


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 86/2023

S.No	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.02.2023	<p>The execution petition of Mr. Akhtar Ali submitted today by Mr. Gulhussain Khelji 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>

AA9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation petition No 86 /2023

Service Appeal No:403-2017

Akhtar Ali S/O Roidead Khan R/o par Hoti, Mohallah Noor Man Khel District Mardan.

(Appellant)

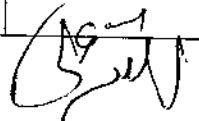
Versus

Govt of KPK Through Inspector General of Prison, Khyber Pakhtunkhwa, peshwar.& others.

(Respondents)

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Appellant

Through



GULHUSSAIN KHELJI Advocate,
Peshawar High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

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Implementation Petition No 86 /2023

Service Appeal No: 403/2017

Akhtar Ali S/O Roidad Khan R/O Par Hoti, Mohallah Noor Man Khel,
District Mardan.

(Appellant)

Versus

1. Govt of, KPK Through Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent High Security prison, Mardan.

(Respondents)

EXECUTION PETITION FOR THE IMPLEMENTATION OF
ORDER / JUDGMENT DATED 17-09-2021 PASSED BY THIS
HONORABLE TRIBUNAL ABOVE TITLED SERVICE APPEAL

Respectfully Sheweth:

1. That the appellant earlier filed service Appeal No 403/2017 for restraining respondents from reinstatement in Service from the date of his dismissal from service and the entire period is treated as leave of the kind due, which was allowed by this honorable Tribunal KPK, Peshawar Dated 17-09-2021.
2. That the appellant time to time again approached respondents for the implementation in its true spirit of the judgment of this honorable Tribunal KPK, Peshawar, but no use and the appellant has not reinstated in Service from the date of his dismissal from service and the entire period is treated as leave of the kind due, as per the judgment.

3. That the respondents are not ready to implement the judgment of this honorable Tribunal in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the judgment dated 17-09-2021 of honorable Tribunal.

It therefore prayed, that on acceptance of this Execution petition /application respondents may kindly be directed to implement the judgment of this honorable Tribunal Dated 17-09-2021 passed in service Appeal No 403/2021.

Dated : _____/02/2023

[Handwritten signature]
[Handwritten signature]

Appellant

Through

GULHUSSAIN KHELJI

Advocate,

Peshawar High Court Peshawar.

AFFIDAVIT

I Akhtar Ali S/O Roidad Khan R/O Par Hoti, Mohallah Noor Man Khel, District Mardan, do hereby Solemnly affirm and declare on oath that the contents of the accompanying Implementation Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

[Handwritten signature]
18/2/2023

[Handwritten signature]
DEPONENT

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 390

Dated 14-4-2017

Service Appeal No. 403 /2017

Akhtar Ali S/o Roidad Khan R/o Par Hoti, Mohallah Noor Man
Khel, Tehsil & District Mardan.....Appellant

V E R S U S

1. Govt of KPK
Through Inspector General of Prison, Khyber
Pakhtunkhwa, Peshawar

2. Superintendent High Security Prison, Mardan.

.....RESPONDENTS

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 26/10/2016 OF
RESPONDENT NO.2, WHEREBY THE APPELLANT HAS BEEN
DISMISSED/ REMOVED FROM HIS SERVICE AND
DEPARTMENTAL APPEAL OF THE APPELLANT WAS ALSO
DISMISSED.

Prayer in Appeal:

Filed to-day

Registrar

On acceptance of this service appeal, the impugned
order dated 26/10/2016, passed by respondent No. 2
may kindly be set aside and the appellant may please
be reinstated in service with all back benefits.

Re-submitted to -day
and filed.

Registrar

25/4/17

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.403/2017

Date of Institution ... 14.04.2017
Date of Decision ... 17.09.2021

Akhtar Ali S/O Roidad Khan R/O Par. Hoti, Mohallah Noor Man
Khel, Tehsil & District Mardan.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Inspector General
of Prison, Khyber Pakhtunkhwa Peshawar and one another.

(Respondents)

Akhtar Ali, ... Pro se.

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

AHMAD SULTAN TAREEN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The relevant facts leading to filing
of instant appeal are that appellant was appointed as Beheshti in
District Jail, Mardan. He received a show cause notice, wherein,
allegations of absence from duty were leveled. He submitted reply
and lastly he was dismissed from service. He submitted departmental
appeal which was also dismissed, hence, the present service appeal.

2. We have heard appellant and Asif Masood Ali Shah learned
D.D.A for the respondents and have gone through the record and the
proceedings of the case in minute particulars.

3. It has been contended by the appellant that the order of dismissal is against law and facts and that he was never provided an opportunity of hearing and the golden principle of natural justice was violated by the respondents. He submitted that major penalty of dismissal from service cannot be awarded for the allegation of willful absence and that the order is arbitrary, capricious and the result of malafide of the respondents and lastly, he submitted that no inquiry was conducted and he was not afforded any opportunity of defense.

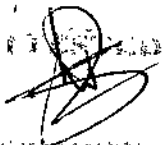
4. Conversely learned D.D.A submitted that appellant was served with a show cause notice when he reported for duty after a willful and unauthorized absence of 19 days w.e.f 05.10.2016 to 24.10.2016. He submitted that the absence without permission of the authority amounts to gross misconduct, therefore, he was rightly dismissed from service.

5. Perusal of record would reveal that appellant was appointed as Baheshti (B.P.S-01) who was attached to High Security Prison Mardan and was proceeded against departmentally for willful absence. In this regard, show cause notice was issued which shows that inquiry was dispensed with and he was proceeded against departmentally for willful absence. He was also charged for habitual absence. There are two different eventualities provided under the scope of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011 relating to the absence. For the first eventuality, Rule-3 of the said rules enumerating the grounds for the proceedings include among them one in Clause (d) of Rule-3 as being guilty of habitually absenting himself from duty without prior approval of leave while the

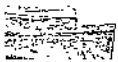
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other eventuality comes under rule-9 of the Rules ibid regarding willful absence. Procedure as provided in Rules ibid is totally different from each of the said eventualities. Habitual absence is to be dealt under discretion of the competent authority within the meaning of Rule-5 and Rule-7 of the Rules ibid while in case of willful absence, there is self contained procedure in Rule-9 of the Rules. Accordingly willful absence from duty of a Government servant for Seven days or more days is to be followed by a notice issued by the competent authority through registered acknowledgement on his home address directing him to resume duty within 15 days of issuance of notice. If the same is received back as undelivered or no response is received from absentee within the stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within 15 days of the publication of that notice, following which an ex-parte decision shall be taken against the absentee. On expiry of the stipulated time given in the notice, major penalty of removal from service may be imposed upon such Government servant. Within the given scope of Rule-9, the Government servant become liable for disciplinary action after seven days of his willful absence. If he in pursuance to the lawful process provided under the said Rules does not come up to explain the reasons of his absence, the ex-parte decision against him is the requirement of law irrespective of any factual position under which he absented himself from attendance of the duty. What the Tribunal has to see in this case is that whether the penalty had followed the procedure provided under Rule-9 of the Khyber Pakhktunkhwa Government Servants (Efficiency & Discipline)


13/11/2022
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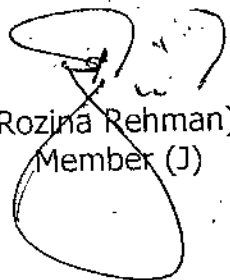



Rules, 2011 or not. Coming to the facts of the case, the appellant was dismissed from service by the impugned order dated 26.10.2016, wherein, there is no reference as to the conduct of proceedings within the meaning of Rule-9 of the E&D Rules, 2011 while the said order has been passed on purported proof of charge of willful absence from duty.

6. As a sequel to above, this appeal is allowed, impugned orders are set aside and appellant is reinstated in service from the date of his dismissal from service. The entire period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
17.09.2021


(Ahmad Sultan Tareen)
Chairman


(Rozina Rehman)
Member (J)


Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Name [Signature]
Date of Completion of Copy 27-9-2021
Date of Delivery of Copy 27-9-2021

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 403 /2017

Akhtar Ali.....Appellant

VERSUS

Govt of KPK and others.....Respondents

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Appellant

Through

Gul Hussain Khilji
Advocates High Court

Date: 14/04/2017

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BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2017

Akhtar Ali S/o Roidad Khan R/o Par Hoti, Mohallah Noor Man
Khel, Tehsil & District Mardan.....Appellant

V E R S U S

1. Govt of KPK
Through Inspector General of Prison, Khyber
Pakhtunkhwa, Peshawar
2. Superintendent High Security Prison, Mardan.
.....RESPONDENTS

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 26/10/2016 OF
RESPONDENT NO.2, WHEREBY THE APPELLANT HAS BEEN
DISMISSED/ REMOVED FROM HIS SERVICE AND
DEPARTMENTAL APPEAL OF THE APPELLANT WAS ALSO
DISMISSED.

Prayer in Appeal:

On acceptance of this service appeal, the impugned order dated 26/10/2016, passed by respondent No. 2 may kindly be set aside and the appellant may please be reinstated in service with all back benefits.

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Respectfully Sheweth:

Brief facts giving rise to the appeal are as under:

1. That the appellant was appointed as Beshti BPS-01 by respondent No 2 in District Jail, Mardan. (Copy of. (Copy of appointment order dated 19/08/2014 is Annexure "A").
2. That the appellant order suddenly received a show cause notice dated 24/10/2016 from respondent No 2 wherein contain allegations i.e. absent from duty of 19 days were leveled against the appellant were made. (Copy of show cause notice is attached as annexure "B").
3. That the appellant submitted reply to the explaining the correct legal position with the request to withdraw the said show cause notice.
4. That the respondent No 2 vide letter dated 26/10/2016 appellant was dismissed from service. (Copy of order is attached as annexure "C").
5. That the appellant submitted a departmental representative to the respondent No 1 as against the aforementioned dismissal order of the appellant.

(Copy departmental representative is attached as annexure "D").

- 6. That the respondent No 1 failed to adjudicate upon the representative appeal of the appellant of the appellant with observation being time barred.
- 7. That feeling aggrieved from above referred order of respondent No. 2, the appellant assails these order before this Honourable Tribunal, inter alia, on the following grounds:-

G R O U N D S :

- A. That the order dated 26/10/2016 of respondents No. 2, is against law, facts and record of the case, hence liable to be set aside.
- B. That the allegations leveled against the appellant are general in nature and to proceed him on the basis of vague allegations, is against the principles of administration of justice, the said order are illegal, without lawful authority and jurisdiction, hence liable to be struck down.
- C. That the appellant was never provided an opportunity of hearing of being heard, so, the respondents have violated golden principles of natural justice "No one should be condemned unheard"

5 (13)

engaged in any profitable activity for earning butter & bread, so, his dismissal in such circumstances, is against the rights of fundamental enshrined in Constitution of Islamic Republic of Pakistan, 1973.

J. That any other ground may be adduced during the course of arguments, with the kind permission of this Honourable Tribunal.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 26/10/2016, passed by respondent No. 2 may kindly be set aside and the appellant may please be reinstated in service with all back benefits.

AND

Any other relief which may be deemed proper in circumstances of the case may also be granted in favour of the appellant.

Appellant

Through

Gul Hussain Khilji
Advocates High Court

Date: 14/04/2017

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BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2017

Akhtar Ali.....Appellant

VERSUS

Govt of KPK and others.....Respondents

AFFIDAVIT

I, Gul Hussain Khilji, Advocate, Peshawar, as per instructions of my client, do hereby solemnly affirm and declare that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

- D. That impugned order dated 26/10/2016 passed by respondents No. 2 in a slipshod manner and is based on assumptions & presumptions, arbitrary and is not sustainable in the eyes of law.
- E. That order passed by respondents No. 2 is not speaking order, passed without assigning any cogent reasons, so, it cannot be termed by no stretch of imagination to be a speaking order.
- F. That appellant has not been provided an opportunity to explain his position with regarded to the charges leveled against him during the inquiry proceedings, so, he was condemned unheard.
- G. That impugned order is arbitrary, capricious and not maintainable and is the result of misreading and non-reading evidence, hence liable to be set aside.
- H. That impugned order is result of malafide of respondents, which is so evident that respondents are not providing record of inquiry to the appellant, which is also against the natural justice.
- I. That appellant belongs to a poor family, low-scale employee, jobless since his termination from service and is sole bread-earner of his entire family. He is not

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BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2017

Akhtar Ali.....Appellant

V E R S U S

Govt of KPK and others.....Respondents

ADDRESSES OF PARTIES

APPELLANT

Akhtar Ali S/o Roidad Khan R/o Par Hoti, Mohallah Noor Man
Khel, Tehsil & District Mardan

RESPONDENTS

1. Govt of KPK
Through Inspector General of Prison, Khyber
Pakhtunkhwa, Peshawar
2. Superintendent High Security Prison, Mardan.

Appellant
Through

Gul Hussain Khilji
Advocates High Court

Date: 14/04/2017



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OFFICE OF THE SUPERINTENDENT CENTRAL PRISON
MARDAN


No. 9008 /Dated: 09/10/2022, E-Mail: mardanjail@gmail.com, 0937-843114

OFFICE ORDER

In compliance of the Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar, letter No.33895-96-WE dated 05-10-2022, Khyber Pakhtunkhwa Service Tribunal Judgment dated 17-09-2021, and Finance Department Letter No.BO-III/FD/4-6/SNEs/Prison/2021-22 dated 16-08-2022.

Mr. Akhtar Ali S/O Roidad Khan (Ex-Beheshti) is hereby Re-instate into service with immediate effect, and he is adjusted against the vacant post of Drummer BPS-03. The entire period is treated as leave of the due kind.


Furthermore, the post of Beheshti is abolished from this Jail, due to dying cadre as per direction of Finance Department letter No.BO-1/FD/5-17/2020-21 dated 26-05-2021.


SUPERINTENDENT
CENTRAL PRISON MARDAN

Endst: No. 9009-13 /Dated: 09/10/2022.

Copy of the above is forwarded to:-

1. The Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information with reference, referred to above, please.
2. The District Accounts officer Mardan for information with the request that the position of beheshti shall be deleted from SAP system, as per direction of Finance Department letter No. BO/1FD-17/2020-21 dated 25-05-2021, please.
3. The Office Superintendent Central Prison Mardan, for information and necessary action, please.
4. Incharge Pay Branch, for information and necessary action please.
5. Mr. Akhtar Ali S/O Roidad Khan, C/O Office Superintendent Central Prison Mardan.


SUPERINTENDENT
CENTRAL PRISON MARDAN

