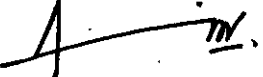


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 420/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1.	2	3
1	26.06.2023	<p>The implementation petition of Mr. Qayyum Nawaz received today by registered post through Sadam Hussain Zakori Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on _____ . Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
KHYBERPAKHTUNKHWA

Execution petition No. 420 of 2023

Qayyum Nawaz **VERSUS** Government of KP and
others

EXECUTION U/S 7(2)(d) OF KP SERVICE TRIBUNAL
ACT, 1974

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3.	Copy of Appeal and its judgment & Order Dated 22.11.2021	A	5 to 12
	Copies of First Execution Petition along with order Dated 29.09.2022	B	13-14
4.	Copy of Order No. 3557-63/EC Dated 29.09.2022	C	15
5.	Wakalatnama in favour of Sadam Hussain Zakori Advocate High Court	---	16



Yours Humble Petitioner
Through Counsel



Sadam Hussain Zakori
Advocate-High-Court

1

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
KHYBERPAKHTUNKHWA

Khyber Pakhtunkhwa
Service Tribunal

Service Tribunal Execution petition No. 420 of 2023

Diary No. 6184
Dated 26/6/23

Qayyum Nawaz S/O Liaqat Ali, Constable, No.1003, Caste
Chughtaj, R/o Muryali Mor, Tehsil & District Dera Ismail Khan

(Appellant)

VERSUS

1. **Government of Khyber Pakhtunkhwa through Secretary**
Home & Tribal Affairs Department, Khyber Pakhtunkhwa,
Peshawar
2. **Inspector General of Police, (IGP)** Khyber Pakhtunkhwa,
Peshawar
3. **Regional Police Officer, (RPO),** Dera Ismail Khan Range,
District Dera Ismail Khan
4. **District Police Officer, (DPO),** Office District Dera Ismail
Khan

(Respondents)

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP
SERVICE TRIBUNAL ACT, 1974 AGAINST THE RESPONDENTS
OF THE JUDGMENT, DECREE & ORDER DATED 22.11.2021
PASSED IN SERVICE TRIBUNAL APPEAL NO.5779/2020 ONLY
TO THE EXTENT OF BACK BENEFITS

Respectfully Sheweth,

BRIEF FACTS:

1. That the addresses of the parties written above for the purpose
of services may be deemed sufficient.

2. That the appeal No:5779/2020 titled "Qayum Nawaz Vs Govt of KP & Others" was instituted by the petitioner against the respondents which was later on decided on 22.11.2021 in favour of petitioner and Court has ordered appellant is reinstated in service with all back benefits. Copy of the order Dated 22.11.2021 Attached as Annexure-A.
3. That as the respondents were not implementing the said judgment & order if this Honourable Tribunal thus, the petitioner preferred Execution Petition wherein, the respondents were called upon to satisfy this Honourable Tribunal as to why the judgment & order is not implemented. Thus in partial compliance of the said judgment & order the District Police Office Dera Ismail Khan conditionally reinstated the petitioner. Hence, the Execution Petition was disposed off vide its order Dated 29.09.2022. Copies of the Execution Petition and order Dated 29.09.2022 are attached as Annexure-B and Order of reinstatement No. 3557-63/EC Dated 29.09.2022 is attached as Annexure-C.
4. That, since then the petitioner is waiting for the respondents to implement the remaining part of the judgment & order Dated 22.11.2021 and to give all the financial back benefits to the petitioner but in vain, hence, the petitioner is left with no other option but to institute another execution petition for the said remaining part of the judgment & order.

HENCE, IT IS, THEREFORE, REQUESTED TO ORDER THE RESPONDENTS TO IMPLEMENT THE JUDGMENT & ORDER DATED 22.11.2021 IN LETTER AND SPIRIT TO THE EXTENT OF FINANCIAL BACK BENEFITS.



Your humble Petitioner

Qayyum Nawaz

Constable, No.1003

Dera Ismail Khan



Through Counsel

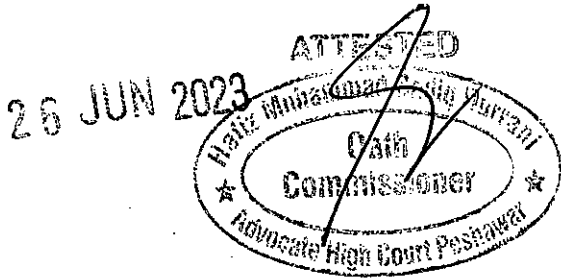
Sadam Hussain Zakori

Advocate High Court

Dated ___/___/ 2023

AFFIDAVIT

I Qayyum Nawaz do hereby solemnly affirm and declare that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Tribunal and this is the lone Execution Petition on the subject.



Qayyum Nawaz
Deponent

CERTIFIED AT D.I.KHAN

That the parawise content of the instant Execution Petition are true and correct and it is the second execution petition on the subject matter

Qayyum Nawaz

Qayyum Nawaz....(Petitioner)

**BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
KHYBERPAKHTUNKHWA**

Execution No. _____ of 2023

Qayyum Nawaz

**VERSUS Government of KP and
others**

EXECUTION U/S 7(2)(d) OF KP SERVICE TRIBUNAL ACT, 1974

MEMO OF ADDRESS

**Qayyum Nawaz S/O Liaqat Ali, Ex-Constable, No.1003, Caste
Chughtai, R/o Muryali Mor, Tehsil & District Dera Ismail Khan**

(Appellant)

VERSUS

- 1. Government of Khyber Pakhtunkhwa through Secretary
Home & Tribal Affairs Department, Khyber Pakhtunkhwa,
Peshawar**
- 2. Inspector General of Police, (IGP)Khyber Pakhtunkhwa,
Peshawar**
- 3. Regional Police Officer, (RPO), Dera Ismail Khan Range,
District Dera Ismail Khan**
- 4. District Police Officer, (DPO), Office District Dera Ismail
Khan**

(Respondents)

Qayyum Nawaz

Your humble Petitioner

(Qayyum Nawaz)

Sadam Hussain Zakori
 Through Counsel
 Sadam Hussain Zakori
 Advocate High Court
 Dera Ismail Khan

Dated ___/___/ 2023

(S)

Annexure - A

(5)



BEFORE THE PROVINCIAL SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA

Service Tribunal Appeal No: 5779 of 2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 4173

Dated 01-6-2020

Qayyum Nawaz S/O Liaqat Ali, Ex-Constable, No.1003, Caste Chughtai, R/o Muryali Mor, Tehsil & District Dera Ismail Khan

(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar
2. Inspector General of Police, (IGP) Khyber Pakhtunkhwa, Peshawar
3. Regional Police Officer, (RPO), Dera Ismail Khan Range, District Dera Ismail Khan
4. District Police Officer, (DPO), Office District Dera Ismail Khan

(Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974
KP AGAINST THE BELOW ORDERS

Filed to-day

Registrar

1. Of The Respondent No.2 Office Order No. S/379-85/20 dated 07.01.2020
Vide Which The Revision Petition Of The Appellant Was Rejected
2. Of The Respondent No.3 Office Order No.1215/Es Dated 13.03.2019
Vide Which The Departmental Appeal Of The Appellant Was Rejected
3. Of The Respondent No.4 Office Order No.1513 Dated 31.10.2018

Note: THE IMPUGNED OFFICE ORDER OF THE RESPONDENT NO.2 WAS
HANDED OVER TO THE APPELLANT ON 03.03.2020 HENCE THE
INSTANT APPEAL IS WITHIN NEXT 30 DAYS OF THE STATUTORY
PERIOD

ATTACHED

KHYBER PAKHTUNKHWA
Service Tribunal

Re-submitted to Registrar and filed.
15/6/2020

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
(Camp Court, D.I.Khan)

Appeal No. 5779/2020

Date of Institution ... 01.06.2020

Date of Decision ... 22.11.2021



Qayum Nawaz son of Liaqat Ali, Ex-constable No. 1003, Caste Chughtai, R/O Muryali Mor, Tehsil and District, Dera Ismail Khan.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar and three others.

... (Respondents)

Present.

Mr. Sadam Hussain Zakori,
Advocate

For appellant.

Mr. Muhammad Rasheed,
Deputy District Attorney,

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN,

CHAIRMAN
MEMBER(J)

JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:- The appellant through the appeal prescribed above in the heading has invoked the jurisdiction of this Tribunal seeking relief based on the prayer copied herein below:-

"It is, therefore, requested to set aside the impugned orders and to reinstate the appellant in his service with all his back benefits."

2. The facts of the case giving rise to the present appeal precisely include that the appellant while serving as Constable having belt No. 1003 under control of respondents with about 19 years of mature service, when posted at Police Station Kirri Khaisor, D.I.Khan, was proceeded against under the Efficiency & Discipline Rules; and consequently, major penalty of dismissal

ATTESTED

EXAMINER
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR


from service was imposed upon him. According to the statement of allegations attached with the charge sheet, there was only allegation against him that he while posted at P.S/Kirri Khaisore, D.I.Khan, was reported vide Mad No. 18 dated 05.02.2018 of P.S/Kirri Khaisor as absent from lawful duties w.e.from 05.02.2018 till date i.e. 14.06.2018 without any leave/ permission from the high-ups. An enquiry was conducted into the said charge and report was submitted by the enquiry officer with findings that there was no valid reason with the Constable Qayum Nawaz about his absence and he did not appear before the enquiry officer intentionally. A final show cause notice was given to the appellant in furtherance of the said enquiry report who submitted his reply to the competent authority. Ultimately, he was awarded with major punishment of dismissal from service by order dated 31.10.2018 since date of his absence i.e. 05.02.2018, issued by respondent No. 4. The departmental appeal against the said order was filed before respondent No. 3 being higher authority which was also dismissed, upholding the order of the competent authority. Revision Petition was submitted to the respondent No. 2 which was also rejected. Consequently, the appellant filed the present appeal with prayer as noted above.

3. Notices of the appeal were given to the respondents. They joined the proceedings and submitted their written reply with several legal and factual objections, refuting the claim of the appellant and asserted for dismissal of appeal with cost being meritless.

4. We have heard arguments and perused the record.

5. Learned counsel for the appellant argued that the entire disciplinary proceedings conducted against the appellant are against the due process of law. The appellant was condemned unheard and the competent authority without determination as to legality of the enquiry report proceeded vide impugned order setting therein the ground of punishment beyond the scope of charge sheet and statement of allegations served upon the appellant. The

ATTESTED



charge of absence against the appellant was not proved in accordance with law. Thus, the appellant was not liable to be punished on such unfounded ground. The mentioning in the impugned order about involvement of the appellant in criminal case being beyond the scope of charge sheet, was not workable for consideration to award punishment to the appellant. Moreover, the appellant was acquitted from the charge by the competent court of law after facing the trial. He prayed for acceptance of the appeal with the relief set up in the prayer.

6. It was argued on behalf of the respondents that the appellant was lawfully proceeded against on account of his wilful absence. He was found involved in criminal case involving moral turpitude and his mere involvement in such a case was sufficient to make him unfit for police service. The competent authority decided to impose the major penalty upon him after due consideration of the material collected through proper enquiry. Learned Deputy District Attorney concluded his arguments with the submission that the appeal being meritless and time barred is not maintainable and is liable to be dismissed with cost.

7. As far as the ground of disciplinary proceedings conducted against the appellant is concerned, it is rooted in the charge of his wilful absence from duty since 05.02.2018 onward till the order dated 31.10.2018 as to his dismissal from service. The copy of enquiry report submitted by Deputy Superintendent of Police Saddar Circle D.I.Khan was annexed with the appeal as well as comments of the respondents. Accordingly, he was served with notice of the disciplinary proceedings on 02.07.2018 through Naib SRC requiring him to submit his reply before the DSP Circle (Enquiry Officer). The enquiry officer based his findings about absence of the appellant on his information received from Police Station Kirri Khaisor and counted the period of absence as about four months. In pursuance to said information, the enquiry officer expressed

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

his opinion in the manner that the period of absence of said constable is too much and he remained absent without leave and permission of the high-ups having no plausible reason of his such absence. The enquiry officer further noted that this was the reason that said constable despite repeated notices did not submit reply to the charge sheet before the DSP Saddar Circle. With aforementioned observations, the enquiry officer concluded that Constable Qayum Nawaz No. 1003 having no plausible reason of his absence, does not appear intentionally before the enquiry officer for enquiry. So, proceeding ex-parte against the appellant, the enquiry officer recommended major penalty against him. The said enquiry report with its given facade is nothing more than an ornamental exercise. According to order sheets of the enquiry proceedings annexed with the enquiry report, appellant purportedly received the charge sheet on 19.06.2018 and he was asked to submit the reply before the DSP Saddar Circle. Order sheet dated 19.06.2018 as well as two other order sheets one prior and the other later in date seem to have been recorded by the Reader of the enquiry officer/(DSP Sadar Circle). Due to admitted contact in-between Reader of the enquiry officer and the appellant, the enquiry officer was supposed to apprise the competent authority that the appellant despite notice did not turn up to show cause of his absence. Both the Competent Authority and the Inquiry Officer were ignorant of the fact that the ground of wilful absence does not make part of the grounds provided for punishment in Police Rules, 1975. Needless to say that a police officer including constable are civil servants of the province within the meaning of definition of civil servants under Section 2(b) of the Khyber Pakhtunkhwa Civil Servant Act, 1973. If the special rules in force for the police service are deficient to provide the ground for disciplinary action on the ground of wilful absence against a civil servant, then the general/E&D Rules will become applicable in such a case.

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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

provides a self-contained procedure for action on account of wilful absence as well as the penalty in pursuance to the action taken there-under. Accordingly, it is provided that in case of wilful absence from duty by a government servant for seven days or more days, a notice shall be issued by competent authority through registered acknowledgement on his home address directing him to resume duty within fifteen days of the issuance of the notice. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall be published in at least two newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision shall be taken against that absentee. On expiry of the stipulated period given in the notice, major penalty of removal from service may be imposed upon such government servant. The disciplinary proceedings based on the charge sheet and statement of allegations followed by the enquiry report by DSP Saddar Circle do not disclose the compliance of Rule 9 ibid. Needless to say that no proper notice as required under Rule 9 ibid was given through registered post and served upon the appellant. If we presume the charge sheet and statement of allegations as notice of wilful absence with further presumption that the same were received by him as per note of the Reader of DSP Saddar Circle, the further course of action was to proceed for publication of the same notice in two newspapers as provided in Rules 9 ibid, when the appellant did not turn up. However, the respondents omitted to proceed as such. So, the action of the respondent department on purported wilful absence of the appellant is not tenable under the facts and law. The disciplinary proceedings conducted in the particular manner were unbefittingly relied upon by the competent authority for imposition of major penalty and similarly by the appellate authority and the revisional authority in case of the appellant for its upholding the impugned order in appeal and revision. So, all the orders including the impugned order

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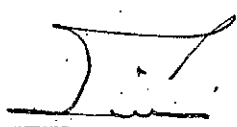
ATTESTED
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 EXAMINER
 Kutch District
 Service Tribunal
 Porbandar


proved. Being involved in this obnoxious social evil, he is earning a bad name for police department for which we claim zero tolerance."

9. In pursuance to the above conclusion, the enquiry officer recommended that major punishment of dismissal from police service may be awarded to the appellant. Additionally, he recommended that a copy of the enquiry report may be sent to S.P Investigation, D.I.Khan with the directives to consider it a part of investigation and append it with judicial file of the case for the kind perusal of the concerned court of trial, if agreed.

10. The said enquiry report alongwith dismissal order, appellate order and copy of FIR have been annexed with the reply of the respondents but the charge sheet and summary of allegations purported to have been served upon the appellant by the enquiry officer, were not annexed with the reply. So, the presumption of absence of any such charge sheet and summary of allegations is viable. No need to say anything more about the second enquiry report when the accused was acquitted of the charge of recovery of narcotics at trial on account of the case registered vide FIR No. 517 dated 27.05.2018 u/s 9-B CNSA Police Station, Cantt, D.I.Khan.

11. For what has gone above, the appeal at hands is accepted by setting aside the impugned orders 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.


(SALAH-UD-DIN)
Member(J)
(Camp Court, D.I.Khan)


(AHMAD SULTAN TAREEN)
Chairman
(Camp Court, D.I.Khan)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ANNOUNCED
22.11.2021

Date of Presentation of Application 25-01-2022

Number of Words 3200

Copying Fee 34/-

Urgent 4/-

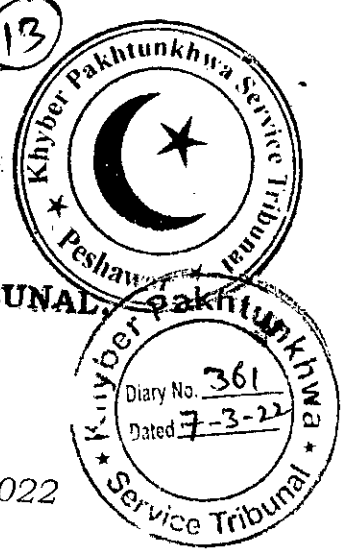
Total 38/-

Name of Copyist _____

Date of Completion of Copy 25-01-2022

Date of Delivery of Copy 25-01-2022

Annexure B (13)



**BEFORE THE PROVINCIAL SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA**

Service Tribunal' Execution No: 13 of 2022

Qayyum Nawaz S/O Liaqat Ali, Ex-Constable, No.1008, Caste Chughtai, R/o Muryali Tor, Tehsil & District Dera Ismail Khan

(Appellant)

VERSUS

1. **Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
2. **Inspector General of Police. (IGP)Khyber Pakhtunkhwa, Peshawar**
3. **Regional Police Officer, (RPO), Dera Ismail Khan Range, District Dera Ismail Khan**
4. **District Police Officer, (DPO), Office District Dera Ismail Khan**

(Respondents)

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT, 1974 AGAINST THE RESPONDENTS OF THE JUDGMENT, DECREE & ORDER DATED 22.11.2021 PASSED IN SERVICE TRIBUNAL APPEAL NO.5779/2020

Respectfully Sheweth,

BRIEF FACTS:

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

1. That the addresses of the parties written above for the purpose of services may be deemed sufficient.

08.07.2022

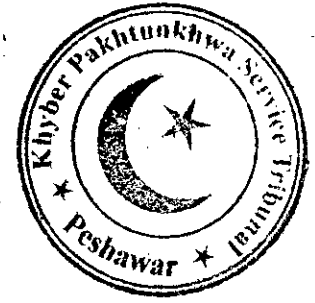
E.P. No. 133/2022
Qayyum Nawaz vs Govt

(14)

Due to Public Holiday on account of Eid-UI-Adha case
to come for the same on 24.09.2022 at camp court D.I Khan.

[Signature]
Reader

**CAMP
KPST
Peshawar**



29th Sept, 2022

Petitioner in person present. Mr. Muft. Amad Adeel Butt, Addl: AG alongwith Mr. Khalil Khan, SI(Legal) for respondents present.

Representative of the respondents submitted copy of order No. 3557-63/EC dated 29.09.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated subject to the outcome of the CPLA No. 173-P/2021 in the august Supreme Court of Pakistan. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court at camp court D.I.Khan and given under my hand and seal of the Tribunal on this 29th day of September, 2022.

[Signature]

(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

Certified to be true copy

**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

Date of Presentation of Application 19/5/23
Number of Words 272
Copying Fee 10/0
Urgent 5/0
Total 15/0
Name of Copy _____
Date of Completion of Copy 19/5/23
Date of Delivery of Copy 19/5/23



KHYBER PAKHTUNKHWA
BAR COUNCIL

ADVOCATE HIG

SADAM HUSSAIN ZAKORI

Advocate
bc-14-4591

Date of Issue: December 2020

Valid Unto: December 2022



16

Annexure - C

15



OFFICE OF THE
DISTRICT POLICE OFFICER
DERA ISMAIL KHAN
☎ 0966-928,062 Fax // 9280293

No. — /EC. dated D.I. Khan the /09/2022
ORDER

In pursuance of judgment of the Khyber Pakhtunkhwa Service Tribunal Camp Court DIKhan dated 22.11.2021, in WP No.5779/2020 and as per directions of the W/Inspector General of Police, Khyber Pakhtunkhwa Peshawar vide No. 4332/Legal dated 06.09.2022 endorsed by the Regional Police Officer, DIKhan vide No. 6094/ES dated 14.09.2022, Mr. Qayyum Nawaz No.1003 is hereby conditionally reinstated in service, subject to outcome of CPLA No. 173-P/2021 before the apex Supreme Court of Pakistan.

District Police Officer
Dera Ismail Khan

No. 355763/EC

dated

29 /09/2022

Copy of above is submitted to:-

1. The Regional Police Officer, DIKhan.
2. The Addl: Superintendent of Police DIKhan.
3. DSP Legal DIKhan.
4. ADSP HQs: DIKhan.
5. OHC DPO Office DIKhan.
6. I/C Security & Computer Lab DPO Office DIKhan.


District Police Officer
Dera Ismail Khan