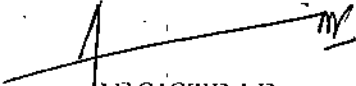


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 27/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.01.2023	<p>The execution petition of Mr. Zeeshab Ahmad submitted today by Roeeda Khan Advocate. It is fixed for implementation-report before touring Single Bench at A.Abad 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>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 27/2022-2023

In Service Appeal: 864/2019

Zeeshan Ahmad Junior Clerk Sub Jail, Dassu, Kohistan.

..... Appellant

VERSUS

- (1) The Secretary Home and Tribal Affairs Department,
Khyber Pakhtunkhwa, Peshawar.
- (2) Inspector General of Prisons, Khyber Pakhtunkhwa,
Peshawar.
- (3) The Superintendent Sub jail Dassu, Kohistan.


..... Respondents

INDEX

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		
2.	Copy of Judgment	A	1-2
3.	Wakalat Nama		3-6

Zeeshan Ahmad
Appellant

Through



Rooeda Khan
Advocate High Court,
Peshawar

(1)

FOR THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 27/2022-2023

In Service Appeal: 864/2019

Zeeshan Ahmad Junior Clerk Sub Jail, Dassu, Kohistan.

..... Appellant

VERSUS

- (1) The Secretary Home and Tribal Affairs Department,
Khyber Pakhtunkhwa, Peshawar.
- (2) Inspector General of Prisons, Khyber Pakhtunkhwa,
Peshawar.
- (3) The Superintendent Sub jail Dassu, Kohistan.

..... Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 16/11/2022 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioners filed Service Appeal No. 864/2019 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 16/11/2022. (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 mentioned Judgment. And properly submitted an application to respondent Department for the implementation however they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
 3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
 4. That the respondent Department is legally bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

ذیشان احمد
Appellant/Petitioner

Through



Rooeda Khan

Advocate High Court Peshawar

AFFIDAVIT

I, Zeeshan Ahmad Junior Clerk Sub Jail, Dassu, Kohistan. 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.

ذیشان احمد
DEPONENT

Service Appeal No.864/2019 titled "Zeeshan Ahmad-vs-The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and other", decided on 16.11.2022, by Division Bench comprising, Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN** .. CHAIRMAN
SALAH UD DIN .. MEMBER (Executive)

Service Appeal No.864/2019

Zeeshan Ahmed, Junior Clerk, Sub Jail, Dassu, Kohistan.
.....(Appellant)

Versus

1. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
 2. **Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.**
 3. **The Superintendant Sub Jail, Dassu Kohistan.**
-(Respondents)

Present:

Mr. Arshad Khan Tanoli,
Advocate.....For appellant.

Muhammad Adeel Butt,
Additional Advocate General.....For respondents.

Date of Institution.....01.07.2019
Dates of Hearing.....16.11.2022
Date of Decision.....16.11.2022

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 04.11.2015 VIDE ANNEXURE 'A' WHEREBY, THE MAJOR PENALTY OF REDUCTION TO A LOWER STAGE IN A TIME SCALE FOR A PERIOD OF FIVE YEARS HAS BEEN IMPOSED UPON THE APPELLANT AND THE PERIOD OF HIS ABSENCE FROM 01.02.2015 TO 15.03.2015 (43 DAYS) HAS BEEN TREATED AS LEAVE WITHOUT PAY.

ATTESTED

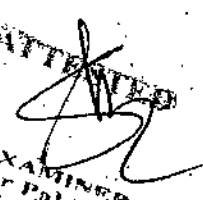
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN. The appellant is aggrieved of order dated 04.11.2015, whereby major penalty of reduction to a lower stage in a time scale for a period of five years was imposed upon him and the period of his absence from 01.02.2015 to 15.03.2015 (43 days) had been treated as leave without pay.

2. According to the appeal, the appellant was serving as Junior Clerk in the Prison Department and was in Sub-Jail Dassu, Kohistan; that because of his involvement in a criminal case, he remained absent from duty for 43 days, because of which he was awarded major penalty of reduction to a lower stage in a time scale for a period of five years and his absence period was treated as leave without pay vide impugned order dated 04.11.2015; that the appellant was acquitted from the charge by the learned Additional & Sessions Judge, Lahore on 19.02.2019 and he filed departmental appeal which was not responded within the statutory period, hence this appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.


ATTENDED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



4. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. The first moot point for determination before us was question of limitation but that had already been settled vide the admitting note dated 13.07.2021 in the following manner:-

"However, in the impugned order, the competent authority deviated from his own tentative decision and imposed major penalty of reduction to a lower stage in a time scale for a period of five years. Apart from the said major penalty, the period of absence of 43 days was also treated as leave without pay. The impugned order on its face, for the reasons of absence of formal charge sheet at the time of commencement of enquiry proceedings, and on account of deviation of the competent authority from its tentative decision of imposition of minor penalty indicated in the show cause notice, is likely to suffer from voidness, if not rebutted by sufficient material and justification by the respondents. Thus, there is uncertainty as to whether the question of limitation will have any bearing or not".

7. The only question remained before this Tribunal for determination is whether the impugned order of reduction to a lower stage in a time scale for a period of five years. It is in this respect observed that the very and only charge against the appellant in the statement of allegation was that he remained absent from duty w.e.f.

(6)

Service Appeal No 864/2019 titled "Zeeshan Ahmad vs The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and other", decided on 16.11.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad

01.02.2015 to 15.03.2015 that is 43 days and period of absence of 43 days was treated as leave without pay. The competent authority had thus itself regularized the absence of the appellant by treating the same as leave without pay, therefore, there existed no legal justification for awarding the impugned penalty to the appellant. We, therefore, allow this appeal and set aside the impugned order dated 04.11.2015. Costs shall follow the event. Consign.

8. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 16th day of November, 2022.

KALIM ARSHAD KHAN
Chairman
Camp court Abbottabad

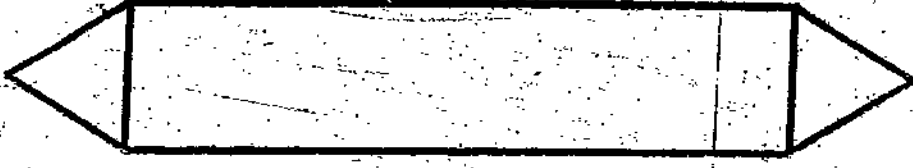
SALAH UD DIN
Member (Judicial)
Camp court Abbottabad

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Number of Pages of the Judgment 11/01/2023
Number of page 4-p
Filing Fee 20/-
Urgent -
Total 20/-
Date of Completion of work 12/01/2023
Date of Delivery of work 12/01/2023

بعدالت لادھہ کل سولہ پاکہ



مورخہ

مقدمہ

دعویٰ

جرم

23 ص 2 منجانب الیام

ذیہ الحہ بنام

باعث تحریر آنکہ

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

آن مقام کیلئے لوسیدہ کے لئے

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 دینے جواب وہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی 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 مذکورہ 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۔

2023ء

ماہ جولائی

13

المرقوم

العبد د گ واہ العبد