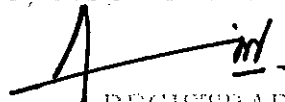


FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 602/2023

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. Bashir Muhammad is submitted today by Mr. Javed Iqbal 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 # 602/2023
Service Appeal No. 2765/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7269

Dated 29/8/2023

Bashir Muhammad (Sub-Inspector)

Versus

Inspector General of Police KPK & Others

INDEX

S.No.	Description of documents	Annex	Pages
1.	Memo of application of Execution with affidavit		1-2
2.	Copy of Judgment	"A"	3-7
3.	DPO Nowshera Order 17.12.2020 regarding punishment	"B"	8
4.	Wakalat Nama		9

Dated: 29/08/2023

Through

Appellant

JAVED IQBAL

Advocate District Court

Mardan

Cell # 0331-9224274

(1)

**BEFORE THE HON'BLE CHAIRMAN SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR**

Execution Petition # 602/2023
Service Appeal No: 2765/2021

Bashir Muhammad (Sub-Inspector) of Police MR-31, District Nowshera

(Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2. Regional Police Officer, Mardan Region.
3. District Police Officer, District Nowshera.

(Respondents)


Subject: **EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO
IMPLEMENT THE JUDGMENT DATED 03/08/2023 OF THIS HON'BLE
TRIUBNAL IN LETTER & SPIRIT.**

Respected Sir!

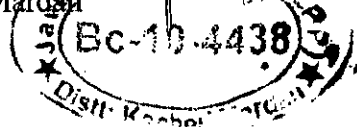
1. The petitioner namely Bashir Muhammad (Sub-Inspector) while posted as Inspector SHO Police Station Risalpur District Nowshera was departmentally proceeded against on the allegations that during registration Case F.I.R No. 645 dated 09/11/2020 U/S 9(D) CNSA PS: Risalpur District Nowshera against accused Mohammad Ishaq & Haji Khan R/o Qamber Khel, District Khyber, he showed less quantity of Narcotics than actual quantity and also replaced it. According to the departmental enquiry the petitioner/ appellant was found guilty of the said misconduct by the enquiry officer. On the basis of the said enquiry the petitioner/ appellant was awarded the punishment of reduction from the confirmed rank of Inspector to the lower rank of Sub-Inspector vide the order of the Learned D.P.O Nowshera dated 17/12/2020 as Annexure -A.
2. After failure of departmental appeal, the petitioner/ appellant filed service appeal in the court of Service Tribunal KPK Peshawar which was partially accepted and department was directed denovo enquiry vided Judgment dated 03/08/2023 as Annexure -B
3. In the light of said judgment, the petitioner/ appellant approach to the department for reinstatement in the original rank of Inspector till the outcome of denovo enquiry, but respondents are reluctant to obey the order of this Hon'ble Tribunal.

It is, therefore, humbly prayed that the respondents may kindly be directed to reinstate the petitioner to the original rank of Inspector till the outcome of the denovo enquiry in greater interest of justice.

Dated: 29/08/2023


Bashir Mchammad
S.I MR-31/ Police Station Hoti
District Mardan

Through Counsel
Javed Iqbal
Advocate, District Courts
Mardan



9

**BEFORE THE HONOURABLE CHAIRMAN SERVICE TRIBUNAL
Khyber Pakhtunkhwa, Peshawar.**

Service Appeal No. 2765/2021

Bashir Muhammad (Sub-Inspector) of Police MR-31-District Nowshera (Appellant)

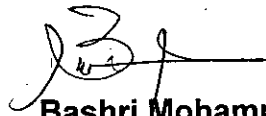
V E R S U S

Inspector General of Police Khyber Pakhtunkhwa Peshawar etc..... (Respondent)

AFFIDAVIT

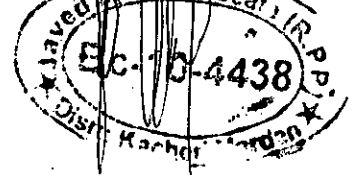
It is certified that the contents of application is true and correct to the best of my knowledge and belief and nothing has been concealed / suppressed from this Honourable Court.

ATTESTED
27/08/2021



Bashri Mohammad
S.I MR-31 Police Station Hoti
District Mardan

Through Counsel
Javed Iqbal Advocate
District Courts Mardan



A 1 3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2765/2021

BEFORE: MRS. RASHIDA BANO
MISS FAREEHA PAUL

MEMBER (J)
MEMBER (E)

Bashir Muhammad Sub-Inspector of Police MR-31 District Nowshera.
..... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police Mardan Region Mardan.
3. District Police Office Mardan.

..... (Respondents)

Mr. Javid Iqbal
Advocate

For appellant

Mr. Fazal Shah Mohmand
Additional Advocate General

For respondents

Date of Institution.....12.02.2021
Date of Hearing.....03.08.2023
Date of Decision.....03.08.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, order dated 17.12.2020 and 15.01.2021 may kindly be set aside and appellant be reinstated in the previous rank of Inspector with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal are, that the appellant while posted as Inspector/SHO Risalpur was departmentally proceeded against on the allegations that he less quantity

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Service Tribunal
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Khyber Pakhtunkhwa
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of contraband narcotic and replaced it while registering case FIR No. 645 U/S 9(D) CNSA Police Station Risalpur District Nowshera dated 09.11.2020 against the accused Muhammad Ishaq and Haji Khan R/O Qamber Khel District Khyber. The appellant was issued charge sheet alongwith statement of allegations by DPO Nowshera for the alleged misconduct and DSP Headquarter was appointed as enquiry officer. After departmental enquiry final show cause notice was issued to the appellant upon which he submitted reply. Thereafter, major punishment of reduction in rank was imposed upon him. The appellant filed departmental appeal which was rejected vide order dated 17.12.2021, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant was not treated in accordance with law and rules and the orders passed by the respondents are unlawful in the eyes of law. He contended that neither the Norcotic was less than the actual recovery nor it was replaced because the factum of recovery of Norcotic has been proved by the statements of PWS and FSL report during the investigation which was further substantiated by video of the accused in a press conference. No one has made any complaint about the less quantity and replacement of Norcotic. He further contended that all allegations were made on mere hearsay, only to create dent in prosecution case and rescue the accused from the clutches of law. He submitted that enquiry was conducted in haphazard manner and no rules and regulations have been followed. Lastly, he submitted that enquiry

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officer by his designation of his scale is not authorized to conduct enquiry against the appellant, therefore, he requested for acceptance of the instant appeal.

5. The learned Additional Advocate General contended that the appellant was treated in accordance with law and rules. He further contended that appellant while posted as SHO Risalpur registered case FIR No. 645 U/S 9(D) CNSA Police Station Risalpur District Nowshera dated 09.11.2020 wherein he showed the contraband less than quantity and also replaced by him which amounts to gross misconduct on his part and rendered him liable for punishment under the Khyber Pakhtunkhwa, Police Rules, 1975. Departmental enquiry was conducted and after fulfillment of all codal formalities major penalty of reduction in rank was imposed upon the appellant.

6. Perusal of record reveals that appellant was issued show cause notice alongwith statement of allegation on 12.11.2020 by appointing DSP HQRs as enquiry officer, who after completing codal formalities submitted his report on 01.11.2020. As a result of inquiry report, final show cause notice was issued to the appellant to which he submitted reply and was finally awarded punishment of reduction in rank from Inspector to Sub-Inspector vide impugned order dated 17.12.2020. Appellant filed departmental appeal on 24.12.2020 which was rejected on 15.01.2021, while instant service appeal is filed on 12.02.2021. Charge sheet was issued with the allegation that while posted as SHO P.S Risalpur, now under suspension at Police Lines, registered case vide FIR No. 645 dated 09.11.2020 U/S 9(D) CNSA P.S, Risalpur against accused Muhammad Ishaq S/O Abid Khan and Haji Khan S/O Zakir Khan wherein he showed the contraband less than the actual amount which amounts to grave misconduct on his part and rendered

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him liable for punishment under Khyber Pakhtunkhwa Police Rules, 1975. Saif Ali Khan was appointed as Enquiry Officer who was Inspector (BPS-16) in rank and was transferred/posted on acting charge basis vide order dated 21.10.2020. So inquiry officer on 12.11.2020 till submitting of his report dated 01.12.2020, was Inspector and was not DSP. Under law Rule 5(4) the inquiry officer must be senior in rank to the accused official, so inquiry proceedings conducted by Inspector is against the Police Rules, 1975 as the accused/appellant himself was Inspector at the time of inquiry. Therefore, this inquiry was not in accordance with law and rules being conducted by the officer of the same rank i.e Inspector (BPS-16) to that of appellant.

7. It is a well settled legal proposition duly supported by numerous judgments of the apex court that for imposition of major penalty, regular inquiry by providing opportunity of cross examination is a must. Reliance is placed on 2022 PLC (CS) 985 and 2019 PLC (CS) 224. Moreover, no opportunity of cross examination was provided to the appellant upon the witness who disposed in inquiry against him which is very essential element of regular inquiry. Beside that witnesses who disposed against the appellant also recorded their statement in court of law in that criminal case wherein they supported on oath. Contents of FIR where less quantity of contraband was shown in record. This is also speak otherwise and was not in consonance with their statement recorded during inquiry rather was in contradiction of it.

8. In view of the above, instant appeal is partially allowed. Case is remitted back to the department with direction to conduct denovo inquiry within 90 days of the receipt of this judgment by appointing officer higher in rank from the appellant and also to provide opportunity of self defense

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and personal hearing to the appellant. The issue of back benefits shall be subject to the outcome of denovo inquiry. Costs shall follow the event. Consign.


9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 3rd day of August, 2023:


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Service Tribunal
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Service Tribunal
Peshawar

Date of Presentation of Application 10/8/23
Number of Words Page 5
Copying Fee 35/-
Urgent 35/-
Total 30/-
Name of Copyist _____
Date of Completion 10/8/23
Date of Delivery of Copy 10/8/23

Date of Presentation of Application 29/08/2023
Number of Words 5/-
Copying Fee 25/-
Urgent 5/-
Total 30/-
Name of Copyist _____
Date of Completion 29/08/2023
Date of Delivery of Copy 29/08/2023

POLICE DEPARTMENTDISTRICT NOWSHERAORDER

This order will dispose of the departmental enquiry initiated under Khyber Pakhtunkhwa Police Rules-1975, against Inspector Muhammad Bashir, under the allegations that he while posted as SHO PS Risalpur, registered case vide FIR No. 645 dated 09.11.2020 u/s 9 D CNSA PS, Risalpur against accused Muhammad Ishaq s/o Abid Khan and Haji Khan s/o Zakir Khan residents of Qambar Khel, Bara, District Khyber, wherein he showed the contraband less than the actual quantity seized by him. Besides, the original contraband was also replaced / changed by him.

On account of which, he was suspended, closed to Police Lines and proceeded against departmentally through DSP HQrs: Nowshera, who after fulfillment of legal formalities submitted his report to undersigned vide his office: No. 445 / St dated 01.12.2020, wherein the allegations leveled against him have been proved and was recommended for awarding major punishment.

He was served with Final Show Cause Notice, to which, he submitted his reply which was perused by the undersigned and found unsatisfactory.

He was heard in orderly room by the undersigned wherein he failed to produce any cogent reason in his defense, therefore, he is hereby awarded major punishment of reduction in rank (substantive rank of Inspector to Sub-inspector) and re-instated in service with immediate effect, in exercise of powers vested in me under Khyber Pakhtunkhwa Police Rules-1975.

OB No. 1221Dated 17/12/2020

No. 3371-75 /PA, dated Nowshera, the 17/12/2020.
Copy for information and necessary action to the:

1. Regional Police Officer, Mardan.
2. Pay Officer.
3. Establishment Clerk.
4. FMC with enquiry papers (45 pages).
5. Official concerned.

[Signature]
District Police Officer,
Nowshera

قیمت
50 روپے

6740

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: محمد صالح باجوہ صاحب
بار کونسل ایسوسی ایشن نمبر: 10-5558
رابطہ نمبر: 8360219-0302

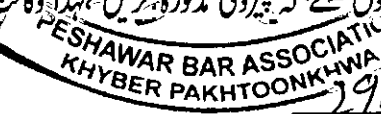


بعدالت جناب:

مخانب: سائل / ڈگری 1/1	دعوی:
لکشنر محمد بنام حکومت	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعت تحریر آگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام مشہور کیلئے محمد صالح باجوہ صاحب کو وکیل مقرر کیا گیا ہے۔
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کالچ اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقررات ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جائزہ التوائے مقدمہ کے سبب سے ہوگا یا کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب باہم ذمہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے



المرقوم: 29/08/2019

العبد العبد
مقام

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

ACCEPTED