Form- A

FORM OF ORDER SHEET

Court of _____

Emlementation Petition No. 178/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.03.2023	The execution petition Mr. Zubair Shah submitted today by Mr. Shahid Ali Yaftali Advocate. It is fixed for implementation report before touring Single Bench at Swat 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

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No. 178/2023

CM No. _____/2023

In the matter of

Service Appeal No. 15962/2020

FRP Constable Zubair Shah.....Applicant / Appellant

VERSUS

IG, KPK & others ..... Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for implementation		1-3
2.	Affidavit		4
3.	**Copy of the Judgment and Order dated 06.10.2022**	A	5 - 11

Zulan

Appellant / Applicant

Through

Dated: 17.03.2023

SHAHID ALI YAFTALI
Advocate, High Court
Peshawar

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No. 178/2023

CM No. _____/2023

In the matter of

Service Appeal No. 15962/2020

FRP Constable Zubair Shah (No. 903/4303) Son of Abdul Mastan R/o Gunbad Maira, Mohallah Shaibarabad, Migora Tehsil Babozai, District Swat.

..... **Applicant / Appellant**

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police, Khyber Pakhtunkhwa at Peshawar.
3. Commandant FRP, Khyber Pakhtunkhwa Peshawar
4. Superintendent of Police FRP, Malakand Range, Swat.
5. District Police Officer at District Alpuri Shangla.

..... **Respondents**

APPLICATION FOR THE IMPLEMENTATION / EXECUTION OF THE JUDGMENT AND ORDER DATED 06.10.2022 IN THE CAPTIONED

SERVICE APPEAL OF THIS HON'BLE TRIBUNAL.

Respectfully Sheweth:

1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 06.10.2022.

2. That vide judgment and order dated 06.10.2022 this Hon'ble Tribunal allowed the appeal and the grievance of the Appellant was redressed in the said Appeal. **(Copy of the Judgment and Order dated 06.10.2022 is attached as Annexure A)**

3. That the Appellant approached the concerned authorities for the implementation of Judgment / Order dated 06.10.2022 but they paid no heed.

4. That the respondents are not implementing the Order/ Judgment dated 06.10.2022 of this Hon'ble Tribunal and have committee clear contempt.

5. That the valuable rights of the Appellant are involved in the instant case and the Respondents are violating the legal and fundamental rights of the Appellant.

6. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 06.10.2022 in its true letter and spirit without any

further delay, which has already been delayed due to the malafide intention of the Respondents.

7. That justice demands that Judgment of this Hon'ble Tribunal may please be implemented in its true letter and spirit.

8. That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

It is therefore, humbly prayed that On acceptance of this Application, the Order and Judgment dated 06.10.2022 of this Hon'ble Tribunal may Kindly be implemented in its true letter and spirit and all the benefits be awarded after the decision of the Hon'ble Tribunal.

Appellant / Applicant

Through

Dated: 17.03.2023

SHAHID ALI YAFTALI
&
SAYED ABID SHAH
Advocates, High Court
Peshawar

(4)

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

CM No. _____/2023

In the matter of

Service Appeal No. 15962/2020

FRP Constable Zubair Shah.....Applicant / Appellant

VERSUS

IG, KPK & others ..... Respondents

AFFIDAVIT

I, FRP Constable Zubair Shah (No. 903/4303) Son of Abdul Mastan R/o Gunbad Maira, Mohallah Shaibarabad, Migora Tehsil Babozai, District Swat, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

ATTESTED

Commissioner

Zubair

DEPONENT

(5)

(1)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKWHA AT PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 16295
Dated 09/12/2020

Service Appeal No. _____ of 2020

FRP Constable Zubair Shah (No. 903/4303) son of Abdul Mastan Resident of Gunbad Maira, Muhallah Shaibarabad, Mingora, Tehsil Babozai, District Swat.

..... Appellant

VERSUS

1. Inspector General of Polcie, Khyber Pakhtunkhwa at Peshawar.
2. Additional Inspector General of Police at Peshawar.
3. Commandant FRP, Khyber Pakhtunkhwa Peshawar.
4. Superintendent of Police, FRP, Malakand Range, Swat.
5. District Police Officer at Alpuri, Shangla.

..... Respondents

Filed to-day
Registrar
9/12/2020

Appeal under Section 4 of the Service Tribunal Act, 1974, against the impugned notification bearing No. 1016-21/EC, dated 05.07.2019, whereby major punishment/ penalty of "time scale" has been imposed upon the appellant.

Re-submitted to -day and filed.
Registrar
14/12/20

Respectfully Sheweth:

The appellant submits as under:

1. That the appellant was selected and appointed as Police Constable on 01.09.2014 at FRP, Malakand Range. The appellant always performed his duty honestly and sincerely, and never gave any cause of complaint to his senior, during

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR AT CAMP COURT SWAT

Service Appeal No. 15962/2020

Date of Institution ... 09.12.2020

Date of Decision ... 06.10.2022

FRP Constable Zubair Shah (No. 903/4303) S/O Abdul Mastan. R/O Gunbad Maira, Muhallah Shaibarabad, Mingora, Tehsil Babozai, District Swat.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa at Peshawar and four others.

... (Respondents)

MR. SHAHID ALI KHAN,
Advocate --- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MS. ROZINA REHMAN --- MEMBER (JUDICIAL)

CONSOLIDATED JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through this single judgment we intend to dispose of instant service appeal as well as connected Service Appeal bearing No. 15963/2020 titled " FRP Constable Ihsan Ullah Versus Inspector General of Police, Khyber Pakhtunkhwa at Peshawar and four others" as well as Service Appeal bearing No. 15964/2020 titled "FRP Constable Ishfaq Hussain Versus Inspector General of Police, Khyber Pakhtunkhwa at Peshawar and

four others", as common question of law and facts are involved in all the appeals.

2. Precisely stated the facts surrounding the instant service appeals are that the appellants while posted in Platoon No. 73 of District Swat and deployed at Paithom Jail were proceeded against departmentally on the allegations that they were involved in abasement and abjectness of their immediate officer S.I/P.C Muhammad Zahid, who was their Incharge. The inquiry officer held the appellants guilty of the allegations leveled against them and the competent Authority awarded each of them the major penalty of time scale constable. The departmental appeals of the appellants as well as their revision petitions were rejected, therefore, they have now approached this Tribunal through filing of the instant appeals for redressal of their grievance.

3. Respondents contested the appeals by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellants in their appeals.

4. Learned counsel for the appellants has contended that in view of FR-29, the competent Authority was required to have specified the period for which such penalty was to remain effective, however no time period has been provided in the impugned orders, therefore, the same are not sustainable in the eye of law; that disciplinary action was initiated against the appellants on report submitted by Incharge Muhammad Zahid S.I but he has also been awarded minor punishment and the report so submitted by him against the appellants could not be

ATTESTED

considered as correct narration of the actual episode, which took place inside Paithom Jail; that the appellants were totally innocent and had left the points of their duties on command of their Incharge Muhammad Zahid S.I; that the inquiry proceedings were conducted in derogation of mandatory provisions of Police Rules, 1975; that co-accused Bakht Muhammad Constable and Muhammad Zahid S.I were awarded minor penalties, while the appellants have been awarded major penalties, which shows that the appellants were treated with discrimination. Reliance was placed on 2020 SCMR 1218, 2009 SCMR 01, 2007 SCMR 1769, 1996 SCMR 1185, 2018 SCMR 380, 2000 SCMR 1743, 1995 SCMR 1027, 1999 PLC (C.S) 1332, PLJ 2019 Tr.C (Services) 01 and 2022 SCMR 327.

5. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellants are serving in a discipline force, however they failed to observe discipline and committed misbehavior with their Incharge, which amounts to misconduct; that a regular inquiry was conducted regarding the incident and the inquiry officer held the appellants guilty of the charges leveled against them; that the appellants were provided ample opportunity of self defence as well as personal hearing but they failed to rebut the allegations leveled against them, therefore, they have rightly been awarded the impugned penalties.

ATTESTED

6. Arguments have already been heard and record perused.

7. A perusal of the record would show that the appellants namely Constable Zubair Shah and Constable Ishfaq Hussain were allegedly

not allowed by the Army Officials for taking *iftari* for the police officials, who were on duty in sub-jail Paithom District Swat, which triggered the incident resulting in initiation of disciplinary action against the appellants as well as constable Bakht Muhammad and Platoon Incharge Muhammad Zahid S.I. Initially, fact finding inquiry was conducted in the matter and there-after a regular inquiry was carried out by appointing Mr. Zahir-ur-Rehman, the then DSP Frontier Reserve Police Timergara as inquiry officer. In view of statements of the eye witnesses as well as the appellants, recorded during the inquiry, it was upon the directions of Incharge Muhammad Zahid S.I that the appellants as well as other officials of FRP, deployed for duties in sub-jail Paithom, had left the points of their duties and went to the barrack. The inquiry report would show that the appellants alongwith one Bakht Muhammad Constable had misbehaved with Incharge Muhammad Zahid S.I. The said Incharge was also awarded minor punishment through the same impugned order dated 05.07.2019 vide which the appellants were awarded major penalties and it has been mentioned therein that minor penalty was awarded to Incharge Muhammad Zahid S.I on account of his lack of supervision. In these circumstances, it could safely be concluded that lack of proper supervision was also one of the reason that resulted in occurrence of the incident. Awarding of major penalties to the appellants thus appear harsh in the given circumstances.

8. Constable Bakht Muhammad No. 3698 was also awarded the same major penalty as awarded to the appellants, however his

departmental appeal was accepted by Commandant Frointer Reserve Police, Khyber Pakhtunkhwa, Peshawar vide order dated 02.11.2021 and the penalty so awarded to him was converted into minor penalty of stoppage of one annual increment. The aforementioned order dated 02.11.2021 would show that the appellate Authority while converting the penalty of Constable Bakht Muhammad No. 3698 had relied on the ground that Incharge Muhammad Zahid S.I was also awarded minor penalty of stoppage of one annual increment for one year. The appellants are thus also entitled to similar penalties as awarded to Constable Bakht Muhammad No. 3698 as well as Incharge Muhammad Zahid S.I.

9. Moreover, vide impugned order dated 05.07.2019, the appellants have been awarded major penalties of time scale constables, however without mentioning the period for which the same shall remain effective, which is violation of FR-29. The same is reproduced for ready reference as below:-

> *"F. R. 29. If a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time -scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent."*

10. In view of the above discussion, the appeal in hand as well as connected Service Appeal bearing No. 15963/2020 titled " FRP Constable Ihsan Ullah Versus Inspector General of Police, Khyber Pakhtunkhwa at Peshawar and four others" as well as Service Appeal bearing No. 15964/2020 titled "FRP Constable Ishfaq Hussain Versus Inspector General of Police, Khyber Pakhtunkhwa at Peshawar and four others", are partially allowed and the penalty so awarded to the

ATTESTED

appellants is converted into minor penalty of stoppage of one annual increment for one year without cumulative effect. On modification of the impugned penalty, the appellants are entitled to all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.10.2022

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

(ROZINA REHMAN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 26/3/23
Number of Page 6
Copying Fee 36/-
Urgent 54/-
Total 36/-
Name
Date of Completion of Copy 26/3/23
Date of Delivery of Copy 26/3/23

قیمت 50 روپے

66593

ایڈوکیٹ: SHAHID ALI TATTALI

بارکونسل/ایسوسی ایشن نمبر: BC-15-6071

رابطہ نمبر: 0345-5404484

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: جج سروسز ٹریبونل خیبر پختونخوا پشاور

دعویٰ: _____

علت نمبر: _____

مورخہ _____

جرم: _____

تھانہ _____

منجانب: لبنیٰ زبیر شاہ

زبیر شاہ
بنام
ایڈیشنل جی پولیس وغیرہ

باعث تحریر آنکہ

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

آن مقام لبنیٰ زبیر کیلئے شاہد علی یفتالی اینڈ سید عامر شاہ ایڈووکیٹس کو وکیل 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 وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم: 20-12-2023

PESHAWAR BAR ASSOCIATION KHYBER PAKHTOONKHWA

گواہ شد

العبد العبد

مقام _____ کے لیے منظور ہے۔

SAYED ABID SHAH
Advocate High Court.

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔