

# FORM OF ORDER SHEET

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

Appeal No. 1611/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07/08/2023	The appeal of Mr. Abid Ali presented by Kabir Ullah Khattak Advocate. It is fixed for hearing before touring Single Bench at _____.

By the order of \_\_\_\_\_



REGISTRAR

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. 1611 /2023

Abid Ali

***VERSUS***


Govt of Khyber Pakhtunkhwa through Secretary  
home Tribal Affairs department KPK Peshawar &  
others

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Abid Ali  
APPELLANT

Through

  
Kabir Ullah Khattak  
Advocate, High Court  
Peshawar.

(1)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. 16/11 /2023

Abid Ali S/o Said Akbar Shah R/o Mohallah  
Bahadar Abad, Tehsil Batkhela District  
Malakand.

**Appellant**

**VERSUS**

1. Govt of Khyber Pakhtunkhwa through Secretary  
home Tribal Affairs department KPK Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa.
3. Deputy Commissioner / Commandant Malakand  
Levis Malkand
4. Regional Police Officer Malakand.
5. District Police Officer Malakand.

**Respondents**

**APPEAL U/S-4 OF THE KHYBER PAKHTUNKHWA**  
**SERVICES TRIBUNAL ACT 1974 AGAINST THE**  
**ORDER DATED 25/08/2011 WHEREBY THE**  
**APPELLANT HAS BEEN TERMINATED FROM**  
**SERVICE AGAINST WHICH THE APPELLANT**  
**FILED DEPARTMENTAL APPEAL ON 15.09.2011**  
**WHICH HAS NOT BEEN DECIDED WITHIN**  
**STATUTORY PERIOD OF 90 DAYS.**

123  
Prayer:-

ON ACCEPTANCE OF THIS APPEAL  
THE IMPUGNED TERMINATION  
ORDER DATED 25.08.2011 MAY KINDLY  
BE SET ASIDE AND THE APPELLANT  
MAY KINDLY BE REINSTATED IN  
SERVICE ALONGWITH ALL BACK  
BENEFITS. ANY OTHER REMEDY  
WHICH DEEMS FIT BY THIS HON'BLE  
TRIBUNAL MAY ALSO BE GRANTED IN  
FAVOUR OF THE APPELLANT.

Respectfully Sheweth,

1. That the Appellant was appointed as a Sepahi BPS-5 in Malakand Lives on the recommendation and tribal affairs department Peshawar in 2005.
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That the appellant was performing his official duty in district Malakand regularly, punctuality, sincerity despite the constant threat to Levis of the police man and law

enforcement agencies from terrorist due to the war on terror.

4. That after the threat of the terrorist side appellants along with his family shifted to other district to save his life.
5. That on 25.08.2011 the impugned order has been passed against the appellant whereby the appellant has been terminated from service without fulfilling the codal formalities and without providing opportunity of defense to appellant. (Copy of termination order is attached as annexure "A").
6. That the appellant filed departmental appeal on 15.09.2011 against the impugned order dated 25.08.2011. (Copy of departmental appeal is attached as annexure "B").
7. That the appellant submitted applications regarding the response of departmental appeal in the year 2014 and 2018 and lastly submitted on 2023 but <sup>no</sup> response whatsoever has been provided to the appellant. (Copies

(4)

of applications are attached as annexure "C, D & E).

8. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

**GROUND:-**

- A. That the impugned order 25/08/2011 is void and abinitio order because it has been passed without fulfilling of the codal formalities.
- B. That no charge sheet has been served or communicated to the appellant in this respect the appellant relied upon a judgment reported on 2009 SCMR page:615
- C. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.
- D. That no final show cause notice has been issued and communicated to the appellant by Respondent department before imposing the major penalty in this respect the appellant relied upon a judgment reported on 2009 PLC (CS) 176.

E. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page:678.

F. That the impugned order termination from service is not included in the list of penalty provided in the rules applied of the appellant that's why according to the judgment<sup>of</sup> superior courts as well as of this Hon'ble Court the impugned termination order is come under the definition of void order against which no limitation has been counted.

G. That no opportunity of cross examination has been provided to the appellant.

H. That the impugned termination order is also void because no specification of absentee has been mention in the impugned order.

I. That it is pertinent to mention here that the appellant has never remain absent from duty but infact all the employees has been restrained from performing his official duty, due to threat of terrorist.

J. That no opportunity of personal hearing has been provided to the appellant which has been clarified from impugned order because the appellant.

K. That the punishment has been given by the Respondent department is harsh one.

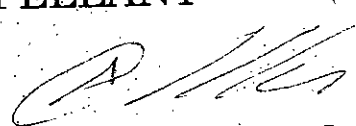

(b)

L. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

*It is therefore, most humbly prayed that on acceptance of this appeal the impugned Termination Order dated 25.08.2011 may kindly be set aside and the appellant may kindly be reinstated in service alongwith all back benefits. any other remedy which deems fit by this Hon'ble tribunal may also be granted in favour of the appellant..*

  
APPELLANT

Through

  
Kabir Ullah Khattak  
&   
Roeeda Khan  
Advocates, High Court  
Peshawar.

**NOTE:-**

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

  
Advocate.



(7)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2023

Abid Ali

***VERSUS***

Govt of Khyber Pakhtunkhwa through Secretary home Tribal  
Affairs department KPK Peshawar & others

**AFFIDAVIT**

I, Abid Ali S/o Said Akbar Shah R/o Mohallah Bahadar Abad, Tehsil Batkhela District Malakand, do hereby solemnly affirm and declare that all the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.

  
**DEPONENT**

(8)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2023

Abid Ali

***VERSUS***

Govt of Khyber Pakhtunkhwa through Secretary  
home Tribal Affairs department KPK Peshawar &  
others

**ADDRESSES OF PARTIES**

***PETITIONER.***


Abid Ali S/o Said Akbar Shah R/o Mohallah Bahadar  
Abad, Tehsil Batkhela District Malakand.

**ADDRESSES OF RESPONDENTS**

1. Govt of Khyber Pakhtunkhwa through Secretary  
home Tribal Affairs department KPK Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa.
3. Deputy Commissioner / Commandant Malakand  
Levis Malkand
4. Regional Police Officer Malakand.
5. District Police Officer Malakand.

  
APPELLANT

Through

  
Roeda Khan  
Advocate, High Court  
Peshawar.

(9)

**BEFORE THE HON'BLE SERVICE TRIBUNAL**  
**PESHAWAR**

In Re S.A No. \_\_\_\_\_/2023

Abid Ali

***VERSUS***

Govt of Khyber Pakhtunkhwa through Secretary home  
Tribal Affairs department KPK Peshawar & others

**APPLICATION FOR CONDONATION OF DELAY (if any)**

***Respectfully Sheweth,***

Petitioner submits as under:

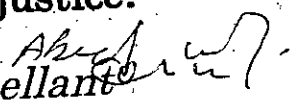
1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That it is pertinent to mention here that the appellant has never remain absent from duty but infact all the employees has been restrained from performing his official duty, due to threat of terrorist.

***Grounds:***

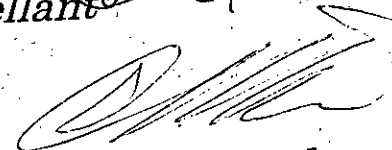
- A. That the impugned orders are void order and no limitation run against the void orders because the impugned termination order has been passed without fulfilling the codal formalities.

- B. That the impugned order termination from service is not included in the list of penalty provided in the rules applied of the appellant that's why according to the judgment superior courts as well as of this Hon'ble Court the impugned termination order is come under the definition of void order against which no limitation has been counted.
- C. That the impugned termination order is also void because no specification of absentee has been mention in the impugned order.
- D. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

Appellant 

Through

  
**Kabir Ullah Khattak**

&   
**Roeda Khan**

Advocates, High Court  
Peshawar.

"A" (11)

OFFICE OF THE DCO/COMMANDANT  
MALAKAND LEVIES MALAKAND

NO. 3238 /LC  
DATED MALAKAND THE 25/8/11

OFFICE ORDER

As reported by Subedar Major Malakand Levies, that No. 4690 Sepoy Abid Ali of Malakand Levies has absent from his duty and he was informed several times to attend his duty but he did not attend his duty till now and request for departmental action against the official concerned.

The official concerned has issued show cause notice to attend his duty within three days, otherwise he will be terminated from service, vide this office No. 3196/LC dated 20-08-2011. The Post Commander Batkhela has reported that he has gone abroad without any prior permission of the competent authority.

Hence, keeping in view the above, No.4690 Sepoy Abid Ali of Malakand Levies is hereby terminated from service with immediate effect.

~~DCO/COMMANDANT  
MALAKAND LEVIES MALAKAND~~

NO. 3239-4 /LC

Copy forwarded to the:-

1. Agency Accounts Officer, Malakand.
2. Subedar Major Malakand Levies:  
For information & necessary action.

~~DCO/COMMANDANT  
MALAKAND LEVIES MALAKAND~~

"B" (12)

To,

The Secretary home Tribal Affairs  
Department KPK Peshawar.

Subject:

**DEPARTMENTAL APPEAL AGAINST THE  
ORDER DATED 25.08.2011 WHEREBY THE  
APPELLANT HAS BEEN TERMINATED  
FROM SERVICE.**

Respected Sir,


With most respect and reference the following few lines are submitted for your kind consideration and favorable orders:

1. That the Appellant was appointed as a Sepahi BPS-5 in Malakand Lives on the recommendation and tribal affairs department Peshawar in 2005.
2. That the appellant was performing his official duty in district Malakand regularly, punctuality, sincerity despite the constant threat to Levis of the police man and law enforcement agencies from terrorist due to the war on terror.
3. That after the threat of the terrorist side appellants along with his family shifted to other district to save his life.
4. That it is pertinent to mention here that the appellant has never remain absent from duty but infact all the employees has been restrained from performing his official duty, due to threat of terrorist.
5. That on 25.08.2011 the impugned order has been passed against the appellant whereby the appellant has been terminated from service without fulfilling the codal formalities and without providing opportunity of defense to appellant.

(13)

It is therefore humbly prayed that on acceptance of the instant departmental appeal the impugned termination order dated 25.08.2011 may kindly be set aside and the appellant may kindly be reinstated on his service along with all back benefit.

Dated: 15.09.2011

  
Appellant

**ABID ALI**  
Ex- Sepahi Malakand Levis

۱۶۱  
۱۰۷  
محترم جناب ڈپٹی کمشنر / کمانڈنٹ صاحب مددکنڈ، ایونٹس و علاقہ  
دروائے جمہوریہ خالص کرنے کے معلومات بہرے ڈپٹی سیکرٹری ایس

جناب عالی۔ مسائل حسب ذیل عرض رساں ہیں۔

① یہ کہ مسائل ایک پر امن و قانون بند شری ہیں

② یہ کہ مسائل کو فوراً 8/2011 کو نوٹری سے Terminate کیا جس

کے خلاف جاتی ہے کے مسائل کے Departmental Appeal فوراً 9/2011

کو دائر کی جی جس کی بابت مسائل کو نوٹری معلومات فراہم نہیں کی جا رہی۔

لینڈ اسٹریٹ کے مسائل کو Departmental Appeal کے

بابت معلومات فراہم کرنے کا حکم صادر ہو گیا۔

فوراً 10/2014

ایس ایس ایس  
عابد علی سابقہ سب ایس ایس  
ایڈیشنل سیکرٹری



محترم جناب ڈپٹی کمشنر / ٹھانڈا صاحب مدد کنندہ ایجوکیشن منسٹر  
درخواست گزار فریضہ نے معلومات برائے ڈیپارٹمنٹل ایپل

منابعی مسائل حسب ذیل عرض دیا ہے۔

1) مسائل کو عودہ  $\frac{8}{2011}$  کو نوٹری سے Terminate کیا جس کے

خلاف بجائی سے مسائل نے Departmental عودہ  $\frac{9}{2011}$

کو دائرگی تھی جس کی بابت مسائل کو نوٹی معلومات فریضہ نے

جا رہی۔

2) یہ کہ مسائل نے اس سے لے کر بھی سال 2014ء میں اس بابت

درخواست دائرگی تھی۔

لہذا استدعا ہے کہ مسائل کو Departmental Appeal کے تحت

معلومات فریضہ کو فائل کرنے کا حکم صادر فرمائیں۔

خواجہ  $\frac{11}{2018}$

مسائل: عابد علی سابقہ سیاسی مدد کنندہ ایجوکیشن

امان 'E'

مخدمت جناب ڈی پی مکشنر / مگنڈنٹ صاحب ملاکنڈ لیویز ضلع ملاکنڈ

درخواست غرادر فراہم کرنے معلومات برائے ڈیپارٹمنٹل ایپل

جناب عالی:

سائل حسب ذیل عرض دساں ہے۔

1- یہ کہ سائل ایک پُر امن و قانون پسند شہری ہے۔

2- یہ کہ سائل کو مورخہ 25.08.2011 کو نوکری سے Terminate

کیا جس کے خلاف بحالی کے لئے سائل Departmental Appeal

مورخہ 15.09.2011 کو دائر کی گئی جسکی بابت سائل کو

کوئی معلومات فراہم نہیں کی جا رہی۔

3- یہ کہ سائل نے اس سے پہلے بھی سال 2014ء اور

2018ء میں اس بابت درخواست دائر کی تھی لیکن

اس بارے تاحال کوئی شنوائی نہیں ہوئی۔

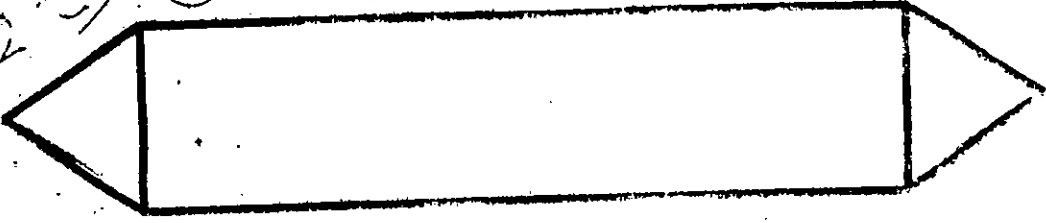
لہذا استدعا ہے کہ سائل کو Departmental Appeal

کے بابت معلومات فراہم کرنے کا حکم صادر فرمائیں۔

اطرف موصوم :- 23-7-20

العبد  
Abid Ali  
عابد علی سابقہ سپاہی ملاکنڈ لیویز

بعد التجدد سروس نردوئل سکرٹری جنرل



مورخہ

مقدمہ

دعویٰ

جرم

2 منجانب

عامہ علم بنام

بحث تحریر آتکہ

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

مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔

دیکر صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

درست ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یہ اپیل کی برآمدگی

نشوئی 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

کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے

کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے

سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔

دی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2022  
[Signatures and stamps]

Abid