Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 69/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.02.2023	The execution petition of Mr. Zahid Khan submitted today by Mr. Zafar Ali Khan 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. By the order of Chairman REGISTRAR

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

اکبر خٹک ... Appellant

Versus

نور الامان ... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: ***Advocate*** ***Court***	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Zafar Ali Khan Adv

Signature:- _____

Dated:- 9-2-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 69/2023

Appeal No.6333/2020

Zahid Khan ..... Appellant

Versus

Inspector General of Police, KP, Peshawar & others.... Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Implementation application with affidavit.		1-2
2	Attested copy of order/ judgment dated 08.09.2022, vakalat name	A	3-8 9,

Petitioner

Through

Zafar Ali Khan
Advocate High Court
03339342142
03139539269
Email Zafar.adv114 Gmail@pk

Dated: 09.02.2023

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition NO. 69/2023

Appeal No.6333/2020

Khyber Pakhtunkhwa Service Tribunal
Diary No. 3498
Dated 09-02-2023

Zahid Khan s/o Abdur Rahim Khan
Constable Belt NO.1145, District Police Bannu
R/o Ismail Khel, District Bannu..... Appellant

Versus

1) Inspector General of Police, KP, Peshawar.
2) Regional Police Officer, District Bannu.
3) District Police Officer, Bannu.
4) Commandant Elite Force, KP, Peshawar.
5) Deputy Commandant Elite Force, KP, Peshawar..... Respondents

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Application for implementation of judgment/ order of service tribunal dated 08.09.2022.

Respectfully Sheweth;

1) That this Hon'ble Tribunal vide judgment/ order dated 08.09.2022 accepted appeal of applicant/ petitioner. (Copy of judgment/ order dated 08.09.2022 is attached as Annexure "A").

2) That petitioner approached the concerned authorities for the implementation of judgment/ order dated 08.09.2022 but the respondents implemented the order of this Hon'ble Tribunal to the extent of reinstatement but the back benefits have not been paid and after reinstatement the salaries still not given to the appellant/ petitioner.

(2)

3) That according to superior courts judgments every organ of the State as well as subordinate court of the country is bound to implement the judgment and order in its true letter and spirit.

4) That justice demands that judgment of this Hon'ble Tribunal may please be implemented in true letter and spirit.

It is, therefore, humbly prayed that respondents may please be directed to implement the order/ judgment dated 08.09.2022 in true letter and spirit and all the benefits be awarded after the decision of the Hon'ble Tribunal.

Petitioner

Through 9-2-2023

Zafar Ali Khan
Advocate High Court

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

9-2-23

Deponent

Khalid Mahmood Advocate OATH COMMISSIONER High Court Peshawar

Annexure - A

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6333/2020

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)
MISS. FAREEHA PAUL ... MEMBER(E)

Zahid Khan S/O Abdur Rahim Khan Constable Belt No. 1145, District Police Bannu, R/O Ismail Khel, District Bannu.

.... *(Appellant)*

Versus

1. **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
2. **Regional Police Officer, District Bannu.**
3. **District Police Officer, Bannu.**
4. **Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.**
5. **Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.**

... *(Respondents)*

Mr. Inayat Ullah Khan
Advocate ... For appellant

Mr. Naseer-ud-Din Shah
Assit. Advocate General ... For respondents

Date of Institution.....18.06.2020
Date of Hearing.....08.09.2022
Date of Decision.....08.09.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 27.03.2018 and Mad No.39 Roznamchat dated 15.10.2019 whereby the appellant was removed from service and later on his pay was stopped w.e.f 15.10.2019 against which he preferred departmental appeal dated 28.01.2020 to D.I.G/RPO District Bannu, for reinstatement in service, but the same was marked to respondent No.3, District Police Officer Bannu. The DPO Bannu vide letter dated 10.02.2022 addressed to Deputy Commandant Elite Force, Khyber Pakhtunkhwa,

ATTESTED

ATTESTED

3/1

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 6333/2020

Before: Mrs. Rozina Rehman ... Member(J)
Miss Fareeha Paul .. Member(E)

Zahid Khan S/o Abdur Rahim Khan Constable Belt No. 1145, District Police Bannu, R/o Ismail Khel, District Bannu.....Appellant

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, District Bannu.
3. District Police Officer, Bannu.
4. Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

...(Respondents)

Mr. Inayat Ullah Khan
Advocate ... For Appellant

Mr. Naseer ud Din Shah
Asstt: Advocate General ... For Respondents

Date of Institution.....18.06.2020
Date of Hearing.....08.09.2022
Date of Decision.....08.09.2022

JUDGMENT

Fareeha Paul, Member (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 27.03.2018 and Mad No.39 Roznachma dated 15.10.2019 whereby the appellant was removed from service and alter on his pay was stopped w.e.f 15.10.2019 against which he preferred departmental appeal dated 28.01.2020 to D.I.G/ RPO District Bannu, for reinstatement in service, but the same was marked to respondent No.3, District Police Officer Bannu. The DPO Bannu vide letter dated 10.02.2022 addressed to Deputy Commandant Elite Force, Khyber Pakhtunkhwa,

ATTESTED

Peshawar requested him to provide service record of the appellant with further request to Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar to review the impugned order dated 27.03.2018 but all in vain. The appellant has prayed for setting aside the impugned order with directions to the respondents to allow him full back benefits/arrears of pay w.e.f 15.10.2019.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable on 19.01.2013 in Police Department Khyber Pakhtunkhwa and posted at District Bannu. After completing his training from Police Training College Hangu, he was formally assigned duties as Constable at District Bannu. After rendering more than three years service at District Bannu, he was transferred to Elite Force Khyber Pakhtunkhwa, Peshawar and as such was receiving training and almost spent one year and five months there. After getting clearance certificate from Elite Force Headquarter, Peshawar he was transferred back to District Bannu, vide order dated 07.12.2017. The appellant got seriously ill w.e.f 22.11.2017 to 27.12.2017 and received treatment from Medical Officer Incharge Central Jail, Bannu followed by a surgery. He preferred an application to his highups for grant of medical leave but it was not considered, and instead he was proceeded against and removed from service vide order dated 27.03.2018 by the Deputy Commandant Elite Force, Khyber Pakhtunkhwa. In pursuance of order dated 07.12.2017 the appellant had reported back to District Bannu. When District Police Officer Bannu, all of a sudden without any prior information to the appellant struck off/removed him from service while making reference to endorsement No. 4626-34/EF order dated 27.03.2018 vide Mad No. 39 Roznamcha dated 15.10.2019. Vide letter dated 02.08.2019 addressed by District Police Officer, Bannu to the Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar it was mentioned that the appellant was

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issued a clearance certificate dated 02.01.2018 by the Elite Establishment and he reported back to District Bannu and a new Belt No.1145 was issued to him while his previous Elite Force Belt No.1449 was changed. The District Police Officer Bannu requested Commandant Elite Force (Respondent No. 4) to review order dated 27.03.2018 and appraise his office accordingly. The appellant preferred departmental appeal to Regional Police Officer, Bannu on 28.01.2020 as no order was communicated to him for restoration/reinstatement of his service upon which RPO Bannu wrote letter dated 10.02.2020 to DPO Bannu to provide his service record but the same was not provided. Feeling aggrieved against the impugned ex-parte action the appellant filed service appeal.

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant contended that Commandant Elite Force (respondent No. 4) passed the impugned order dated 27.03.2018 and Mad No. 39 dated 15.10.2019 without communicating to the appellant. He raised the question that if something wrong was done by the appellant than why clearance certificate was issued by the Commandant Elite Force Khyber Pakhtunkhwa, Peshawar. Issuance of clearance certificate meant that no disciplinary proceedings were pending against him and hence there was no justification to strike him off or remove him from service. He drew the attention to letter dated 10.02.2020 of DPO Bannu addressed to Deputy Commandant Elite Force requesting him to send service record of the appellant for further process. Through another previous letter dated

ATTESTED

02.08.2019. he had requested the Commandant Elite Force to review the order dated 27.03.2018 and accordingly appraise the DPO Bannu, but no action was taken by respondent No. 4 on any of the letters. The learned counsel further contended that the Duty Rota was an evidence that the appellant was performing his regular duties at the office of DPO Bannu and therefore, any one sided or ex-parte action against him had no substance in the eyes of law. The letter of District Police Officer Bannu showed that his office was not intimated of any disciplinary proceedings initiated against him. Learned counsel for the appellant argued that the appellant was seriously ill and submitted application for grant of medical leave w.e.f 22.11.2017 to 27.12.2017 but the same was not considered which was against the law and rules as medical leave supported by relevant documents could not be denied. He invited the attention towards the competent authority in case of the appellant for taking action against him and which was the District Police Officer Bannu and stressed that the office of Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar was not competent to issue any order of removal from service against the appellant and requested for setting aside the impugned order with further direction to reinstate him w.e.f 15.10.2019.

5. The learned Assistant Advocate General referred to order dated 27.03.2018 and contended that charge sheet and summary of allegations was issued to the appellant, and proper inquiry was conducted before any further action was taken. Final showcause notice was also issued but reply was found unsatisfactory. The appellant was called in orderly room but he failed to appear and hence a notice was issued in local daily also. He was of the view that entire procedure had been completed in the light of rules before awarding major penalty of removal from service.

ATTESTED

6. From the record presented before us it is evident that the appellant was transferred back by office of Commandant Elite Force Khyber Pakhtunkhwa, Peshawar to District Bunnu on disciplinary grounds vide order dated 07.12.2017. Disciplinary action was initiated against him by Deputy Commandant Elite Force Khyber Pakhtunkhwa vide order sheet dated 29.12.2017 as is evident from the letter of DPO Bannu addressed to Commandant Elite Force, and the same letter indicates that the Elite Establishment had issued the LPC to the appellant also, which according to him was contrary to disciplinary rules as an inquiry had been initiated against him. He was handed over a clearance certificate on 02.01.2018 by Elite Establishment. It is strange to note that the office of Commandant Elite Force did not enter into any correspondence with the DPO Bannu, being the parent office of the appellant and hence the office of DPO Bannu remained unaware of any departmental proceedings initiated against the appellant. The official on his transfer from the office of Commandant Elite Force was repatriated on 07.12.2017 to the office of DPO Bannu. The period of absence as shown in the impugned order dated 27.03.2018 is 04.01.2018 whereas the same order indicates that he remained absent from duty w.e.f 22.11.2017 to 02.01.2018 and that period of 41 days has been treated as leave without pay. The advertisement dated 02.03.2018 in daily Aaj indicates his continuous absence from 22.11.2017. Record further indicates that service record of the appellant as requested by DPO Bannu was not provided by Commandant Elite Force. The available record further indicates that the appellant reported arrival in Police Line Bannu on 20.02.2018 and was allotted new belt no. 1145 and hence he was on the strength of regular police of District Bannu at the time of issuing of impugned order dated 27.03.2018.

ATTESTED

7. In view of the above discussion we arrive at the conclusion that the Office of Commandant Elite Force was not competent for taking any disciplinary action against the appellant and hence order of removal from service passed by the Commandant Elite Force is against the law and rules. In view of that the service appeal of the appellant is allowed, and impugned order dated 27.03.2018 is set aside and the respondents are directed to reinstate the appellant from the date of his removal i.e 15.10.2019 and allow him all back benefits as prayed for. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of September, 2022.*

(ROZINA REHMAN)
Member (J)

(FAREEHA PAUL)
Member (E)

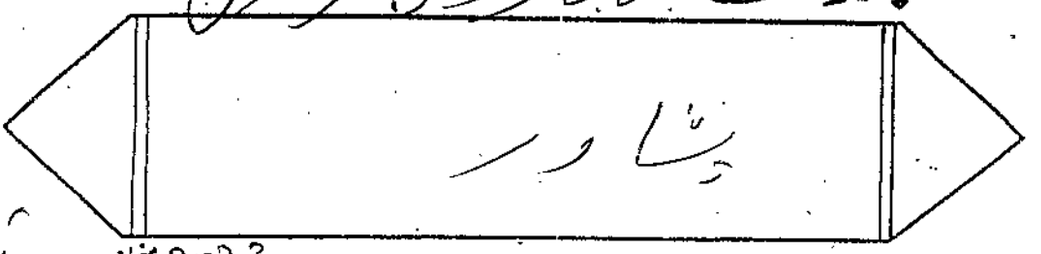
Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09-09-22
Number of Words 2400
Copying Fee 26/-
Urgent
Total 26/-
Name of Copyist
Date of Complection of Copy 07-11-22
Date of Delivery of Copy 07-11-22

(۹)

بعدالت جناب سول جج سینئر ڈویژن پشاور



مورخہ ۔۔۔۔۔۔۔۔ 2023ء منجانب زاہد خان بنام انکم ٹیکس حکام وغیرہ

مقدمہ ۔۔۔۔۔۔۔۔

دعویٰ Implementation petition

جرم ۔۔۔۔۔۔۔۔

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے طفیل علی خان ایڈووکیٹ ہائی کورٹ پشاور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم ۔۔۔۔۔۔۔۔ ماہ ۔۔۔۔۔۔۔۔ 20

العبد ۔۔۔۔۔۔۔۔ گواہ العبد ۔۔۔۔۔۔۔۔

بمقام ۔۔۔۔۔۔۔۔ کے لئے منظور ہے۔

Accepted

CNIC 17201-2296148-5

CNIC No 17201-2296148-5

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