


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 603/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.08.2023	<p>The implementation petition of Mr. Ahmad Nawaz is submitted today by Mr. Uzma Syed Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>31-08-2023</u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Execution Petition # 603/2023

Execution Petition No. _____/2023

In

Appeal No. 7687/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. *7292*

Dated *29/8/23*

Ahmad Nawaz Constable No. 413 Kohat Region Kohat.

..... Appellant

Versus

1. the Inspector General of Police KPK CPO Peshawar.
2. Regional Police Officer Kohat, Regin Kohat.
3. District Police Officer Kohat.

..... Respondents

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Dated 29.08.2023

Ahmad Nawaz
Appellant/Petitioner

Through

Uzma Syed
Advocate
High Court Peshawar

(13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 603 /2023
In

Appeal No. 7687/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7242

Dated. 29/8/2023

Ahmad Nawaz Constable No. 413 Kohat Region Kohat.

..... Appellant

Versus

1. the Inspector General of Police KPK CPO Peshawar.
2. Regional Police Officer Kohat, Regin Kohat.
3. District Police Officer Kohat.

..... Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 28/10/2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No.7687/2021 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 28/10/2022 which was accepted and the impugned order dated 14/07/2020 is set aside and the appellant is reinstated in service with all back benefits. (Copy of the Judgment is attached as Annexure-A).
2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention

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Judgment and properly moved an application to respondent Department. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.

3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment dated 28/10/2022 of this Hon' able Tribunal.

Dated 29.08.2023

Muhammad Naveed
Appellant/Petitioner

Through

Uzma Syed
Uzma Syed Advocate
High Court Peshawar

(1) (3)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. _____/2021



Ahmad Nawaz no: 413, Constable
Kohat Region Kohat.

(Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, CPO Peshawar.
2. Regional Police Officer Kohat, Region Kohat.
3. District Police Officer Kohat.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK
SERVICE TRIBUNALS ACT, 1974 AGAINST
THE ORDER DATED 14.07.2020,
WHEREBY THE APPELLANT WAS
EXONERATED AND PERIOD WAS
TREATED AS EXTRA ORDINARY LEAVE
WITHOUT PAY AND AGAINST NOT TAKING
ACTION ON THE DEPARTMENTAL
APPEAL OF THE APPELLANT WITH IN
STATUTORY PERIOD OF 90 DAYS.

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Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7687/2021

Date of Institution ... 26.10.2021

Date of Decision ... 28.10.2022

Ahmad Nawaz, Constable No. 413, Kohat Region Kohat.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, CPO Peshawar and two others.

... (Respondents)

MS. UZMA SYED,
Advocate

--- For appellant.

MR. NASEER-UD-DIN SHAH,
Assistant Advocate General


--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to the present appeal are that departmental action was taken against the appellant on the allegations of absence from duty as well as his involvement in case FIR No.804 dated 27.08.2016 under Sections 302/202/109/148/149 PPC Police Station Muhammad Riaz Shaheed District Kohat and case FIR No. 811 dated 28.08.2016 under Sections 223/224 PPC Police Station Muhammad Riaz Shaheed District Kohat. On conclusion of the inquiry, he was awarded major penalty of compulsory retirement from service, however service appeal of the appellant was partially allowed vide judgment dated 19.02.2020, and the matter was remitted to the


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respondent-department for de-novo inquiry. During the de-novo inquiry, the appellant was exonerated and he was reinstated in service vide order bearing O.B No. 497 dated 14.07.2020, however intervening period was treated as un-authorized leave without pay. The aforementioned order to the extent of treating the intervening period as un-authorized leave without pay was challenged by the appellant through filing of departmental appeal, which remained un-responded, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that as the appellant was exonerated from the charges leveled against him and was reinstated in service, therefore, the competent Authority was legally not justified in treating the intervening period as leave without pay; that the appellant remained out of service on account of his wrongful compulsory retirement by the respondents and no fault existed on part of the appellant in non-performing of his duty during the intervening period; that appellant did not remain willfully employed during the period of compulsory retirement and he is legally entitled to all back benefits; that although there is some delay in filing of service appeal, however in view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the delay in filing of the appeal is condonable; that even otherwise too, the matter is relating to financial benefits and no limitation would run against the same. Reliance was placed on, 2007


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SCMR 855, PLD 2003 Supreme Court 724, 2015 PLC (C.S) 366 and 2015 SCMR 77.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that though the appellant has been reinstated in service, however in view of the principle of no work no pay, the appellant is not entitled to any back benefits for the period during which he remained out of service; that the service appeal of the appellant is time barred and is liable to be dismissed on this score alone. Reliance was placed on the judgment dated 18.04.2018 rendered by this Tribunal in Appeal bearing No. 218/2016 titled "Shah Duran Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others".

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 awarded major penalty of compulsory retirement from service vide order dated 13.01.2017, which was set-aside by this Tribunal and matter was remitted to respondent-department for de-novo inquiry. During de-novo inquiry, the appellant has been exonerated of the charges leveled against him. In view of exoneration of the appellant in the de-novo inquiry, this fact has been established that in the previous inquiry, the appellant had been wrongly and illegally awarded major penalty of compulsory retirement from service. It was thus, due to wrongful penalty of compulsory retirement from service that the appellant was unable to perform his duty during the


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intervening period, therefore, the competent Authority was not justified in treating the same as un-authorized leave without pay. Nothing is available on the record, which could show that the appellant had remained gainfully employed during the period of his compulsory retirement. On reinstatement of the appellant in service, he was entitled to all back benefits with effect from the date of his compulsory retirement till the date of his reinstatement in service.

7. In the wake of outspread of COVID-19, the Government of Khyber Pakhtunkhwa declared Public Health Emergency for the first time in March, 2020 for three months, which was extended from time to time for further term. The case of the appellant falls within the period of emergency. In view of Section-30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law shall remain frozen. The appeal in hand is thus not hit by limitation.

8. In view of the above discussion, the appeal in hand is allowed by modifying the impugned order dated 14.07.2020 and the appellant is held entitled to all back benefits with effect from the date of his compulsory retirement i.e 13.01.2017 till the date of his reinstatement in service i.e 14.07.2020. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.10.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

Date of Presentation of Application	29/08/2023
Number of Words	81-
Copying Fee	25/-
Argument	5/-
Total	30/-
Name of Copyiest	
Date of Completion of Copy	
Date of Delivery of Copy	29/08/2023

بعدالت

۱۹۸۰ Peeru Tribunal, Peshawar

۲۰۲۳ منجانب

احمد نواز بنام

مورخہ

مقدمہ

دعویٰ

جرم

لو لیس

باعث تحریر آنکے

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

آن مقام پینالوجی کیلئے عظمیٰ سردی ایڈووکیٹس 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 دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی 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 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 پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پلچند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2023ء

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المرقوم

العبد د گ واہ العبد