FORM OF ORDER SHEET

Court of

Appeal No.	1738/2023

S.No.	Date of order	Order or other proceedings with signature of judge	
-	proceedings		
1	2	3	
	. ,		
1-	29/08/2023	The appeal of Mr. Ghafoor Khan is presented	
	•	today by Mr. Noor Muhammad Khattak Advocate. It is	
		fixed for preliminary hearing before Single Bench at	
	<i>,</i>	Peshawar on 3 -08-2023.	
	z	By the order of Chairman	
		A Chairman	
!		√ REGISTRAR .	
		1	

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No. 1738/2023

GHAFOOR KHAN

VS

GOVT OF KPK & OTHERS

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APPELLANT

Through:

NOOR MOHAMMAD KHATTAK ADVOCATE, SUPREME COURT OF PAKISTAN.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 1738/2023

Mr.Ghafoor Khan S/o Pura Khan Ex- Sepoy No.4947 Resident of Village Badagrah, Tehsil Dargai, District Malakand.

... APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary
- 2- The Secretary to Government of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
- **3-** The Deputy Commissioner/Commandant Malakand Levies.

RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT IMPLLEMENTING THE ORDER DATED 18-10-2017 WHEREBY THE DEPARTMENTAL APPEAL/REVISION PETITION OF THE APPELLANT HAS BEEN ACCEPTED AND THE RESPONDENTS HAVE BEEN DIRECTED TO REINSTATE THE APPELLANT INTO SERVICE WITH ALL BACK BENEFITS AND AGAINST THE INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed to implement the order dated 18-10-2017 and reinstate the appellant into service with all back benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favour of the appellant.

R. SHEWETH: ON FACTS:

- **1-** That the appellant was an employee of respondent department and was performing his duty as sepoy No.4939 quite efficiently and to the entire satisfaction of the superiors.
- 3- That the appellant feeling aggrieved from the aforesaid impugned order filed departmental appeal but the same has been

4- That the appellant after being highly aggrieved from the impugned order dated 08-06-2015 and appellate order of the respondents filed writ petition No.514-M/2015 in the Hon'able High Court Peshawar which was disposed of by the apex court in the terms as under:-

- 7. That the Secretary SAFRON while deciding the revision petition/departmental appeal of the appellant directed the competent authority to reinstate the appellant into service through order dated 18-10-2017. Copy of the order dated 18-10-2017 is attached as Annexure.
- 3. That after the issuance of the reinstatement order by the Secretary SAFRON the appellant was quite hopeful for his reinstatement but the competent/appointing authority of the appellant was reluctant to reinstate the appellant into service without any plausible reason. Where after the appellant presented various applications for the implementation of the order dated 18-10-2017 but in vain and lastly the appellant submitted an application before the respondent No.2 vide dated 03-03-2023. Copies of the applications are attached as Annexure.
- 9. That feeling aggrieved from the impugned inaction of the respondents the appellant preferred the instant appeal on the fallowing grounds.

GROUNDS:

- A- That the impugned inaction of the respondents by not implementing the order dated 18-10-2017 for the reinstatement of the appellant is against the law, facts, norms of natural justice and materials on the record hence not tenable; and liable to be set aside.
- B- That the appellant has not been treated by the concerned authority in accordance with law and rules and as such the

authority violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the impugned inaction of the respondents by not implementing the order dated 18-10-2017 for the reinstatement of the appellant is illegal and unlawful and the same is not sustainable in the eye of law.
- D- That impugned inaction of the respondents by not implementing the order dated 18-10-2017 for the reinstatement of the appellant is arbitrary, mala fide; and against the norms of natural justice.
- E- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Dated: 18.08.2023

APPELLANT GHAFOOR KHAN

THROUGH:

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MUHAMMAD AYUB

UMAR FAROOQ

& Model
KHANZAD GUL
ADVOCATES, PESHAWAR

AFFIDAVIT

I Mr.Ghafoor Khan S/o Pura Khan Ex- Sepoy No.4947 Resident of Village Badagrah, Tehsil Dargai, District Malakand do hereby solemnly affirm that the contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Deponent



OFFICE OF THE DC/COMMANDANT MALAKAND LEVIES MALAKAND

DATED MALAKAND THE.

Phone No: 0932-414880 Fax: 0932-413199

EFICE ORDER

As reported by Subedar Major Malakand Levies that No.4947 Sepoy Ghafoor Khan absent from his duty without any prior permission of the competent authority. He was time and again informed to attend his duty but he remained absent and report for departmental action ainst the official concerned vide Subedar Major endorsement No.284 dated: 05/05/2015.

Keeping in view of above, a show-cause notice issued to the official concerned vide his office No.2911/LC dated: 11/05/2015 through Post Commander Koper. The Post Commander Coper has reported that the official concerned is not present at his home and disappeared since tome tays. To this effect statement of his brother namely Saif-ur-Rehman also obtained on the overleaf of the show-cause notice.

Later on, a charge sheet was issued to the official concerned vide this office No.3321/LC dated: 26/05/2015 through Post Commander Koper. The Post Commander Koper has reported that the official concerned is not available/present in his home and gone to some unknown place His where about is not known. To this effect statements of elders of the locality namely ltbar Khar s/o Wali Muhammad r/o Miangan, Badraga and Saif ur Rehman s/o Pora Khan r/o Digan, Badraga, was recorded on the overleaf of charge sheet.

As Malakand Levies is a discipline force, the official concerned is found gui cy/misconduct under Levy Rules 2013, Schedule-II (see rules-10) clauses B,D&O, and therefore, 1 Muhammad Ali Abbas, DC/Commandant Malakand Levies as competent authority hereby terminated the official concerned from service with immediate effect.

NO. Copy forwarded to the:

1 District Accounts Officer, Malakand.

Subedar Major Malakand Levies.

For information and necessary action.

DC/COMMAI MALAKAND LÉVIES MALAKAND

DC/COMM MALAKAND LEVIES MALAKAND

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-5- "B"

GOVERNMENT OF KHYBER PAKHTUNKHWA, HOME & TRIBAL AFFAIRS DEPARTMENT





IN THE COURT OF HOME SECRETARY KHYBER PAKHTUNKKWA
(APPELLATE AUTHORITY)

APPELLANT: MR GHAFOOR KHAN V/S COMMANDANT LEVIES, MALAKAND

Departmental appeal of Mr. Ghafoor Khan, Ex-Levy Sepoy, Walakand against order No. 3692/LC dated 08.06.2015 issued by the D.C/Commandant Levies, Malakand.

ORDER

- Background of the case is that the appellant was terminated on account of absence from duty. His reinstatement requests were processed at appropriate level in the department and comments of the DC / Commandant Levies, Malakand obtained. The DC / Commandant Levies stated in his comments that several summon were issued but the appellant remained absent and it was reported that the appellant is not at home and gone to some unknown place. Hence show-cause and thereafter charge sheet served upon the applicant but remained absent hence terminated from service on 08.06.2015.
- The appellant was granted opportunity of personal hearing stating that he had a money dispute with someone and that is why he remained absent from duty. Mercover, he said that he was ill and could not attend duties. He could not give any plausible reason as to why he did not inform the authorities about the reasons for absence from duty, nor did he mention the money dispute in is written statement. Since he has not been able to submit any thing substantial during personal hearing, the appeal is rejected and the appellant may be informed accordingly.

F,

À 719101911666 Dated 19.09.2015 TELESTICANO DISTRICT INVENTANO

· (HOME SEĆRETARY) HYBER PAKHTUNKHWA

BETTER COPY OF THE PAGE NO. S GOVERNMENT OF KHYBER PAKHTUNKHWA HOME & TRIBAL AFFAIRS DEPARTMENT

IN THE COURT OF HOME SECRETARY KHYBER PAKHTUNKHWA (APPELLATE AUTHORITY)

APPELLANT MR. GHAFOOR KHAN V/S COMMANDANT LEVIES, MALAKAND

Departmental appeal of Mr. Gahfoor Khan, Ex-Levy Sepoy, Malakand against order No. 3692/LC dated 08/06/2015 issued by the D.C/Commandant Levies, Malakand.

ORDER

- Background of the case is that the applicant was terminated on account of absence from duty. His reinstatement requests, were processed at appropriate level in the department and comments of the DC/Commandant Levies, Malakand obtained. The DC/Commandant Levies stated in his comments that several summon were issued but the appellant remained absent and it was reported that the appellant is not at home and gone to some unknown place. Hence show-cause and thereafter charge sheet served upon the applicant but remained absent hence terminated from service on 08/06/2015.
- 3. The appellant was granted opportunity of personal hearing stating that he had a money dispute with someone and that is why he remained absent from duty. Moreover, he said that he was ill and could not attend duties. He could not give any plausible reason as to why he did not inform the authorities about the reasons for absence from duty, nor did be mention the money dispute in is written statement. Since he has not been able to submit any thing substantial during personal hearing, the appeal is rejected and the appellant may be informed accordingly.

(HOME SECRETARY) KHYBER PAKHTUNKHWA

Announced:

BEFORE THE PESHAWAR HIGH COURT/ MINGOI BENCH (DARUL QAZA) AT SWAT

Writ Petition No. 514 M of 2015

Ghafoor Khan son of Pura Khan
Resident of Village Badargah, Tehsil Dargai,
District Malakand.

Petitioner

VERSUS

- (1) Federation of Pakistan through Ministry of SAFRON, Pak Secretariat, Islamabad.
- (2) Govt. of Khyber Pakhtunkhwa through Secretary
 Home & Tribal Affairs, FATA Secretariat, Worsak
 Road, Peshawar.
- (3) Secretary Law & Order, FATA Secretariat Worsak Road, Peshawar.
- (4) Deputy Commissioner / Commandant Malakand Levies, Malakand.

.... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

12 OCT 2015

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT (Judicial Department)

<u>W.P. No. 514-M/2015.</u> <u>JUDGMENT</u>

Date of hearing: 26.4.2017.

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Petitioner:- (Ghafoor Khan) by Mr. Zia-ur-Rahman Utmankhel, Advocate.

Respondents (Federation of Pakistan through Ministry of SAFRON & others) by Mr. Hussain Ali, Deputy Attorney General and Mr. Sabir Shah, A.A.G.

the constitutional jurisdiction of this Court,
Ghafoor Khan the Petitioner herein, by filing
this writ petition has come up with the
perspective prayer:-

"In the light of above and so many other grounds, it is therefore, prayed that by acceptance of the instant writ petition the impugned order of termination of the Petitioner may be set aside.

"Any other remedy coupled with cost, which efficacious and appropriate, in peculiar circumstances of the case, may please be graciously granted, though not specifically prayed for."

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- He has set as many as grounds from (A) to (G) and has therefore prayed in accordance with the set prayer in the writ petition.
- A. Learned DAG and learned A.A.G appearing on behalf of the Official Respondents in view of the comments furnished by DC/Commandant Malakand Levies, Respondent No. 4 and Secretary Home & Tribal Affairs Department, Govt: of Khyber Pakhtunkhwa, Peshawar, Respondent No. 2 that

wa)

preferred before the Worthy appeal Secretary Home Khyber Pakhtunkhwa (Appellate Authority) after hearing dismissed vide the order dated 16.01.2013. to the Khyber Pakhtunkhwa According Government Guzette Extraordinary, 20th -September, 2012 an appeal under section [1] if the competent authority dismisses such an appeal, the Force Personnel may file a revision petition to the next higher authority within thirty days of the receipt of decision of appeal or sixty days of the preference of appeal, whichever is earlier.

- 5. The next higher authority has been pointed-out is to be the SAFRON, but the Petitioner when his appeal has been dismissed has never preferred any revision to the said higher authority within the ambit of its limitation.
- 6. It was at best thought for that as Section 11 provides that whenever an appeal is dismissed, the revision petition may be filed to

the higher authority which has not been done so.

Let with consent of the parties, this writ petition
be termed as revision petition to be placed
before the next higher authority within the legal
framework, who shall by all means decide the
wheel of fortune of the Petitioner within two (2)
months on receiving this order.

7. In such terms, this writ petition is disposed of accordingly.

Announced Dt: 26.04.2017 Sd. Mohamin Walliamim Khan-J Sd. Mariani Shakoor J

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28/4/2017

The Secretary

SAFRON Islamabads

(Opportmental Appeal) 2 Subject :

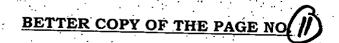
Esleened Sit:

with great regard it is submitted that the applicant in the relaterant Levies Forces and Served for ten (10) Year: The applicant served with great zeal zest and devotion Mere is not a single complaint against the pelitioner. That owing to domestic problems that affect applicant remaind absent an accident and for about 43 days. That the applicant is Submitted on rejected. Le fore the Honomable Secretary Home Denaitment but was The applicant lodged a wort petition before the Honomable Perhawar Him went ringora Beach The Honographia could directed the The Honomable Secretary applicant to submit on appeal before MERON

applicant belongs to a tumble family The gurdian of his Family.

re- instate the It is therefore, tendy applicant.

CAll relevant documents are alloche



To.

The Secretary SAFRON Islamabad.

Subject:

DEPARTMENTAL APPEAL

Esteemed Sir,

With great regard it is submitted that the applicant was an employee in the Malakand Levies Force and served for ten (10) years. The applicant served with great zeal, zest and devotion and there is not a single complaint against the petitioner. That owing to an accident and domestic problems that the applicant remained absent for about 43 days. That the applicant submitted an appeal before the Hon'ble Secretary Home Department but was rejected. The applicant lodged a writ petition before the Hon'ble Peshawar High Court, Mingora Bench. The Hon'ble Court directed the applicant to submit an appeal before the Hon'ble Secretary SAFRON.

The applicant belongs to a humble family and the sole guardian of his family.

It is therefore, kindly requested to re-instate the applicant.

I shall be very thankful
(All relevant documents are attached)

Your obedient

Ghafoor Khan

E"-12-

No.F.2(34)-LIC/2014
Government of Pakistan
Ministry of States & Frontier Regions

Islamabad, the 18th October, 2017

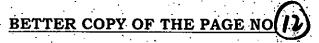
the Deputy Commissioner/Commandant, Vialaka ad Levy Force, <u>VIALA KAND.</u>

Subject:- APPEAL FOR RE-INSTATEMENT.

The undersigned is directed to refer to the subject cited above and to say that the Ghabor Khan, Regt No.4947 has submitted an appeal for re-instatement in service. The appeal is also liked a Writ Petition at Peshawar High Court Dar-ul-Quzu at Swat. The monor the Court disposed off the case with the directions to the petitioners to submit it departmental appeal before the competent authority i.e. Secretary, SAFRON for sympathic consideration.

It is therefore requested that Mr. Ghafoor Khan may kindly be re-instated into

(MAQSOOD AHMED BURIRO Section Officer (LK&B)



By: U.M.S

No. F.2(34)-LK/2014
Government of Pakistan
Ministry of States & Frontier Regions

Islamabad, the 18th October, 2017

The Deputy Commissioner/Commandant, Malakand Levy Force.

MALAKAND

Subject: APPEAL FOR RE-INSTATEMENT

The undersigned is directed to refer to the subject cited above and to say that Mr. Ghafoor Khan, Regt No. 4947 has submitted an appeal for reinstatement in service. The appellants also filed a Writ Petition at Peshawar High Court, Dar-ul-Qaza at Swat. The Honorable Court disposed off the case with the directions to the petitioners to submit a departmental appeal before the competent authority i.e. Secretary, SAFRON for sympathic consideration.

It is therefore requested that Mr. Ghafoor Khan may kindly be re-instated into service.

(MAQSOOD AHMAD BURIRO) Section Officer (LK&B)



مرد از ارتی م علی و له مره مط . کینت ساسی ما اور لرمز مين ملازمت ترماعاً . بنره بحش سامي فتريم رس سال مالان مريز من وركوى مرفعاع - تقريباً على رسال يبلي في الريو و الله ى ئىلى مىلى ئىلى ئى ئى ئى ئى ئى ئى ئى ئى ئى من ك من ير منابعة وليني كشر على ساك على عربة الم سے می مرشاست کما تھا۔ منا- مای سره شاری مرب او ان می تعلی داندی بیره شاری اور باری بردن کا و احد کسی علی این در این کا واقع کسی می این در این کا واقع کسی می این در این کارود - این می در این در ا 1. 1240 210 2 140 2 (16/10) grape (16/10) د در بیره دری و تری در مال کر مای - بیره کامیان و تارای . - O/W/ 11 / 1/2 1/2 نورخان ولد موراخان (مرحر) سن برركر

كرمت خاب سمريري معوم في بيارنهيث ليناور ج ادسالات عام معرات كراز روباره كالح ماارات رينورس صب ديل بان سے رن مرك ما موضع مداك زهم لوم على اربى صلع مدانم كان نرب ه وا وي المراس المرادمة تان نجه معرسون وهوي ک بن د مرح هر د ن فير م رون على جامر أوسى وقت معاجر و دري كانتها ما على عن س نه الله كوروري Le Cocione de 5 los eperos de de sociones ولا مرق المد جمور من عرات دارالففاء منكرره سوات لغرفه م إلفهاى/فرياد الم معدد زمان المراب في بارغين المعني ما المعلى ما حاسد و المرازان سالم مع معمول إمار كو المواسي فرس ك و المراد كالمرائي (C.0,6,0) & Fe & 10 - GDC - LK 8. B , 10 (18 2017 013 (2 16 03. 8 9102 Will an english for 2016 عربي في نما نظمان مو الله على موروع المربي في المربية اور دوائی و تدر و بر تنزاه ای کاری سرن - عد دشاه درات در درا و سی المرا مرابع الموادي المرا من المراج ا ردى رى كال و كا ها مرون ما دون ما دور الم دي الم دون الله و الله الم ففوره ومراوران الارود

-14-

The Commandant, Malakand Levies, Malakand

Subject:

grounds.

APPLICATION FOR REINSTATEMENT

: /Sir.

With great regard, it is submitted that the applicant is the citizen of Pakistan and bonafide resident of District Malakand. That the applicant was appointed in the Malakand Levy Force in the year 2006. The applicant served with great zeal and zest and there was no single complaint against the applicant in his entire service. The applicant remained absent from duty owing to his disease and domestic problemes for 20-25 days. Hence, he was terminated from service accordingly.

That the applicant submitted departmental appeal before the competent authority but no heed has been given to the applicant. The applicant filed writ petition in the Peshawar High Court Mingora Bench and the directives were given in the judgment.

Therefore, it is humbly requested that the applicant may kindly be reinstated in service. The applicant belongs to humble family and the sole guardian/breadwinner of his family (Copies of relevant documents enclosed.)

I shall be very thankful if my request is entertained on humanitarian

Dated: 15.06.2022

Yours truly,

Ghafoor Khan Reg: No4947

Cell No.03419393858

16-

The Commandant, www. Malakand Levies, Malakand

Subject:

APPLICATION FOR REINSTATEMENT

R/Sir,

With great regard, it is submitted that the applicant is the citizen of Pakistan and bonafide resident of District Malakand. That the applicant was appointed in the Malakand Levy Force in the year 2006. The applicant served with great zeal and zest and there was no single complaint against the applicant in his entire service. The applicant remained absent from duty owing to his disease and domestic problemes for 20-25 days. Hence, he was terminated from service accordingly.

That the applicant submitted departmental appeal before the competent authority but no heed has been given to the applicant. The applicant filed writ petition in the Peshawar High Court Mingora Bench and the directives were given in the judgment.

Therefore, it is humbly requested that the applicant may kindly be reinstated in service. The applicant belongs to humble family and the sole guardian/breadwinner of his family. (Copies of relevant documents enclosed.)

grounds.

Dated: 3-3-2023

Yours truly,

Ghafoor Khan

Reg: No4947

Cell No 03419393858

17-

VAKALATNAMA BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal No	/20 <u>2_3</u>
1919 food Khau VERSUS 1914 of KPK	(APPELLANT) (PLAINTIFF) (PETITIONER) (RESPONDENT) (DEFENDANT)
Do hereby appoint and constitute Noor Advocate Supreme Court to appear, withdraw or refer to arbitration for Counsel/Advocate in the above noted may for his default and with the authority to e Advocate Counsel on my/our cost. I/Advocate to deposit, withdraw and recessums and amounts payable or deposited of the control of the counsel of the coun	plead, act, compromise, or me/us as my/our tter, without any liability ngage/appoint any other we authorize the said we on my/our behalf all
Dated/202	CLIENT
ADVO WALE	MOHAMMAD KHATTAK CATE SUPREME COURT W ED ADNAN AN KHAN
MUHA & MAHM	FAROOQ MOHMAND MMAD AYUB OOD JAN CATES

Flat No. (TF) 291-292 3rd Floor, Deans Trade Centre, Peshawar Cantt. (03:1-9314232)