


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 280/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.05.2023	<p>The execution petition of Mr. Shah Wali submitted ^{by} Uzma Syed Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>15-5-23</u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

Execution Petition No. 280 /2023
In

Service Appeal: 7473/2021

Shah Wali S/o Sadar Azam R/o Malik Deen khel, Tehsil Bara
District Khyber.

..... Applicant

VERSUS


1. District Police Officer, District Khyber, Khyber
Pakhtunkhwa .
2. Chief Capital Police Officer, (CCPO) Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa
Peshawar.

..... Respondents

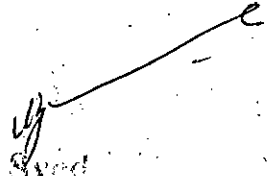
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1.	Copy of petition		1-2
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3.	Wakalat Nama		9

Dated 08/05/2023


Appellant

Through


Uzma Syed
Advocate High Court,
Peshawar

03359169955

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

Execution Petition No. 280 /2023

In

Service Appeal: 7473/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5192

Dated 8/5/2023

Shah Wali S/o Sadar Azam R/o Malik Deen khel, Tehsil Bara
District Khyber.

..... Applicant

VERSUS

1. District Police Officer, District Khyber, Khyber Pakhtunkhwa .
2. Chief Capital Police Officer, (CCPO) Peshawar.
3. Inspector General of Police Khyber Pakhtunkhwa Peshawar.

..... Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 03/04/2023 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.**

.....

Respectfully Sheweth:

1. That the appellant/Petitioners filed Service Appeal No. 7473/2021 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 03/04/2023. (Copy of Judgment is annexed as Annexure-A).

- 2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment however they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
- 3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
- 4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

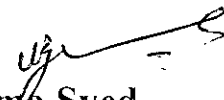
It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

Dated 08/05/2023



Appellant/Petitioner

Through

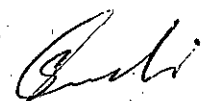


Uzma Syed

Advocate High Court Peshawar

AFFIDAVIT

I, Shah Wali S/o Sadar Azam R/o Malik Deen khel, Tehsil Bara District Khyber do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.



DEPONENT



BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE

TRIBUNAL, PESHAWAR.



Service Appeal No. 7473 /2021

Sháh Wali S/o Sadar Azam R/o Malik Din Khel, Tehsil Bara,
District Khyber.....(Appellant)

V E R S U S

1. District Police Officer, District Khyber, Khyber Pakhtunkhwa.
2. Chief Capital Police Officer (CCPO) Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar.....(Respondents)

**APPEAL UNDER SECTION 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST THE IMPUGNED ORDER
DATED 08/04/2021 PASSED BY THE
RESPONDENT No. 1, WHEREBY MAJOR
PUNISHMENT OF DISMISSAL FROM
SERVICE IS IMPOSED.**

Respectfully Sheweth:

Facts giving rise to the instant Service Appeal are as
under:

1. The Appellant was serving as constable in the Police
department Khyber Pakhtunkhwa district Khyber.

TESTED
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

(U)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7469/2021

Date of Institution ... 21.09.2021
Date of Decision ... 03.04.2023



Mohib Ullah Khan, SI, S/O Raza Khan R/O Caste Malik Din Khel, Soor
Dhand, Khajori, P.O Bara, District Khyber.

... (Appellant)

VERSUS

District Police Officer, District Khyber, Khyber Pakhtunkhwa and two
others.

... (Respondents)

Shah Faisal Ilyas,
Advocate

... For appellant.

Asad Ali,
Assistant Advocate General

... For respondents.

Mrs. Rozina Rehman

... Member (J)

Mr. Muhammad Akbar Khan

... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): This judgment is intended to dispose of two connected service appeals including the present one bearing No.7469/2021 titled "Mohib Ullah Khan Vs. Police Department & others" and Service Appeal No.7473/2021 titled Shah Wali Vs. Police Department & Others" as common question of law and facts are involved therein. The appellants have invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

"On acceptance of this appeal, the impugned order dated 08.04.2021 may graciously be set aside and direct the respondents to reinstate the appellant with all back benefits."

2. Brief facts of the case are that appellant Mohib Ullah Khan was serving as Sub Inspector while Shah Wali as Constable in the Police Department of Khyber Pakhtunkhwa. They were performing their duties with zeal and zest at Police Station Bara, District

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KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL



Khyber when in the meanwhile they were charged in case FIR No.163 dated 10.09.2020 registered at PS Bara. That after lodging of FIR they were not even charged in the above mentioned FIR but they were suspended alongwith stoppage of pay. After suspension formal inquiry was conducted and appellants were charge sheeted. They submitted reply and major punishment of dismissal from service was awarded to the appellants on 08.04.2021. Feeling aggrieved, they filed departmental appeal but no decision was conveyed to the appellants, hence, the present service appeal.

3. We have heard Shah Faisal Ilyas Advocate, learned counsel for the appellant and Asad Ali, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Shah Faisal Ilyas Advocate, learned counsel for the appellant argued inter-alia that the appellants were not directly charged in case FIR No.163 rather they were implicated after four days of the alleged occurrence. That they were charged on 14.09.2020 while they were arrested three days before nomination in the FIR which shows malafide. He submitted that no proper procedure was adopted before passing the impugned order as no opportunity of personal hearing was afforded to the appellants and that the impugned action of the respondents was also repugnant to the Constitution of Islamic Republic of Pakistan, 1973 as appellants were discriminated by the respondents and were deprived of their lawful rights. He, therefore, requested for acceptance of the instant service appeals.

5. Conversely, AAG argued that appellants while posted at PS Bara involved in case FIR No.163 dated 10.09.2020 and that being members

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

of the disciplined force, their involvement in a murder case was a gross misconduct, hence, after fulfillment of all codal formalities, they were dismissed from service on account of involvement in criminal case.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that one Sher Haidar Khan S.I reported the matter in shape of FIR No.163 dated 10.09.2020 registered at Police Station Bara of District Khyber U/S 302, 353, 324, 477, 186, 148, 149 PPC/7ATA against unknown accused. Both the appellants have not been directly charged in the FIR. Both the appellants were placed under suspension with stoppage of pay with immediate effect being involved in the above mentioned case FIR vide order of District Police Officer, Khyber dated 11.09.2020 i.e. on the next following day of the registration of FIR. Charge sheet and statement of allegations are available on file which are undated and there is nothing on file which could show that these two documents were properly served upon the appellants. As per record, they were arrested on 11.09.2020 and were bailed out by competent court of Law on 05.10.2020. There is nothing on record to show as to whether they were served with charge sheet and statement of allegation inside jail premises or at their home addresses. The only document available on file is their suspension order which was properly replied by the appellants. DSP Headquarter Khyber had been appointed as Inquiry Officer who did nothing and came to the conclusion that the involvement of the appellants in criminal cases is not tolerable being Police personnel and major punishment was recommended. The inquiry report is also undated and it was not shown as to when the inquiry was conducted when the appellants were in jail or

TESTED
 JUDGE
 District Court
 Peshawar


ORDER
03.04.2023

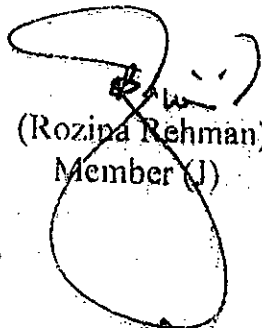
Appellant present through counsel.

Asad Ali, learned Assistant Advocate General for respondents present.

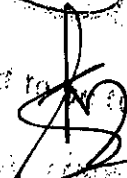
Vide our common detailed judgment of today of this Tribunal placed on file of connected Service Appeal No.7469/2021 titled "Mohib Ullah Khan Vs. Government of Khyber Pakhtunkhwa, instant appeal is accepted and impugned order dated 08.04.2021 is set aside. Appellant is reinstated into service from the date of his dismissal from service i.e. 08.04.2021 with all back and consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
03.04.2023

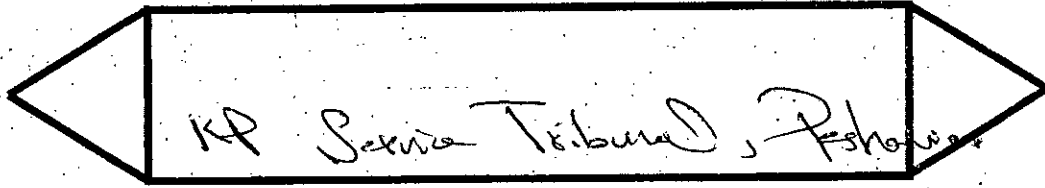

(Muhammad Akbar Khan)
Member (E)


(Rozina Rehman)
Member (J)

Date of Presentation of Appeal _____
Number of Pages Page 2 17-4-23
Copying Fee _____
Urgent _____
Total 15/-
Name _____
Date of Completion _____ 17-4-23
Date of Delivery of Copy _____ 17-4-23

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

بعدالت



سہ 2 منجانب

شاہد کی بنام

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے عظمیٰ سید احمد ولد

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی 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 محتاج 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 مذکور با اختیار اسے حاصل ہوں گے۔

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے

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

کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

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المرقوم

العبد گواہ العبد