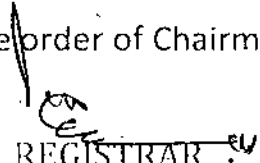


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 66/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.02.2023	<p>The execution petition of Mr. Shamraiz Khan submitted today by him. 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 style="text-align: right;">By the order of Chairman  REGISTRAR</p>

بخدمت جناب چیئرمین صاحب سروس ٹراہونل کورٹ پشاور

درخواست بمسراد دادرسی سائل

جناب عالی! سائل حسب ذیل عرض رساں ہے؛

مؤدبانہ گزارش ہے کہ سائل کی عرصہ دراز سے قتل مقتالہ کی دشمنی چلی آرہی ہے مخالفین ایبٹ آباد میں رہائش پذیر ہے جہاں پر سائل کو مخالفین کی طرف سے جانی خطرہ لاحق ہے۔ اس لئے استدعا ہے کہ سائل کے درخواست Implimentation کی سماعت سروس ٹراہونل پشاور میں کرنے کا حکم صادر فرمایا جائے۔

سائل دعا گو رہے گا۔

مورخہ: 07 فروری، 2023ء

سائل

شمیر خان ٹیچر

GPS شمال گلی نمبر 1 ضلع کوٹلی پالس کوہستان

BEFORE THE SERVICE TRIBUNAL COURT KPK
PESHAWAR

Execution Petition No. 66/2023

Misc Application No. _____/2023

Shamraiz Khan Senior Primary School Teacher Shamal Gali No.1 District Kolai Palas Kohistan.

...PETITIONER

VERSUS

1. Director Education Elementary and Secondary Education KP, near Hussain Shaheed High School Firdous Peshawar.
2. District Education Officer (Male) Kolai Palas Kohistan.

...RESPONDENTS

APPLICATION FOR IMPLEMENTATION

INDEX

S.#	Description	Page #	Annexures
1.	Application alongwith affidavit	1 to 02	
2.	Copy of service appeal No.1608	03	"A"
3.	Copy of judgment of this Honourable Tribunal dated 30/03/2022	04 to 07	"B"
4.	Copy of application dated 30/05/2022	08	"C"

Dated: 06/02/2023

.....IN PERSON
...APPELLANT / PETITIONER
...SHAMRAIZ KHAN

03452962848.

Shamraiz Khan

1

BEFORE THE SERVICE TRIBUNAL COURT KPK
PESHAWAR

Execution Petition NO. 66/2023

Misc Application No. _____/2023

Shamraiz Khan Senior Primary School Teacher Shamal Gali No.1 District Kolai Palas Kohistan.

...PETITIONER

VERSUS

1. Director Education Elementary and Secondary Education KP, near Hussain Akhtukhwa Shaheed High School Firdous Peshawar. Service Tribunal
2. District Education Officer (Male) Kolai Palas Kohistan.

Diary No. 3454

Dated 07-2-2023

...RESPONDENTS

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 30/03/2022.**

Respectfully Sheweth:-

The facts forming the backgrounds of the instant implementation petition are arrayed as under:-

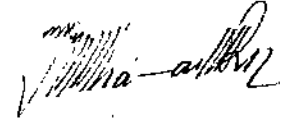
1. That applicant / appellant was removed from service by the respondent vide order dated 31/07/2019. The petitioner / appellant filed service appeal No.1608/2019 before this Service Tribunal for his re-instatement in service. Copy of service appeal No.1608 is attached as Annexure "A".
2. That this Honourable Tribunal accepted service appeal of the appellant and directed the respondents to re-instate the appellant in service vide judgment dated 30/03/2022. Copy of judgment of this Honourable Tribunal is attached as Annexure "B".

3. That the appellant / petitioner submitted the judgment of Honourable Tribunal through application dated 30/05/2022 to respondents for their implementation of the judgment, but the judgment dated 30/03/2022 of this Honourable Tribunal has not so far been implemented by the respondents department. Copy of application dated 30/05/2022 is attached as Annexure "C".
4. That the act of the respondents towards the petitioner / appellant is malafide and non-implementation of judgment dated 30/03/2022 amounts to contempt of this Honourable Tribunal.

It is therefore, humbly prayed that on acceptance of the instant implementation petition, respondents may be directed to reinstate the petitioner / appellant in service forthwith, failing which contempt of court proceedings may be initiated against them.

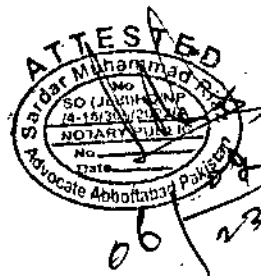
.....*IN PERSON*
 ...*APPELLANT / PETITIONER*
 ...*SHAMRAIZ KHAN*

Dated: 06/02/2023

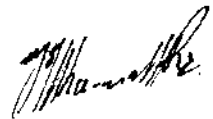


AFFIDAVIT:-

I, *Shamraiz Khan Senior Primary School Teacher Shamal Gali No.1 District Kolai Palas Kohistan*, do hereby solemnly affirm and declare on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Tribunal.



DEPONENT



3

15

Annex 'A'



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1608/2019

*Shamraiz Khan Ex Senior Primary School Teacher Shamal Gali No 1
District Kolai Palas Kohistan.*

Khyber Pakhtunkhwa (Appellant)
Service Tribunal

Versus

Duty No. *1644*

Date *29-11-2019*

1. Government of Khyber Pakhtunkhwa through Secretary E& SE KPK Civil Secretariat Peshawar.
2. Director Education Elementary & Secondary Education KP, near Hussain Shaheed High School Firdos Peshawar.
3. District Education Officer Male, Kolai Palas Kohistan.
4. Sub Divisional Education Officer Kolai Palas Kohistan.

(Respondents)

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT 1974,
 AGAINST THE ORDER DATED 31/07/2019, WHEREBY APPELLANT
 WAS REMOVED FROM SERVICE BY THE RESPONDENT NO 3 AND
 ORDER DATED 04/10/2019, RECEIVED ON 17/11/2019
 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT
 WAS DISMISSED BY THE RESPONDENT NO 2.

Filed to-day

[Signature]
REGISTRAR

29/11/19

PRAYER

ON ACCEPTANCE OF THE APPEL THE IMPUGNED ORDERS
 PASSED BY RESPONDENTS NO 2 & 3 MAY GRACIOUSLY BE SET
 ASIDE AND APPELLANT MAY BE REINSTATED IN SERVICE WITH
 ALL BENEFITS

ANY OTHER RELIEF, WHICH THIS HONORABLE TRIBUNAL MAY
 DEEM FIT MAY ALSO BE GRANTED.

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

(4) Annex "B"

/

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1608/2019

Date of Institution ... 29.11.2019
Date of Decision ... 30.03.2022



Shamraiz Khan Ex-Senior Primary School Teacher Shamal Gali
No.1 District Kolai Palas Kohistan.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary E&SE
Khyber Pakhtunkhwa Civil Secretariat, Peshawar and three
others.

(Respondents)

Rashid Rauf Swati,
Advocate

... For appellant.

Naseer-Ud-Din Shah,
Assistant Advocate General

... For respondents.

Salah-Ud-Din
Rozina Rehman

... Member (J)

... Member (J)


JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

"On acceptance of the appeal, the impugned orders
passed by the respondents No.2 & 3 may graciously
be set aside and appellant may be reinstated in
service with all benefits."

2. The relevant facts leading to filing of instant appeal are that
appellant was appointed as PTC Teacher in 1992. It was on

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

16.05.2019 when he was served with show cause notice. He submitted reply but to utter surprise of appellant, he was removed from service on 31.07.2019. He filed departmental appeal which was dismissed. He also filed an application for review of the order dated 04.10.2019 which was not responded to, hence, the present service appeal.

3. We have heard Rashid Rauf Swati Advocate for appellant and Naseer-Ud-Din Shah, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Rashid Rauf Swati Advocate, learned counsel appearing on behalf of appellant, inter-alia, contended that the so called disciplinary proceedings are in violation of the settled law on the subject as such the impugned notification of removal from service and dismissal of departmental appeal is liable to be set aside. He contended that the appellant throughout his carrier performed his duty properly and with full devotion to the entire satisfaction of his seniors. It was argued that due to enmity, family of the appellant is settled in Mansehra and he was the only teacher posted in the School in a far flung hilly area and despite repeated requests, no other teacher was posted in the said School but he never remained absent from duty rather availed leave as and when needed. Learned counsel submitted that only four days alleged absence was made a ground for his removal from service though he was on leave and the penalty imposed is harsh and against the settled principles. Lastly, he submitted that no charge sheet and statement of allegations were served upon the appellant and that the

ATTESTED
[Signature]
[Stamp]

major penalty was imposed without regular inquiry which is violation of fundamental rights of fair trial guaranteed by the Constitution. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely learned AAG submitted that appellant remained willful absent from duty and found negligent several times by IMU/DCMA. He contended that services of the appellant were not satisfactory according to the rules and his removal from service was recommended by the SDEO after conducting proper inquiry and after fulfillment of codal formalities, he was punished according to law.

6. From the record, it is evident that the appellant was proceeded against departmentally on the allegations of habitual absence and major penalty of removal from service was imposed upon him under Rule-4(b) (iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. A Government servant shall be liable to be proceeded against under the Rules ibid if he is guilty of habitually absenting himself from duty without prior approval of leave. If on the basis of its own knowledge or information placed before it, the competent authority is of the opinion that there are sufficient grounds for initiating proceedings against a Government servant under the rules it shall either:

proceed itself against the accused by issuing a show cause notice under Rule-7 and for reasons to be recorded in writing, dispense with inquiry and if the competent authority decides to get an inquiry conducted into the charge or charges against the accused, by appointing an inquiry officer or an inquiry committee, as the case may

ATTESTED

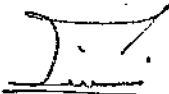
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

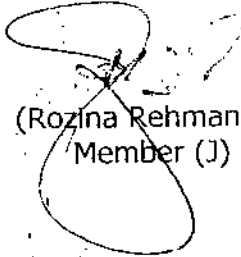
be under Rule-11 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

In the instant case, the competent authority appointed Inquiry Officer (Sub Division Education Officer) but no inquiry report is available on file. No charge sheet and statement of allegations were ever served upon appellant which means that proper procedure prescribed by the law was not followed in the instant case. The only show cause notice available on file shows that as per report of DCMA/IMU, the appellant was charged for willful absence from duty on 04.05.2019, whereas, the impugned notification dated 31.07.2019 shows four different dates for which the appellant was charged for willful absence. These dates are 24.04.2018, 04.12.2018, 22.03.2019 and 04.05.2019. In fact, major penalty of removal from service was imposed upon him on the allegation of absence for a single day which order is harsh and does not commensurate with the gravity of guilt. Even otherwise, absence was not proved as no proper inquiry was conducted in the matter.

7. For what has been discussed above, instant service appeal is accepted. Impugned order is set aside and appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
30.03.2022


(Salah-Ud-Din)
Member (J)


(Rozina Rehman)
Member (J)

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

Date of Presentation of Application 30/3/22
Number of Words 2000
Copying Fee 22/-
Urgent _____
Total 22/-
Name of Copyist _____
Date of Completion of Copy 25/5/22
Date of Delivery of Copy 25/5/22

[Faint handwritten notes and stamps, possibly including a date like 30/3/22]

حضرت صاحب دوسرا ایجوکیشن انسٹیٹیوٹ کوئی پائل سا کوہستان اور دہریہ

جامعہ عالی

1 گمراہی سے ہم Removal Appeal لیا ہے سرورس ٹیریوٹیل اڈانڈی اپیل No. 1608/2019

لہذا یہ سماعت فیصلہ طرز سائل فورم 03 30 سرورس جیسے غلط بنیاد پر حقوق و قانون دادا دی گئی اور یہ سائل گزشتہ کا حکم ہوا۔

حکم عدالت سرورس ٹیریوٹیل کے لہذا یہ غلط کامی لیم در فراغت ٹیریوٹیل سے ارسال صرف ہے استر عامیہ سائل فورم 19/19 اور فورسوں کیا گیا تھا جو عدالت سے اپیل منظور ہو گیا تھا۔ پرنسپل اور اس کے حقوق فیصلہ حکم ہوا اور فریڈیا شامل و کور و مینور ہو گیا۔

الموع 05 30 2022

عینہ کواڑش

الموع

Munir

Teacher P.S. Sural Talik Koli

Copy forwarded to 0345.2962848

2 گمراہی سے ہم SDEED میں کوئی پائل سا کوہستان

3 گمراہی سے ہم یادداشت و گمراہی سے سرورس ٹیریوٹیل

کوئی غلط بنیاد پر فراغت سے پیدا اپیل / تنظیم عدالت
قد مور باہر 1608 تاریخ فروری 30 2019

گمراہی سے ہم فراغت و سرورس کوئی پائل سا کوہستان
کو فروغ کا وہاں کے ریکارڈ گمراہی سے اپیل اور یہ فراغت
برا یادداشت کوئی پائل سا کوہستان فراغت سے
اللہ تعالیٰ کوئی گمراہی سے ہم فراغت سے 05 2019