


FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 234/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.04.2023	<p>The execution petition of Mr. Khaled Khan submitted today by Mr. Khalid Khan 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</p> <p style="text-align: right;"> REGISTRAR</p>

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No. **234**/2023

IN

Appeal No. 535/2022

AAE

Khalid Khan, Ex-Constable, No.1457,
Mardan Police, Tehsil & District Mardan..... **Petitioner**

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region, Mardan.
3. The District Police Officer, District Mardan..... **Respondents**

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE ORDER DATED 06-12-2022 COMMUNICATED ON SAME DAY IN LETTER AND SPIRIT

Respectfully Sheweth:

1. That the petitioner filed service appeal bearing No. 535/2022 before this august Service Tribunal against the impugned Order dated: 05.04.2022.
2. That the appeal of the petitioner was fixed before divisional bench of this Hon'ble Tribunal on 06-12-2022 and the divisional bench of this Hon'ble Tribunal very graciously allowed the Service appeal of the appellant vide its judgment dated 06-12-2022. The operative part is under "*For what has been discussed above, this appeal is accepted, the impugned orders are set aside and the appellant is re-instated into service with all back benefits, parties are left to bear their own costs. File be consigned to the record room.*" (Copy of the judgment dated 06-12-2022 is attached as Annexure "A").
3. That after obtaining copy of the order dated 06-12-2022 the petitioner/appellant applied to the Department for its implementation but the respondent Department turned a deaf ear to the petitioner.
4. That since the passage of more than 03 months of time the department has not implemented or obeyed the Judgment dated 06.12.2022 passed by this Hon'ble Tribunal.
5. That the petitioner has no any other remedy but to file instant implementation petition.

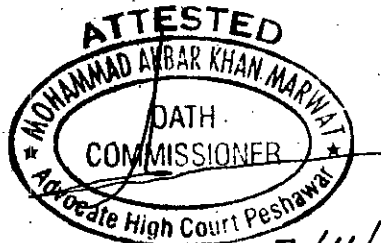
It is therefore, most humbly prayed that the respondents may be directed to implement the Judgment dated 06.12.2022 in letter and spirit.

Any other relief, which not specifically prayed for and deemed appropriate, to this Hon'ble Tribunal, in circumstances of the case may also be granted to the Petitioner.

AFFIDAVIT

Stated on oath that contents of instant application are true and correct to the best of knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Pink
DEPONENT



7/4/23

Through: Petitioner

Khalid
KHALID KHAN

Haider Ali
HAIDER ALI

Muaz Ashraf
MUAZ ASHRAF
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 535 /2022

16/04/2022
Annex "A"
2

Khalid Khan
Ex-Head Constable No.1457
Mardan Police, District Mardan.....



Appellant

VERSUS

1. The Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer,
Mardan Region, Mardan.
3. The District Police Officer,
District Mardan

Respondents

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORIGINAL IMPUGNED ORDER DATED 16.01.2022 WHEREBY APPELLANT WAS AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL BUT THE SAME WAS REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 05.04.2022.

PRAYER:

On acceptance of the instant appeal, the impugned original order dated 16.01.2012 passed by Respondent No.3 and the impugned appellate order dated 05.04.2022 passed by Respondent No.2, may graciously be set aside and appellant be re-instated into service with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant hails from respectable family of District Mardan. He joined the Police Force as a Constable on 10.05.2006. It is apprised that during that period he performed his duties elegantly and was never ever proceeded against

ATTESTED

Khalid Khan
Khyber Pakhtunkhwa Service Tribunal

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 535/2022

3

Date of Institution ... 11.04.2022
Date of Decision ... 06.12.2022

Khalid Khan, Ex-Head Constable No. 1457, Mardan Police, District
Mardan.

... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa, Peshawar and
two others.

... (Respondents)

Muhammad Amin
Advocate

... For appellant

Naseer Ud Din Shah
Assistant Advocate General

... For respondents

Mrs. Rozina Rehman
Mr. Mian Muhammad

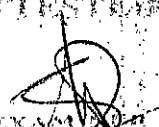
... Member (J)
... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the
jurisdiction of this Tribunal through the above titled appeal with the
prayer as copied below:

"That on acceptance of the instant appeal the impugned
original order dated 16.01.2012 passed by respondent No. 3
and the appellate order dated 05.04.2022 passed by
respondent No. 2 may graciously be set aside and appellant
be reinstated into service with all back benefits".

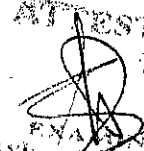
2. Brief facts of the case are that appellant joined police force as
constable on 10.05.2006. He performed his duties elegantly and was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

never ever proceeded against departmentally. As a result he was promoted to the rank of head constable on 19.05.2016. On the day of occurrence, he was performing his duties as head constable at police station Takht Bhai alongwith other colleagues and was on routine gasht when Bakhtaj, Samtaj, and Zartaj started firing upon police party. Resultantly, the police force also started firing in defence and in this regard an FIR No. 1088 dated 16.09.2021 at police station Takht Bhai was registered. Investigation under Section 156 Cr.P.C was initiated and accused Samtaj was arrested. In the meanwhile, appellant was charge sheeted on the charges of inefficiency, negligence and cowardice. He submitted his reply by refuting the allegations levelled against him. That on the basis of irregular and illegal facts finding enquiry, show cause notice was issued, he therefore, submitted his reply but he was dismissed from service. He filed departmental appeal which also met the same fate, hence the present service appeal.

3. We have heard Muhammad Amin, Advocate learned counsel for the appellant and Naseer Ud Din Shah, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Amin Advocate, learned counsel for the appellant submitted that appellant was not treated in accordance with law and rules and respondents acted in violation of Article 4 of the Constitution of Islamic of Republic of Pakistan. It was further submitted that whenever accused/employee is subjected to departmental proceedings a charge is framed in shape of charge sheet and

ATTESTED

 EXAMINER
 District Court
 District Court

5

statement of allegations and the basic aim of the same is to inform the delinquent civil servant of the charges without any ambiguity and that the charges leveled against the appellant were inefficiency, negligence and cowardice which are not covered under Rule 3 of Police Rules, 1975, therefore, the impugned orders are liable to be set aside. He submitted that from the contents of FIR, it is evident that other police officials alongwith appellant were present on spot but none of them except appellant were proceeded against departmentally and that none were examined during the inquiry proceedings in order to unearth the hidden facts. Lastly, he submitted that no proper regular inquiry was conducted according to law and the appellant was discriminated and was made scapegoat. He, therefore, requested that appellant may kindly be reinstated in service with all back benefits as he was not provided any opportunity of personal hearing which is mandatory requirement of law. Reliance was made on 2003 SCMR 1126 and PLD 2008 SC 412.

5. Conversely, learned AAG submitted that the appellant was on patrolling duty with PASI Shah Faisal Shaheed the then incharge of police station Madi Baba. In the meanwhile, an encounter with some outlaws took place. Resultantly, PASI Shah Faisal embraced shahdat while accused succeeded in decamping after commission of crime despite the presence of appellant. Lastly, he submitted that proper inquiry was entrusted to SDPO Katlang who submitted his report and in the light of recommendations of inquiry officer final show cause notice was issued and major punishment of dismissal from service was awarded to the appellant which does commensurate with gravity of misconduct of the appellant.

ATTESTED
 By
 Keyhole
 Service Tribunal
 Peshawar

6. We have heard learned counsel for parties and perused the record. Record reveals that appellant was on patrolling duty with Shaheed Shah Faisal the then incharge of police post Madi Baba. Copy of FIR No. 1088 dated 16.09.2021 is available on file which shows that one constable Muhammad Nawas reported the matter in respect of occurrence. As per contents of FIR, Shaheed Shah Faisal alongwith Khalid Khan the present appellant, Parvez FC, Saeed Ur Rehman FC and Muhammad Nawaz FC were present in a private motor car and were on patrolling duty. Presence of three police officials were not mentioned by the respondents in their comments. The said motor car was being driven by Shaheed Shah Faisal at the relevant time when in the meanwhile an encounter with some outlaws took place. Resultantly, PASI Shah Faisal embraced shahadat while accused decamped from spot. From bare reading of FIR, it becomes crystal clear that besides Shah Faisal PASI, four other police officials were present in the motor car but none of them except appellant were proceeded against departmentally. Nothing was brought in black and white in order to show as to why were they exonerated from the charges and just Khalid Khan was proceeded against departmentally. One Ikhtiraz Khan SDPO Katlang was nominated as inquiry officer but he did not record the statements of those officials who were present in car at the relevant time. Appellant was not given any opportunity of cross examination. Statement of allegations is silent in respect of the presence of other police officials. The inquiry report is available on file which shows that statement of the present appellant, Inspector Akram Khan and S.I Noor Muhammad Khan were recorded but the

ATTESTED
EXAMINER
Riyaz Ahmad Khan
Service Tribunal
Kashmir

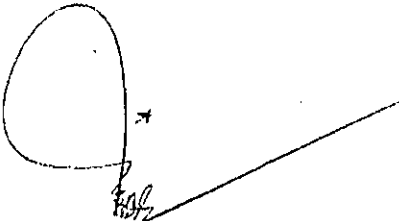
same are not available on file which means that the appellant was not provided opportunity of cross examination. From the inquiry report it is also evident that S.I Noor Muhammad who was SHO at relevant time had narrated a story as he himself was not an eye witness of the occurrence. It has been held by the superior fora that where the civil servant was not afforded chance of personal hearing before passing of termination order, such order would be void ab-initio. Reliance was placed on 2003 SCMR 1126.

7. The respondents have very blatantly violated the set norms and rules and conducted the proceedings in an authoritarian manner and harsh punishment was awarded to the appellant. We have observed that the inquiry conducted by the respondents is not in accordance with law/rules. It is, however, a well-settled legal proposition duly supported by numerous judgments of Apex Court that for imposition of major penalty, regular inquiry is a must.

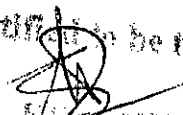
8. For what has been discussed above, this appeal is accepted, the impugned orders are set aside and the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED
06.12.2022


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)


Chairman
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

8

جناب عالی!

گزارش ہے کہ سائل 2006 کا بھرتی شدہ ہے اور 2015 میں لوئر کورس پاس کر کے 2016 ہیڈ کانسٹیبل کے عہدہ پر ترقی یاب ہوا۔ سائل بحوالہ حکمانہ کاروائی چارج شیٹ نمبری 228/PA مورخہ 05/10/2021 تک پولیس سے مورخہ 14/01/2022 درخواست ہوا۔ سائل نے بحالی کے لیے سروس ٹریبیونل سے رجوع کیا جہاں پر سائل کے درخواست کو قبول کر کے 06/12/2022 کو بحال کر دیا گیا۔

جناب عالی سائل کے دو بیٹے اور دو بیٹیاں ہے۔ اس کے علاوہ ماں بھی دل کی بیمار ہے۔ بدورانہ درخواستی سائل مستحق اپنی ماں کا علاج معالجہ اور بیوی بچوں کی کفالت کرتا آ رہا ہے۔ سائل کی مالی حالات بھی نہایت انتہائی تنگ ہیں۔ اس لیے آپ صاحبان سے بذریعہ درخواست استدعا ہے کہ سائل کو اپنے سابقہ آسامی پر مرعات سمیت بحال کرنے کے احکامات صادر فرمائیں۔ اس عنایت کے لیے سائل کے بال بچے صاحب کی اقبال بلندی کے لیے دعاگو رہینگے۔

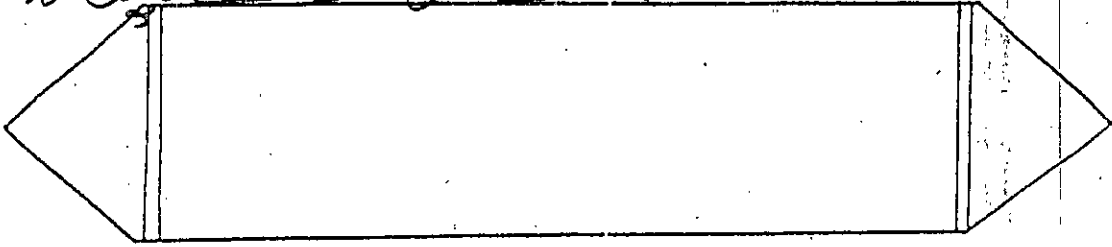
العارض

آرکائیو فرمان خالد خان 1457/HC

برخواست شدہ

15-3-2023

بعدالت سرورس سرپونلے لیسٹ



2 مخائب

IGIP خالد خان بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئیکہ

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

آن مقام لیسٹ کے لیے خالد خان صاحب مدد علیہ صفیہ اسٹریٹ

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 و تقرر ثالت ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ عرضی 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 اختیار 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 مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ

پر داخستہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائے التوائے مقدمہ کے سبب سے ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی

مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 06 ماہ 04 2023

واہ الب

بمقام لیسٹ کے لئے منظور