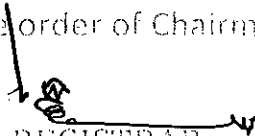


FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 281/2023

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. Sardar Munir submitted today by Mr. Taimur Ali Khan 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  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 231 /2023
In Service Appeal No.8828/2020

Sardar Munir

V/S


Police Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-02.
2	Copy of judgment dated 10.01.2023	A	
3	Vakalat Nama	-----	

PETITIONER

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

①

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

Execution Petition No. 231 /2023
In Service Appeal No.8828/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5189

Dated 8/5/2023

Sardar Munir, Ex Constable No 1859,
District Police Peshawar.

PETITIONER

VERSUS

1. The Capital City Police Officer, Peshawar.
2. The Superintendent of Police, Cantt, Peshawar.
3. The Provincial Police Officer KPK Peshawar.

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 petitioner has filed service appeal No. 8828/2020 in this august Tribunal against the orders dated 24.07.2020, whereby the departmental appeal of the petitioner was rejected and against the order dated 18.02.2020 whereby the petitioner was dismissed from service.
2. The appeal was finally heard and decided by this Honorable Tribunal on 10.01.2023 and the Honorable Tribunal converted the major penalty off dismissal from service into compulsory retirement from service in its judgment dated 10.01.2023. **(Copy of judgment dated 10.01.2023 is attached as Annexure-A)**
3. That the august Service Tribunal converted the dismissal order 18.02.2020 into compulsory retirement in its judgment dated

10.01.2023, but after the laps of more than 04 months the respondents did not convert the order dated 18.02.2020 from dismissal into compulsory retirement into service by the implementing judgment dated 10.01.2023.

- 4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august 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 department is legally bound to obey the judgment dated 10.01.2023 of this Honourable Tribunal in letter and spirit.
- 6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement 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 favour of petitioner.

S.M.

PETITIONER
Sardar Munir

THROUGH:

T.A.K.

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
&

(SHAKIR ULLAH TORANI)
ADVOCATE PESHAWAR

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

S.M.

DEPONENT



3
3

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 8328 /2020

Sardar Munir Ex Constable No 1859, District Police Peshawar.

.....Appellant

V E R S U S

Khyber Pakhtunkhwa
Service Tribunal

Diary No 8240

Dated 05/8/2020

- 1. Capital City Police Officer Peshawar
- 2. Superintendent of Police, Cantt. Peshawar.
- 3. Provincial Police Officer KPK Peshawar.

Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 24-07-2020 PASSED BY RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 18-02-2020 OF RESPONDENT NO 2 HAS BEEN REJECTED/DISMISSED.

PRAYER:-

On acceptance of this appeal the impugned Order dated 24-07-2020 of respondent No 1 and Order dated 18-02-2020 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

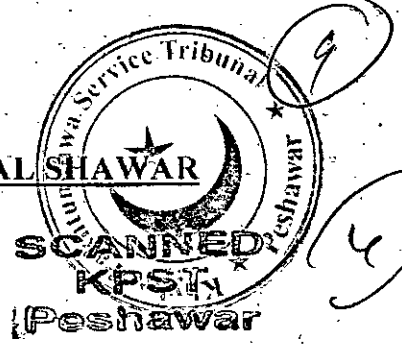
- 1. That the appellant joined the respondent Department as Constable in the year 1991 remained posted to various Police Stations and since enlistment he performed his duties with honesty and full devotion.
- 2. That the appellant while lastly posted to Police Station Tatara Peshawar fell ill during duty and was unable to have performed his duties, so informed the SHO concerned and thus time and again visited the Doctors who advised him medicines and bed rest. **(Copies of Medical Chits are enclosed as Annexure A).**
- 3. That after recovery the appellant reported for duty on 17-03-2020 but due to Covide-19 and Lockdown the offices were closed and no one was allowed to move or enter the offices, and finally after about three months of Lockdown when easing the Lockdown on 15-06-2020 the appellant was told that he has been dismissed from service by respondent No 2 vide order dated 18-02-2020, the appellant obtained copy of his dismissal order at the same time and filed departmental appeal before respondent No 1 which was also rejected/dismisssed vide Order

Filed to-day
Registrar
5/8/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.8828/2020

Date of Institution ... 05.08.2020
Date of Decision ... 10.01.2023



Sardar Munir, Ex Constable No. 1859, District Police Peshawar:

... (Appellant)

VERSUS

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police, Cantt. Peshawar.
3. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Fazal Shah Mohmand
Advocate

... For appellant.

Naseer Ud Din Shah,
Assistant Advocate General

... For respondents.

Mrs. Rozina Rehman
Miss. Fareeha Paul


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

JUDGMENT

ROZINA REHMAN, MEMBER: The appellant has 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 24.07.2020 of respondent No.1 and order dated 18.02.2020 of respondent No. 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.”

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case are that appellant joined the police department as constable in the year 1991. During service, while posted at PS Tatara Peshawar, he fell ill and was unable to perform his duties. He, therefore, informed SHO concerned and visited different doctors. After recovery, he reported for duty on 17.03.2020 but due to Covid-19 and lockdown, offices were closed and no one was allowed to move or enter into offices. The appellant was informed regarding his dismissal from service on 15.06.2020. He then filed departmental appeal which was also rejected; hence the present service appeal.

3. We have heard Fazal Shah Mohmand, 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. Fazal Shah Mohmand Advocate, learned counsel for appellant submitted that impugned orders were wrong, illegal, against law and facts as mandatory provisions of law and rules were badly violated by the respondents and appellant was not treated in accordance with law and rules. He argued that no charge sheet and show cause notice was issued and communicated to the appellant and as such impugned orders were not maintainable in the eyes of law. He further submitted that no proper inquiry was conducted in order to unearth the hidden facts and that no witness was examined in the presence of the appellant. It was contended that the appellant was not given any opportunity of personal hearing and absence on the part of appellant was neither willful nor

ATTESTED

F. K. ANWER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

deliberate rather the same was due to circumstances compelling in nature and were beyond the control of the^s appellant. He therefore, requested for acceptance of the appeal.

5. Conversely, learned AAG submitted that appellant while posted at PS Mechani Gate Peshawar absented from his official duty with effect from 26.05.2019 to 04.07.2019 and 09.12.2019 to 18.02.2020 without proper permission from the competent authority. In that regard he was issued charge sheet alongwith statement of allegations and SDPO Hayatabad was appointed as inquiry officer. During the course of inquiry he was summoned time and again but he did not turn up. The inquiry officer submitted his report and after fulfillment of all codal formalities he was awarded major punishment of dismissal form service.

6. From the record it is evident that the appellant was departmentally proceeded against on the allegation of absence. He, while posted at PS Mechani Gate absented himself from lawful duty w.e.f 26.05.2019 to 04.07.2019 and 09.12.2019 till the date of dismissal from service i.e 19.12.2020. He was charge sheeted on 23.07.2019 and for the purpose of scrutinizing his conduct, DSP Town was appointed as inquiry officer. He was summoned by the inquiry officer but he failed to attend his office. There is difference in respect of his absence in the impugned order as well as in the inquiry report. The dismissal order dated 19.02.2020 would reveal that he was shown absent for 109 days, while the inquiry report submitted by DSP would reveal his absence w.e.f 26.05.2019 to 04.07.2019 (for 39 days). The competent authority clearly


ATTESTED

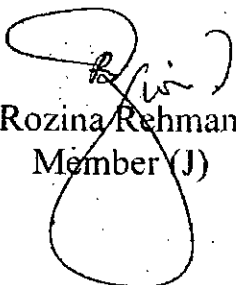
COMMISSIONER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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mentioned his absence from Mechani Gate w.e.f 26.05.2019 to 04.07.2019 for (39 days), while the inquiry officer reported his absence from PS Hayatabad. There is no inquiry regarding his absence from 09.12.2019 to 19.02.2020. Speaking about the apparent delay occurring by submission of departmental appeal it was stated that appellant had fallen ill (necessary medical record provided) and on the other hand conditions prevailing due to lock down because of covid-19 and closure of offices caused such delay. So in view of the available record delay is condoned. Keeping in view the last request of the learned counsel for appellant and without touching other merits of the case, we are of the view that since the appellant has put in considerable regular service, it would be appropriate, keeping in view the circumstances of the case, to convert major penalty awarded in the shape of dismissal from service into that of compulsory retirement from service. As such, we convert the said penalty into that of compulsory retirement. Absence period is treated as leave without pay. Order accordingly. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.01.2023


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

Number of pages 4
 Date 28/4/23
 Date 02/5/23
 Date 02/5/23

Certified to be true copy

 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

VAKALAT NAMA

NO. _____/202

IN THE COURT OF K.P. Service Tribunal, Peshawar

Sardar Munir

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Department

(Respondent)
(Defendant)

I/We, Sardar Munir

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/202

SIR
(CLIENT)

ACCEPTED

Taimur Ali Khan
TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

Shahid Ullah Torani
Advocate Peshawar