


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 394/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.06.2023	<p>The execution petition of Mr. Tariq Mehmood re-submitted today by Syed Noman Ali Bukhari 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>By the order of Chairman  REGISTRAR</p>

The execution petition of Mr. Tariq Mehmood received today i.e. 09.6.2023 is incomplete on the following scores which is returned to the counsel for the applicant for completion and resubmission within 15 days.

- 1- Annexures of the petition is unattested.
- 2- Annexure-A of the petition is illegible.

No. 1720 /S.T,

Dt. 12-06 /2023.



REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Syed Noman Ali Bukhari Adv.
High Court Peshawar.

Pi

objection 1 to 2 were removed & file
re-submitted



20-6-2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 394 /2023

In
Service Appeal No.1439/2019

Tariq Mehmood

V/S

Police Deptt:

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S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-07
3.	Copy of order	-B-	08-09
4.	Copy of leave account	-C-	10
5.	Vakalat Nama	-----	11

PETITIONER
Tariq Mehmood

THROUGH:

SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

&

(UZMA SYED)
ADVOCATE, PESHAWAR.

Cell No: 0306-5109438

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

Execution Petition No. 394 /2023

In

Service Appeal No.1439/2019

Tariq Mehmood Ex-Driver Constable No.271
R/o Yousaf Abad, Tube Well Chowk, Street No.5, Dalazak road, Peshawar.

PETITIONER

VERSUS

1. The Inspector General Police, KP, CPO, Peshawar.
2. The District Police Officer, Peshawar.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 19/01/2022 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No-1439/2019 against the transfer order.
2. That the said appeal was finally heard by the Honorable Tribunal on 19/01/2022. The Honorable Tribunal is kind enough to accept the appeal of appellant and appellant was re-instated into service and intervening period treated as leave of kind due. (Copy of judgment is attached as Annexure-A).

3. That the deptt: in compliance of judgment re-instated the appellant into service vide order dated 17/10/2022 but till date no back benefit was allowed to the appellant. **Copy of re-instatement order is attached as annexure-B**
4. That the appellant also filed application and leave account to respondents for the implementation of judgment. The respondents were totally failed in taking any action regarded the Hon'able Tribunal judgment dated 19-01-2022 in letter and spirit. **Copy of leave account is attached as annexure-C.**
5. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 19-01-2022.
6. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
7. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the same in letter and spirit.
8. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 19/01/2022 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 favor of applicant/appellant.

PETITIONER
Tariq Mehmood

THROUGH:

(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

DEPONENT

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1439/2019

Date of Institution 30.10.2019

Date of Decision 19.01.2022



Mehmond Ex-Driver Constable No. 271 (Capital City Police Peshawar) R/o
Ghalabat Abad, Tube Well Chowk, Street No. 5, Dalazak Road, Peshawar.
(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Inspector General of Police Khyber
Pakhtunkhwa, Central Police Office, Peshawar and others.
(Respondents)

For Appellant

For Appellant

Muhammad Biaz Khan Paindakhiel,
Advocate General

For respondents

MAD SULTAN TAREEN
AQ-UR-REHMAN WAZIR

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

AQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are
that the appellant while serving as Constable Driver, was charged in FIR U/S 9C
of the Penal Code dated 03-05-2019 and was arrested. The appellant was proceeded
against departmentally and was ultimately dismissed from service vide order
dated 03-07-2019. In the meanwhile, the appellant was released on bail vide
order dated 09-05-2019. The appellant filed departmental appeal, which was
dismissed vide order dated 25-09-2019, hence the instant service appeal with
prayers that the impugned orders dated 03-07-2019 and 25-09-2019 may be set
aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

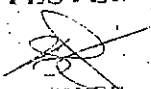
Signature of the Member (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

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learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the appellant was dismissed from service in an arbitrary manner, it however was required to suspend the appellant and wait for conclusion of the criminal case; but the respondents hastily proceeded the appellant and dismissed him from service; that trial in the criminal case is pending adjudication before the competent court of law and the appellant is yet to be proved guilty or innocent, however the respondents have condemned the appellant in the present case before the conclusion of the criminal case, which is illegal and against the vested constitutional rights of the appellant.

Learned Assistant Advocate General for the respondents has contended that the appellant while serving as driver in police department, was charged in the case DC CNSA Dated 03-05-2019; that the appellant was proceeded departmentally by serving charge sheet/statement of allegation upon him and inquiry was also conducted; upon findings of the inquiry report, the appellant was charged with final showcause notice; that the appellant responded to the charge sheet as well as to the showcause notice but his reply was not found convincing, hence he was awarded with major punishment of dismissal from service vide order dated 03-07-2019; that criminal case is still pending adjudication against the appellant but it is a well settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, hence the appellant was proceeded departmentally which culminated into his dismissal from service.

We have heard learned counsel for the parties and have perused the

ATTESTED

EXAMINER
Rajinder Singh
Service Tribunal
Delhi

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Record reveals that the appellant was proceeded against on the charges mentioned in FIR against him and was dismissed from service. Being involved in the case, the respondents were required to suspend the appellants from service under section 16:19 of Police Rules, 1934, which specifically provides for suspension of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant on account of pendency of criminal case against him would be bad unless the official was found guilty by competent court of law. Contents of FIR would not be substantiated allegations, and based on the same, maximum penalty cannot be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

The allegations so leveled against the appellants are registration of FIR against him, but it was responsibility of the inquiry officer to prove the charges levelled against him in the FIR, but the inquiry officer did not bother to conduct a proper inquiry and while sitting in his office, wrote a two page report, which is of no value in the eye of law. The authorized officer failed to frame proper charge and communicate it to the appellant alongwith statement of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory pre-requisite, which should be followed. Reliance is placed on 2000 SCMR 1743.

Report of the inquiry so conducted cannot be termed as a regular inquiry, as it is replete with deficiencies. The inquiry officer did not bother to associate the appellants with the inquiry proceedings. No statement of any witnesses recorded in presence of the appellant nor the appellant was afforded

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...ability to cross-examine such witnesses, thus the respondents skipped a
...step as provided in law, which clearly shows that neither the appellant
...associated with proceedings of the inquiry nor was he afforded any
...opportunity to defend his cause. Such an act on part of the inquiry officer is a
...manifest violation of professional dishonesty and shirking responsibility, which
...raises a question as to what would be the evidentiary value of the contents of the
...report. The Supreme Court of Pakistan in its judgment reported as 2008
...MR 1369 have held that in case of imposing major penalty, the principles of
...natural justice required that a regular inquiry was to be conducted in the matter
...and opportunity of defense and personal hearing was to be provided to the civil
...servant proceeded against, otherwise civil servant would be condemned unheard
...and major penalty of dismissal from service would be imposed upon him without
...following the required mandatory procedure, resulting in manifest injustice.

It is a cardinal principle of natural justice of universal application that no
...person should be condemned unheard and where there was likelihood of any
...action against anyone, the principle of Audi Alteram Partem would
...be followed by providing the person concerned an opportunity of being
...heard. The inquiry officer mainly relied on FIR with no solid evidence against the
...appellant. Mere reliance on hearsay and that too without confronting the
...witness with the same had no legal value and mere presumption does not form
...a basis for imposition of major penalty, which is not allowable under the law.

The criminal case is still pending against the appellant, which will be
...decided on its own merits in due course of time, but it is a well settled legal
...proposition that criminal and departmental proceedings can run side by side
...without affecting each other, but in the instant case, we are of the considered
...opinion that the departmental proceedings were not conducted in accordance
...with law. The authority, authorized officer and the inquiry officer badly failed to
...comply with the relevant rules in letter and spirit. The procedure as prescribed had

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Sd/-
[Signature]
[Name]
[Designation]
[Department]

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not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. The allegations so leveled had not been proved. The appellant suffered for longer for a charge, which is not yet proved.

20. In circumstances, the instant appeal is accepted. The impugned orders dated 03-07-2019 and 25-09-2019 are set aside and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. The respondents still have an option under the provisions contained in Rule 16:2(2) of Police Rules, 1934, if decision in the criminal case was found adverse. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
19.01.2022

Certified true copy

ATIQ-UR-REHMAN WAZIR
Member (E) Islamabad
Service Tribunal
Pakistan

(ZAHMAD SULTAN TAREEN)
CHAIRMAN

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

Date of presentation of Application 25/04/2022

No. 2000

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Total 28

Date of Copy 25-04-2022

Date of Delivery of Copy 25-04-2022

ORDER

B (8)

Ex-Driver Constable Tariq Mehmood No.271 was awarded major punishment of dismissal from service by the then SP HQrs vide OB No.2115 dated 03.07.2019 in the charges of involvement in criminal case vide FIR No.710 dated 03.05.2019 u/s 9CC ISA PS. Paharipura.

In this regard he was filed departmental appeal before W/CCPO against above punishment orders which was rejected/filed by the then CCPO, Peshawar vide order No.1290-96/PA dated 25.09.2019.

Now, Ex-Driver Constable Tariq Mehmood No.271 has submitted an application along-with court judgment, wherein the Hon'able Service Tribunal ordered that "the instant appeal is accepted. The impugned orders dated 03.07.2019 and 25.09.2019 are set aside and the appellant is re-instated into service. The intervening period is treated as leave of the kind due. The respondent still have an option under the provision contained in Rule 16:2(2) of Police Rules, 1934, if the decision in the criminal case was found adverse."

In light of the Tribunal Judgment, DSP Legal opinion & kind approval of W/CCPO, Now, Ex-Driver Constable Tariq Mehmood No.271 is hereby conditionally & provisionally re-instated in service subject to the decision of CPLA which is still subjudice in the Apex Court and the intervening period is treated as leave of the kind due.

~~SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR~~

OB. NO. 2185 / Dated 17/10/2022

No. 322-8-3 / PA/SP/dated Peshawar the 17/10/2022

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. PA to W/CCPO Peshawar.
4. Pay Office,
5. OASI, CRC.& FMC along-with complete departmental file.
6. Officials concerned.

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روزنامه فوج شکرانہ

روزنامہ فوج شکرانہ

ازدواج طارق محمد 926 DFCC 1-1-1986

نمبر	تاریخ	نمبر	تاریخ	نمبر	نمبر
01	30	2498	9-6-2001		
02	60	3430	11-8-2001		
03	30	3220	20-1-2009		
04	30	2970	1-9-2009		
05	40	3221	8-10-2009		
06	30	3125	8-8-2007		
07	25	3713	11-10-2012		
08	40	3502	0-10-2013		
09	20	773	6-2-2017		
10	70	3285	2-9-2018		

تاریخ 455 DFCC 1-1-1986

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26-10-2020

بعدالت

KP Service Tribunal

مورخہ
مقدمہ
دعویٰ
جرم

2ء منجانب
Taxiay Mahmood
vs
Police Deptt

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام پیشاور کیلئے سید ایمان علی بھاری محلی علی مسد

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے
سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2023ء

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المرقوم

العبد گواہ العبد

طیاری محصور