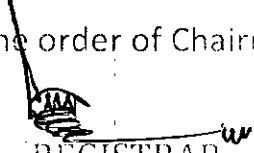


Form-A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Emlementation Petition No. 196/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	
1	29.03.2023	<p>The execution petition of Mr. Muhammad Noman received today by registered post through Mr. Muhammad Ismail Alizai Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan 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</p> <p> REGISTRAR</p>

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

In: Service Appeal No. 5673 / 2021.  
Civil Misc; No; /2023

*Execution Petition  
No = 196 / 2023*

Muhammad Noman, Ex-PC / CTD No.1218.

Appellant.

Versus

Provl: Police Officer, Khyber Pakhtunkhwa, and others.


Respondents.

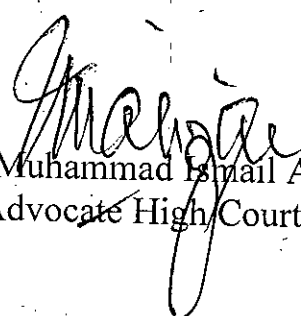
**Implementation Petition**

**I N D E X**

<u>S.No.</u>	<u>Description of Documents</u>	<u>Annexure</u>	<u>Page(s)</u>
1.	Petition with Grounds of Appeal & affidavit.	--	01 — 02
2.	Copy of judgment dtd 28.10.2022.	A	03 — 09
3.	Copy of application	B	— 10
4.	Vakalat-Nama	--	— 11

Dated: 27.03.2023.

  
(Muhammad Noman) Appellant  
Through Counsel

  
(Muhammad Ismail Alizai)  
Advocate High Court, DIKhan.

D

2

**BEFORE SERVICE TRIBUNAL, KHY:PAKHTUNKHWA,PESHAWAR.**

In: Service Appeal No. 5673 / 2021.  
Civil Misc; No; /2023

*Execution Petition*  
*No 196 / 2023*

Muhammad Noman,  
Ex-Constable No.1218, CTD Unit, D.I.Khan.  
Office of SSP / CTD, South Zone,  
Presently, Care of Fazal Rabani Marwat,  
Basti Naad Ali Shah, D.I.Khan.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 4624

Dated 29/3/2023

(Appellant)

**Versus**

1. The Provincial Police Officer (IGP), KPK,  
Central Police Office, Peshawar.
2. Deputy Inspector General of Police / Counter Terrorism Department,  
Khyber Pakhtunkhwa, Peshawar,
3. Senior Superintendent of Police , CTD, South Zone, Khyber Pakhtunkhwa  
at Dera Ismail Khan,
4. Superintendent of Police, CTD, D.I.Khan.

(Respondents)

*Note: The addresses given above are sufficient for the purpose of service.*

.....

**Implementation Petition seeking issuance of direction to respondents on compliance of the judgment dated 28.10.2022 passed by the KP-Service Tribunal.**

Respectfully Sheweth: -

The petitioner / appellant very humbly submits as under: -

**BRIEF FACTS:**

1. That while deciding subject noted service appeal filed by the present petitioner this Hon'ble Tribunal had very graciously set-aside the decision of the departmental authority whereby the petitioner was awarded major penalty of dismissal from service and further that the Tribunal had vide its judgment dated 28.10.2022 very graciously ordered re-instatement of petitioner / appellant in service. Copy of judgment dated 28.10.2022 is placed at **Annex-A.**

*Muhammad Noman*

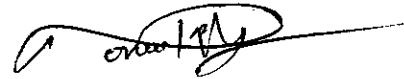
- (2)
2. That the petitioner / appellant approached the concerned authorities of respondent department for giving effect to the judgment passed by the Hon'ble Tribunal, and for said purpose had moved an application coupled with a copy of the judgment. Copy of application is placed at **Annex-B**.
  3. That the concerned authorities / respondents are apparently avoiding implementation of the judgment for reasons unknown though the judgment has attained finality since no word is conveyed to the petitioner by respondent department on challenging the judgment of the Tribunal at any forum.
  4. That left with no alternate remedy the petitioner approaches the hon'ble Tribunal seeking implementation of the judgment dated 28.10,2022 passed by it in favour of the petitioner / appellant.

**Prayer:**

In view of the fore mentioned submissions, it is very humbly requested that the respondents may be very graciously required to implement the judgment passed by the Tribunal, as mentioned above, and the appellant may in consequence thereof be reinstated in service besides allowance of all back benefits. Grant of any other relief including costs, as may be deemed appropriate by the Hon'ble Tribunal is solicited, too. If the respondents would be adamant on defiance to the implementation of the judgment, the Hon'ble Tribunal may kindly take-up proceedings against them in terms of the law of contempt in the larger interest of justice.

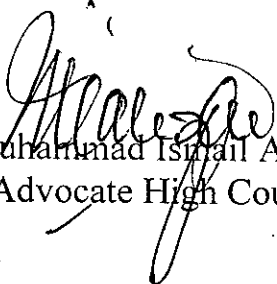
Dated: 27.03.2023

Humble petitioner / Appellant,



(Muhammad Noman)

Through Counsel.

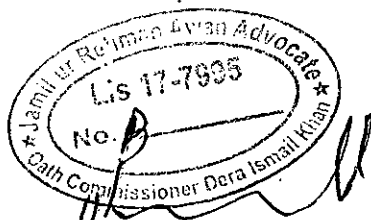


(Muhammad Ismail Alizai)  
Advocate High Court.

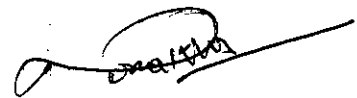
**AFFIDAVIT:**

Dated: .03.2023.

I, Muhammad Noman, the petitioner /appellant hereby solemnly affirm and declare on oath that contents of the petition are true and correct to the best of my knowledge, belief and per the official records. Also, that nothing is willfully kept or concealed from this Hon'ble Tribunal.



27/3/23



Deponent.

cAc (3)

Service Appeal No.5673/2021-titled "Muhammad Noman-vs-The Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 28.10.2022, by Division Bench comprising Kalim Arshad Khan, Chairman and Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court, D.I.Khan.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR CAMP COURT D.I.KHAN.**

BEFORE: **KALIM ARSHAD KHAN .. CHAIRMAN**  
**ROZINA REHMAN .. MEMBER (Judicial)**

*Service Appeal No.5673/2021*

**Muhammad Noman, Ex-Constable No. 1218, CTD Unit, D.I.Khan. Office of SSP/CTD, South Zone. Presently, Care of Fazal Rabani Marwat, Basti Naad Ali Shah, D.I.Khan.**

.....(Appellant)

VERSUS

1. **The Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar.**
2. **Deputy Inspector General of Police/Counter Terrorism Department, Khyber Pakhtunkhwa, Peshawar.**
3. **Senior Superintendent of Police, CTD, South Zone, Khyber Pakhtunkhwa, at Dera Ismail Khan.**
4. **Superintendent of Police, CTD, Dera Ismail Khan.**

.....(Respondents)

Present:

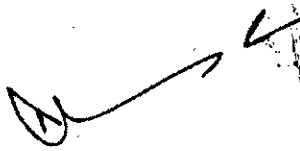
Mr.Muhammad Ismail Alizai.  
Advocate.....For appellant.

Mr. Muhammad Jan,  
District Attorney.....For respondents.

Date of Institution.....26.05.2021  
Dates of Hearing.....28.10.2022  
Date of Decision.....28.10.2022

**SERVICE APPEAL AGAINST FIRST, ORDER DATED 24.01.2019 WHEREBY THE APPELLANT IS AWARDED PUNISHMENT OF DISMISSAL FROM SERVICE BY RESPONDENT NO.3 & SECONDLY, FROM FINAL ORDER DATED 03.05.2021 OF RESPONDENT NO.1 WHEREBY DEPARTMENTAL APPEAL/REVISION PETITION WAS REJECTED.**

**ATTESTED**  
  
KALIM ARSHAD KHAN  
Chairman  
Khyber/Pakhtunkhwa  
Service Tribunal  
Peshawar




### JUDGMENT

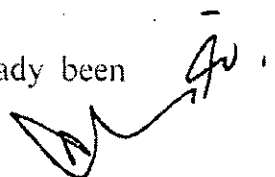
**KALIM ARSHAD KHAN, CHAIRMAN:-** Briefly stated the facts giving rise to filing of the instant service appeal are that disciplinary action was taken against the appellanton the allegation that he was charged in case FIR No. 919 dated 18.10.2018 registered under Sections 9(b) CNSA read with section 15AA of Police Station Cantonment D.I.Khan. That on conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide impugned order dated 24.01.2019. The appellant filed departmental appeal, however the same was filed on 17.12.2020, therefore, the appellant filed revision petition, which was also rejected vide order dated 03.05.2021, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions as raised by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was not at all associated with the inquiry proceedings and the inquiry officer even did not bother to afford opportunity to the appellant to record his statement. He further argued that neither copy of the inquiry report was provided to the appellant nor any final show-cause notice was issued to him. He also argued that the impugned order of dismissal of the appellant was passed prior to outcome of the trial of the criminal case registered against him, which fact has rendered the impugned order as void ab-initio. He next contended that the appellant has already been

**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



5

*Service Appeal No.5673/2021 titled "Muhammad Noman-vs-The Provincial Police Officer (JGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 28.10.2022, by Division Bench comprising Katim Arshad Khan, Chairman, and Razia Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court D.I.Khan*

acquitted in the criminal case registered against him, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant the local police of Police Station Cantonment D.I.Khan recovered Charas "Hashish" weighing about 250 grams as well as two pistols with ammunitions from the possession of the appellant, therefore, case FIR No. 919 dated 18.10.2018 under Sections 9(b) CNSA read with section 15AA of Police Station Cantonment D.I.Khan was registered against the appellant. He further argued that the inquiry proceedings were conducted in accordance with relevant rules and the appellant was provided ample opportunity of self-defense as well as personal hearing but he failed to produce any cogent material in rebuttal of the charges leveled against him; that departmental as well as criminal proceedings are distinct in nature and can run parallel. He next argued that the appellant has been acquitted in the criminal cases, however the allegations leveled against him were proved in the departmental inquiry, therefore, he has rightly been dismissed from service. In the last he argued that the appellant has been dismissed from service vide order dated 24.01.2019 but he has submitted departmental appeal on 14.09.2020 which is badly time barred, therefore, the appeal in hand is not maintainable and is liable to be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

Page 3

**ATTESTED**  
*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*[Handwritten Signature]*

Service Appeal No 5673/2021 titled "Muhammad Noman-vs-The Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 28.10.2022, by Division Bench comprising Kalim Arshad Khan, Chairman, and Rozina Rahman, Member, Judicial Khyber Pakhtunkhwa Service Tribunal, Camp Court D.I.Khan.

6. A perusal of the record would show that the appellant was dismissed from service vide order dated 24.01.2019 on the allegations of his involvement in case FIR No. 919 dated 18.10.2018 registered under Section 9(b) CNSA read with section 15AA of Police Station Cantonment D.I.Khan. Charge sheet (undated) was issued by giving three days' time to the appellant to put in written defence, in contravention of the provisions of rule 6 i(b) of the Khyber Pakhtunkhwa Police Rules, 1975 (as amended upto 2014), which require the authority to give seven days' time to the accused official to put in written defence after the show cause notice has been served upon the appellant. Mr. Gul Rauf Khan DSP/CTD Dera Ismail Khan was appointed as inquiry officer in the matter, who submitted his report to the Senior Superintendent of Police, Counter Terrorism Department Sought Zone Khyber Pakhtunkhwa, who straightaway passed the impugned order. As usual, the entire record of the enquiry proceedings has not been placed on record by the respondents and only a report is on the file. As per the report, the inquiry officer has recorded the statements of police officials namely Mr. Umer Khitab ASI Muharrar P.S CTD, Imran Ullah Khattak SHO P.S Cantt, Abdul Ghafoor No. 195 P.S Cantt, Constable Naseer Ahmad No. 6219 P.S Cantt, Constable Muhammad Suleman No.8777 P.S Cantt and Lady Constable Humaira Akhtar No. 735 P.S Cantt but, it appears that, the appellant was not provided opportunity of cross examination to all the witnesses, which has rendered the whole proceedings illegal and liable to be set-aside. None of the statements of the witnesses has been placed on file to ascertain whether the enquiry officer reached a proper conclusion or not

Page A  
ATTESTED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar




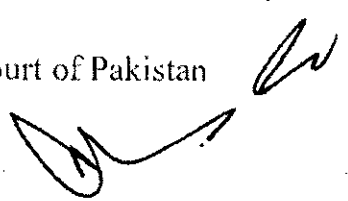
especially when it is stated in the enquiry report that ASI Umar Khitab, Moharrar Police Station CTD alleged that the appellant was absent from duty at the time of occurrence, then it was incumbent upon the respondents to have placed any concrete document showing and proving such alleged absence of the appellant at the relevant point of time together with the supporting documentary evidence that at the time the appellant was to perform duty at such and such place etc. Similarly, what action was taken on his alleged absence is also not disclosed. So much so the statement of this important witness was not placed on record to make assessment of the above facts. All these factors lead us to hold that the enquiry conducted in the above mode and manner has rendered it fruitless.

7. On receipt of report of the DSP/CTD D.I.Khan Range, the appellant was straightaway dismissed by the Senior Superintendent of Police CTD South Zone KP at DIKhan vide order dated 24.01.2019, without issuing him final show cause notice as the impugned order is silent regarding issuance of show cause notice or providing any opportunity of personal hearing after conduct of the alleged enquiry and holding the appellant guilty of misconduct. Similarly, copy of the proceedings conducted by DSP/CTD D.I.Khan Range were also not provided to the appellant. This Tribunal has already held in numerous judgments that issuing of final show-cause notice as well as providing of copy of the inquiry report to the delinquent official/officer was a must.

Reliance is also placed on judgment of august Supreme Court of Pakistan

**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



*Service Appeal No.5673/2021 filed "Muhammad Noman-vs-The Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 28.10.2022, by Division Bench comprising Kalan Arshad Khan, Chairman, and Rozina Rehman, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court D.I.Khan.*

reported as PLD 1981 Supreme Court 176, wherein it has been held that rules 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-supply of copy of the inquiry report to the appellant has caused miscarriage of justice, in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him. Besides the disciplinary proceedings were initiated by the Superintendent of Police CTD, D.I.Khan, as is evident from statement of allegation vide Endst No.2627-31/CTD dated 23.10.2018, wherein the Superintendent of Police, CTD D.I.Khan, showing himself to be the Competent Authority, initiated the departmental proceedings whereas vide the impugned order No.19-22/R/SSP/South Zone, dated 24.01.2019, instead, the Senior Superintendent of Police CTD South Zone, Khyber Pakhtunkhwa, has passed the same without showing whether and how the SSP CTD South Zone KP became the Authority at the time when the impugned order of dismissal of the appellant was passed.

8. Moreover, the appellant has already been acquitted vide judgment dated 05.09.2020 passed by the then ASJ/Judge Special Court/Judge Model Criminal Trial Court, Dera Ismail Khan. It is evident from perusal of the record that disciplinary action was taken against the appellant on the ground of his involvement in case FIR No. 919 dated 18.10.2018 under Sections 9(b) CNSA/15AA of Police Station CanttD.I.Khan, however after acquittal of the appellant, the very ground, on the basis of

**ATTESTED**

*[Signature]*  
JUDGE  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*[Signature]*

9

Service Appeal No. 3672/2021 titled "Muhammad Noman vs The Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar and others" decided on 28.10.2022, by Division Bench comprising Kalim Arshad Khan, Chairman, and Rozina Rehman, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court D.I.Khan.

which disciplinary action was taken against the appellant has vanished away.

9. 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 with all back benefits. Costs to follow the event. Consign.

10. Pronounced in open Court at D.I.Khan and given under our hands and seal of the Tribunal on this 28<sup>th</sup> day of October, 2022.

**KALIM ARSHAD KHAN**  
Chairman  
Camp Court D.I.Khan

**ROZINA REHMAN**  
Member (Judicial)  
Camp Court D.I.Khan

**Certified to be true copy**

**CHIEF CLERK**  
**Khyber Pakhtunkhwa**  
**Service Tribunal,**  
**Peshawar**

Date of Presentation of Application 01/11/2022  
 Number of Words 28500  
 Copying Fee 20/-  
 Urgent 20/-  
 Total 20/-  
 Name of Clerk \_\_\_\_\_  
 Date of Completion of Copy 18/12/22  
 Date of Delivery of Copy 15/12/22

بخدمت جناب DIG/CTD صاحب خیبر پختونخواہ پشاور .

درخواست بمراد حاضری کرنے اجازت

جناب عالی!

سائل کو محکمہ CTD نے درخواست کیا تھا۔ مورخہ: 28/10/2022 کو سروس ٹریبونل نے بحال کر دیا ہے۔

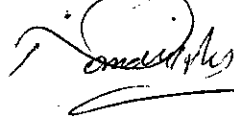
لہذا استدعا ہے کہ سائل کو حاضری کی اجازت دی جاوے اور نمبر الاٹ کیا جائے۔

مورخہ: 13/01/2023

العارض

محمد نعمان ولد فضل ربانی قوم شیخ محلہ سراج خیل سکندہ پنپالہ تحصیل پہاڑ پور ضلع ڈیرہ اسماعیل خان

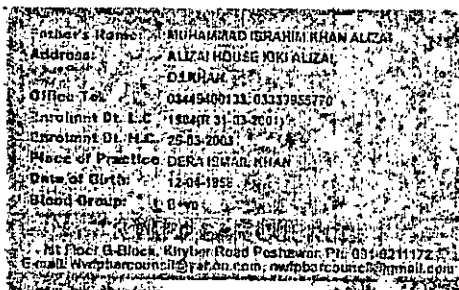
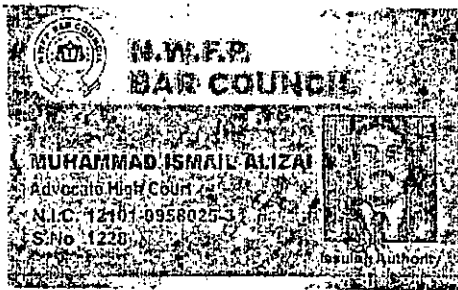
سابقہ کنسٹیبل نمبر CTD/1218 ضلع ڈیرہ اسماعیل خان



موبائل نمبر: 03427480795

نوٹ: (ضلع عدالت کی مدد سے کاپی حسب نمبر CTD/HQ کو موصول ہو چکی ہے)۔

# VAKALATNAMA



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Service Appeal *CM (Comptroller & Accounts Officer) No. 1/2023 in SA 5673/2021*

I/WE, *Muhammad Nouman* Petitioner/Appellant,

hereby appoint Mr. Muhammad Ismail Alizai, Advocate High Court, D.I. Khan, in the above mentioned matter / case and authorize him/ them to do all or any of the following acts, in my/our name and on my/our behalf, that is to say,

1. To appear, act and plead for me/us in the above mentioned case in this Court/ tribunal in which the same may be tried or heard or any other proceedings what so ever, ancillary thereto, including appeal, revision etc; on payment of fees separately for each court by me / us,
2. To sign, verify, file, present or withdraw all/any proceedings, petitions, appeals, cross objections and application for compromise or withdrawal, or for submission to arbitration of the said case or any other documents, as may be deemed necessary or advisable by him/ them and to conduct prosecution or defense of the said case at all its stages,
3. To undertake execution proceedings, deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be conferred to be done for the progress and in the course of prosecution of the said case,
4. To appoint and instruct any other Advocate/ legal practitioner authorizing him to exercise the power and authority conferred upon the advocate whenever he/they may think fit to do so and to sign Power of Attorney on our behalf,

I /we, the undersigned do hereby agree to ratify and confirm all acts done by the advocate or his authorized substitute in the matter as my /our own acts, as if done by me/us to intents and purposes, and I / we undertake that I /we or my/our duly authorized agent shall appear in the court on all hearings and will inform the advocate(s) for appearance when case is called and I/we the undersigned agree hereby not to hold the advocate(s) or his/their substitute responsible if the said case be proceeded ex-parte or dismissed in default in consequence of my/our absence from court when it is called for hearing and for the result of the said case, the adjournment costs whenever ordered by the court shall be of the advocate(s) which he/they may receive and retain himself/themselves. I/we the undersigned do hereby agree that in the event of the whole or part of the fees agreed by me/us to be paid to the advocate(s), if remain unpaid, he/they shall be entitled to withdraw from prosecution of the above said case until the same is paid and fee settled is only for the above said case and above court and I /we agree hereby that once fee is paid, I/we shall not be entitled for refund of the same in any case whatsoever.

IN WITNESS WHEREOF, I /we do hereby set my/our hand to these presents, the contents of which have been read / read over, explained fully and understood by me/us on this *27<sup>th</sup>* Day of *July* 2023

Accepted By:

*Muhammad Ismail Alizai*  
 Muhammad Ismail Alizai,  
 Advocate High Court.

Thumb Impression / Signature(s) of Executant(s)

*Muhammad Nouman*  
 .....  
*Muhammad Nouman*  
 04-03-2023

12103-1499393-7