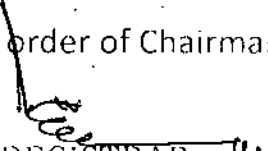


Form- A

FORM OF ORDER SHEET

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

Execution Petition No. 121/2023

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. Kashif submitted today by Mr. Mehtab Sikandar 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 style="text-align: right;">By the order of Chairman  REGISTRAR</p>

ADG

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Appeal No.566/2018

E.P. NO-121/2023

Kashif (FC No.447) !..... Appellant

**Versus**

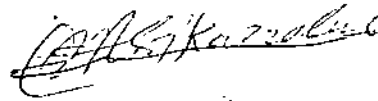
Inspector General of Police, Peshawar and others..... Respondents

**INDEX**

S.No.	Description of documents.	Annexure	Pages.
1	Implementation application with affidavit.		1-2
2	Attested copy of order/ judgment dated 14.07.2022	A	3-9
3	Wakalatnama		10

  
Appellant/ Petitioner

Through



**Mehtab Sikandar**  
Advocate High Court.

Dated: 27.02.2023

0314-9160891

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Appeal No.566/2018

B.P. No. 121/2023

Kashif (FC No.447) son of Sikandar Hayat

R/o Mohallah Mama Khel, Tehsil Razar District Swabi..... Appellant

**Versus**

- 1) Inspector General of Police, Peshawar
- 2) Regional Police Officer, Mardan.
- 3) District Police Officer, Swabi
- 4) Sub Divisional Police Officer, Tehsil Razzar, District Swabi

..... Respondents

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**Application for Execution/ implementation  
of judgment/ order of Service Tribunal dated  
14.07.2022.**

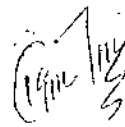
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*Respectfully Sheweth;*

- 1) That this Hon'ble Tribunal vide order dated 14.07.2022 accepted appeal of applicant/ petitioner which was received by the applicant on 28.12.2022. (Attested copy of judgment/ order dated 14.07.2022 is attached as Annexure "A").
- 2) That petitioner approached the concerned authorities for the implementation of judgment/ order dated 14.07.2022; but they paid no heed.
- 3) That respondents are not executing/ implementing the order/ judgment dated 14.07.2022 of this hon'ble Tribunal and have committed clear contempt.

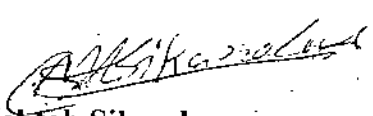
- 4) That justice demands that judgment of this Hon'ble Tribunal may please be implemented in true letter and spirit.

It is, therefore, humbly prayed that respondents may please be directed to execute/ implement the order/ judgment dated 14.07.2022 in true letter and spirit and all the back benefits be awarded after the decision of the Hon'ble Tribunal.



Appellant/ Petitioner

Through



**Mehtab Sikandar**  
Advocate High Court.


0314-9160891

**AFFIDAVIT**

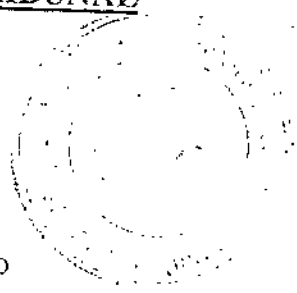
I, do hereby affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent



BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR



Service Appeal No. 566 / 2018

Kashif FC No. 447 Constable Police Station Lahore District Swabi, presently r/o  
Mohallah Mama Khel, Tehsil Razzar, District  
Swabi.....Appellant.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 610

Dated 23-4-2018

VERSUS

1. Inspector General of Police, Peshawar.
2. Regional Police Officer, Mardan.
3. District Police Officer, Swabi.
4. Sub Divisional <sup>Police</sup> Officer tehsil Razzar, Swabi..... Respondents.

APPEAL AGAINST THE ORDER DATED <sup>7/21</sup> 2017 WHEREBY  
SERVICES OF THE APPELLANT WAS DISMISSED WHILE  
AWARDING MAJOR PUNISHMENT UNDER KHYBER  
PAKHTUNKHWA POLICE RULES 1975 AND AGAINST THE FINAL  
ORDER DATED <sup>26.03.17</sup> 2018 WHEREBY DEPARTMENTAL APPEAL  
FILED BY THE APPELLANT WAS REJECTED.

Respectfully Sheweth:-

to-day  
Razzar  
16/10

1. That the appellant was appointed as Constable in Police Force of the Khyber Pakhtunkhwa on <sup>19/11/08</sup> 2008 where after posted at various police station.
2. That appellant put in meritorious services in the department for long 9 years and at the relevant time was performing his duties on the grave of Mashal Khan a victim of the Abdul Wali Khan University Mardan Occurrence.
3. That without any information/reason a charge sheet with summary of allegation was served upon the appellant alleging therein that he has committed abetment and conspiracy in a murder case registered vide FIR No.364 dated 15.6.2017 Police Station Kalo Khan (copy of charge sheet and relevant document a/w summary of allegation are annexed as annexure "A" & "B" while FIR etc will be produced at the relevant time.)
4. That Sub Divisional Officer Razar Circle Karnal Sher Kaly was appointed as inquiry officer to conduct inquiry and inspite of the fact that it is neither proved from FIR nor the complainant has charge the appellant nor there is any evidence to connect the appellant with the alleged offence, but even then the

OFFICIAL  
*[Signature]*

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 566/2018

Date of Institution ... 23.04.2018  
Date of Decision .. 14.07.2022

Kashif FC No.447 constable Police Station Lahor District Swabi,  
presently R/O Mohallah Mam Khel, Tehsil Razzar, District Swabi.

(Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa, Peshawar and  
three others.

(Respondents)

Mentab Sikandar,  
Advocate

For appellant.

Muhammad Riaz Khan Paindakhel,  
Assistant Advocate General

For respondents.

Salah Ud Din  
Rozina Rehman

Member (J)

Member (J)

JUDGMENT

Rozina Rehman, Member(J):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 07.08.2017 and final order dated 26.03.2018  
rejecting departmental appeal may graciously be set  
aside and appellant be reinstated in service with full  
back benefits in the interest of justice."

2. Brief facts of the case are that appellant was appointed as  
Constable in the Police Force of Khyber Pakhtunkhwa on 19.11.2008.  
At the relevant time, he was performing his duties on the grave of  
Mashal Khan, a victim of Abdul Wali Khan University Mardan. He was

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served with a charge sheet alongwith statement of allegations alleging therein that he had committed abetment and conspiracy in a murder case registered vide FIR No.364 dated 15.06.2017 at Police Station Kalu Khan. SDPO Razzar Circle was appointed as Inquiry Officer and the appellant was recommended for major punishment. Final show cause notice was also served upon him and he submitted reply but he was dismissed from service vide order dated 07.08.2017. He filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Mehtab Sikandar Advocate, learned counsel for appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Mehtab Sikandar Advocate, learned counsel for appellant inter-alia argued that the impugned order is against law, facts and material as the appellant was not treated in accordance with law and rules. It was contended that no proper inquiry was conducted as the appellant was not afforded proper opportunity of defense and that he was not heard as required under the law, therefore, the very proceedings conducted by the Inquiry Officer, his recommendation and subsequent dismissal order are of no legal effect.

5. Conversely, learned AAG submitted that according to the service record of the appellant he was found habitual absentee; that while posted to PS Lahor, he absented himself from lawful duty w.e.f 28.02.2017 till date of dismissal i.e. 07.08.2017 without any leave or permission from authority on account of which he was proceeded against departmentally. During the pendency of inquiry, appellant was

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booked in case FIR No.364 dated 15.06.2017 registered at Police Station Kalu Khan U/S 302/120 B 148/149 PPC and FIR No.518 dated 16.07.2017 U/S 4 PO/ 3/4 AF/15 AA on account of which he was also served with show cause notices. SDPO Razzar was appointed as Inquiry Officer and appellant was recommended for punishment. He was then served with final show cause notice and after fulfillment of all codal formalities he was dismissed from service on account of his willful absence and involvement in criminal cases.

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 Amjad Ali registered FIR No.364 on 15.06.2017 at Police Station Kalu Khan District Swabi regarding murder of his son Tanveer by unknown accused, therefore, FIR was registered against unknown culprits. It was on 12.07.2017 when the present appellant was served with show cause notice for allegedly involved in the abetment and conspiracy of a murder in the holy month of Ramazan vide case FIR No.364 dated 15.06.2017. He was also issued show cause notice due to his involvement in case FIR No.518 dated 16.07.2017. Inquiry was also dispensed with. Final show cause notice was issued regarding his absence on 04.07.2017 and DSP Razzar was appointed as Inquiry Officer to conduct proper departmental inquiry. Departmental inquiry is available on file. Vide order dated 07.08.2017, he was dismissed from service from the date of his absence i.e. 28.02.2017. The present appellant Constable Kashif was not only charged for absence but also for his involvement in two different criminal cases. Inquiry was conducted only in respect of his absence. As per record, he while posted to Police Station Lahor, absented himself from

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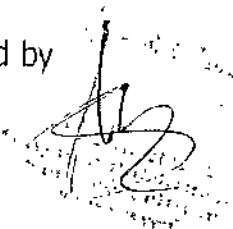
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duty w.e.f 28.02.2017 without any leave. SDPO was appointed as inquiry officer but inquiry was not conducted in accordance with law as no witness was examined and the appellant was not associated to the inquiry proceedings. The inquiry officer did not pay heed to the other show cause notices which were issued to the appellant in respect of his involvement in criminal cases. It has not been brought on record as to whether charge sheet alongwith statement of allegations and show cause notices were ever served upon appellant. The impugned order of District Police Office Swabi dated 07.08.2017 is worth mentioning wherein it has been clearly mentioned that appellant was proceeded against departmentally for absence and that after collection of evidence and recording statement of all concerned, appellant was found guilty but no evidence of any witness was ever produced before this Tribunal in order to show the presence of appellant while cross examining the witnesses. Inquiry report is silent in this regard. On the strength of so-called inquiry report and that too regarding absence, he was awarded major punishment of dismissal from service from the date of his absence i.e. 28.02.2017. Three lines were added by the DPO Swabi in his dismissal order which are hereby reproduced for ready reference:

*"Besides above, he also involved himself in criminal case registered vide Nos.364 dated 15.06.2017 U/S 302/120-B/148/149 PPC and No.518 dated 16.07.2017 U/S 3/4 AF/15 AA-13 KPK Police Station Kalu Khan."*

It merits a mention here that for just involvement in cases of criminal nature whether he was proceeded against departmentally in accordance with law? The answer is NO. The order of the appellate authority is available on file which shows that order of the DPO was reproduced by



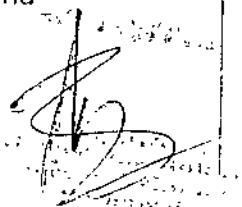
the appellate authority in shape of order dated 03.11.2017 and his mercy petition in shape of appeal under Rule 11-A also met the same fate. Admittedly, present appellant was acquitted U/S 249-A Cr.PC by the learned Judicial Magistrate-I Swabi in case FIR No.518 dated 16.07.2017. Similarly, the present appellant Kashif alias K-2 was acquitted in case FIR No.364 dated 15.06.2017 vide order of the learned Additional Sessions Judge, Swabi dated 12.06.2021 as the criminal case was full of doubts.

7. 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 criminal case was also a 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.

8. It is established from the record that charges of his involvement in 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.

9. So far as his absence is concerned, he was not served with charge sheet and show cause notice. No proper inquiry was conducted and the appellant was never associated to the inquiry proceedings. His medical record was not taken into consideration and he was not given any opportunity of personal hearing.

10. The respondents have very blatantly violated the set norms and rules and conducted the proceedings in an authoritarian manner and



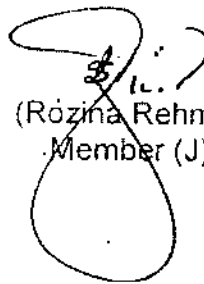
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harsh punishment was awarded to the appellant. We have observed that the inquiry conducted by the respondents is not in accordance with law/rules. It is, however, a well-settled legal proposition duly supported by numerous judgments of Apex Court that for imposition of major penalty, regular inquiry is a must.

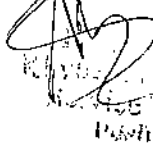
11. For what has been discussed above, this appeal is accepted, the impugned orders are set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
14.07.2022

  
(Salah Ud Din)  
Member (J)

  
(Rozina Rehman)  
Member (J)

Certified to be true copy

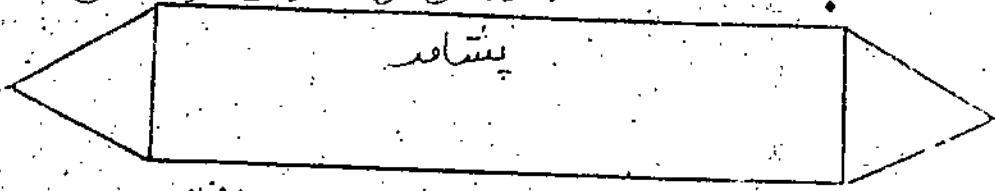
  
Secretary  
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State of Punjab  
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28/12/22  
28/12/22

10

# بعدالت خیر پختو خفا سروس لٹری میول



۲۰۰۶ء پنجاب

موری

اسٹیکس جنرل آف یولس وغیرہ

FC No (447)

Application for cancellation

2023

Appeal: 566/2019

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام پشامہ کے لئے صنیاب مسکندر ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زیر اس پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے۔ اور اس کا ساتھ پروا ختم منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔

اگر کوئی تاریخ پیشی مقام دورہ پر ہوا یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروان

مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ مندرجہ ہے۔

المقوم

Accepted

د گواہ

Be: 17-7405  
 cell: 0314-9160891

کے لئے منظور ہے۔

Kashif Huzart M/o Sikandar Huzart

CMC 16202-7326274-9  
 cell no 0346-7519292