITIONER

VERSUS



- 1. District Police Distt. Lower Dir
- 2. Regional Police Officer Malakand Division
- 3. Inspector General of Police Khyber Pakhtunkhwa
- 4. Deputy Inspector General of Police, Malakand Division Swat

RESPONDENTS

APPEAL UNDER SECTION 04 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF INSPECTOR GENERAL OF POLICE DATED MARCH 15, 2017 (APPELLATE AUTHORITY) WHERE BY THE DEPARTMENT APPEAL OF THE APPELLANT WAS DISMISSED/REJECTED AND AGAINST THE ORDER OF RPO DATED 28-01-2016 AND DPO DATED 10-07-2017 PRAYER IN APPEAL.

ON ACCEPTANCE OF THIS APPEAL THIS HONORABLE TRIBUNAL MAY VERY GRACIOUSELY BE PLEASED TO SET ASIDE THE IMPUGNED ORDER DATED 15-03-2017, RPO ORDER DATED 28-01-2016 AND DPO ORDER DATED 10-07-2017 AND THE APPELLANT MAY VERY GRACIOUSLY BE REINSTATED INTO THE SERVICE FROM THE DATED 10-07-15 WITH ALL SERVICE BENEFITS

Respectfully submitted as under:

1. That the appellant was appointed as Constable on dated 26-07-2007 by the Respondents was assigned the duties in Village Palosa Dag P.P. Station Munda District Dir Lower.
[Copy of appointment letter is annexure A]

2. That the appellant served the department with commitment and always remained on duty at various stations in the time when terrorism in Malakand division was at peak and the Government of Pakistan was

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Re-submitted to da
and filed.
REGISTRAR
26/9/17

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1074/2017

Date of Institution ... 15.09.2017

Date of Decision ... 28.01.2022



Atta Ur Rehman S/o Said Rehman Ex-Constable at District Lower Dir R/o Village Palosadag Tehsil Munda District Lower Dir. ... (Appellant)

VERSUS

District Police Distt: Lower Dir and others. ... (Respondents)

Appellant ... In Person

Muhammad Adeel Butt,
Additional Advocate General

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 10-07-2015. Feeling aggrieved, the appellant filed departmental appeal, which was accepted in terms that penalty of dismissal was converted into removal from service vide order dated 28-01-2016. The appellant filed revision petition, which was also rejected vide order dated 09-03-2017, hence the instant service appeal with prayers that the impugned order dated 10-07-2015, 28-01-2016 and 09-03-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

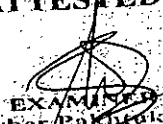
31

02. Appellant has contended that he has been proceeded against in absentia, without affording him appropriate opportunity of defense, which is illegal, unlawful and contrary to norms of natural justice; that his absence was not willful, but due to illness of his father and absence on medical grounds does not constitute gross misconduct; that the illness of his father was well in the knowledge of the respondents, but such stance of the appellant was not taken into consideration, which was arbitrary in nature; that it is settled principal of law that regular inquiry is must before imposition of major penalty of dismissal from service; that his absence period was treated as leave without pay, hence there remains no ground to further penalize the appellant.

03. Learned Additional Advocate General for the respondents has contended that the appellant is a habitual absentee and always remained absent from duty on the pretext of illness of his father; that prior to this, the appellant was discharged from service in probation period, but was re-instated upon his departmental appeal; that short service record of the appellant is full of entries regarding willful absence; that the appellant was required to seek leave or permission from his seniors and bring the matter timely in the notice of his seniors, but he failed to do so; that the appellant has rightly been penalized as he is least interested in his job.

04. We have heard both the parties and have perused the record.

05. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellant was one among those, who was re-instated into service vide order dated 10-08-2011 by the police department. The appellant resumed his duty and served for another three years, when he was again dismissed from

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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service on the issue of absence from duty and his dismissal later on was converted into removal from service. It is un-disputed that the appellant remained absent from duty, but stance of illness of his father, which has been debated in the inquiry report as well as in comments of the respondents, which shows some weight in stance of the appellant, which could be taken in favor of the appellant. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted. So much so that the impugned order of dismissal is also not in order. 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 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. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal by converting the major penalty of removal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

Certified to be true copy

(AHMAD SULTAN TAREEM)
CHAIRMAN

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

Service Tribunal,
Peshawar

Date of Presentation of Application 14-4-22
Number of Words 1600
Copying Fee 10/-
Urgent 3/-
Total 24/-
Name of Applicant _____
Date of Completion of Copy 14-4-22
Date of Delivery of Copy 14-4-22



(B^v) (7)

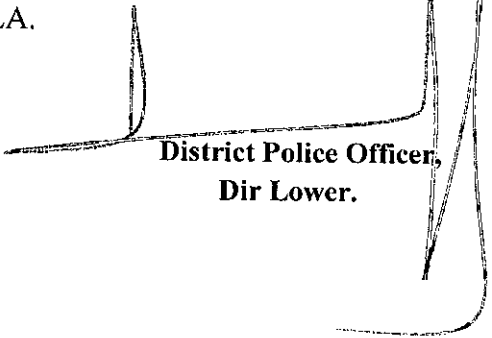
OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

Fax No. 09459250049, Phone No. 09459250094

Email:- establishment.dirl@gmail.com

ORDER OF RE-INSTATEMENT INTO SERVICE

As per directions of CPO Peshawar vide Memo: No. 4331/Legal, dated 06-09-2022, in light of Service Tribunal Khyber Pakhtunkhwa Peshawar letter No. 924/ST, dated 25-04-2022 in Service Appeal No. 1074/2017 and Order Sheet dated 28-01-2022 in Execution Petition No. 359/2022. Ex-Constable Atta Ur Rahman No. 595 is hereby re-instated into service with immediate effect provisionally and conditionally, subject to the outcome of CPLA.


District Police Officer,
Dir Lower.

OB No. 823

Dated. 06-09/2022

No. 10632-37/EC, Dated Timergara the, 06-09/2022.

Copies submitted to the:-

1. Regional Police Officer Malakand at Saidu Sharif Swat for information
2. AIG Legal Khyber Pakhtunkhwa Peshawar for information.
3. District Accounts Officer, Dir Lower.
4. DSP legal, Dir Lower for necessary action.
5. Pay Officer DPO Office Dir Lower.
6. OASI DPO Office Dir Lower.

بعد التمهات سے عمل شروع ہو گا



مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے لئے لودہ

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2022ء

ماہ اگست

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المرقوم

واہ العبد

Handwritten signature and initials.