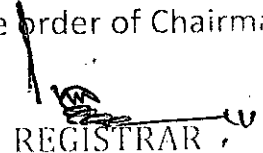


Form- A
FORM OF ORDER SHEET

Court of _____

Emlementation Petition No. 183/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	
1	21.03.2023	<p>The execution petition of Mr. Fakhr Alam submitted today by Uzma Syed 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 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. _____/2023

VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED APPEAL AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned appeal is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the appeal may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Date: 21-3-2023

Through

Appellant/Applicant

UZMA Syed
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 183 /2023

In

Service Appeal 1204/2019

Fakhr Alam

VS

Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-07
3.	Copy of application	-B-	08
4.	Vakalat Nama	-----	09

Fakhr Alam

PETITIONER

Fakhr Alam

THROUGH:

Uzma Syed
UZMA SYED

Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

Date: 20/03/2023

Cell No: 0306-5109438

(1)

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

Execution Petition No. 183 /2023

In
Service Appeal 1204/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4495

Mr. Fakhr Alam S/o Nisar Badshah (Ex- Constable NO.247)
Buner Police.

Dated 21/3/2023

(PETITIONER)

VERSUS

1. The Regional Police Officer, Malakand at Saidu Sharif Swat.
2. The District Police Officer, Bunner.

(RESPONDENTS)

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 08/02/2023 OF THIS HONORABLE TRIBUNAL
IN LETTER AND SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the appellant filed an appeal bearing No.12045/2019 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 08/02/2023 and the Honorable Tribunal was kind enough to accept the appeal and re-instated the appellant with all back benefits. (Copy of judgment is attached as Annexure-A).
3. That the appellant also filed applications for implementation of judgment but in vain. So, in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and

Contempt of Court. Copy of applications is attached as annexure-B.

- 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 except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 08/02/2023 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 favour of petitioner.

PETITIONER
Fakhr Alam

THROUGH:

Uzma
UZMA SYED

Noman
SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

AFFIDAVIT:

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

Fakhr Alam
Deponent



BEFORE THE SERVICE TRIBUNAL PESHAWAR.



Appeal No. 1204 /2019.

Fakhr Alam shah S/o Nisar Bacha (Ex-Constable No.247 Buner Police) resident of village Gadar, Mardan.

(Appellant).

VERSUS

1. The District Police Officer, Buner.
2. The Regional Police Officer, Malakand at Saidusharif Swat.

(Respondents).

Appeal under Section-4 of The Service Tribunal, 1974, against the order of The D.P.O/Respondent No.1, contained in Letter No.923-26/Enq dated 12-02-2018, (O.B No.19 dated 08-02-2018), whereby the Appellant is awarded the punishment of dismissal from service, upholding the previous order contained in O.B No.78 dated 11-08-2014.

1. That the Appellant was appointed as constable in Buner Police on 09-03-2009.
2. That previously the D.P.O/Respondent No.1, awarded the Appellant with the punishment of dismissal from service on 11-08-2014, which was set-aside by this Honourable Tribunal in service Appeal No. 41 of 2015, decided on 06-11-2017. Because, no opportunity of defence was afforded to Appellant.

ATTESTED

BY 
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 1204/2019

Date of Institution ... 30.09.2019

Date of Decision ... 08.02.2023



Fakhr Alam Shah S/O Nisar Bacha (Ex-Constable No. 247 Buner Police)
Resident of Village Gadar, Mardan.

... (Appellant)

VERSUS

The District Police Officer, Buner and 01 another.

... (Respondents)

MS. UZMA SYED,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN

--- MEMBER (JUDICIAL)

MR. MUHAMMAD AKBAR KHAN

--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts surrounding the instant service appeal are that the appellant was appointed as Constable in Police Department vide order dated 09.03.2009. The appellant was dismissed from service by the District Police Officer on 11.08.2014 on the basis of a complaint filed by one Sher Zamin alleging therein that the appellant had attempted to commit sodomy upon his nephew namely Bilal Khan. The appellant challenged his penalty through filing of Service Appeal bearing No. 241/2015 before this Tribunal, which was allowed vide judgment dated

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ATTESTED
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

06.11.2017 with the directions to the respondent to hold de-novo inquiry within a period of four months, failing which the appellant shall be deemed to have been reinstated in service. De-novo inquiry was thus conducted in the matter and the appellant was again dismissed from service vide order dated 12.02.2018. The appellant after availing departmental remedy, has now approached this Tribunal through filing of instant service appeal for redressal of his grievance.

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

3. Learned counsel for the appellant has addressed her arguments supporting the grounds raised by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that during the de-novo inquiry, Mr. Darvesh Khan Head of Investigation Buner issued show-cause notice to the appellant on 10.01.2018, wherein it is mentioned that he being competent Authority had decided to proceed against the appellant in general Police proceedings without aid of inquiry officer. Similarly, grounds of action were also conveyed to the appellant, however later on statement of allegations and charge sheet were issued to the appellant on 15.01.2018, by the same Darvesh Khan

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Head of the Investigation Buner. While going through the contents of statement of allegations, we have observed that on one hand, Mr. Darvesh Khan Head of Investigation issuing the same as competent Authority but on the other hand he is also an inquiry officer in the matter. If Mr. Darvesh Khan was an inquiry officer in the matter, then he was legally not competent to issue statement of allegations and charge sheet to the appellant as it was the job of the competent Authority and not the inquiry officer. It is also interesting to note that the inquiry officer has issued final show-cause notice to the appellant on 16.01.2018, which was the job of the competent Authority. Furthermore, charge sheet as well as statement of allegations were issued to the appellant on 15.01.2018 and whole exercise of de-novo inquiry was completed by submitting inquiry report to the District Police Officer Buner on 19.01.2018. While going through the available record, we have observed that inquiry proceedings were conducted in a hasty and slipshod manner without complying the mandatory provisions of Police Rules, 1975 rendering the impugned order of dismissal of the appellant as void ab-initio. One of the main dent in the previous inquiry proceedings as pointed out in the judgment rendered in previous service appeal of the appellant was non-provision of an opportunity to the appellant for cross-examination of the witnesses examined during the inquiry. It is, however astonishing that as per the available record, the appellant was again not provided any opportunity of cross-examination of complainant namely Sher Zamin. Although, the complainant Sher Zamin has been cross-examined, however it



ATTESTED
 [Signature]
 MEMBER
 Service Tribunal
 Khairpur

appears that cross-examination has been conducted by the inquiry officer and not the complainant. As far as the question of limitation is concerned, the same would not be attracted in the instant case for the reason that the impugned order dated 12.02.2018 is void ab-initio and no limitation runs against a void order.

6. According to the charge sheet as well as statement of allegations, complainant's nephew namely Bilal was taken by the appellant to a field for sodomy, however in his statement recorded during the inquiry, complainant namely Sher Zamin has not at all mentioned that his nephew was taken by the appellant to a field for commission of sodomy. Moreover, in case any attempt was made by the appellant for commission of sodomy upon Bilal, it is not understandable that why any FIR was not registered against the appellant.

7. In view of the above discussion, orders dated 12.02.2018, 14.06.2018 and 04.12.2018 are set-aside and the appellant stands reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.02.2023

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

(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)
CAMP COURT SWAT

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	28/2/23
Number of Pages	5
Copying Fee	25/-
Urgent	✓
Total	30/-
Name of Officer	
Date of Completion of Work	28/2/23
Date of Delivery of Copy	28/2/23

خدمتِ حباب Dpo صاحبِ کونستبل

درخواستِ بمراد بھالی محکمہ لڑیں سے قیمت کٹیل
مطالبہ فیصلہ سرورٹ شریونیل پرک لیاؤ

مبارک علی!

معدومہ خدمت میں تم سائل درجہ ۱۰۳/۰۹ کو حکم لڑیں
مبلغ لبریز سے قیمت کٹیل سبکی سرورٹ مفی سرعام
دے رہا تھا تم درجہ ۱۱۸/۰۸ کو حکم لڑیں سے برخواست گیا
سائل نے سرورٹ شریونیل سرورٹ اپیل داخل کر کے سرورٹ
سرورٹ بحوالہ فیصلہ درجہ ۱۰۳/۰۸ کو حکم لڑیں سے تمام سرورٹ
کیا تھ حال کن ماحکم جاری مبالغہ فیصلہ کی نقل
لنا درخواست ندرجہ

پسند بزرگہ درخواست استماع تم سائل کو
سترارہ نیلہ کی درستی سے حکم لڑیں سے بحال کرنے اور
بغاوات سے ماحکم ہمارے مالکی جاری

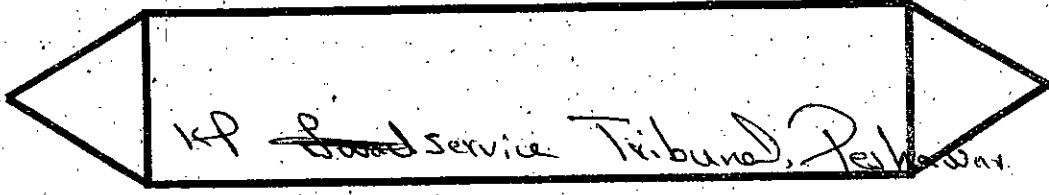
العارضی اور خیر عالم شاہ

خیر عالم حاضری

01.03.23

درجہ

بعدالت



2ء منجانب

فخر عالم بنام

پولیس

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام چٹوڑہ کیلئے عظمیٰ منیڈر ایڈوائس

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج 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 مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ 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 لکھ دیا کہ سند ہے۔

فخر عالم بنام

2023ء

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ماہ

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المرقوم

واہ العبد

د گ

العبد