


Form-A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 220/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	
1	03.04.2023	<p>The execution petition of Mr. Shah Nawaz submitted today by Mr. Noor Muhammad Khattak 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 style="text-align: right;">By the order of Chairman  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Shah Nawaz VS Government

S#	CONTENTS	YES	NO
1	This Appeal has been presented by _____	✓	
2	Whether counsel / appellant/ respondent/ deponent have signed the requisite document?	✓	
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 number of referred cases given are correct?	✓	
16	Whether appeal contains cutting / overwriting?	✓	
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 are 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 /documentations as required in the above table, have been fulfilled.

Name:-

آس سی پی

Signature:-

[Signature]

Dated:-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION NO. 220 /2023

Shah Nawaz

VS

GOVT. OF KPK & OTHERS

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

Respectfully Sheweth:

5. That the above mentioned case is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
6. 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.
7. 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.
8. 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 case may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 3/4/23

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 220 /2023

In

Appeal No. 838/2016

SHAH NAWAZ VS JUDICIARY

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation Petition with Affidavit	1-2
2.	judgment dated 30.05.2022	"A"	3-17
3.	Copy of the order dated 07.10.2022	"B"	8
4.	Vakalatnama		9

PETITIONER

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 220 /2023

In

Appeal No. 838/2016

Khyber Pakhtunkhwa Service Tribunal
Peshawar
Case No. 4680
Date 3/4/2023

Mr. Shah Nawaz, Junior Clerk (BPS-11),
O/O District & Sessions Judge, Abbottabad.

.....PETITIONER

VERSUS

- 1- The Administrative Judge through Registrar Peshawar High Court, Peshawar.
- 2- The District & Sessions Judge Abbottabad.

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36³ AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 30.05.2022 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 838/2016 before this august Service Tribunal against the major punishment of compulsory retirement orders dated 30.11.2011 and 01.12.2011 and appellate order dated 25.04.2016.
- 2- That the appeal of the petitioner was finally heard and decided 30.05.2022 and as such the ibid appeal was allowed in favour of the petitioner with the following relief by this august Service Tribunal:

"We therefore, allow the appeal in hand and convert the major penalty of compulsory retirement of the appellant into minor penalty of stoppage of two annual increments. The intervening period is treated as leave of the kind".

Copy of the judgment dated 30.05.2022 is attached as annexure..... **A**

- 3- That after obtaining copy of the judgment dated 30.05.2022 the same was submitted with the respondents for implementation to the Department concerned and vide order dated 07.10.2022 the appellant was re-instated but the two annual increments from 01.12.2022 and 01.12.2023 are withheld which is the violation of the judgment supra. Copy of the order dated 07.10.2022 is attached as annexure**B.**
- 4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 30.05.2022 passed in appeal No. 838/2016 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 24/3/23

Shah Nawaz

**PETITIONER
SHAH NAWAZ**

THROUGH:

Noor Mohammad Khattak

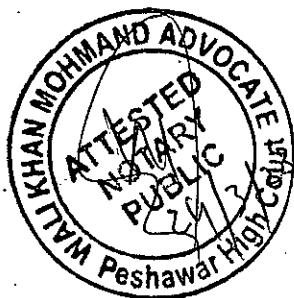
**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

AFFIDAVIT

I Shah Nawaz, Junior Clerk (BPS-11), O/O District & Sessions Judge, Abbottabad, do hereby solemnly affirm that the contents of this **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Shah Nawaz

DEPONENT



"A" -3- 1 4-9-



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 838/2016

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

Shah Nawaz Ex-Junior Clerk, Office of the District and Sessions Judge
Abbottabad.

... (Appellant)

Versus

1. Senior Pusine Judge through Registrar, Peshawar High Court, Peshawar.

2. District & Sessions Judge, Abbottabad.

... (Respondents)

Mr. Noor Muhammad Khattak
Advocate

... For appellant

Mr. Muhammad Adeel Butt
Addl. Advocate General

... For respondents

Date of Institution.....04.08.2016
Date of Hearing.....30.05.2022
Date of Decision.....30.05.2022

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 orders dated 30.11.2011 and 01.12.2011 of respondent No. 2 through which the appellant had been awarded major penalty of compulsory retirement from service and judgment of the learned Senior Pusine Judge Peshawar High Court dated 25.04.2016 through which the penalty had been upheld. The appellant has prayed to set aside the orders and reinstate him in service with all back benefits or any other order deemed fit in his favor.

ATTSTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

4-~~10~~

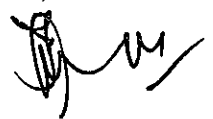
2. Brief facts of case, as given in the memorandum of appeal, are that the appellant was served with a charge sheet on 12.09.2011 by the learned Senior Civil Judge Abbottabad on the ground that on 15.06.2011 the appellant who was Muharrir of Additional Sessions Judge-VI, Abbottabad had handed a release warrant to Saeed Akhtar(Sweeper) for taking it to District Jail Mansehra which was gross negligence and misconduct within the meaning of NWFP Government Servants (E&D) Rules, 1973. The appellant replied to it on 01.07.2011 and 22.09.2011. He also submitted reply on 25.10.2011 to the final show cause notice issued to him on 14.10.2011. Statement of a witness, Hayat, Naib Nazir of Senior Civil Judge, Abbottabad was recorded on 23.09.2011 and on the same day statements of the appellant and Saeed Akhtar (Sweeper) were also recorded. The learned Civil Judge-V Abbottabad who was appointed as Inquiry Officer submitted his report on 23.09.2011 before the Senior Civil Judge. The learned Senior Civil Judge recommended major penalty to the appellant vide order dated 24.09.2011. Based on that, the learned District & Sessions Judge Abbottabad compulsorily retired the appellant from service with immediate effect vide impugned orders dated 30.11.2011 and 01.12.2011. The appellant filed departmental appeal which was rejected and his penalty of compulsory retirement was withheld vide judgment dated 25.04.2016. The appellant hence filed the instant appeal before this Service Tribunal.

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 Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. Learned counsel for the appellant contended at the very onset that the appellant had been proceeded against under NWFP Government Servants (E&D) Rules 1973 as stated in his charge sheet dated 12.09.2011 whereas (E&D) Rules

ATTESTED

EXAMINER
Syed Fakhtukhwa
Service Tribunal
Peshawar




were repealed and Removal from Service Ordinance 2000 (RSO 2000) was in place at that time. He further contended that the only allegation levelled against the appellant was that he handed over a release warrant to Saeed Akhtar (Sweeper) of the said department for taking it to District Jail Mansehra and that there was no allegation of corruption as such. Based on that allegation major penalty was imposed on him which did not commensurate with the alleged offence committed by him. Handing over the release warrant by the appellant to an official of the said department for taking it to District Jail Mansehra did not amount to "misconduct", rather the appellant had acted in good faith to get the accused person in jail to be released in time, instead it showed the efficiency in doing his official duty and not delaying the release warrant which was urgent in nature. Moreover, no regular inquiry was conducted in light of provisions of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000, and the appellant was not given an opportunity to cross-examine the witness and no chance of hearing and producing defense was given to him. The learned counsel for appellant further argued that there were no allegations in the show cause notice regarding previous conduct and a criminal case against the appellant, particularly when a case was registered under Section 489-F PPC, which was a civil nature case and compromise was made between the appellant and complainant, and he was acquitted vide order dated 07.10.2010. Hence it was illegal on the part of respondents to attribute that case as amounting to misconduct on the part of appellant when it was not subject matter of the inquiry in dispute.

5. Learned Additional Advocate General contended that the appellant had admitted in his own statement that he handed a release order to Saeed Akhtar (Sweeper) who was not authorized messenger of the court, and for delivering the same to Mansehra Jail he had to abandon his duty on the main gate of Judicial Complex Abbottabad, thus leaving the gate at the mercy of terrorists. By handing

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Pesbawar



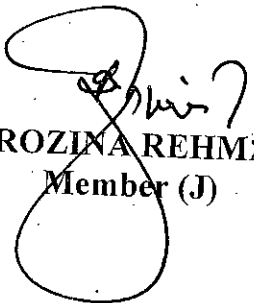
over the release order to an unauthorized person, the appellant committed gross negligence and proved himself guilty of corrupt practice. He further contended that the major penalty was right and commensurate with the gravity of offence.

6. After hearing the arguments and going through the available record it transpires that disciplinary action against the appellant was initiated under (E&D) Rules, 1973 and as a result major penalty of compulsory retirement from service was awarded to him. It was noted that disciplinary action was initiated by the District & Sessions Judge Abbottabad on 29.06.2011 in the form of an explanation served to Mr. Shah Nawaz, Muharrir to Additional District & Sessions Judge VI Abbottabad and Saeed Akhtar (Sweeper), office of Senior Civil Judge Abbottabad on the ground of being absent from duty from 9.00 am to 2.00 pm on 15.06.2011. The same explanation mentioned the handing over of release warrant by the appellant to Mr. Saeed Akhtar (Sweeper). The process continued and statement of allegations was issued on 12.09.2011 under the same (E&D) Rules, 1973. At the time when the entire disciplinary proceedings were initiated the (E&D) Rules had been repealed and Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000 was promulgated till such time that it was repealed through Khyber Pakhtunkhwa Removal from service (Special Powers) (Repeal) Act 2011 passed by Provincial Assembly of Khyber Pakhtunkhwa on 12.09.2011 and assented to by the Governor of the Khyber Pakhtunkhwa on 15.09.2011. Record reveals that charges against Shah Nawaz and Saeed Akhtar were of similar nature but penalty awarded to them was different which tantamounts to discrimination; one of them was given the penalty of stoppage of two annual increments whereas the appellant was awarded major penalty of compulsory retirement. If we keep aside the disciplinary proceedings initiated under the rules which were not in place at that time, and consider the proceedings to be conducted in the way it had to be done, even then the punishment seems discriminatory and harsh. Therefore, we

~~13~~ - 7 -


allow the appeal in hand and convert the major penalty of compulsory retirement of the appellant into minor penalty of stoppage of two annual increments. Intervening period is treated as leave of the kind. Parties are left to bear their own costs. Consign.

7. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 30th day of May, 2022.


(ROZINA REHMAN)
Member (J)


(FAREEHA PAUL)
Member (E)

Certified to be true copy


EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 25/11/22
Number of Words 2000
Copying Fee 21/-
Urgent 4/1/-
Total 26/-
Date of Completion of Copy 25/11/22
Date of Delivery of Copy 25/11/22



"B" - 8 -

**OFFICE OF THE
DISTRICT AND SESSIONS JUDGE
ABBOTTABAD**

Phone: 0992-921051
Fax: 0992-921594
Email: dsjtd@gmail.com

OFFICE ORDER

In compliance of decision passed in service appeal No. 838/2016 of Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar, major penalty of compulsory retirement already awarded to Mr. Shah Nawaz Ex-Junior Clerk is converted into minor penalty of stoppage of two annual increments due from 01.12.2022 and 01.12.2023 are hereby withheld, intervening period is treated as leave of kind. Official concerned is hereby re-instated in service with immediate effect.

2181-2187

No. 2/4 & 2/52

District & Sessions Judge
Abbottabad
07/10 /2022

Copy forwarded to the: -

1. Registrar, Peshawar High Court, Peshawar.
2. Members Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. Senior Civil Judge (Admn), Abbottabad.
4. District Comptroller of Accounts, Abbottabad.
5. Budget & Accounts Assistant, District Courts, Abbottabad.
6. Official concerned by name.
7. Office copy.

District & Sessions Judge
Abbottabad

Attested

9-

VAKALATNAMA
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Exemption

APPEAL NO: _____ OF 2023

Shah Nawaz

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Judiciary

(RESPONDENT)
(DEFENDANT)

I/We *Appellant*

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** 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 cost. 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.

Dated. *24/3* /2023

Noor Mohammad
CLIENT

ACCEPTED

Noor Mohammad
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

(BC-10-0853)

(15401-0705985-5)

Kamran
KAMRAN KHAN

Umar Farooq
UMAR FAROOQ MOHMAND

Waleed Adnan
WALEED ADNAN

&

Muhammad Ayub
MUHAMMAD AYUB
ADVOCATES

OFFICE:

Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)