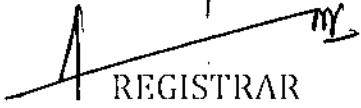


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 50/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.01.2023	<p>The execution petition of Mr. Farman Ullah submitted today by Mr. Fazal Shah Mohmand 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 style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No 50 /2023
In
Service Appeal No 9408/2020

AA9

Farman Ullah.....Petitioner

V E R S U S

PPO and others.....Respondents

I N D E X

S. No	Description of documents	Annexure	Pages
1.	Implementation Petition with Affidavit		1-2
2.	Copy of the Judgment/Order dated 18-01-2022	A	3-8
3.	Vakalat Nama		9

Dated:-24-01-2023

Petitioner/Appellant

Through

Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No _____/2023

In

Service Appeal No 9408/2020

Farman Ullah, Head Constable No 15440, Counter Terrorism
Department, Operation Team Dir Upper**Petitioner**

V E R S U S

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Counter Terrorism
Department, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police, Counter Terrorism Department,
Malakand Region at Swat.**Respondents**

IMPLEMENTATION PETITION UNDER SECTION 7 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
FOR THE IMPLEMENTATION OF JUDGMENT/ORDER
DATED 18-01-2022 PASSED BY THIS HONORABLE
TRIBUNAL IN THE ABOVE TITLED SERVICE APPEAL.

Respectfully Submitted:-

1. That the Petitioner/appellant earlier filed Service Appeal No 9408/2020, before this honorable Tribunal for his reinstatement in service, which was accepted and the respondents were directed to reinstate the appellant in service with all back benefits vide Order/Judgment dated 18-01-2022. **(Copy of the Order/Judgment dated 18-01-2022 is enclosed as Annexure A).**
2. That the respondents are not ready to implement the Order/Judgment of this honorable Tribunal in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Judgment and Order dated 18-01-2022 of this honorable Tribunal.
3. That noncompliance of the order of this honorable Tribunal, speaks malafide on part of the respondents and they are bent upon to lower the position of the judiciary in the eyes of the public at large.

2

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Judgment /Order of this honorable Tribunal dated 18-01-2022 passed in Service Appeal No 9408/2020.

Dated:-24-01-2023

Petitioner/Appellant

Through

Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan

AFFIDAVIT

I, Farman Ullah, Head Constable No 15440, Counter Terrorism Department, Operation Team Dir Upper, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

DEPONENT

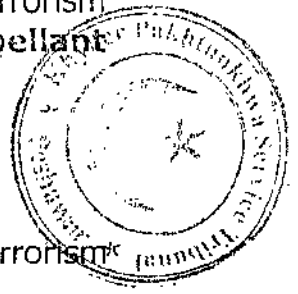
Fazal Shah Mohmand
Advocate Peshawar

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Diary No. 8967
Dated 19-8-2020

Service Appeal No 9408/2020

Farman Ullah Ex Head Constable No 1540, Counter Terrorism
Department, Operation Team Dir Upper.....Appellant



V E R S U S

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Counter Terrorism Department, Khyber Pakhtunkhwa Peshawar.
3. Superintendent of Police, Counter Terrorism Department, Malakand Region at Swat..... Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER DATED 11-08-2020 PASSED BY RESPONDENT NO 1 WHEREBY REVISION PETITION FILED AGAINST THE ORDER DATED 10-02-2020 OF RESPONDENT NO 2 WHICH THE APPELLANT HAD FILED AGAINST THE ORDER DATED 26-09-2018 OF RESPONDENT NO 3 WHEREBY THE APPELLANT WAS AWARDED THE PENALTY OF REMOVAL FROM SERVICE.

PRAYER:-

On acceptance of this appeal the impugned Orders 11-08-2020 of respondent No 1, order dated 10-02-2020 of respondent No 2 and order dated 26-09-2018 of respondent No 3 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 was enlisted as Constable in District Police Dir Upper on 10-05-2006, was selected for Elite Course in the year 2009 and after qualifying the same was serving in Elite Force till March 2014 when the appellant was selected for Upper School Course and after qualifying which the appellant was transferred to Counter Terrorism Department Operation Team Dir Upper. Since appointment the appellant performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.

2. That on 03-08-2018 the appellant while lastly posted to Counter Terrorism Department Operation Team Dir Upper, was falsely involved in criminal case vide FIR No 463 dated 03-08-2018 U/Ss 302/324/PPC of Police Station Dir and was arrested the same day. (Copy of FIR is enclosed as Annexure A).

Filed by
Registrar
19/8/2020

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 9408/2020

Date of Institution ... 19.08.2020

Date of Decision ... 18.01.2022



Farman Ullah Ex Head Constable No. 1540, Counter Terrorism Department,
Operation Team Dir Upper. ... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others
... (Respondents)

Fazal Shah Mohmand,
Advocate ... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief fact of the case are that the appellant while serving as Constable in Police Department, was charged in FIR U/Ss 302/324/34 PPC dated 03-08-2018 and was arrested the same day. The appellant was also proceeded departmentally on the charges of registration of FIR against him and was ultimately dismissed from service vide order dated 26-09-2018. In the meanwhile, the appellant was acquitted of the charges vide judgment dated 19-12-2019 and was released from jail. The appellant filed departmental appeal dated 26-12-2019, which was rejected vide order dated 10-02-2020. The appellant filed revision petition dated 11-02-2020, which was also rejected vide order dated 11-08-2020, hence the instant service appeal with prayers that the impugned orders dated 26-09-2018, 10-02-2020 and

ATTESTED

MEMBER
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

11-08-2020 may be set aside and the appellant may be re-instated in service with all back benefits.


02. Learned counsel for the appellant has contended that the appellant was not proceeded as per mandate of law, hence his rights secured under the law has badly been violated; that respondents were required to suspend the appellant and to wait for decision in the criminal case, instead he was proceeded hastily and was dismissed from service, which is against law, facts and norms of natural justice; that the appellant was acquitted of the criminal charges vide judgment dated 19-12-2019, hence there remains no ground to maintain such penalty; that the appellant was proceeded in absentia as during the departmental proceedings, the appellant was behind the bar and before his release, he was dismissed from service, which was illegal and unlawful.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was found involved in a criminal case FIR U/Ss 302/324/34PPC Dated 03-08-2018 and on the same very charges, the appellant was proceeded departmentally; that proper charge sheet/statement of allegation was served upon the appellant and a proper inquiry to this effect was conducted; that proper showcause notice was also served upon the appellant; that the inquiry officer proved the allegation leveled against him; that upon recommendation of the inquiry officer, the appellant was dismissed from service vide order 26-09-2018; that departmental appeal as well as revision petition of the appellant were rejected being barred by time.

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

05. Record reveals that the appellant after being charged in FIRs, was proceeded departmentally in absentia as the appellant was in jail, who was released on 19-12-2019, but before his release from jail, the appellant was

ATTESTED


 M. S. JINER
 Assistant Commissioner
 Service Tribunal
 Allahabad

dismissed on 26-09-2018, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry. To this effect, the august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have 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, 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.

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

07. The criminal case was decided vide judgment dated 19-12-2019 and the appellant was exonerated of the charges. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Services Tribunal

presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed.

08. On the question of limitation contention of the appellant, hold force, as the appellant filed departmental appeal just after acquittal from criminal charges.

In a situation, if a civil servant is dismissed from service because of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. The august Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation, Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880, where as the appellant has a strong case on merit and the respondents have no arguments

ATTORNEY GENERAL
 FEDERAL GOVERNMENT
 MINISTRY OF LAW, GOVERNMENT
 SERVICES BUILDING
 ISLAMABAD

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except limitation. In view of situation, the delay so occurred is condoned. We are of the considered opinion that absence of the appellant cannot be counted as absence, as the appellant was behind the bars and facing criminal proceedings

09. We are of the considered opinion that the appellant has not been treated in accordance with law and was removed from service without adhering to the method prescribed in law. Now in case of his acquittal from the same charge, upon which he was dismissed, has vanished away. In circumstance, we are inclined to accept the instant service appeal. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs.

ANNOUNCED
18.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified true copy

CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 01/04/22
Number of Bundles 2000
Copy Fee 22/-
Stamp 4/-
Total 26/-
Date of Delivery of Copy 01/04/22
Date of Delivery of Copy 01/04/22

IN THE SERVICE TRIBUNAL KP, PESHAWAR.

No. _____/2022

.....Petitioner.

VERSUS

..... Respondents.

I, the undersigned, do hereby appoint and constitute,

FAZAL SHAH MOHMAND Advocate Supreme Court. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

1. To draft and sign files at necessary pleadings, applications, objections, affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
2. To employ any other Legal Practitioner, authorizing him to exercise the power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I/We also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I/We further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 21-10-2020


CLIENT(s)

ACCEPTED BY:

FAZAL SHAH MOHMAND
ADVOCATE,

SUPREME COURT OF PAKISTAN.

B. c No; 10-5543 CNIC No. 16102-6124521-1

OFFICE:-Cantonment Plaza Flal 3/B Khyber Bazar Peshawar Cell# 0301 8804841
(Clerk) Cell# 03339122477

Email: - fazalshahmohmand@gmail.com.