


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 97/2023

S No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.02.2023	<p>The execution petition of Mr. Amir Ali submitted today by Syed Noman Ali Bukhari 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 KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 97 /2023

In

Service Appeal No.946/2015

Amir Ali

V/S

Police Department.


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S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment dt: 22.9.2022	-A-	03-08
3.	Vakalat Nama	-----	09

APPLICANT/PETITIONER


AMIR ALI

THROUGH:


(SYED NOMAN ALI BUKHARI)

Advocate, High Court
Peshawar.

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 97 /2023

In

Service Appeal No.946/2015

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3791

Dated 23/2/2023

Amir Ali, Ex-Constable No. 391,
Mardan District Police.

PETITIONER

VERSUS

1. The Provincial Police Officer, KP, Peshawar.
2. The Deputy Inspector General of Police Mardan Region-I, Mardan.
3. The District Police Officer, Mardan.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 22.09.2022 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.946/2015 in this august Tribunal against the order dated 20.04.2015 & 25.02.2015 whereby the appellant was removed from Service.
2. That the said appeal was finally heard by the Honorable Tribunal on 22.09.2022 and the Honorable Tribunal was kind enough to accept the appeal and set aside the impugned orders and the appellant is reinstated into service, however in view of peculiar facts and circumstances of the case, he shall not be entitled to any financial back benefits. The seniority of the appellant shall, however be considered alongwith the batch-mates from the date of his appointment in accordance with relevant rules. **(Copy of judgment is attached as Annexure-A).**

- 3. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
- 5. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 22.09.2022 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

APPLICANT/PETITIONER

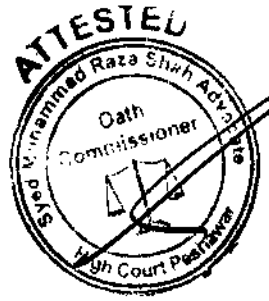
Amir Ali
AMIR ALI

THROUGH:

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.



DEPONENT

Amir Ali

A

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

APPEAL NO. 946 /2015

K.W.F. Province
Service Tribunal
Diary No. 511
Dated 19-5-2015

Amir Ali, Ex- Constable No.391.

Mardan District Police.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Deputy Inspector General of Police Mardan Region-I, Mardan.
3. The District Police Officer, Mardan.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 20.04.2015, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 25.02.2015 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:


File to
Coordinator
19/5/15

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 20.04.2015 AND 25.02.2015 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

re-submitted to-407
and filed.

Registration
24/5/15

ATTESTED


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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 946/2015

Date of Institution ... 19.05.2015

Date of Decision ... 22.09.2022



Amir Ali, Ex-Constable No. 391, Mardan District Police.

... (Appellant)

VERSUS

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

... (Respondents)

SYED NOMAN ALI BUKHARI,
Advocate

--- For appellant.

SYED NASEER-UD-DIN SHAH,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant joined Police Force as recruit on 22.12.2014. Departmental action was taken against the appellant on the allegations that he alongwith his brother namely Fawad Ali and father namely Darwaish as well as other persons namely Saeed and Imran Ali S/O Niamatullah were charged in case FIR No. 542 dated 21.09.2014 under sections 506/387/427/148/149 PPC Police Station Hoti District Mardan but the

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Service Tribunal
Peshawar

(S)

appellant concealed this fact at the time of his appointment as constable and also managed to procure a favourable report from the concerned police station. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service, which was challenged by the appellant through filing of departmental appeal but the same was also declined, hence the instant service appeal.

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

3. Learned counsel for the appellant has contended that the inquiry proceedings were conducted in violation of mandatory provisions of Police Rules, 1975 and neither any final show-cause notice was issued to the appellant nor copy of the inquiry report provided to him; that the appellant was though charged in a false criminal case, however he was acquitted by competent court of law; that soon after registration of FIR, compromise was effected between the parties and the appellant was granted pre-arrest bail, however the appellant being not a law knowing person, was under the impression that he had been acquitted; that after recruitment of the appellant, valuable rights were created in his favour and he could not have been dismissed from service merely on the charge of his involvement in the criminal case; that the impugned orders are not in accordance with law, therefore, the same may be set-aside and the appellant may be

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reinstated in service with all back benefits. Reliance was placed on 1986 PLC (C.S) 420 and 2010 PLC (C.S) 924.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant stood charged in a criminal case and in view of Circular Order No. 8/2007 issued by Provincial Police Officer Khyber Pakhtunkhwa Peshawar on 16.06.2007, the appellant was debarred from his enlistment as Constable, however he submitted false affidavit regarding his non-involvement in any criminal case and thus secured his recruitment; that the appellant in connivance with the then Madad Muharrar Police Station Hoti had procured a false verification report and the concerned Madad Muharrar has also been awarded the penalty of forfeiture of two years approved service; that the appellant was treated in accordance with law and the allegations against him stood proved in a regular inquiry, therefore, he has rightly been dismissed from service.

5. Arguments have already been heard and record perused.


6. A perusal of the record would show that departmental action was taken against the appellant on the allegations that he alongwith his brother namely Fawad Ali and father namely Darwaish as well as others were charged by complainant Fida Muhammad in case FIR No 542 dated 21.09.2014 under sections 506/387/427/148/149 PPC Police Station Hoti District Mardan but the appellant concealed this fact at the time of his appointment as constable and also managed to

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procure a favourable report from the concerned police station. Available on the record is copy of verification form for initial appointment in respect of the appellant. Madad Muharrar of the concerned police station had endorsed report on the aforementioned verification form by mentioning that on scrutiny of record maintained in the police station, the appellant was not found convicted in any criminal case. Nothing false was mentioned in the said report of Madad Muharrar for the reason that the appellant was only charged in a criminal case and was not at all convicted in any criminal case. It is not understandable as to how the said report of Madad Muharrar was made a ground for initiating disciplinary action against the appellant.

 7. The appellant was though charged in a criminal case, however the matter was privately settled through compromise and the appellant was granted pre-arrest bail vide order dated 18.10.2014 i.e prior to his recruitment on 22.12.2014. In view of compromise between the parties and grant of pre-arrest bail, the appellant being not a law knowing person was under the impression that he has been acquitted in the criminal case. The appellant has admittedly been acquitted in the mentioned criminal case and there exists no legal reason to debar him from serving in the police department. Moreover, the appellant was not provided any opportunity of personal hearing before passing of the impugned order of his dismissal from service. Similarly, the appellant was neither issued any final show-cause notice nor he was provided copy of the inquiry report. August Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176, has graciously held that rules

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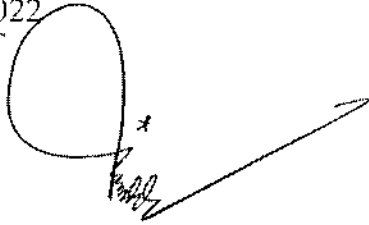
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Service Tribunal
Peshawar

devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-provision of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service, however in view of peculiar facts and circumstances of the case, he shall not be entitled to any financial back benefits. The seniority of the appellant shall, however be considered alongwith his batch-mates from the date of his appointment in accordance with relevant rules. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

22.09.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Checked to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 07/12/22
Number of Words 24000
Copying Fee 26/-
Urgent 4/1
Total 30/-
Name of S. _____
Date of S. 07/12/22
Date of Delivery of Copy 07/12/22

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal, Peshawar.

Amir Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We, Amir Ali (petitioner)

Do hereby appoint and constitute **Mr. M. Asif Yousafzai, ASC** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Amir Ali
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI, ASC,

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar