


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 515/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.07.2023	<p>The implementation petition of Mr. Imran Khan submitted today by Mr. Muhammad Ilyas Orakzai 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>

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Execution Petition No. 515/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6682

Dated 21/07/23

CM (Implementation) No:- _____/2023

In
Service Appeal No:- 7262/2021

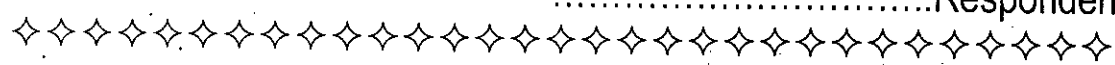
Imran Khan S/o Jan Muhammad, (Ex-Levy Sepoy) R/o Cast Mula Khel,
Tapa Char Khela, Village Badan, Tehsil Upper District Orakzai, presently
residing at Shahu Khel Road, Umar Abad, Tehsil & District Hangu.

..... Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar.
2. The Inspector General of Police (IGP), Khyber Pakhtunkhwa, Peshawar.
3. The Regional Police Officer (RPO), Kohat Region, Kohat.
4. The District Police Officer (DPO), District Orakzai, Orakzai Headquarter, Hangu.
5. Deputy Commissioner District Orakzai, Orakzai Headquarter, Hangu.

..... Respondents



APPLICATION FOR IMPLEMENTATION OF THE ORDER/
JUDGMENT DATED 04/05/2023 OF THIS HONOURABLE
TRIBUNAL IN THE ABOVE TITLED SERVICE APPEAL.

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Respectfully Sheweth:-

1. That the above titled Service Appeal was decided in favour of the applicant/appellant vide order/judgment dated 04/05/2023. (Copy of order dated 04/05/2023 is attached as annexure "A")

2. That this Honourable Tribunal give direction to the respondents, which is reproduced as under:-

"in view of the above discussion, the appeal in hand is allowed by setting aside the impugned orders and the appellant is re-instated in service with all back benefits."

3. That the respondent have not take any action of the judgment of this Honourable Tribunal till date and in this regard the appellant/applicant also filed an application before the respondent for implementation of the above order dated 04/05/2023, but in vain. (Copy of application is attached as annexure "B").

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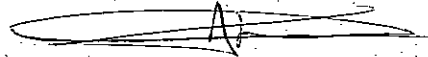
It is, therefore, most humbly prayed that on acceptance of this application, the respondents may kindly be direct to implement the order/judgment of this Honourable Tribunal dated 04/05/2023.

Dated:- 21/07/2023



Appellant

Through:-



Muhammad Ilyas Orakzai
Advocate High Court

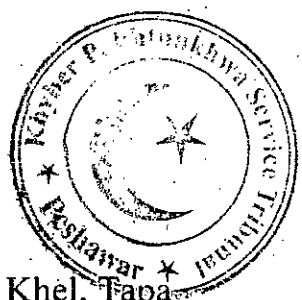
(B) Annex A'

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 7262/2021

Date of Institution ... 12.08.2021

Date of Decision... 04.05.2023



Imran Khan S/o Jan Muhammad, (Ex-Levy Sepoy). R/o Cast Mula Khel, Tapa Char Khela, Village Badan, Tehsil Upper District Orakzai, presently residing at Shahu Khel Road, Umar Abad, Tehsil & District Hangu.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar and 04 others.

... (Respondents)

MR. MUHAMMAD ILYAS ORAKZAI,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was appointed as Levy Sepoy vide order dated 16.06.2010. During the course of his service, he was charged in case FIR No. 562 dated 06.06.2017 under section 377 PPC Police Station City Hangu. The appellant was arrested and after facing trial, he was convicted by the learned Additional Sessions Judge Hangu vide judgment dated 07.06.2018 and was sentenced to undergo one year rigorous imprisonment. Upon his conviction, the appellant was terminated from service vide order dated 01.08.2018 passed by the then Deputy Commissioner District

ATTENDED
CHAIRMAN
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

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Orakzai. The appellant challenged his conviction through filing of criminal appeal No. 698-P/2018 before the august Peshawar High Court, Peshawar. Vide judgment dated 25.03.2019, passed by august Peshawar High Court, Peshawar, the judgment dated 07.06.2018 passed by Additional Sessions Judge Hangu was set-aside and the matter was remanded to the trial court. In the post remand proceeding, the appellant was acquitted vide judgment dated 11.06.2019 passed by the then Additional Sessions Judge-I Hangu. Upon his acquittal, the appellant preferred an application/ departmental appeal before the Deputy Commissioner District Orakzai on 26.06.2019 for his reinstatement in service. Vide letter dated 10.07.2019 the application/departmental appeal of the appellant was forwarded to the Deputy Inspector General of Police Kohat Region Kohat, who vide letter dated 16.01.2020 had observed that as the appellant was terminated from service by the Deputy Commissioner Orakzai, therefore, the matter was beyond the jurisdiction of police. The appellant then preferred Writ Petition No. 1818-P/2020 before the august Peshawar High Court, Peshawar, which was disposed of vide judgment dated 18.03.2020, wherein it was held that the fate of departmental appeal of the appellant may be decided by the concerned Deputy Commissioner or Commissioner concerned as the case may be. The departmental appeal of the appellant was dismissed by the Commissioner District Orakzai vide order dated 29.03.2021, hence the instant service appeal.

2. On admission of the appeal for regular hearing, notices were issued to the respondents. Respondent No. 5 contested the appeal by

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 Peshawar

way of submitting para-wise comments. Respondents No. 1 to 4 failed to submit reply/comments despite several opportunities being granted to them, therefore, their right of submission of reply/comments was struck of vide order dated 20.12.2022.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by respondent No. 5.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that the impugned order of termination of the appellant dated 01.08.2018 was passed on the sole ground of his conviction by the trial court in case FIR No. 562 dated 06.06.2017 registered under section 377 PPC Police Station City Hangu. The respondents have not produced any documentary evidence which could show that any departmental action in the shape of inquiry was taken against the appellant on account of his involvement in the concerned criminal case. Admittedly, the appellant has now been acquitted by the trial court vide judgment dated 11.06.2019. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was terminated from service, has 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

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 Service Tribunal
 Peshawar

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same has thus attained finality. The available record does not show that the appellant had remained gainfully employed in any service during the period during which he remained out of service on account of his termination from service.

6. 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
04.05.2023

(Handwritten signature)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

(Handwritten signature)

(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT ABBOTTABAD

Naeem Amin

(Handwritten signature)
Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09-5-23
Number of Page 4
Copying Fee 20/-
Urgent 20/-
Total 20/-
Date of Delivery of Copy 18/5/23

(9)

ANNEX B⁹

محکمہ خزانہ اور ٹریژری کے سیکشنز کے ذریعے فراہم کیے گئے اور ان کے بارے میں

درخواستیں

جہاں عالی!

گزارش ہے۔ کہ سائل درج ذیل گزارشات پیش کرتے ہیں۔

۱۔ یہ کہ سائل کیوں سبھی اور ان کے ساتھ ساتھ اور ناقص طور پر FIR تھانہ سٹی ہسٹو میں نامزد کر دیا تھا۔

۲۔ یہ کہ ڈسٹرکٹ کورٹس ہسٹو نے سائل کو درج شدہ مقدمہ میں بری کر دیا ہے۔

۳۔ یہ کہ پشاور ہائی کورٹ اور سکرپس ٹریبونل پشاور نے سائل کو حق میں فیصلہ جاری کر دیا ہے۔

۴۔ یہ کہ مورف 04/05/2023 کو سکرپس ٹریبونل پشاور نے سائل کے حق میں فیصلہ دیتے ہوئے سائل کو تمام مراعات کے ساتھ واپس جاتی مائرڈر جاری کیا ہے۔ (مافی لفا ہے)

یہ سائل کو دوبارہ نوکری جاتی جمع تمام مراعات جاری کرنے کے احکامات دی گئے۔

Dy. Office Orakzai
Dairy No. 4516
Dated 30/5/22

نوٹیشن ہوگی

مورف 30/05/2023

کامپوز

عمران خان کیوں سبھی ٹریبونل ڈسٹرکٹ اور کنزٹی۔ دیال نمبر۔ 0334-932635

ATTSTF



OFFICE OF THE DISTRICT POLICE OFFICER

ORAKZAI

NO. 534 /PA/DPO-Ork

Dated 30/05/2023

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To: The Deputy Commissioner
Orakzai


Subject: SERVICE APPEAL NO. 7262/2021 TITLE "IMRAN KHAN VS GOVT. OF KPK & OTHERS

Memo:-

Please refer to the subject cited above and your office letter No. 1082-DC-Ork/Litigation-Cell dated 17.05.2023.

1. It is stated that appellant named Imran Khan was at the strength of District Administration who was terminated from service on account of involvement in moral culprit vide your office order Endst: No. 1291/PA/LK dated 01.08.2018.
2. Feeling aggrieved the appellant filed department appeal before Regional Police Officer Kohat at disposed of beyond the jurisdiction of police copy enclosed.
3. Subsequently, in compliance with the order of Honorable Peshawar High Court Peshawar dated 18.03.2020 passed in writ petition No. 1818-P/2020 your office has passed the order vide dated 687/DC/R/C-21 dated 29.03.2021.
4. Forgoing the above, it is to bring into your kind notice that after promulgation of 25th amendment Police Organization is established in NMDs in 2019, while the appellant was proceeded with departmentally by your office, prior to merger and establishment of Khyber Pakhtunkhwa Police. Therefore the appellant is neither absorbed in police nor at the strength of police and the matter is behind the jurisdiction of police.

Therefore, it is requested that the matter may be looked into according to Judgement of Khyber Pakhtunkhwa Service Tribunal, please.


DISTRICT POLICE OFFICER, ORAKZAI

Copy of even No. & date to the following for information:-

1. The Regional Police Officer, Kohat.
2. AIG Legal, CPO Peshawar.


DISTRICT POLICE OFFICER, ORAKZAI


ATTSTED

(15)

وکالت نامہ

بعدالت فیسرتکون خواہ سرورس کمرشل کورٹ

ضلع:- اہل کڑی
مقدمہ فوجداری ادیوانی

منجانب:- محمد شہیر خلیل
23

مورخہ: _____ جرم: _____
تھانہ: _____
بنام: محمد شہیر خلیل ایڈووکیٹس ہائی کورٹ، پشاور
باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام۔

محمد الیاس اور کزنی، محمد شہیر خلیل ایڈووکیٹس ہائی کورٹ، پشاور

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 و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک درو پیرا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل گرانے و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکورہ کریں۔

لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم:- 21 ماہ جولائی 2023

بمقام پشاور کے لئے منظور ہے۔

العبد

العبد

Attested & Accepted

Muhammad Ilyas Orakzai
Advocate High Court
BC No:- 10-3471
CNIC 14101-0798923-7
Cell 0333-9191892

Muhammad Shabir Khalil
Advocate High Court
BC No:- 11-10999
CNIC 17301-1490356-7
Cell 0333-9047138

محمد شہیر خلیل ایڈووکیٹس ہائی کورٹ، پشاور
15-5446/650-1016/1271175