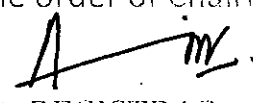


Form- A

FORM OF ORDER SHEET

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

Implementation Petition No. 298/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.05.2023	<p>The execution petition of Mr. Muhammad Zubair submitted today by Mr. Taimur Ali Khan 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 style="text-align: right;">By the order of Chairman                        For REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Execution petition No. 248/2023  
In Service Appeal No.1425/2017

Muhammad Zubair

V/S

Police Department

**APPLICATION FOR FIXING THE INSTANT EXECUTION  
PETITION AT PRINCIPAL SEAT AT PESHAWAR.**

**RESPECTFULLY SHEWETH:**

1. That the petitioner has filed the instant execution petition for implementation of judgment dated 03.04.2023 of this Honorable Tribunal which was allowed by the Honorable Tribunal at Principal seat at Peshawar.
2. That the petitioner engaged the petitioner which is doing legal practice at Peshawar and the petitioner also wants to pursue his case at Principal seat at Peshawar.
3. That it will be convenient for both petitioner as well as for his counsel if the instant execution petition fix in principal seat at Peshawar.

It is therefore most humbly prayed that on acceptance of this application the instant execution petition may kindly be fixed at principal seat at Peshawar.

**APPLICANT/ PETITIONER**

THROUGH:



**(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Execution petition No. 298 /2023  
In Service Appeal No.1425/2017

Muhammad Zubair

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	03-09
3	Vakalat Nama	-----	10

PETITIONER

THROUGH:



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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Execution Petition No. 298 /2023  
In Service Appeal No.1425/2017

Khyber Pakhtunkhwa  
Service Tribunal  
Diary No. 5298  
Dated 12/5/23

Muhammad Zubair, Ex Constable No. 198,  
Police Station Darbani.

**PETITIONER**

**VERSUS**

1. The Provincial Police Officer KPK, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police officer, Torghar.

**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 petitioner has filed service appeal No. 1425/2017 in this Honorable Tribunal against the orders dated 14.11.2017, whereby the departmental appeal of the petitioner was rejected against the order dated 28.09.2016, whereby the petitioner was dismissed from service.
2. The appeal was finally heard and decided by this Honorable Tribunal on 03.04.2023. The Honorable Tribunal accepted the appeal of the petitioner and the impugned order 28.09.2016 was set aside alongwith the other orders on the appeal of the petitioner and the petitioner was reinstated into service with all back benefits. (Copy of judgment dated 03.04.2023 is attached as Annexure-A)

3. That the Honorable Service Tribunal reinstated the petitioner by accepting his appeal in its judgment dated 03.04.2023, but after the lapse of more than one month the petitioner was not reinstated by the respondents by implementing the judgment dated 03.04.2023 of this Honorable Tribunal.
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 03.04.2023 of this Honorable 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 03.04.2023 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.

*M. Zubair*

**PETITIONER**  
Muhammad Zubair

**THROUGH:**

*[Signature]*

**(TAIMUR ALI KHAN)**  
**ADVOCATE HIGH COURT**

**&** *[Signature]*

**(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.



*M. Zubair*

**DEPONENT**

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1425 /2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1396

Dated 08/12/2017

Muhammad Zubair, Ex-Constable, No.198,  
Police station Darbani.

.....(Appellant)

**VERSUS**

1. The Provincial Police Officer, KPK Peshawar.
2. The Regional Police Officer Hazara, Region Abbotabad.
3. The District Police Officer Torghar.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 14.11.2017 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AGAINST THE ORDER DATED 28.09.2016 FOR NO GOOD GROUNDS.

**PRAYER:**

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 14.11.2017 AND 28.09.2016 MAY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO REINSTATE THE APPELANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

Registrar

11/12/17

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant was appointed as Constable on 26.09.2011 in the Police Deptt. and completed his due training etc and also has good service record throughout.

03180507092

*Handwritten signature*

4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Service Appeal No.1425/2017



Date of Institution ... 08.12.2017  
Date of Decision ... 03.04.2023

Muhammad Zubair, Ex-Constable No.198, Police Station Darbani.

(Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and  
two others.

(Respondents)

Taimur Ali Khan,  
Advocate.

For appellant.

Asif Masood Ali Shah,  
Deputy District Attorney

For respondents.

Mrs. Rozina Rehman

Member (J)

Mr. Muhammad Akbar Khan

Member (E)

**JUDGMENT**

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction  
of this Tribunal through above titled appeal with the prayer as copied  
below:

“That on acceptance of this appeal, the order dated  
14.11.2017 and 28.09.2016 may be set aside and the  
respondents may be directed to reinstate the appellant  
with all back and consequential benefits”.

**ATTSTED**  
*Handwritten signature*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

2. Brief facts of the case are that appellant joined the Police Force as  
Constable on 26.09.2011. While serving in the Police Department, he  
was falsely implicated in a criminal case. He was proceeded against

departmentally and was dismissed from service on 28.09.2016. He filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Taimur Ali Khan Advocate learned counsel for appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Taimur Ali Khan Advocate, learned counsel for the appellant contended that the impugned orders are against law, facts and norms of justice, therefore, not tenable and liable to be set aside; that one sided inquiry was conducted against the appellant as he was never associated with the inquiry proceedings and the inquiry report was never provided to the appellant which is also against law and rules. Learned counsel argued that appellant was not given fair trial as enshrined under Articles-4 & 25-A of the Constitution of Islamic Republic of Pakistan, 1973 and that due to false involvement in a criminal case, it was for the department to wait till the conclusion of a criminal case but without waiting for the conclusion of criminal case, appellant was dismissed from service. Lastly, it was submitted that no charge sheet alongwith statement of allegation or show cause notice were ever communicated to the appellant and no proper inquiry was conducted in the matter. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned DDA submitted that the appellant while posted at Police Station Darbani found involved in case FIR No.53/15

U/S 9C-CNSA/ANF Peshawar and a huge quantity of 2400 gm of

WITNESSED

WITNESSED  
Khalid Ali Khan  
Service Tribunal  
Peshawar



Opium was recovered from his possession; that he was arrested on spot, where-after, he was suspended and proper departmental inquiry was initiated against him. He was given show cause notice and after dismissal, he was properly informed and copy of the order was given after his release from jail. He contended that he was punished after fulfillment of all codal formalities.

6. From the record it is evident that departmental proceedings were conducted against the present appellant while posted at Police Station Darbani on the following grounds:

*"Constable Muhammad Zubair No. 198 presently posted at Police Station Darbani, found involved in case FIR No. 53/15 U/S 9C-CNSA-ANF Peshawar on the allegation of supplying Poppy which was shameful for you as well as create bad manners in the Police Department which amount to gross negligence in the performance of Government duty"*

From the above mentioned statement of allegation, it is evident that he was proceeded against departmentally on the allegation of his involvement in criminal case. Ijaz Khan, DSP Headquarter was deputed to conduct formal departmental inquiry against the accused. It merits to mention here that charge sheet is not available on file and just statement of allegation is on record but the respondents failed to prove service of the charge sheet alongwith statement of allegation upon the appellant who was inside jail right from his arrest till 7<sup>th</sup> July, 2017 i.e. the date when he was admitted to bail by the august Peshawar High Court,

ATTESTED

ADMINISTRATIVE  
 Officer, Peshawar  
 Service Tribunal  
 Peshawar

Peshawar. The inquiry report is available on file which shows that just history of the case was narrated by the Inquiry Officer and nothing else was done. The inquiry Officer never met the appellant as he was in jail. Statement of witnesses were not recorded and accused official was not given any opportunity of cross-examination. He was condemned unheard which is evident from the inquiry report. Final show cause notice is available on file which was issued on 21.07.2016 when admittedly accused official was behind the bars and the same note is available at the bottom of the final show cause notice but no cogent evidence was produced before this Bench in order to prove proper service of final show cause notice upon the accused official. Admittedly, he was convicted and sentenced to suffer 22 months imprisonment as his under trial period was taken into consideration by the trial Court. He then filed an appeal in the august Peshawar High Court from the judgment of the learned Judge Special Court (CNS) Peshawar and vide judgment of Peshawar High Court dated 06.03.2023 present appellant Muhammad Zubair was acquitted of the charges leveled against him and his conviction and sentence was set aside. He filed departmental appeal when he was bailed out but his departmental appeal was rejected and service appeal was filed on 08.12.2017. As per Rule-16.3 of Police Rules, 1934 when a Police Officer is tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case. In the instant case, he was departmentally proceeded against on the allegation of his involvement in a criminal case. The District Police Officer, Torghar while awarding major

ATTESTED

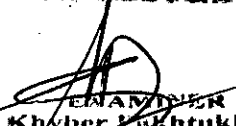
EXAMINER  
Khair Pakhtkhwa  
Service Tribunal  
Peshawar

punishment did not wait for the outcome of criminal case and awarded major punishment on 28.09.2016. He succeeded in getting bail from High court on 17.07.2017, where-after, he filed departmental appeal which was rejected on 14.11.2017. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in the criminal case was the sole ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

7. It is established from the record that charges of his involvement in the criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695 and judgments rendered by this Tribunal in Service Appeal No.1380/2014 titled Ilam Nawaz Vs. Police Department; Service Appeal No.616/2017 titled Mumtaz Ali Vs. Police Department; Service Appeal No.863/2018 titled Fatch-ur-Rehman Vs. Police Department; Service Appeal No.1065/2019 titled Naveed Gul Vs. Police Department and Service Appeal No.12098/2020 titled Ali Imran Vs. Police Department.

8. For what has been discussed above, this appeal is accepted and the impugned order 28.09.2016 is set aside alongwith other orders on the appeal of the appellant and the appellant is reinstated in service with all

**ATTESTED**

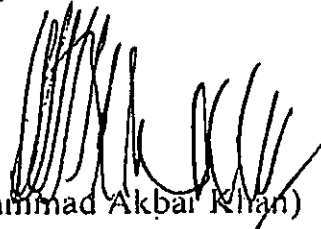
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

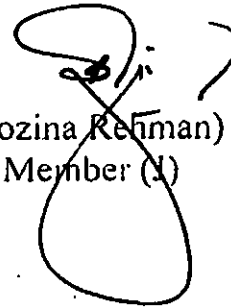
back benefits. Parties are left to bear their own costs. File be consigned to the record room.

9

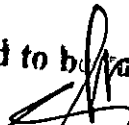
ANNOUNCED.

03.04.2023

  
(Muhammad Akbar Khan)  
Member (E)

  
(Rozina Rehman)  
Member (J)

\*Mutazem Shuh\*

**Certified to be true copy**  
  
**EXAMINER**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**

Date of Presentation of Application 03-05-23  
Number of ~~Words~~ Page 6  
Copying Fee 30/-  
Urgent 5/-  
Total 35/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 03-05-23  
Date of Delivery of Copy 03-05-23

**VAKALAT NAMA**

NO. \_\_\_\_\_/2023

IN THE COURT OF KP Service Tribunal Peshawar

Muhammad Zubair

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police Department

(Respondent)  
(Defendant)

I/We, Muhammad Zubair

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, 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 \_\_\_\_\_/2023

M. ul

(CLIENT)

ACCEPTED



(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

(SHAKIR ULLAH TORANI)  
ADVOCATE