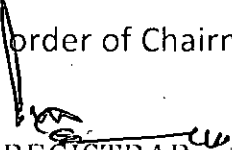


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 756/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.12.2022	<p>The execution petition of Mr. Shah Hussain Khan submitted today by Mr. Shuaib Sultan 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 SERVICES TRIBUNAL PESHAWAR

=====
E. Petition No. 756 /2022
=====

Shah Hussain Khan... VS... The Police Department & Others

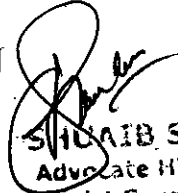
INDEX

S No	Description Of Documents	Annexure	Pages
1	Memo of Execution Petition with Affidavit		1 & 2
2	Judgment dated 18.10.2022	A	3 ----- 8
3	Application For Implementation Of Judgment dated 18.10.2022	B	9
4	Wakalat Nama		10

Dated-26-12-2022


PETITIONER
SHAH HUSSAIN KHAN
THROUGH COUNSEL

SHUAIB SULTAN
ADVOCATE
HIGH COURT


SHUAIB SULTAN
Advocate High Court
District Courts Mardan

BEFORE THE SERVICES TRIBUNAL

PESHAWAR

Petition No. 756 /2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 2574

Dated 27/12/2022

Shah Hussain Khan S.I, CTD Operation staff Mardan, Police Department Mardan. **Petitioner**

VERSUS

1. The Provincial Central Police Office, K.P. Peshawar
2. The Additional Inspector General of Police, HQ, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent of Police, CTD Mardan Region, Mardan.

Respondents.

=====

EXECUTION PETITION OF JUDGMENT/ ORDER , IN SERVICE APPELA No. 4839/ 2021, DECIDED ON 18-10-2022, UNDER CASE TITLE "SHAH HUSSAIN VS POLICE DEPARTMENT MARDAN ETC."

=====

**Respectfully Sheweth,
Facts:**

- I. That the Petitioner while posted as Sub-Inspector at operation wing CTD Mardan, the respondent No.04/ The Superintendent of Police, CTD Mardan Region, Mardan, awarded him the major punishment i.e. Reduction from higher stage to lower stage in the same time scale of pay specified as three years.
- II. That the petitioner challenged the said Order before this Honorable Services Tribunal vide Appeal No. 4839/2021, which was accepted on 18.10.2022. whereby the impugned order are set aside. **(Copy of the Judgment is annexure "A")**.

2

III. That the Petitioner submitted the copy of the relevant Judgment vide application dated 26.12.2022, but the respondents are reluctant to implement the Judgment in question. Although they are legally bound to implement the same. **(Copy of the Application is annexure "B")**.

It is therefore prayed that on accepting of this Petition, the Respondents may be directed to implement the Judgment in question in letter and spirit, with the costs of this Appeal.

Any other consequential relief, not specifically prayed for and deemed proper and appropriate by This Honorable Tribunal, under the facts and circumstances of the case, may also be granted to the appellant.

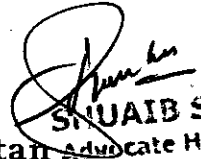
Dated: 26-12-2022



Petitioner

Shah Hussain Khan

Through:



SHUAIB SULTAN
Advocate High Court
District Courts Mardan

Advocate, High Court at Mardan.

AFFIDAVIT

I, **Shah Hussain Khan**, the Petitioner, do hereby state on solemn affirmation that the contents of this execution Petitions are true and correct to the best of my knowledge and belief.

Deponent

Shah Hussain Khan



BEFORE THE SERVICES TRIBUNAL**PESHAWAR**Appeal No. 4889/2021Khyber Pakhtunkhwa
Service TribunalDiary No. 4935Dated 16/4/2021

Shah Hussain Khan S.I, CTD Operation staff Mardan, Police
Department Mardan.

Appellant**VERSUS**

1. The Provincial Central Police Office, K.P. Peshawar
2. The Additional Inspector General of Police, HQ, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Inspector General of Police, ^{CTD} Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent of Police, CTD Mardan Region, Mardan.

Respondents.

Services Appeal Under Section 4 of the Service Tribunal Act, 1974

Filed to - against the office order of Superintendent of Police / Respondent No.04,

Registrar was Contained in Endorsement No. 1197-1201 CTD / Mardan Region

dated 25-06-2020 and the representation preferred to the respondent

No.03, against the said order was dismissed vide office Order No. 9232-

36 / EC/ CTD dated Peshawar the 12-08-2020, while the Revision

petition to Additional Inspector General of Police/ Respondent No. 02

was also rejected vide Office Order No. S 2262-70/ 21 dated, Peshawar

the 22-03-2021, to the extent of three years punishment i.e reduction

from higher stage to lower stage in the three years time scale of pay

TESTED

(Signature)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

P-4

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 4839/2021

Date of Institution ... 16.04.2021

Date of Decision ... 18.10.2022



Shah Hussain Khan S.I, CTD Operation staff Mardan, Police Department
Mardan.

... (Appellant)

VERSUS

The Provincial Central Police Officer, Khyber Pakhtunkhwa Peshawar and
three others.

... (Respondents)

MR. SHUAIB SULTAN.

Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,

Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN

MR. MIAN MUHAMMAD

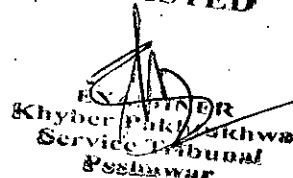
--- MEMBER (JUDICIAL)

--- MEMBER (EXECUTIVE)

JUDGMENT:

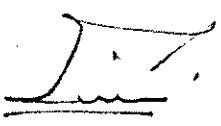
SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant appeal are that the appellant while posted as S.I in Operation Wing CTD Mardan, was proceeded against departmentally on the allegations that he was involved in arms smuggling and works as arm carrier to Punjab. Show-cause notice as well as grounds of action were issued to the appellant by Superintendent of Police CTD Mardan Region on 14.02.2020. On conclusion of the inquiry, the appellant was awarded major punishment

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of reduction from higher stage to lower stage in the same time scale of pay. The same was challenged by the appellant through filing of departmental appeal, which was rejected. The appellant then filed mercy petition before the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was also declined with the only modification that the impugned punishment of time scale shall be for three years. The appellant then approached this Tribunal through filing of instant service appeal for redressal of his grievance.

2. Respondents contested the appeal by way of submitting comments, wherein they refuted the assertions raised by the appellant in his appeal.

 3. Learned counsel for the appellant has contended that the appellant has a long unblemished service record and the allegations of his involvement in arms trafficking are totally wrong and baseless; that the appellant throughout his career has earned good ACRs and has been awarded several commendation certificates by his superiors; that the inquiry proceedings were conducted in utter violation of mandatory provision of Police Rules, 1975, therefore, the impugned orders are nullity in the eye of law; that not an iota of evidence was procured by the inquiry officer regarding the alleged involvement of the appellant in arms trafficking but even then he was awarded the impugned major penalty; that the appellant though knows one Sher Shah, who has been arrested in case FIR No. 4/2020 under sections 13-2(A)/13-2(B) registered at Police Station Chauntra District Rawalpindi, however the appellant is having no concern with arms business of Sher Shah; that

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

the inquiry officer has not recorded statement of any witness in support of the allegations leveled against the appellant, therefore, the inquiry officer has wrongly held that the charges against the appellant proved.

4. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellant has remained involved in arms trafficking and was having close contacts with arm smugglers, which fact is evident from CDR of Cell Phones of the appellant; that the appellant had visited several places in Punjab Province as well as Khyber Pakhtunkhwa in connection with arms trafficking and the said fact stood affirmed from CDR of his Cell Phones; that the charges against the appellant stood proved in a proper regular inquiry, wherein the appellant was provided an opportunity of self defence as well as personal hearing; that as the allegations against the appellant stood proved in a regular inquiry, therefore, he has rightly been awarded the impugned penalty.

J

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that show-cause notice and grounds of action were issued to the appellant on 14.02.2020. A finding report dated 02.03.2020 is available on the record, which would show that Akbar Khan DSP Headquarters CTD Mardan Region has conducted inquiry against the appellant. On sifting of the record, no document was found available on the record, which could show that Akbar Khan DSP Headquarters CTD Mardan was appointed as Inquiry Officer by the competent Authority. Representative of the respondents

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

as well as learned Assistant Advocate General have frankly conceded that no document regarding appointing of Akbar Khan DSP Headquarters CTD Mardan as inquiry officer in the matter is available in record of the respondents. Moreover, the inquiry officer has recommended in his report that the appellant may be proceeded against departmentally, if agreed by the competent Authority. Superintendent of Police CTD Mardan Region had thus put an endorsement dated 06.03.2020 on the findings report, whereby DSP Headquarters CTD Mardan has been asked to initiate proper departmental proceedings as per rules. The available record, however does not show that any further proceedings were carried out by DSP Headquarters CTD Mardan in compliance of the aforementioned endorsement. It appears from the record that the matter then remained dormant for more than three months and it was on 25.06.2020 that the impugned order was passed by Superintendent of Police, CTD Mardan Region, whereby the impugned major penalty of reduction from higher stage to lower stage in the same time scale of pay was awarded to the appellant. The procedure so adopted for inquiry against the appellant, could not be considered to be in conformity with the relevant provisions of Police Rules, 1975.

7. In support of the allegations against the appellant, the respondents have mainly relied on CDR of the Cell Phones of the appellant, showing visiting of the appellant to various places in Punjab and Khyber Pakhtunkhwa. In absence of any tangible evidence, mere CDR of Cell Phones of the appellant cannot by itself prove the charge

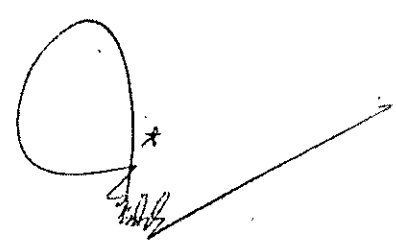
ATTESTED

MAJID
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

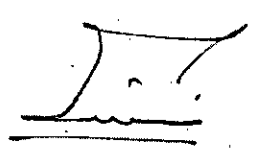
of involvement of the appellant in arms trafficking. In view of material
dents in the inquiry proceedings, the impugned orders are not
sustainable in the eye of law and are liable to be set-aside.

8. Consequent upon the above discussion, the impugned orders
stand set-aside and the appeal in hand is allowed as prayed for. Parties
are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.10.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 05/12/22
Number of Words 2400
Copying Fee 26/-
Urgent 4/5
Total 30/-
Name of Copyist _____
Date of Completion of Copy 05/12/22
Date of Delivery of Copy 05/12/22

R9

"B"

To

The District Police Officer
Mardan.

SUBJECT:- APPLICATION FOR THE IMPLEMENTATION OF JUDGMENT DATED 18.10.2022, IN SERVICE APPELA No. 4839/ 2021, UNDER CASE TITLE "SHAH HUSSAIN VS POLICE DEPARTMENT MARDAN ETC.

Sir,

It is submitted with great reverence that the Honorable Services Tribunal Peshawar set aside the Impugned order, whereby I was awarded the major punishment i.e. Reduction from higher stage to lower stage in the same time scale of pay specified as three years, vide judgment dated 18.10.2022, it is requested that the aforesaid judgment may be implemented in my favor.

Date. 15.12.2022



SHAH HUSSAIN.

SI, CTD, operation

WAKALAT NAMA

BEFORE KPK SERVICES TRIBUNAL

PESHAWAR

Appeal No. _____ of 20 _____

In re:-

Shah Hussain Khan

Appellant

Petitioner

VERSUS

The Police Deptt,

Respondent

KNOW ALL to whom these present shall come that I/ we Petitioner
(Degree holder) Execution Petition in the above noted service appeal,
do hereby appoint and constitute **Mr. SHUAIB SULTAN ADVOCATE**
Mardan as Counsel in subject proceeding and authorize him to appear, plead etc.,
compromise, withdraw or refer to arbitration for me/ us, as my/ our Advocate in
the above matter, without any liability for his default and with the authority to
engage/ appoint any other Advocate/ Counsel at my/ our behalf all sums and
amounts payable to deposited on my/ our account in the above noted matter.

IN WITNESS WHEREOF I/ We do hereunto set my/our hand to these presents the
contents of which have been understood by me/us on this _____ day of
_____ 2020 .

Accepted subject to the terms of the fees.



SHUAIB SULTAN
Advocate High Court

Shuaib Sultan Advocate High Court

District Courts Mardan

Cell No. 0300-5727424

Email. shuaibadv@gmail.com

Bar Council, S. No.Bc-10-5973

Signature of client: _____



Dated: 26. 12. 2022.