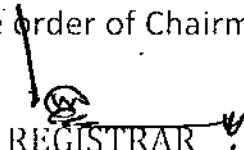


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 21/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.01.2023	<p>The execution petition of Mr. Abid Hussain submitted today by Mr. Bilal Ahmad Kakaizai 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>

AA 9

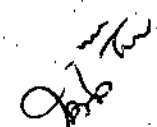
BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No: 21 / 2023
Service Appeal No: 142 / 2018
Date of Decision: 09.11.2021

ABID HUSSAIN VS Capital City Police Officer Peshawar etc.

INDEX

DESCRIPTION OF DOCUMENTS		PAGE NO:
<i>Implementation Application</i>		1 - 2
<i>Affidavit</i>		3
<i>Addresses Sheet</i>		4
Annexure-A	Judgment dated 09.11.2021.	5 - 10
Annexure-B	Application dated 15.12.2022.	11
Wakalatnama		NIL


Applicant / Appellant

Through,


BILAL AHMAD KAKAIZAI

(Advocate, Supreme Court of Pakistan)

213, Sunehri Masjid Road, Near HBL
Nothia Branch, Peshawar Cantt.

0300-9020098

①

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No: 241 / 2023
Service Appeal No: 142 / 2018
Date of Decision: 09.11.2021

ABID HUSSAIN,
Constable No. 5360,
District Police, Peshawar.

..... APPLICANT / APPELLANT

VERSUS

- 1. CAPITAL CITY POLICER OFFICER, Peshawar.
 - 2. SUPERINTENDENT OF POLICE, Headquarters, Peshawar.
 - 3. PROVINCIAL POLICE OFFICER, Khyber Pakhtunkhwa Peshawar.
- RESPONDENTS

APPLICATION FOR IMPLEMENTATION OF JUDGEMENT
DATED 09.11.2021.

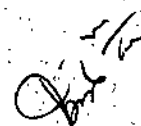
Respectfully Sheweth,

- 1. That, Appellant / Applicant filed the subject mentioned Appeal in this Honorable Tribunal, which was accepted on 09.11.2021, copy of the Judgment dated 09.11.2021 is attached as Annexure-A.
- 2. That, the Respondents were time and again requested to implement the above said Judgment in its letter & spirit but they seems to be reluctant. It merits mentioning here that Applicant / Appellant has been conditionally reinstated in service however

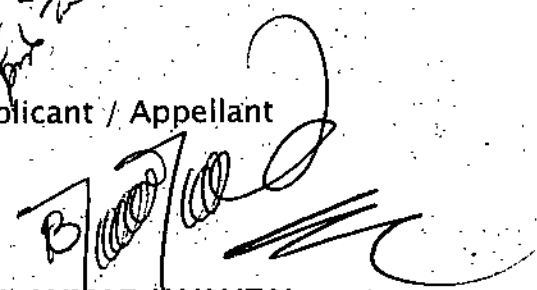
without obtaining the Interim Order from the Honorable Apex Court, the Back Benefits of the Applicant / Appellant have not been paid to the Applicant / Appellant, copy of the Application dated 15.12.2022 is attached as Annexure B.

3. That, justice delayed is Justice denied.

In view of the above, it is requested that Respondents be directed to implement the whole Judgment dated 09.11.2021, without any further delay with such other relief as may deem fit in the circumstances of the case may also be granted.


Applicant / Appellant

Through,



BILAL AHMAD KAKAIZAI
(Advocate, Supreme Court of Pakistan)
213, Sunehri Masjid Road, Near HBL
Nothia Branch, Peshawar Cantt.
0300-9020098

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No: _____ / 2023

Service Appeal No: 142 / 2018

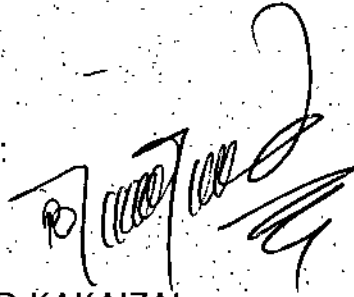
Date of Decision: 09.11.2021

ABID HUSSAIN VS Capital City Police Officer Peshawar etc.

AFFIDAVIT

I, Abid Hussain, Appellant / Applicant, do hereby on oath affirm and declare that the contents of the Implementation Application are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.

Identified by:



BILAL AHMAD KAKAIZAI
(Advocate, Supreme Court of Pakistan)



Deponent

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No: _____ / 2023

Service Appeal No: 142 / 2018

Date of Decision: 09.11.2021

ABID HUSSAIN VS Capital City Police Officer Peshawar etc.

ADDRESSES OF PARTIES.

APPLICANT / APPELLANT:

ABID HUSSAIN, Constable No. 5360, District Police, Peshawar.

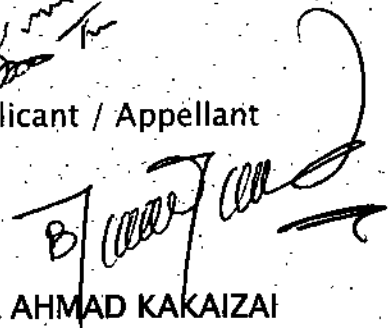
RESPONDENTS:

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



Applicant / Appellant

Through,



BILAL AHMAD KAKAIZAI


(Advocate, Supreme Court of Pakistan)

213, Sunehri Masjid Road, Near HBL

Nothia Branch, Peshawar Cantt.

0300-9020098.

(T) (S) H



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 142/2018

Abid Hussain Ex Constable No 5360, District Police Peshawar.

Appellant

V E R S U S

1. Capital City police Officer Peshawar.
2. Superintendent of Police, Headquarters, Peshawar.
3. Provincial Police Officer KPK Peshawar

Respondents

Dated: 25/11/2018
147

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT
1974 AGAINST THE ORDER DATED 04-01-2018
PASSED BY RESPONDENT NO 1 WHERE BY
DEPARTMENTAL APPEAL OF THE APPELLANT FILED
AGAINST THE ORDER DATED 17-11-2017 OF
RESPONDENT NO 2 HAS BEEN REJECTED/FILED.**

PRAYER:-

On acceptance of this appeal the impugned Order dated 04-01-2018 of respondent No 1 and Order dated 17-11-2017 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as Constable on 31-10-2004 remained posted to various Police Stations and since then he performed his duties with honesty and full devotion.
2. That the appellant while lastly posted to Police Station Badaber, fell ill, was admitted to Hospital where the Doctor advised him Medicines and bed rest. (Copies of Medical Chits are enclosed as Annexure A).
3. That the legs of the appellant had been fractured and was unable to have performed his duties, and in the meanwhile the appellant was also falsely implicated in case FIR No 397 dated 03-05-2017 U/Ss 452/511/380PPC/15AA Police Station Kotwali Peshawar, was arrested and was released on Bail vide order dated

Registered to day
and night

25/11/18
11/11/18



(6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 142/2018

Date of Institution 25.01.2018
Date of Decision 09.11.2021

Abid Hussain Ex-Constable No.5360; District Police, Peshawar.
(Appellant)

VERSUS

Capital City Police Officer, Peshawar and two others.
(Respondents)

Fazal Shah Mohmand,
Advocate For appellant.

Kabir Ullah Khattak,
Additional Advocate General For respondents.

Rozina Rehman Member (J)
Mian Muhammad Member (E)

JUDGMENT

Rozina Rehman, Member(J): Brief facts of the case are that appellant was appointed as Constable. He fell ill and got admitted in hospital where he was advised bed rest. He had been confined to his home because of a leg fracture. In the meanwhile, he was implicated in a criminal case and was arrested. After release from jail on bail, he reported for duty but was not allowed and consequently he was suspended. He was issued charge sheet and inquiry was initiated against him and was finally awarded major penalty of dismissal from service. He filed departmental appeal which was rejected, hence, the present service appeal.

2. We have heard Fazal Shah Mohmand Advocate learned counsel for appellant and Kabir Ullah Khattak, learned Additional

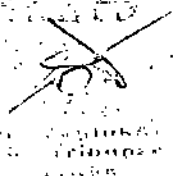
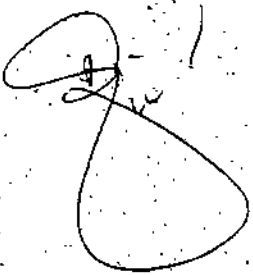
Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Fazal Shah Mohmand Advocate, learned counsel for appellant submitted that mandatory provisions of law and rules were badly violated by the respondents as the appellant was not treated according to law. Learned counsel argued that no proper inquiry was conducted to find out the real facts and that no one was examined in presence of appellant nor he was given proper opportunity of defense. It was further contended that appellant was declared innocent by complainant of the criminal case and that minor penalty was recommended by the Inquiry Officer but the respondents imposed major penalty which is not tenable and lastly, he submitted that the absence of the appellant was not willful and deliberate and even otherwise the period of his absence was regularized by treating the same as leave without pay, therefore, appellant may be reinstated with all back benefits.

4. Conversely, learned A.A.G submitted that the appellant was posted in P.S Badhber wherefrom he absented himself from duty w.e.f 09.04.2017 to 18.05.2017 and was also charged in a criminal case vide F.I.R No.397. He submitted that the appellant was arrested by the local police in the above mentioned criminal case who was later on bailed out and that after completion of all codal formalities, he was dismissed from service.

5. From the record it is evident that on the allegations of his involvement in criminal case and absentia as well from lawful duty, appellant was proceeded against departmentally. He was placed under suspension and D.S.P Headquarter was appointed as Inquiry

Officer who recommended that the appellant may be awarded punishment of stoppage of one year annual increment and absence period may be treated as leave without pay, where-after, legal opinion of D.S.P (Legal) was sought and the inquiry was sent back to the Inquiry officer to record statement of the Investigating Officer. This time inquiry paper was marked to Inspector Yousaf Jan. of Police Lines to probe into the matter and dig out actual facts, where-after, major punishment of dismissal from service was imposed upon appellant while the absence period was treated without pay. From the record, it is evident that the appellant made proper departure for fourteen days casual leave from P.S Badhber on 25.03.2017 and his arrival was due on 09.04.2017. He has annexed medical record which fully supports his case. During his leave period, he sustained injuries and was unable to walk which fact has been discussed in detail by the Inquiry Officer. The registration of F.I.R against appellant U/S 452 PPC/15-AA at P.S Kotwali shows that he was charged by one Inayat Ali for House trespass. The said Inayat Ali i.e. complainant of case F.I.R No.397 later on patched up the matter with the appellant as he was satisfied about the innocence of the accused/present appellant and in view of his statement, appellant was acquitted of the charges leveled against him vide order of the learned Judicial Magistrate Peshawar dated 13.12.2017. Infact, the appellant had never committed House trespass by entering into the house of one Inayat Ali rather he was present in the house of his relative and from the balcony of his relative's house he fell down inside the house of Inayat Ali. Fracture of his legs is also not disputed and that was the main reason he remained absent from duty. Now, on one hand he has been acquitted by a competent court of Law from charges being innocent



OFFICER IN CHARGE
POLICE STATION
KOTWALI

while on the other hand, his absence is justified being on bed and in jail for few days.

6. It has been held by the Apex Court that all acquittals are certainly honorable. There can be no acquittal, which may be said to be dishonorable. Implication of the appellant in the case of house trespass was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.

7. It is established from the record that charges of involvement in the criminal case ultimately culminated in honorable acquittal of appellant by the competent Court of Law in the above-mentioned criminal case. In this respect, we have sought guidance from 1988 P.L.C (C.S) 179; 2003 S.C.M.R. 215 and P.L.D. 2010 Supreme Court 695.

8. In view of the foregoing, the instant appeal is accepted and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
09.11.2021

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

2000

24-0

24-0

22-2-2022

27-2-2022

Handwritten notes and stamps on the left margin, including a circular stamp with text that is partially illegible.

ORDER

10

Ex-Constable Abid Hussain No.5360 was awarded major punishment of dismissal from service by the then SP HQrs vide OB No.4185 dated 17.11.2017 on the charges of involvement in criminal case vide FIR No.397 dated 03.05.2017 u/s. 452/15-AA, & absented from lawful duty w.e.f 09.04.2017 to 18.05.2017 (39-days).

In this regard he was filed departmental appeal before W/CCPO against above punishment orders which was rejected/filed by the then CCPO, Peshawar vide No.17-22/PA dated 04.01.2018.

Being aggrieved of the orders, Ex-Constable Abid Hussain No.5360 instituted a service appeal No.142/2018 title as Abid Hussain Ex-Constable No.5360 District Police Peshawar vs Capital City Police Officer Peshawar and two others before the Honourable Service Tribunal Peshawar. The Honourable Service Tribunal vide its judgment passed on 09.11.2021 has ordered that **"the instant appeal is accepted and the appellant is re-instated in service with all back benefits."**

In light of the Tribunal Judgment, DSP Legal opinion & kind approval of W/CCPO, Ex-Constable Abid Hussain No.5360 is hereby conditionally re-instated in service with all back benefits subject to the decision of CPLA which is still subjudice in the Apex Court.

106516
1159
01/01/2022

**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

28-1-22 OB. NO. 215 / Dated 26 / 1 / 2022

No. 322-28 / PA / SP / dated Peshawar the 25 / 1 / 2022

Copy of above is forwarded for information & n/action to:-

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. Pay Office,
4. OASI, CRC & FMC along-with complete departmental file.
5. Officials concerned.

D No. 3173
P. No. 15-12-2022

(11) B

صاحب عالی!
تذکرہ ایس ایم جی ایم ایس کے بارے میں درخواست کی گئی ہے اور اس کے بارے میں
میں بہر حال کیا گیا۔ سروس ریٹرنل عدالت کے بارے میں تو نومبر 2021ء
مع تمام سرعات کے بحال رہا ہے میں تبدیل شدہ بندہ ہوں اور
آپ صاحب سے بذریعہ درخواست اس کے بارے میں جاننا ہوتا ہے باقی ماندہ سروس
دینے کے احکامات صادر فرمائیں اور فرمادیں میں تمام عمر دعاگو رہے گا
(نوٹ: عدالت سے پہلے کافی سہارا لے لیں)

14/12/2022

المترجم

الوصف

آئی کا تابع زمان ہیڈ کٹیشن عامہ حسین $\frac{1159}{4c}$ حال بقعات سسٹمز ڈیپارٹمنٹ

بھنا ہے!

درخواست کنندہ کا راجہ
جوڈیشل کمیشن میں ڈیوٹی
سے انجام دے رہا ہے درخواست
مطابق مناسب حکم صادر ہے

Sir
Forwarded
Liz
LOIPE
15/12/2022

ریپورٹ عرض ہے

MPL
15/12/2022

بعدالت خیبر پختونخواہ سروس ٹریبیونل، پشاور

Appellant

مخائب

2023

مورخہ

Capital Police etc.

نام ABID HUSSAIN

مقدمہ

دعویٰ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کے لیے،
ملال احمد کے زنی ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا کامل
اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے، جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط
کرنے 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 اختیار ہوگا۔ از 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 مذکورہ باختیارات حاصل ہوں
گے۔ اور اس کا ساختہ پرواختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہو گیا
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 سندر ہے۔

2021

ہا

المرقوم

بمقام

Attested &

Accepted

bilalahmad78@gmail.com

bc-11-1062

0300-9020098