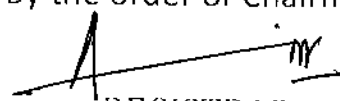


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 31/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.01.2023	<p>The execution petition of Mr. Shafi Ullah submitted today by Mr. Javed Iqbal Gulbella 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  REGISTRAR</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.**

Implementation Petition No. 31 /2023

In Service Appeal No. 1233/2017

AA 9

Shafi Ullah

VERSUS

Govt. of Khyber Pakhtunkhwa, etc.

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3.	Copies of the Service Appeal	"A"	4
4.	Copies of Order & Judgment Dated: 26-01-2022.	"B"	5-9
5.	Copy of the Order Dated: 07-11-2022 passed in Implementation Petition.	"C"	10
6.	Other Documents	"D"	—
7.	Wakalatnama		

Dated: 16-01-2023

Appellant/Petitioner

Through

2
Javed Iqbal Gulbela
Advocate Supreme Court
Pakistan. *2*

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.**

Implementation Petition No. 31 /2022

In Service Appeal No. 1233/2017

Shafi Ullah (late) S/o Fazle Mehmood, PST government Primary School Dir Colony, Ring Road, Peshawar, through Mst. Ambareen w/o of Appellant.

.....*Petitioner*

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar.
3. Director Elementary and Secondary Education, Civil Secretariat, Peshawar.
4. District Education Officer (Male), Grand Trunk Road, Peshawar.

.....*Respondents*

**PETITION FOR IMPLEMENTATION
OF THE JUDGMENT AND ORDER
DATED 26-01-2022 in S.A No. 1233/2017.**

Respectfully Sheweth,

1. That the petitioner had earlier filed a Service Appeal No. 1233/2017 which was allowed by this Hon'ble Tribunal vide judgment and order dated 26-01-2022. (Copies of Service Appeal and judgment dated 26.04.2022 are annexed as Annexure "A" & "B" respectively)
2. That this Hon'ble Tribunal vide judgment and order dated 26-01-2022 directed the respondents:

"We are of the considered opinion that the Appellant has not been treated in accordance with law. Since, the Appellant is no more but keeping in view, his length of service and gravity of the charges leveled against him, we are inclined to partially accept the instant appeal by converting penalty of dismissal into compulsory retirement form service. Parties are left to bear their own costs."

3. That the petitioner/appellant have provided the attested copy to the respondents, for the implementation of order dated in its letter and spirit but till date the adamant respondents have taken no step in the said direction.
4. That despite the clear-cut directions of this Hon'ble Tribunal, the respondent intentionally violated the orders of this Hon'ble Tribunal and now the respondent department is reluctant to endorse the same orders of this Hon'ble tribunal.
5. That keeping in view the adamancy of the Respondents, the appellant earlier moved an implementation petition before this August Tribunal, whereby the Respondents submitted an office order bearing no. Endst. No. 10968-73/Service Appeal (Lit File) dated: 19-10-2022, which was placed on file and a copy of which was provided to the Petitioner as well for expression of satisfaction.
6. That inspite of clear cut direction of this Hon'ble Tribunal, the pension and pensionary benefits have not been released so for.
7. That this lethargic and candid approach on part of the respondent towards the highly reverent order and judgment of this August Tribunal, which is in other words amounts to another fervent contempt of court.
8. That act of non-implementing the order/judgment of this Hon'ble Tribunal, constrained the petitioner/appellant to move the instant petition.

It is therefore, most humbly prayed that on acceptance of the instant petition, the Respondents be directed to implement the judgment and order dated 26-01-2022 in S.A.No.1233/2017 in its true spirit and the respondent be directed to release pension and pensionary benefits, instantly and it further prayed that the responsible respondents be punished accordingly for this loathsome attitude and violative approach towards the reverent judgment and order of this Hon'ble Tribunal.

Dated: 16-01-2023

Appellant/Petitioner

Through

Javed Iqbal Gulbela
Advocate Supreme Court
Pakistan.

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.**

Implementation Petition No. _____/2023

In Service Appeal No. 1233/2017

Shafi Ullah

VERSUS

Government of KPK & Other

Affidavit

I, *Ambareen Widow of Shafi Ullah (Late) PST government Primary Scholl Dir Colony, Ring Road, Peshawar*, do hereby solemnly affirm & declare on oath that all contents of the instant Service Appeal are true & correct to the best of my knowledge and belief & nothing has been concealed from this Hon'ble Tribunal.

Date:16-01-2023

DEPONENT

Identified By: ²

Javed Iqbal Gulbela ²
Advocate, Supreme Court,
of Pakistan.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1233 / of 2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1272

Dated 07-11-2017

Shafi Ullah son of Fazle Mehmood, PST
Government Primary School Dir Colony
Ring Road, Peshawar...

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar.
2. Director Elementary and Secondary Education, Civil Secretariat, Peshawar.
3. District Education Officer (Male) G.T. Road, Peshawar. ...

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER OF DISMISSAL FROM SERVICE OF THE APPELLANT DATED 03.07.2017.

Prayer:

On acceptance of this Service Appeal the impugned order of dismissal from service of the appellant dated 03.07.2017 may please be set aside and the appellant be reinstated to his service with all back benefits.

Filed to-day

Registrar

2/11/17. Respectfully Sheweth:

1. That the appellant was appointed as PST on 21.05.1992 in Government Primary School Mera Urmar Payan No.3 Peshawar. (Copy of Appointment Letter dated 21.05.1992 is attached herewith as annexure 'A').

ATTESTED

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1233/2017

Date of Institution ... 07.11.2017

Date of Decision ... 26.01.2022



Shafi Ullah son of Fazle Mehmood, PST Government Primary School Dir Colony Ring Road, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar and others. ... (Respondents)

Javed Iqbal Gulbela,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... 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 PTC Teacher in Education Department, was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 03-07-2017. The appellant filed departmental appeal followed by Service Appeal No 1233/2017, which was accepted vide judgment dated 14-12-2018 and penalty of dismissal was converted into compulsory retirement. The respondents filed Civil Appeal No. 1561/2019 and the august Supreme Court of Pakistan set aside the judgment dated 14-12-2018 and remanded it to this tribunal for deciding the appeal afresh.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the

ATTACHED

Constitution has badly been violated; that the appellant has been awarded major punishment of dismissal from service without conducting a regular inquiry, hence the appellant was deprived of the opportunity to defense his cause; that absence of the appellant was not willful but due to severe enmity, due to which the appellant went in hiding for some time and it was not possible for the appellant to resume his duty at the cost of his life, but such stance of the appellant was never taken into consideration; that on the basis of such enmity, the appellant was killed on 19-04-2019 and now legal heirs of the appellant is pursuing his case; that no proper procedure was adopted, while passing the impugned order of dismissal; that the respondents treated the absence period as leave without pay, hence there remains no reason to further penalize the appellant after regularization of his absence.

03. Learned Deputy District Attorney for the respondents has contended that the appellant remained absent from duty since 01-01-2014, hence he was served with a show cause notice dated 29-04-2017, followed by its publication in two newspapers on 03-06-2017; that the appellant responded to the showcause notice vide letter dated 15-06-2017; that the appellant has taken the stance that his absence was not willful, but due to enmity, but the competent authority after fulfilling formalities under Rule-9 of E&D Rules, 2011 dismissed the appellant from service vide order dated 03-07-2017.

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

05. Impugned order of dismissal 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 in view of regularization of his absence, the authorities did not have any justification to penalize the appellant on such absence. 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. The authorities had proceeded the appellant under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, but at a belated stage, as the respondents claimed that the appellant was absent since 2014 and absence notices were issued in June, 2017, which speaks volumes of the in-efficiency on part of the respondents. Interestingly, the proceedings so conducted under Rule-9 of the rules *ibid* were followed in a novel way. After issuance of the absence notices by the respondents, the appellant submitted reply of the show cause that his absence was not willful but was due to enmity; hence, the respondents were required either to allow the appellant to resume his duty or in case, respondents were not satisfied with reply of the appellant, in that situation, the appellant was required to be proceed as per law by issuing him proper charge sheet/statement of allegation and proper inquiry was required to be conducted, thereafter show cause notice was required to be served upon the appellant. In a situation, if the appellant fail to respond, in that situation the respondents would have to take ex-parte action, but the respondents despite his response, had unlawfully taken ex-parte action and dismissed the appellant without proceeding him as per method prescribed in law, which however was not warranted and on this score alone, the impugned order is liable to be set aside. 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.


ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07. We have observed that the appellant was condemned unheard and he was not afforded appropriate opportunity to defend his cause. It however, 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 appellant repeatedly submitted before the competent authority that his absence was not willful, rather due to severe enmity, but no heed was paid his clamour. Such apprehensions of the appellant proved true at the cost of his life, as the appellant was killed by his enemies on 19-04-2019 during the course of litigation, In circumstances, it can be concluded that absence of the appellant was not intentional, nor was the appellant guilty of charges of gross misconduct or corruption, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. Charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. The appellant has admitted his absence but such absence was not willful, which does not constitute gross misconduct entailing major penalty of dismissal from service. Competent authority had jurisdiction to award any of the punishments mentioned in law to the government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the magnitude of the guilt, Otherwise the law dealing with the subject would lose its efficacy. Reliance is placed on 2006 SCMR 1120.

08. So far as the question of limitation is concerned, the appellant was dismissed from service vide order dated 03-07-2017 and he filed departmental appeal on 25-07-2017, which was not responded within the stipulated timeframe, hence the appellant instituted the service appeal on 07-11-2017 well within time,

ATTESTED



 Member
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

even if there was an issue of limitation in the instant case, no limitation would have run for challenging the impugned order, as such order was passed in violation of mandatory provisions of law. Reliance is placed on 2007 SCMR 834.


09. We are of the considered opinion that the appellant has not been treated in accordance with law. Since the appellant is no more but keeping in view, his length of service and gravity of the charges leveled against him, we are inclined to partially accept the instant appeal by converting penalty of dismissal into compulsory retirement from service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
26.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 25/4/22
Number of Pages 2000
Copy Fee 2/-
Urgent 5/-
Total 26/-
Name of Applicant _____
Date of Completion of Copy 25/4/22
Date of Delivery of Copy 25/4/22

E.P. No. 283/22⁻¹⁰⁻
Shafiqullah
Ann "C"

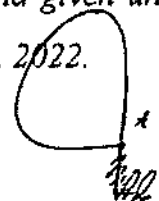


07.11.2022 Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Sajjad Akhtar, DEO (Male) for the respondents present.

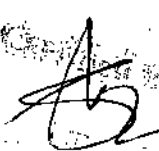
02. In pursuance of the Service Tribunal judgement dated 26.02.2022, the respondent department has issued office order bearing Endst. No.10968-73/Service Appeal (Lit File), dated 19.10.2022 whereby the petitioner has been compulsorily retired from service. The Office order is placed on file and a copy thereof provided to learned counsel for the petitioner who expressed satisfaction on the implementation report produced by the respondents. Consign.

03. Learned Additional Advocate General on the other hand, submitted an application for release of the salary in respect of respondent No. 1 to 3 as proper implementation report has been submitted in the Tribunal by them. Since the Service Tribunal's judgement in question is implemented, salary of the respondents No. 1 to 3 is hereby released.

04. Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 08th November, 2022.


(Mian Muhammad)
Member (E)

Date of Presentation of Application 14/11/22
Number of Words 800
Copying Fee 10/-
Stamp 5/-
Total 15/-
Date of receipt of copy 14/11/22
Date of delivery of copy 14/11/22


Secretary
Service Tribunal
Peshawar

وکالت نامہ

Honble KPK Senior Tribunal بعدالت:

Shafi ullah بنام Gout. of KPK

Implementation petition دعویٰ Petition/Appellat

17 - 01 - 2023

تاریخ

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے داخل پیروی و جوابدی

بقام اپنا وکیل کیلئے جاوید اقبال گل بیلہ لہذا وکیٹ سپریم کورٹ آف پاکستان

کو پدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا کوڈ یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر دالت کروں گا، اگر پیشی پر من مظہر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کی کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کوکل پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد وراثی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کٹرفہ درخواست حکم امتناعی یا ترقی یا گرفتاری قبل اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ویسے ہی اختیارات حاصل ہوں گے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند ہے۔

مورہ 17 - 01 - 2023 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

BC- 107924

17301-60885-7

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Javedigitalgubda9/980@gmail.com