

## Form- A

## FORM OF ORDER SHEET

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

Implementation Petition No. 293/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.05.2023	<p>The execution petition of Mr. Junaid Khan submitted today by Mr. Muhammad Yousaf Orakzai 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</p>

SCANNED  
K-31  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**

Execution Petition No. 2937 /2023

In Service Appeal No. 1028/2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 5278

Dated 11/05/2023

Junaid Khan

Versus

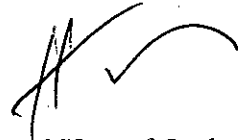
District Police Officer, Hangu & Other

Serial No	Particulars		Pages
1	Miscellaneous Application alongwith affidavit		1-3
2	Copy of CNIC of the petitioner	"A"	4
3	Copy of order & Judgment dated 15-02-2023	"B"	5-12
4	Wakalatnama		13



Junaid Khan(Petitioner)

Through



Mohammad Yousaf Orakzai

Advocate High Court

Office FF12 Bilour Plaza Peshawar Cantt

0301-8808685

Dated 11-05-2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**

Execution Petition No. 293 /2023

In Service Appeal No. 1028/2017

(1)

Junaid Khan S/O Khial Gul

R/O Kacha Banda Tehsil and District Hangu

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 5278

Dated 11/5/23

..... Petitioner

Versus

1. District Police Officer, Hangu;
2. Deputy Inspector General of Police, Kohat Region Kohat;
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

..... Respondents

**EXECUTION PETITION FOR EXECUTION OF ORDER/JUDGEMENT PASSED BY THIS  
HON'BLE TRIBUNAL IN SERVICE APPEAL NO. 1028/2017 DATED 15-02-2023**

**RESPECTIVELY SHEWETH:-**

- 1) That the petitioner is indeed a law-abiding citizen of Pakistan is the permanent and bona fide resident of district, Peshawar.

The Copy of CNIC is annexed as "A"

- 2) That the petitioner has approached before this learned tribunal vide Service Appeal No. 1028/2017, which has been honored, vide order dated 15-02-2023.

The Copy of the order/judgment dated 15-02-2023 is annexed as "B"

- 3) That non-compliance of the aforesaid judgment of this august Court on the part of the respondents is illegal, and beyond the jurisdiction.

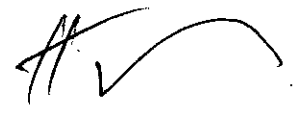
- 4) That the respondents were duty bound to give effect to the said judgment in letter and spirit.
- 5) That ignorance of the law is no excuse, hence, the respondents may kindly be booked for the willful disobedience of the order this august Court.
- 6) That this august Court is empowered to proceed against the respondents.
- 7) That other ground will be urged at the time of arguments

**PRAYER:-**

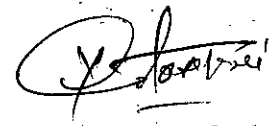
It is therefore, humbly prayed on acceptance of this application, the judgment and order dated 15-02-2023 may kindly be implemented in the letter and spirit.

Junaid Khan (Petitioner)

Through



1. Mohammad Yousaf Orakzai



2. Mohammad Yaseen Orakzai  
Advocates High Court

**Certificate:-**

It is hereby certified that no such like application has been filed on the subject as per information conveyed to us, and nothing has been concealed therein.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**

*Execution*

Petition No. \_\_\_\_\_ /2023 alongwith interim relief

In Service Appeal No. 1028/2017


Junaid Khan

Versus

Asif Bahadur Khan District Police Officer, Hangu & Other

**AFFIDAVIT**

I, Junaid Khan S/O Khial Gul R/O Kacha Banda Tehsil and District Hangu (petitioner) do hereby affirm on oath that the content of miscellaneous application are true and correct and nothing has been concealed therein.




Deponent Junaid Khan

CNIC No. 1461-4819938-3

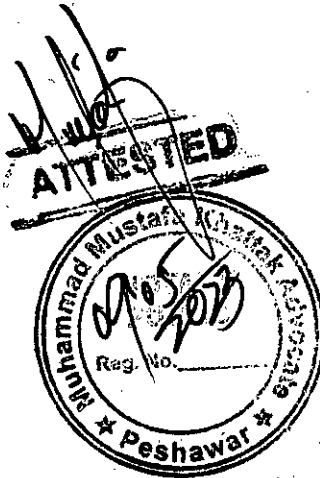
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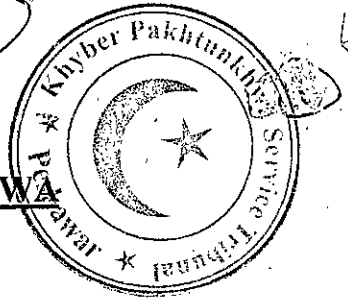


Mohammad Yousaf Orakzai

Advocate High Court



13 (5)



**BEFORE THE HON'ABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

*Appeal no. 1028/2017*

Junaid Khan

Appellant

*R/o Banda Dakkhana Hangu, Near PPC Railway Pattak Hangu*

Versus

Khyber Pakhtunkhwa Service Tribunal

Diary No. *1067*

Dated *12-9-2017*

1. District Police Officer, Hangu.
2. Deputy Inspector General of Police, Kohat Region, Kohat.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

Respondents

**SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974; AGAINST THE ORDER DATED 29-03-2017 OF RESPONDENT NO.1, WHEREIN THE APPELLANT WAS COMPULSORY RETIRED FROM SERVICE.**

**PRAYER-IN-APPEAL:**

By accepting this appeal, the impugned order of the Respondent No.1 may graciously be set-aside and the appellant may kindly be re-instated in his service with all back benefits alongwith grant of any other remedy deemed fit by this Hon'ble Tribunal.

**Respectively Sheweth:**

Facts leading the institution of the instant appeal are;

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**EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar**

**BRIEF FACTS:**

a) That the appellant joined Police Department as Constable on 18-06-2002 and was promoted to the rank of HC and then was shoulder promoted as ASI on the basis of outstanding performance to the satisfaction of the high ups.

*Filed to day*  
*12/9/17*  
**Registrar**

b) That the appellant indeed is an illiterate official but remained posted at different points/posts of Police Stations of District Hangu during the days of militancy

Re-submitted to -day and filed.

*Registrar*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1028/2017

Date of Institution ... 12.09.2017

Date of Decision... 15.02.2023



Junaid Khan, R/O Banda Dak Khana Hangu, Near PTC Railway pattak Hangu. ... (Appellant)

**VERSUS**

District Police Officer, Hangu and 02 others.

... (Respondents)

-----  
MR. MOHAMMAD YOUSAF ORAKZAI,  
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,  
Additional Advocate General

--- For respondents.

SALAH-UD-DIN  
FAREEHA PAUL

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-** Precise facts forming the

background of the instant service appeal are that the appellant

joined Police Service as Constable on 18.06.2002. During the

course of his service, disciplinary action was taken against him on

the allegations that complaints were received that the appellant

was in the habit of conducting raids upon houses of innocent

people for illegal financial gains. On conclusion of departmental

proceedings, he was dismissed from service vide O.B No. 425


dated 09.08.2010, however his service appeal was disposed of by

this Tribunal with the directions to DIG Kohat Region Kohat to

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

decide the departmental appeal of the appellant in accordance with law. The DIG Kohat Region Kohat dismissed the departmental appeal of the appellant on 28.05.2013 with the findings that departmental appeal filed by the appellant before DIG Kohat Region Kohat had already been disposed of vide order dated 29.09.2010 resulting into de-novo inquiry against the appellant, followed by order dated 27.12.2010, whereby the appellant was dismissed from service. The afore-mentioned order of dismissal of the appellant was again challenged by him through filing of another service appeal No. 569/2013 before this Tribunal, which was disposed of vide order dated 13.05.2012 with the directions to the respondents to treat the service appeal of the appellant as departmental appeal and to decide the same within a period of one month failing which the service appeal of the appellant was deemed to have been accepted. The DIG Kohat Region Kohat rejected the departmental appeal of the appellant vide order dated 10.06.2015, whereby the dismissal order of the appellant dated 27.12.2010 was maintained, constraining the appellant to file another service appeal No. 712/2015 before this Tribunal, which was allowed vide judgment dated 16.01.2017 and the matter was remitted to the competent Authority for de-novo inquiry. On conclusion of the de-novo inquiry proceedings, the appellant was awarded major penalty of compulsory retirement from service vide the impugned order bearing O.B No. 200 dated 29.03.2017, which was challenged through filing of departmental

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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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appeal, however the same was not responded within the statutory period, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Additional Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. The appellant's previous service appeal bearing No. 712/2015 was allowed by this Tribunal vide judgment dated 16.01.2017. Para-7 of the said judgment is reproduced as below:-

"7. The crux of the aforementioned discussion is that appellant was initially removed from service on the ground that he used to conduct illegal raids for ulterior motives, that the said charge was moulded in last order of R.P.O dated 10.06.2015 to the effect that criminal cases were registered against him. That he had ill reputation and that he had quarreled with his colleagues and aimed official weapon on them. The record is utterly silent to the effect that proper show-cause notice and statement of allegations have ever been served by the respondents upon the appellant with all aforesaid charges. (Emphasis provided) Appellant was never associated with any inquiry proceedings and all the alleged departmental inquiries from the record is evident were conducted in his absentia. We are of the affirm opinion that it is the bounden duty of the competent authority to proceed in accordance with

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EXAMINER  
Public Provident Fund  
Service Tribunal  
Gurgaon

*law and procedure despite the fact that there were heinous charges against the appellant. We deem it as important that proper inquiry is must in the instant case so as to provide complete opportunity to appellant to make his defence. Therefore, the appeal in hand is hereby accepted. The appellant is reinstated into service, however he shall remain suspended. The respondents are directed to conduct proper inquiry by providing proper statement of allegation, charge sheet and full opportunity to appellant not only to be associated with the inquiry but also with opportunity of cross-examination and defence. The de-novo inquiry shall be concluded within the span of sixty days failing which the suspension order will stand vacated. Parties are left to bear their own costs. File be consigned to the record room."*

6. Despite clear directions being given in the above reproduced para-7 of the judgment dated 16.01.2017, the competent Authority conducted the de-novo inquiry proceedings in a slipshod manner and it appears that the competent Authority and the inquiry officer did not bother to follow the directions of this Tribunal in letter and spirit. A perusal of the record would show that during the de-novo inquiry proceedings, charge sheet as well as statement of allegations were issued to the appellant on 08.03.2017. The relevant para-a & para-b of charge sheet/statement of allegations as issued to the appellant are reproduced as below:-

*" a). In the light of judgment of service tribunal, Khyber Pakhtunkhwa Peshawar dated 16.01.2017 & Now the Honourable court of Service Tribunal issued direction about your reinstatement/Denovo departmental inquiry vide Registrar Service Tribunal Khyber, Pakhtunkhwa Peshawar letter No. 253/ST dated 01.02.2017 & Order of your reinstatement issued by the undersigned vide this office OB No. 147 dated 07.03.2017. You while posted Naryab Dam PS Doaba was found involved in illegal/extra departmental activities*

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*[Signature]*  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

*departmentally proceeding against your was initiated on the above charges and was dismissed from service by the then DPO Hangu Order bearing OB No. 425 dated 09.08.2010.*

*b). Your above act shows criminal gross misconduct on your part which cannot be ignored."*

7. While going through the charge sheet as well as statement of allegations, it can be observed that the same are quite weird in nature and do not show any particular allegation on the basis of which, disciplinary action was taken. Although, the appellant was not proceeded against on the allegations of criminal cases registered against him, however the inquiry officer has categorically mentioned in his report that the appellant has been acquitted in all the criminal cases due to non-availability of any evidence against him. Moreover, such findings of the inquiry officer are in support of the appellant, the inquiry officer has not given any findings that the appellant was guilty of the charge leveled against him. The competent Authority was thus not legally justified in awarding major penalty to the appellant.

8. The appellant was awarded major penalty of compulsory retirement from service vide the impugned order bearing O.B No. 200 dated 29.03.2017 and on its communication, he challenged the same through filing of application/appeal before the Inspector General of Police Khyber Pakhtunkhwa Peshawar on 15.05.2017, which remained un-responded. The appellant was though required to have filed departmental appeal before the D.I.G Kohat Region Kohat, however filing of application/appeal before the Inspector General of Police Khyber Pakhtunkhwa Peshawar

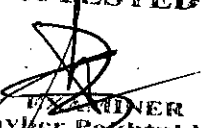
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**ATTESTER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

would not make the appeal in hand as not maintainable. In view of Rule-6 (d) of Khyber Pakhtunkhwa Civil Servants Appeal Rules, 1986, it was required that the departmental appeal of the appellant should have been withheld and he should have been informed of the fact that the same has been addressed to an officer, to whom the appeal was not lying, however the same has not been done. Second proviso to Rule-6 of Khyber Pakhtunkhwa Civil Servants Appeal Rules, 1986, provides that an appeal withheld for failure to comply with requirement of rule-4 or clause-d of rule-6 may be resubmitted within thirty days of the date on which the appellant is informed of the withholding of the appeal and, if resubmitted properly in accordance with the requirements of these rules, the same shall be deemed to be an appeal under rule-3 and shall be dealt with in accordance with the provision of Khyber Pakhtunkhwa Civil Servants Appeal Rules, 1986.


9. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Obviously, the appellant has received pensionary benefits and on his reinstatement in service, he is required to return back the same. On the other hand, the appellant on account of his compulsory retirement has not received his salary from the date of his compulsory retirement, therefore, it is deemed appropriate to direct that the back financial benefits of the appellant from the date of his compulsory retirement till the date of his reinstatement shall be adjusted towards the pensionary benefits received by the appellant. In case the said amount is less


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EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

than the amount of pensionary benefits already received by the appellant then the remaining outstanding amount of pensionary benefits may be recovered from the ensuing salaries of the appellant in appropriate monthly installment and if still there exist certain outstanding amount, then the same may be recovered from the pensionary benefits which the appellant would receive on his retirement. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.02.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

**Certified to be true copy**

  
Khair-ud-Din  
Secretary  
Tribunal  
Peshawar

Date of Presentation of Application 10/05/23  
 Number of Pages Page 7  
 Copying Fee 35/-  
 Urgent 8/0  
 Total 40/-  
 Name of Applicant \_\_\_\_\_  
 Date of Completion of Copy 10/05/23  
 Date of Delivery of Copy 10/05/23

قیمت 50 روپے	73609			
ایڈوکیٹ: 		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: Bc-12-3547				
رابطہ نمبر: 0301-880 8685				

بعد اٹ جناب: سر جسٹس کونسل پشاور

منجانب: جنیڑ خان	دعویٰ: Execution Petition
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:


**باعث تحریر آنکہ**

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

آن مقام کے قریب کیلئے محمد یوسف لہری صاحب کو وکیل مقرر کر کے قرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقررات و فیصلہ بر حلف 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 و نظریاتی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا اجزائی کارروائی 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 با اختیار انت حاصل ہوں گے اور اس کا سناختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:   
**PESHAWAR BAR ASSOCIATION**  
**KHYBER PAKHTUNKHWA**

مقام: خیبر پختونخواہ کے لیے منظور ہے



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

g.malik@ovakganifamilylaw.com

جنیڑ خان صاحب کی طرف سے منظور ہے