

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 63/2023

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. Iqbal Hussain submitted today by Mr. Muhammad Aslam Tanoli Advocate. It is fixed for implementation report before touring Single Bench at A.Abad on _____.</p> <p>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>

By the order of Chairman


REGISTRAR

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....63/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3425

Dated 6-2-2023

Iqbal Hussain, Inspector KPK Police No. H/74, presently posted as
Acting DSP at Hohistan.

.....(Petitioner)

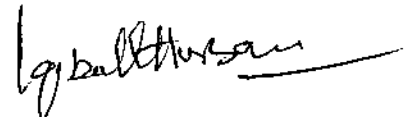
VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.

EXECUTION PETITION IN SERVICE APPEAL NO. 8145/2020

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3.	Wakalatnama		



PETITIONER

THROUGH



(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 6-02-2023

①

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 63/2023

Iqbal Hussain, Inspector KPK Police No. H/74, presently posted as Acting DSP at Hohistan.

.....(Petitioner)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.

EXECUTION PETITION IN SERVICE APPEAL NO. 3315/2020 FOR IMPLEMENTATION OF JUDGMENT/DECISION DATED 19-04-2022 OF THIS HONOURABLE SERVICE TRIBUNAL.

PRAYER: ON ACCEPTANCE OF INSTANT EXECUTION PETITION THE RESPONDENTS MAY GRACIOUSLY BE DIRECTED TO IMPLEMENT THE JUDGMENT/DECISION DATED 19-04-2022 OF THIS HONOURABLE SERVICE TRIBUNAL PROVISIONALLY/CONDITIONALLY SUBJECT TO OUTCOME OF CPLA BEING FILED BY THE RESPONDENTS.

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal before this Honorable Service Tribunal against the order of Respondents whereby petitioner/appellant was awarded the punishment of "Stoppage of 03 (three) years increments with cumulative effect" and period remained out of service as leave without pay by respondents.
2. That this Honorable Tribunal on acceptance subject service appeal issued judgment/decision dated 19-04-2022 that "In view of the above discussion, the appeal in hand is allowed by setting aside the impugned penalty

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and three annual increments of the appellant are restored with all consequential benefits".

(Copy of judgment/decision dated 19-04-2022 is attached as Annexure- "A").

3. That on receipt of attested copy of the judgment/decision dated 19-04-2022 this Honorable Tribunal, the appellant requested the respondents for implementation of the judgment/decision.
4. That the respondents instead of implementing the judgment/decision of this Honorable Tribunal stated that they have filed a CPLA with stay application against the judgment/decision of Honorable KPK before the Supreme Court of Pakistan in its Branch Registry at Peshawar.
5. That despite petitioner's incessant approaches to respondents, he has not been granted the decided rights/benefits of his service. Appellant is facing financial distresses due to the reason.
6. That there is no stay order from the Apex Supreme Court of Pakistan against the judgment/decision dated 19-04-2022 of this Honorable Tribunal and in such a position respondents are legally bound to implement the said judgment/decision in its letter and spirit. Hence this Execution Petition on the following:

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GROUNDS

- A) That as this Honorable Service Tribunal in its judgment/decision dated 19-04-2022 has decided that "In view of the above discussion, the appeal in hand is allowed by setting aside the impugned penalty and three annual increments of the appellant are restored with all consequential benefits".
- B) That there is no stay order from the Apex Supreme Court of Pakistan against the Judgment/decision dated 19-04-2022 of this Honorable Tribunal and the same is in field. Respondents are legally bound to comply with the said judgment/decision.
- C) That departmental authorities/respondents are reluctant to pay any heed to the judgment/decision dated 19-04-2022 of this Honorable Tribunal hence instant execution petition.
- D) That petitioner is facing financial distresses due to non-implementation of judgment/ decision of this Honorable Tribunal.
- E) That instant Execution Petition is well within time and this Honorable Tribunal has got ever jurisdiction to entertain and adjudicate upon the same.

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PRAYER:

It is, therefore, humbly prayed that this Honorable Tribunal may graciously be pleased to accept this Execution Petition and issue necessary orders/directions to the respondents to implement the judgment/decision dated 19-04-2022 of this Honorable Tribunal in its true letter and spirit.

Iqbal Hussain
PETITIONER

THROUGH

M. Aslam
(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 6-02-2023

AFFIDAVIT

I, Iqbal Hussain petitioner do hereby undertake/solemnly affirm that the contents of foregoing petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honorable Tribunal.

Dated 6-02-2023

Iqbal Hussain
DEPONENT

ATTESTED
YASIR JAVED
NOTARY PUBLIC
Advocate High Court Haripur

YASIR JAVED
R.O. A.C.
Notary Public
Haripur
No. _____
Date 04/02/2023
ADVOCATE HIGH COURT PESHAWAR

Am-A

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BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Appeal No. 3315...../20

Iqbal Hussain Inspector. Police No.H/74, Police Lines Haripur.
Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 20-11-2019 OF THE DISTRICT POLICE OFFICER HARIPUR WHEREBY APPELLANT WAS AWARDED PENALTY OF "COMPULSORY RETIREMENT FROM SERVICE" AND THE REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD ORDER DATED 09-03-2020 WHEREBY WHILE ACCEPTING HIS DEPARTMENTAL APPEAL THE PENALTY OF COMPULSORY RETIREMENT HAS BEEN CONVERTED INTO STOPPAGE OF 03 YEARS INCREMENTS WITH COMULATIVE EFFECT.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL BOTH THE IMPUGNED ORDERS DATED 20-11-2019 AND 09-03-2020 OF THE RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND THE APPELLANT BE RESTORED HIS 03 INCREMENTS WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully sheweth,

That appellant while posted Oil Police Station Khanpur(Haripur) was issued a Show Cause Notice dated 12-09-2019 by the District Police Officer Haripur alleging therein:

Filed today
Registrar
23/11/2020

"that while posted as Oil OS Khanpur, it has come to the notice of the undersigned vide FIR No.470 dated. 07-09-2019 u/s-325 PPC PS Khanpur that accused Yasir s/o Abdul Rasheed r/o Kohala Pine was arrested in case FIR No.439 dated 18-08-2019 u/s-302 /34/109 PPC PS Khanpur who tried to commit suicide in your custody. This act shows in-competency and negligence on you part which is gross misconduct in terms of Police E&D Rules 1975 hence charge sheeted". (Copy of Show Cause Notice dated 12-09-2019 is attached as Annex- "A").

ATTESTED

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR,
AT CAMP COURT ABBOTTABAD

Service Appeal No. 3315/2020

Date of Institution ... 23.04.2020

Date of Decision ... 19.04.2022



Iqbal Hussain Inspector Police No. H/74, Police Lines Haripur.

(Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.

(Respondents)

MR. MUHAMMAD ASLAM TANOLI,
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts of the instant service appeal are that the appellant while posted as OII in Police Station Khanpur District Haripur, was proceeded against departmentally on the allegations that one Yasir S/O Abdur Rasheed, who was being arrested in case FIR No. 439/2019 under sections 302/34/109 PPC, had tried to commit suicide, while in custody of the appellant. On conclusion of the inquiry, the appellant was awarded major penalty of compulsory retirement from service, vide order dated 20.11.2019. The appellant challenged the same

[Signature]

TESTED
[Signature]
[Stamp]


through filing of departmental appeal, which was decided vide order dated 09.03.2020, whereby the appellant was reinstated in service and the punishment of compulsory retirement was converted into punishment of stoppage of three annual increments with cumulative effect, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant had thoroughly made body search of the concerned accused and nothing incriminating was found in his possession. He next contended that during interrogation, the accused complained of severe pain in his stomach, therefore, he was handed over to Muhammad Hafeez IHC for taking him to the toilet. He next contended that there existed no lapse on part of the appellant in the episode of attempting of committing of suicide by the concerned accused but even then, the competent Authority wrongly and illegally held the appellant guilty of committing misconduct. He further argued that no one was examined by the inquiry officer as witness in the matter and the appellant was not confronted with the alleged incriminating evidence used against him for imposition of the penalty. He also argued that the concerned accused had caused himself minor injury and was discharged from the hospital on the following day. He further argued that although there is some delay in filing of the service appeal but the same was due to the lockdown on account of COVID-19, therefore, the delay if any, in filing of the appeal is condonable.

Jan 11

4. On the other hand, learned Additional Advocate General for the respondents has contended that the accused was in custody of the appellant at the relevant time and it was due to sheer negligence of the appellant that the accused made an attempt of committing suicide by causing injury to himself through a blade. He next contended that regular inquiry was

ATTESTED

Attesting Officer
Service Tribunal



conducted in the matter and the appellant was found guilty of misconduct. He further argued that the appellate Authority has already taken lenient view in the matter and has converted the major penalty of compulsory retirement from service into stoppage of three annual increments with cumulative effect. He next contended that the service appeal of the appellant is time barred and the appellant has not put forward any sufficient cause for condonation of delay, therefore, the appeal in hand is liable to be dismissed.

5. Arguments heard and record perused.

6. A perusal of the record would show that the appellant was awarded major penalty of compulsory retirement from service by competent Authority vide order bearing endorsement No. 8061-62 dated 20.11.2019, copy of which is available on the record. It is mentioned in the aforementioned order that the same was announced in presence of the appellant on 20.09.2019. According to the content of the said order, the appellant was heard in orderly room on 20.11.2019, which is quite astonishing because the appellant was given hearing after announcement of the order on 20.09.2019.

7. It is evident from perusal of the record that upon arrest of the accused Yasir, his body search was made. In this respect, copy of recovery memo is available on the record, which would show that only a cell phone was recovered from his possession. It is an admitted fact that the accused Yasir was handed over to one Muhammad Hafeez IHC for taking him to the toilet. The appellate Authority i.e. Regional Police Officer Hazara Region Abbottabad, has also mentioned in his order dated 09.03.2020 that primarily, the responsibility of checking of the washroom was that of the Muhammad Hafeez IHC, who has been awarded punishment of forfeiture of approved service for one year. Moreover, in view of the material available on the record, it cannot be safely concluded that there was any fault on the part of the appellant. The appellant was though issued final show-cause notice but copy of the

RECORDED

 20/11/2019

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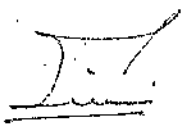
inquiry report was not provided to him, which has deprived him of making proper defense in the inquiry proceedings.

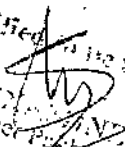
8. In wake of COVID-19, the Government of Khyber Pakhtunkhwa declared Public Health Emergency for the first time in March, 2020 for three months which was extended from time to time for further term. The case of the appellant falls within the period of emergency. In view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law shall remain frozen. The departmental appeal of the appellant was decided on 09.03.2020, while he filed the instant service appeal on 23.04.2020. The service appeal has though been filed beyond the statutory period of 30 days, however in view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the appeal in hand is not hit by limitation.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned penalty and three annual increments of the appellant are restored with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.04.2022

(ROZINA REHMAN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD


Certified to be true copy
MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/6/22
Number of Pages 2020
Complaint Fee 22/-
Filing Fee 5/-
Total 26/-
Date of Receipt of Application 23/6/22
Date of Receipt of Fee 23/6/22

وکالت نامہ

بعد ازاں جناب *محمد منیر علی* نے *خواجہ کرم علی* کو *کریڈیٹ* پر *مستحق* قرار دیا اور

منجانب *اسٹریٹ* *ایڈووکیٹ* *محمد منیر علی*

دعویٰ یا برہمن *Execution Petition* باعث تحریر آئی کہ

مندرجہ بالا عنوان میں اپنی طرف سے بیروی و جوابدہی مقام *ایڈووکیٹ آباد* *منشاور*
 محمد منیر علی ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص
 رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی
 پیشی پر مظہر حاضر نہ ہوں۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ
 ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز
 تعطیل بیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ ساعت ہونے یا بروز پکھری کے اوقات
 کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے واسطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے
 بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب
 موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق
 کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے
 کا ہر قسم کا بیان دینے اور سپرد و تالی و راضی نامہ و فیصلہ بر خلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و
 برآمدگی مقدمہ یا منسوخی ڈگری یا یکطرفہ درخواست حکم اتمامی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو
 بشرط ادا تکلی علیحدہ بیروی مختار نامہ کرینکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا ایئر سٹر
 کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہونگے جیسے صاحب
 موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیروی نہ
 کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سند ہے مضمون
 مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

تاریخ: 2023-02-06

السنة النبوية

Accepted by
M. Aslam

Isbal Hussain
(ایڈووکیٹ منیر علی)