


Form-A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 241/2023

S.No.	Date of order proceedings.	Order or other proceedings with signature of judge
1	2	3
1	12.04.2023	<p>The execution petition of Mr. Muhammad Sadiq 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.</p> <p>By the order of Chairman</p> <p> REGISTRAR <i>ely</i></p>

The execution petition Mr. Muhammad Sadiq Ex-Constable Police line Lakki Marawat received today i.e. 6.4.2023 is incomplete on the following scores which is returned to the counsel for the applicant for completion and resubmission within 10 days.

- 1- Petition/annexures are not properly paged according to index.
- 2- Annexures of the petition are unattested.
- 3- Approved file covers is not used.

No. 1105 /S.T,

Dt. 07/04 /2023.

REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

S.Noman Ali Bukhari Adv.
High Court Peshawar.

Sis

objection removed & resubmitted

uzma
UZMA SYED
Advocate
12-4-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 241 /2023
In Service Appeal No.710/2017

Muhammad Sadiq

V/S

Police Deptt:

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PETITIONER
Muhammad Sadiq

THROUGH:


(UZMA SYED)
ADVOCATE HIGH COURT

Cell No: 0311-9440376

Date - 5-4-2023

(1)

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

Execution Petition No. 241 /2023
In Service Appeal No.710/2017

Muhammad Sadiq Ex-Constable,
Police Line, Lakki Marwat.

petitioner

VERSUS

1. The Inspector General of Police, KPK, Peshawar.
2. The Deputy Inspector General of Police, CTD KP, Peshawar.
3. The Additional Inspector General of Police, CTD KP, Peshawar.
4. The District Police officer, Lakki Marwat.
5. The Regional Police Officer, Bannu Region Bannu.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 10-01-2023 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No.710/2017 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 10-01-2023 and the Honorable Tribunal is kind enough to accept the appeal vide judgment dated 10-01-2023 as prayed for. (Copy of judgment is attached as Annexure-A).
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 10-01-2023.

4. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. 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 implemented the same in letter and spirit.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 10-01-2023 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 favor of applicant/appellant.

M Sadiq

PETITIONER
Muhammad Sadiq

THROUGH:

U3

(UZMA SYED)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

M Sadiq

DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 710/2017

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

Muhammad Sadiq Ex-Constable Police Line, Lakki Marwat.
..... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police CTD, Khyber Pakhtunkhwa, Peshawar.
4. District Police Officer, Lakki Marwat.
5. Regional Police Officer, Bannu Range, District Bannu.
..... (Respondents)

Miss Uzma Syed,
Advocate

For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney,

For respondents

Date of Institution..... 06.07.2017

Date of Hearing..... 09.01.2023

Date of Decision..... 10.01.2023

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 order dated 20.10.2016 whereby major penalty of compulsory retirement had been imposed upon the appellant and against the appellate order dated 14.06.2017, whereby departmental appeal

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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of appellant had been rejected on no good grounds. It has been prayed that by accepting this appeal, the impugned orders dated 20.10.2016 and 14.06.2017 might be set aside and the respondents be directed to reinstate the appellant in service with all back benefits and any other remedy which this august tribunal deems fit might also be awarded in favour of the appellant.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was an employee of the respondent department and was serving as Head Constable. He served the respondent department for more than 24 years quite efficiently and up to the entire satisfaction of his superiors. While performing his duty as Head Constable CTD Lakki Marwat, a criminal case was registered vide FIR No. 438 dated 20.07.2016 u/s 15-AA/9CNSA at Police Station Serai Naurang in which the appellant was not directly charged but he was arrested by the police on 11.08.2016 and was put in confinement till 21.10.2016. Thereafter he was taken to Peshawar in the office of AIG, CTD and there too he was kept in confinement for sufficient days based on a statement of Mr. Nasib before the police. Lastly major penalty of compulsory retirement was imposed upon him vide order dated 20.10.2016 (communicated to the appellant on 10.11.2016) without conducting fact finding inquiry in the matter. Feeling aggrieved from the impugned order, the appellant preferred departmental appeal before respondent No. 1 on 30.11.2016 which was rejected on 14.06.2017; hence the instant service appeal.


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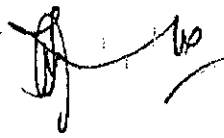
BY ATTORNEY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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 learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail contended that the appellant was not directly charged in the FIR dated 20.07.2016 but the respondents malafidely involved him on the basis of baseless statement of one Naseeb. He further contended that no charge sheet and statement of allegations had been issued to the appellant nor show cause notice was served upon him which were mandatory before passing the impugned order. He further contended that no chance of personal hearing/defence had been afforded to him and the respondents acted in an arbitrary manner. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, contended that the appellant alongwith DSP Muhammad Subhan colluded with the notorious criminal gang of Naseebo who was involved in heinous offences including the murder of Police Officer and utilized the services of Zarpayon Jan alias Bajjan of District Karak, a notorious gambler and runner of gambling den, and planned the surrender of the members of that gang. The appellant also facilitated the said gang in fake recovery of weapons snatched from the Police Officers after killing them with sole aim and motive of weakening the

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 Service Tribunal
 Peshawar

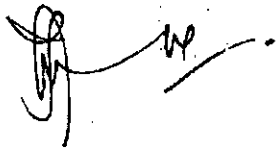


prosecution of criminal cases registered against that gang. They intended to surrender before Police, however, they colluded with the police officials, DSP CTD Muhammad Subhan and the present appellant. Later on certain persons of the said gang surrendered themselves to the local police on 04.08.2016 and during their interrogation they disclosed contact with Muhammad Sadiq, the present appellant. He further contended that after conducting preliminary inquiry, the appellant was issued charge sheet and statement of allegations and proper departmental inquiry was conducted. He was given a chance of personal hearing and cross examining the witnesses but he could not prove his innocence and had rightly been dismissed from service. Learned DDA requested that the appeal might be dismissed with cost.

6. From the arguments and record presented before us it transpires that the appellant, who was serving as Head Constable at CTD Lakki Marwat, was arrested and put behind bar on 11.08.2016 on the basis of FIR No. 438 dated 20.07.2016 u/s 15AA/9CNSA registered at P.S Naurang, despite the fact that he was not directly charged in that FIR. He was arrested on the allegations that he, alongwith DSP Muhammad Subhan, colluded with the notorious criminal gang of Naseebo who were involved in heinous offences including the murder of police officer and utilized the services of Zarpayon Jan alias Bajjan of District Karak, a notorious gambler and runner of gambling den, and planned the surrender of the members of the gang. It was further alleged that the appellant alongwith the DSP also facilitated fake

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Service Tribunal




recovery of the weapons belonging to the gang with the sole aim and motive of weakening the prosecution of criminal cases registered against them. According to a copy of an order dated 20.10.2016 signed by the DIG H.Q an inquiry was conducted through a committee comprising of Mr. Sher Akbar Khan, RPO, D.I.Khan and Mian Naseeb Jan, DPO Karak and the allegations were established against the appellant and the DSP Muhammad Subhan. Prior to that the appellant had been put under suspension and later on, after the charges against him were proved, he was compulsory retired from service from the date of his suspension. Charge sheet signed by the DIG/HQrs for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar is available in the case file, however statement of allegations is missing to ascertain the composition of Inquiry Committee. It has been noted here that the order of compulsory retirement of the appellant has been passed by the DIG, HQ declaring himself the competent authority. Departmental appeal of the appellant has been decided by the Additional IGP/Hqrs. Both the officers have passed their respective orders for the Inspector General of Police, Khyber Pakhtunkhwa. Now a point worth consideration here is that the Police Department Delegation of Powers Rules 1958 have clearly defined the authorities for appointment, awarding punishment, appellate authorities, transferring authorities and so on in the schedule appended with it. The appellant was Head Constable at CTD Lakki Marwat and as per the rules, the authority competent to award the punishment of compulsory retirement was his appointing authority which was the Assistant I.G, P.A.R/Superintendent of Police concerned. Appellate authority in this case is


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the Additional I.G. While going through the entire proceedings of the case, it was noted that in case of the appellant, order of compulsory retirement was passed by the DIG, HQ for I.G Police, Khyber Pakhtunkhwa and the appellate order was passed by the Additional IG, HQ for IG Police Khyber Pakhtunkhwa, which apparently means that both the orders were passed by the same authority i.e. the Inspector General of Police Khyber Pakhtunkhwa. On the order passed by the DIG HQ, he has declared himself the competent authority for the appellant, which in this case is not correct as the appellant was a Head Constable at CTD Lakki Marwat and his competent authority was the Superintendent of Police concerned. Hence the entire proceedings become void in the light of Police Department Delegation of Powers Rules 1958. Above all a judgment dated 22.06.2022 of the Judge Anti Terrorism Court Bannu Division was presented before the bench according to which the appellant alongwith Muhammad Subhan were discharged from the case FIR No. 438 dated 20.07.2016 u/s 9-CNSA/109/120-B/203 PPC/15AA of P.S Naurang District Lakki Marwat for want of evidence.

7. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 10th January, 2023.*


 (FAJEEHA PAUL)
 Member (E)


 (ROZINA REHMAN)
 Member (J)

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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

VAKALAT NAMA

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NO. _____ /20

IN THE COURT OF KP. Service Tribunal Peshawar

M. Sadig

Appellant
Petitioner
Plaintiff

VERSUS

Police Deptt

Respondent (s)
Defendants (s)

I M Sadig do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 5/4 /2023

M Sadig

(CLIENT)

ACCEPTED

**SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC-15-5643**

Uzma Syed
Advocate