Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 496/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.07.2023	The implementation petition of Mr. Sultan Muhammad submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution petition No. 496 /2023
In Service Appeal No.1227/2018

Sultan Muhammad **V/S** Police Department

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S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	--------	01-02
2	Copy of judgment dated 09.06.2023	A	03-07
3	Copy of application	B	08
4	Vakalat Nama	------	09

PETITIONER

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No._____/2023
In Service Appeal No.1227/2018

Sultan Muhammad, FC 1141 S/O Haji Fazal Mehmood,
R/o Regi Malakandher, Peshawar.

PETITIONER

VERSUS

1. Government of Khyber Pakhtunkhwa, Peshawar through Secretary Home & Tribal affairs Department.
2. Inspector General of Police, Peshawar.
3. Capital City Police Officer, Peshawar.
4. Superintendent of Police Head Quarter, Peshawar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 09.06.2023 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 1227/2018 in this Honorable Tribunal against the order dated 28.06.2018, whereby the petitioner was compulsory retirement from service and against order dated 15.10.2018, whereby the departmental appeal of the petitioner was rejected.

2. The appeal was finally heard and decided by this Honorable Tribunal on 09.06.2023. The Honorable Tribunal allowed by setting aside the impugned orders and the petitioner was reinstated into service with all back benefits. **(Copy of judgment dated 03.04.2023 is attached as Annexure-A)**

3. That the Honorable Service Tribunal reinstated the petitioner in service with all back benefits by accepting his appeal in its judgment dated 09.06.2023, but after the lapse of more than one month the petitioner was not reinstated by the respondents by implementing the judgment dated 09.06.2023 of this Honorable Tribunal.

4. That the petitioner has also filed application for implementation of judgment dated 09.06.2023, but no action has taken on his application by the respondents. **(Copy of application is attached as Annexure-B)**

5. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 09.06.2023 of this Honorable Tribunal in letter and spirit.

7. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement the judgment dated 09.06.2023 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 favour of petitioner.

PETITIONER
Sultan Muhammad

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

DEPONENT

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1227/2018

Date of Institution ... 08.10.2018

Date of Decision... 09.06.2023

Sultan Muhammad No. FC 1141 S/O Haji Fazal Mehmood R/O Regi Malakandher, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, Peshawar through Secretary Home & Tribal Affairs Department and 03 others. ... (Respondents)

MR. SAIF ULLAH KHALIL, Advocate --- For appellant.

MR. ASIF MASOOD ALI SHAH, Deputy District Attorney --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MS. FAREEHA PAUL --- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant appeal are that the appellant while posted in Police Line Peshawar, was involved in case FIR No. 72 dated 14.04.2014 under sections 302 PPC Police Station University Campus as well as case FIR No. 74 dated 15.04.2014 under sections 392/341 PPC Police Station University Campus. The inquiry proceedings against the appellant culminated into his dismissal from service vide order dated 29.04.2015. The departmental appeal of the appellant was also rejected vide order dated 30.03.2016. The appellant then filed Service Appeal No. 433/2016 before this Tribunal, which was

ATTESTED

allowed vide judgment dated 01.03.2018 with the directions to the respondent-department to conduct de-novo inquiry against the appellant. In light of judgment of this Tribunal, de-novo inquiry was carried out against the appellant and on conclusion of the same, he was awarded major penalty of compulsory retirement from service vide order dated 28.06.2018 passed by Superintendent of Police Headquarters Peshawar. The departmental appeal of the appellant was rejected vide order dated 15.10.2018 by the Capital City Police Officer Peshawar. The appellant has now approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to full hearing, respondents were summoned, who put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. Learned counsel for the appellant argued that elder brother of the appellant was killed due to land dispute and the appellant was then falsely involved by the opponents in three criminal cases for the purpose of causing damage to his service career. He next contended that the appellant has already been acquitted in all the criminal cases registered against him, therefore, the very ground on the basis of which departmental action was taken against the appellant has vanished away. He further argued that the inquiry officer has not recorded statement of any witness in support of the allegations leveled against the appellant but even then he had

wrongly and illegally concluded that the allegations against the appellant stood proved. He next argued that neither any show-cause notice nor charge sheet or statement of allegations were issued to the appellant in the de-novo inquiry proceedings and the inquiry proceedings are thus nullity in the eye of law. He next contended that the mandatory provisions of Police Rules, 1975 were not complied with by the inquiry officer in the inquiry proceedings. He also argued that the appellant was having an unblemished record of long service and he was wrongly and illegally awarded the impugned penalty, which is liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant was a member of disciplined force, however he was involved in three criminal cases and had brought bad name to the police department. He next argued that a regular inquiry was conducted against the appellant and the allegations against him stood proved, therefore, he has rightly been awarded the impugned penalty. He further argued that the appellant was afforded opportunity of personal hearing as well as self defence but he failed to substantiate his plea of innocence through any cogent evidence. In the last he argued that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant was charged in case FIR No. 72 dated 14.04.2014 under sections 302

PPC and case FIR No. 74 dated 15.04.2014 under sections 392/341 PPC Police Station University Campus as well as case FIR No. 110 dated 28.03.214 under sections 324/34 PPC Police Station Regi. According to the charge sheet as well as statement of allegations issued to the appellant, departmental action was taken against the appellant on the allegations of his involvement in case FIR No. 72 dated 14.04.2014 under sections 302 PPC and case FIR No. 74 dated 15.04.2014 under sections 392/341 PPC Police Station University Campus. We have gone through the de-novo inquiry report submitted by the inquiry officer and have observed that the inquiry officer has not recorded statement of any witness in support of the allegations leveled against the appellant. Even statements of complainants of the concerned criminal cases were not recorded by the inquiry officer in the de-novo inquiry proceedings. The inquiry officer was required to have carried out the inquiry proceedings in light of Khyber Pakhtunkhwa Police Rules, 1975, however it is astonishing that he has mentioned in his report that he had carried out a secret probe which reveals that the appellant was not carrying a sound reputation and is not fit to be retained in Police Force. Such finding of the inquiry officer was having no legal worth and could not be taken into consideration for awarding penalty to the appellant.

7. The appellant was proceeded against departmentally on the allegations of his involvement in criminal cases, however it is an admitted fact that he has already been acquitted in the concerned criminal cases by the competent court of law. In view of acquittal of

ATTESTED

the appellant, the very charges, on the basis of which the appellant was proceeded against, have vanished away. Nothing is available on the record, which could show that the acquittal order of the appellant has been challenged by the department through filing of appeal before the higher forum and the same has thus attained finality.

8. In view of the above discussion, the appeal in hand is allowed 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.

ANNOUNCED
09.06.2023

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(FAREEHA PAUL)
MEMBER (EXECUTIVE)

Naeem Amin

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
26/6/23

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(6)

10369 27/6/23

درخواست برائے دوبارہ بحالی من سائل برائے
پوسٹ ڈرائیور / کانسٹیبل No. 1141 BPS-
پوسٹ آفس پشاور

27/6/23

جناب عالی! سائل عرض رساں ہوں۔

1 - یہ کہ من سائل محکمہ پوسٹس میں بطور ڈرائیور / کانسٹیبل نمبری 1141 پوسٹل لائن میں باقاعدہ طور بھرتی تھا۔

2 - یہ کہ من سائل کو سال 2018 میں جبری ریٹائرڈ کیا ہوا تھا۔ جس نے باقاعدہ طور عدالت میں مقدمہ دائر کیا۔ اور عدالت نے من سائل کے حق کے احکامات صادر فرمائیں۔ (نقل لف ہا)۔

3 - یہ کہ من سائل کے دوبارہ بحالی مورخہ 09/06/2023 کو سروس ٹریبونل (نقل)

4 - یہ کہ اب من سائل کو حسب ضابطہ باقاعدہ طور پر اپنے ہی پوسٹ کے احکامات صادر فرمائیں۔

لہٰذا استدعا کرتا ہوں۔ کہ درخواست سائل منظور دوبارہ پوسٹ ڈرائیور / کانسٹیبل پر بحالی کے احکامات صادر فرمائیں۔

العارض
المرقوم 27.6.023

سلطان محمد ولد فضل محمد سکنہ دیگی ملاکنڈ حال پشاور
Mobile No. 0319-5134819

(9)

بعدالت

سپرنٹنڈنٹ سنٹرل جیل لاہور

مورخہ سنہ 2 منجانب سلطان محمد

مقدمہ سلطان محمد بنام محکمہ پولیس

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام لاہور کیلئے شمس الحق خان

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 دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی 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 پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب 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 لکھدیا کہ سند رہے۔

Accepted & Attested

المرقوم ماہ

العبد گواہ العبد

Sultan