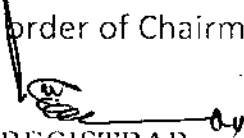


Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 118/2023

S.No	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	01.03.2023	<p>The execution petition Mr. Rasool Zman submitted today by Mr. Mir Zaman Safi Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 118 /2023
In

Appeal No.1100/2015

RASOOL ZAMAN

VS

POLICE DEPTT

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	1- 2.
2-	Affidavit	3.
3-	Judgment	A	4- 8.
4-	Wakalat nama	9.

PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564

0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2023

In

Appeal No.1100/2015

Mr. Rasool Zaman, Constable No. 1923,
Emergency Platoon, Police Lines, Peshawar.

.....APPELLANT

VERSUS

- 1- The Superintendent of Police, FRP, Bannu.
- 2- The Additional Inspector General of Police, FRP, Khyber Pakhtunkhwa, Peshawar.
- 3- The Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 21.01.2022 IN
LETTER AND SPIRIT

R/SHEWETH:

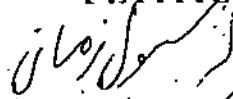
- 1- That the petitioner filed Service appeal bearing No. 1100/2015 before this august Service Tribunal against the impugned removal order dated 08.10.2011.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 21.01.2022 and was decided in favor of the petitioner vide judgment dated 21.01.2022 with the view that *"We are of the considered opinion that the appellant has not been treated in accordance with law, as his absence was not intentional and the allegation of his absence were not so grave as to propose major punishment of removal from service, hence taking a lenient view, we are inclined to accept the instant appeal. The appellant is reinstated in service and the impugned orders are set aside. The intervening period is treated as leave without pay"*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 14.01.2022 the petitioner submitted the same before the respondents for implementation but till date the judgment of this august Tribunal has not been implemented by the respondents in letter and spirit.

4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 21.01.2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

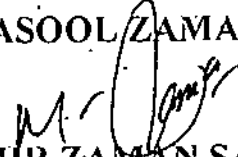
Dated: 28.02.2023.

PETITIONER



RASOOL ZAMAN

THROUGH:



MIR ZAMAN SAFI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2023

In

Appeal No.1100/2015

RASOOL ZAMAN

VS

POLICE DEPTT:

AFFIDAVIT

I Mir Zaman Safi, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this implementation petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


MIR ZAMAN SAFI
ADVOCATE

A-4



BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1100 /2015

M. W. F. ET AL
Service Tribunal
S.A No. 1129
Date 1-10-15

Kasool Zaman S/o Akbar Zaman,
R/o Ghori Wala, Bannu, Ex-C. No. 1923,
Emergency Platoon, Police Line, Peshawar. Appellant

Versus

1. Superintendent of Police, FRP, Bannu.
2. Additional Inspector General of Police
FRP, KP, Peshawar.
3. Commandant, FRP, KP, Peshawar. Respondents

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST OB NO. 661, DATED
08.10.2011 OF R. NO. 1 WHEREBY APPELLANT
WAS REMOVED FROM SERVICE OR OFFICE
ORDER NO. 8491-92/EC, DATED 10.12.2011
OF R. NO. 2 WHEREBY REPRESENTATION OF
APPELLANT WAS REJECTED FOR NO LEGAL
REASON.**

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

Respectfully Sheweth:

1. That appellant was appointed as constable on 15.07.2007 and was serving the department to the best of his ability and to the entire satisfaction of superiors

That on 27.07.2011, appellant was served with charge sheet and statement of allegation to the effect that he absented himself from duty on 05.05.2011 which was repiled on 15.08.2011 by denying the allegation as his

ACCEPTED
[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1100/2015

Date of Institution ... 01.10.2015

Date of Decision ... 21.01.2022

Rasool Zaman S/o Akbar Zaman, R/o Ghori Wala, Bannu, Ex-C. No. 1923,
Emergency Platoon, Police Line, Peshawar. ... (Appellant)

VERSUS

Superintendent of Police, FRP, Bannu and others. ... (Respondents)

Arbab Saiful Kamal,
Advocate ... For Appellant

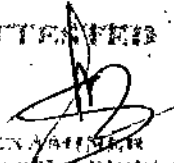
Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was initially appointed as Constable vide order dated 15-07-2007. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately removed from service vide order dated 08-10-2011, against which the appellant filed departmental appeal dated 18-10-2011, which was rejected vide order dated 10-12-2011. The appellant filed revision petition dated 17-07-2015, which was returned to respondent No 1 vide order dated 28-08-2015, hence the instant service appeal instituted on 30-09-2015 with prayers that the impugned orders dated 08-10-2011 and 10-12-2011 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED


MEMBER (EXECUTIVE)
Khyber Pakhtunkhwa Service Tribunal Peshawar

6

02. Learned counsel for the appellant has contended that absence of the appellant was not willful, but was due to compelling reason of death of his brother, which was very shocking for the appellant and the appellant has taken such stance in his departmental appeal, which was considered by the authority to some extent, but was not given due consideration, hence the impugned order passed by the respondents is illegal, unlawful and is liable to be set aside; that the appellant resumed his duty after funeral of his brother and there was no justification for removal of the appellant from service, but the respondents malafiedly proceeded against the appellant after resumption of his duty and was unlawfully removed from service, which is against law, facts and norms of natural justice, therefore, not tenable and liable to be set aside; that inquiry into the matter was not conducted as per mandate of law, as no statement of witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that copy of the inquiry report was not found attached with the showcause notice to enable the appellant to submit proper reply; that absence if not willful does not constitute gross misconduct and on this score alone, no one can be expelled from service.

03. Learned Deputy District Attorney for the respondents has contended that the appellant deliberately absented himself from lawful duty with effect from 05-05-2011 to 08-08-2011 for a long period of 92 days without permission of the competent authority; that charge sheet based on summary of allegation was issued to the appellant on 04-08-2011, which was responded and the appellant took the plea of sudden death of his brother, which was perused and examined by the competent authority, but reply of the appellant was not based on cogent reason and was found un-satisfactory; that proper inquiry was conducted and the inquiry officer submitted its report on 29-08-2011 and recommended the appellant for imposition of major penalty and based on the recommendation of

ATTESTED



⑦

the inquiry officer, final show cause notice was served upon the appellant on 21-09-2021 and was ultimately removed from service.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant admitted to the fact that he was unable to attend to his duty due to sudden death of his brother and such stance of the appellant was taken into consideration by the competent authority, but the competent authority finally did not agree with plea of the appellant, hence he was removed from service on the charges of absence. Though the appellant resumed his duty after funeral of his brother but he was taken to task after resumption of his duty. The appellant was served with charge sheet/statement of allegation, to which he responded and placed the stance of death of his brother, which however was not taken into consideration. It is a well-settled legal proposition that absence on medical grounds even without permission of the competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214. The inquiry officer was supposed to take a lenient view, instead he recommended him for major punishment, which appears to be harsh. Competent authority had jurisdiction to award any of the punishments mentioned in law to the government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the magnitude of the guilt, Otherwise the law dealing with the subject would lose its efficacy. Reliance is placed on 2006 SCMR 1120.

06. We are also mindful of the question of limitation, as the appellant filed revision petition with a considerable delay, but Rule 16:32 of Police Rules, 1934 provides that official whose appeal has been rejected may appeal authority next above prescribed appellate authority for revision, hence appellant was entitled to file revision petition before IGP, which was filed under the rule—it would be in consonance with object of the Act to give extended meaning to the word appeal

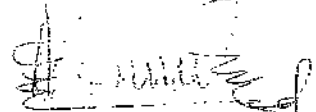
OFFICER
EXCISE & TAXATION
MUMBAI


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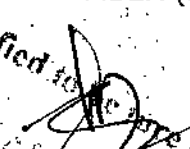
or representation to include revision as prescribed under applicable rules—on such interpretation, period of limitation in this case should be calculated from date on which revision application was dismissed and in such a situation, his appeal cannot be consider as barred by time. Reliance is placed on PLJ 1996 SC 208. Moreover case of the appellant otherwise is strong on merit, which cannot be ignored based on limitation.

07. We are of the considered opinion that the appellant has not been treated in accordance with law, as his absence was not intentional and the allegation of his absence were not so grave as to propose major punishment of removal from service, hence taking a lenient view, we are inclined to accept the instant appeal. The appellant is re-instated in service and the impugned orders are set aside. The intervening period is treated as leave without pay. Respondents however, are at liberty to conduct inquiry, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
21.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 27/2/23
Number of ~~Pages~~ Page 5
Copying Fee 25/-
Urgent 5/-
Total 30/-
Name of _____
Date of Copy 27-2-23
Date of Delivery of Copy 27-2-23

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2023

Rasool Zaman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt:

(RESPONDENT)
(DEFENDANT)

I/We Rasool Zaman

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, 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 cost. 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.

Dated. _____/_____/2023

Rasool Zaman
CLIENT

MIR ZAMAN SAFI
ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.

Mobile No.0323-9295295

0317-9743003