


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 609/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.09.2023	<p>The implementation petition of Mr. Zia-ur-Rehman is submitted today by 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>

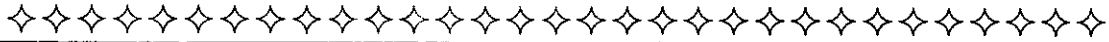
BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR
CHECK LIST

Zia Ur Rehman

Versus

The Secretary, Higher
Education & others
.....Respondents

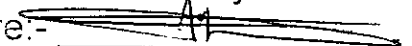
..... Appellant



S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Muhammad Ilyas Orakzai Advocate Supreme Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Muhammad Ilyas Orakzai ASC

Signature:- 

Dated:- 04/09/2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR**

Execution petition No. 609/23

CM (Implementation) No:- _____/2023

In

Service Appeal No:- 4306/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7332

Dated 4/9/2023

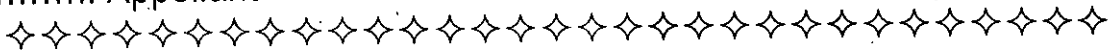
Zia Ur Rehman

Versus

The Secretary, Higher
Education & others

..... Appellant

..... Respondents



INDEX

S#	Description of the Document's	Annex	Pages
1.	<i>Grounds of application for implementation</i>	*	1-2
2.	<i>Affidavit</i>	*	3
3.	<i>Copy of order dated 17/07/2023</i>		4-8
4.	<i>Copy of application dated 15/08/2023</i>		9
5.	<i>Wakalat Nama</i>		10

Dated:- 04/09/2023

Zia Ur Rehman
Appellant

Through:-

Muhammad Ilyas Orakzai
Advocate Supreme Court

2

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

“In view of the above, the service appeal is allowed as prayed for with the direction to the respondent department to consider the appellant as under suspension from the date the FIR was lodged and he was arrested till his acquittal”.

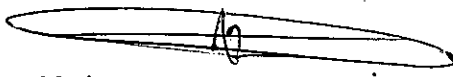
3. That the respondent have not take any action of the judgment of this Honourable Tribunal till date and in this regard the appellant/applicant also filed an application before the respondent on 15/08/2023 for implementation of the above order dated 17/07/2023, but in vain. (Copy of application dated 15/08/2023 is attached as annexure “B”).

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 17/07/2023.

Dated:- 04/09/2023

Through:-


Appellant


Muhammad Ilyas Orakzai
Advocate Supreme Court

3

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR**

CM (Implementation) No:- _____/2023

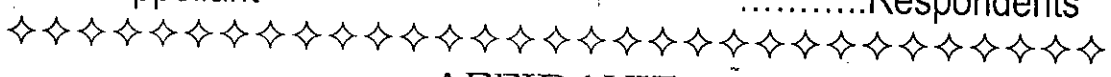
In
Service Appeal No:- **4306/2020**

Zia Ur Rehman

Versus

The Secretary, Higher
Education & others
.....Respondents

..... Appellant

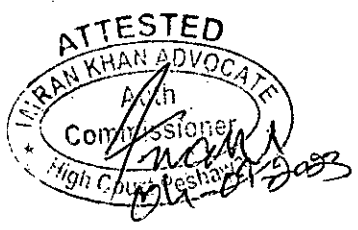


AFFIDAVIT

I, Zia Ur Rehman S/o Abdur Rahim, Ex-Naib Oasid,
Government Degree College, Hangu, R/o Mohallah Hayatabad,
Tehsil & District Hangu, (The petitioner/appellant) do hereby
solemnly affirm and declare on oath that the contents of this
accompanying application for implementation are true and
correct to the best of my knowledge and belief and nothing has
been concealed from this Honourable Court.

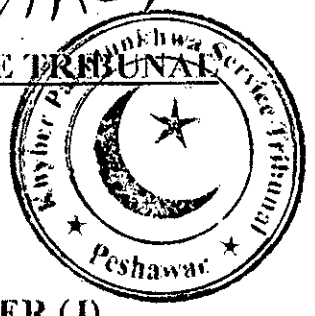
Fia Rehman

DEPONENT
CNIC No:- 14101-9680788-1
Cell No:- 0335-4768368



W Amex "A"

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Service Appeal No. 4306/2020

**BEFORE: MRS RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)**

Mr. Zia-ur-Rehman, Ex-Naib Qasid (BPS-03) Government Degree College, Hangu. (Appellant)

Versus

- 1. The Secretary Higher Education, Khyber Pakhtunkhwa Peshawar.
- 2. The Director, Higher Education, Khyber Pakhtunkhwa, Peshawar.
- 3. The Principal, Government Degree College, Hangu. (Respondents)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Fazal Shah Mohmand,
Addl. Advocate General ... For respondents

Date of Institution..... 13.05.2020
 Date of Hearing..... 17.07.2023
 Date of Decision..... 17.07.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 20.08.2018 whereby major penalty of removal from service was imposed on the appellant and against no action taken on the departmental appeal of appellant within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 20.08.2018 might be set aside and the appellant be reinstated into service with all back benefits alongwith any other remedy which this Tribunal deemed fit and appropriate.

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 PESHAWAR

(5)

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Naib Qasid (BPS-03) in the respondent department vide order dated 15.12.2017. During service of the appellant an FIR No. 648 u/s 380 dated 08.07.2018 in P.S City Hangu was lodged against unknown person. Later on, appellant and two other employees of the college were falsely implicated in the aforementioned FIR. On the basis of the said FIR, the respondent department removed the appellant from service vide impugned order dated 20.08.2018 without fulfilling the legal formalities and without waiting for the decision of the learned trial court. Later on, the appellant was acquitted in the criminal case by the learned Additional Sessions Judge-II, Hangu vide judgment dated 27.11.2019. After acquittal in the criminal case, he filed departmental appeal on 24.12.2019 before the appellate authority but no reply was received till filing of the instant appeal on 13.05.2020.

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

4. Learned counsel for the appellant, after presenting the case in detail, argued that no charge sheet and statement of allegations were served upon the appellant before passing the impugned order dated 20.08.2018. He further argued that neither show cause notice was served upon the appellant nor chance of personal hearing/defence was afforded to him and that the

ATTESTED
[Signature]
Secretary
Service Tribunal

[Signature]

6

complainant was not cross-examined by him. He requested that the appeal might be accepted.

5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that on 07.07.2018, the appellant alongwith his two friends committed theft from Computer Lab. of the college. According to him, the appellant and his co-accused were identified through CCTV footage and all the three were arrested by the police and respondent No. 3 constituted a committee on 09.07.2018 to conduct fact finding inquiry. On the recommendation of the said inquiry, vide office order dated 17.07.2018, inquiry committee was constituted to conduct formal inquiry into the matter. Charge sheet was served upon the appellant and opportunity of personal hearing was afforded to him wherein he confessed his guilt. Thereafter, show cause notice was served upon him on 02.08.2018 and after fulfillment of all the codal formalities, he was removed from service vide order dated 20.08.2018. The learned AAG further argued that the appellant was convicted by the learned trial court vide judgment dated 18.09.2019 but later on acquitted by appellate court vide judgment dated 27.11.2019. He further argued that no departmental appeal was available in official record. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it appears that the appellant, while serving as Naib Qasid in Government Degree College, Hangu was implicated in FIR u/s 380 PPC. As stated by the learned counsel for the appellant, no charge sheet and statement of allegations were served upon the appellant while he was behind the bar and that he was not afforded

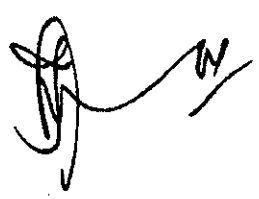
RECEIVED
 Khushalpur
 Service Tribunal
 Hangu

[Handwritten signature]

any opportunity to defend his case or cross examine any witness and hence any inquiry conducted by the respondent department was against the law and rules. The respondents on the other hand, have attached two inquiry reports, one is a preliminary inquiry and the other is a formal inquiry. Perusal of the inquiry report shows, that the statement of the appellant was recorded in writing. He was inquired in the form of a questionnaire to which he responded in writing, and both the documents have been attested by the Incharge Judicial lockup, Hangu. It has further been noted that the Inquiry Committee states in its report that they cross examined the appellant in the light of his statement but the report is silent on an extremely important aspect of cross examination of witnesses by the appellant. The departmental inquiry report only identifies the appellant in the CCTV recording. There is no evidence of theft being committed by him. The judgment of learned Additional Sessions Judge-II, Hangu was also perused simultaneously to ascertain the facts. It was found in that judgment that the case of the prosecution was entirely based on circumstantial evidence; neither the appellant was charged in the initial report nor the occurrence was witnessed by anyone. Statement of the appellant taken in the custody of police has not been accepted by the learned ASJ. As the prosecution could not prove its case, the appellant was acquitted vide judgment dated 27.11.2019.

7. It is a well settled principle that "every acquittal is honourable" and when an accused official is acquitted from a criminal charge after trial by the competent court of law, he cannot be ousted from his service. When the charge could not be proved in the court of law, there was no reason to pass


ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar




any adverse order of punishment for the appellant by the departmental authority.

8. In view of above, the service appeal is allowed as prayed for with the directions to the respondent department to consider the appellant as under suspension from the date the FIR was lodged and he was arrested till his acquittal. 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 17th day of July, 2023.


(FARAHIA PAUL)
Member (I)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 09/8/23
Number of words Pages
Copying Fee 25/-
Urgent 5/-
Total 30/-
Name of Copyiest _____
Date of Completion of Copy 09/8/23
Date of Delivery of Copy 09/8/23

آنحضرت جناب پرنسپل آف گورنمنٹ ڈگری کالج ہنگو

عنوان: درخواست بمراد

بجوالہ 1974 Khyber Pakhtunkhwa Service Tribunal Act, 1974 من مسائل کو کلاس فور کے پوسٹ پر

بجالی کی استدعا

جناب عالی

گزارش کی جاتی ہے کہ من مسائل محبت وطن مہذب پاکستانی شہری اور ضلع ہنگو کا مستقل رہائشی ہوں یہ کہ کالج سے چوری ہونے کی صورت میں من مسائل کو بغیر تفتیش کے مذکورہ پوسٹ سے ڈسچارج کیا تھا۔

یہ کہ بعد ازاں من مسائل نے Khyber Pakhtunkhwa Service Tribunal سے رجوع کیا اور اب مورخہ 17-07-2023 کو واضح RECOMENDATIONS اور احکامات صادر فرمائے ہیں کہ من مسائل کو مذکورہ پوسٹ پر دوبارہ بحال کریں۔

جناب عالی

من مسائل کو اس پوسٹ پر تعیناتی کے احکامات تک کافی مسائل کا سامنا کرنا پڑا من مسائل ایک غریب خاندان سے تعلق رکھتا ہے اور انکم کا کوئی ذریعہ نہیں ہے براہ کرم من مسائل کو اب مزید مشکلات کھڑی نہ کرنے کی استدعا کی جاتی ہے اور AS PER RULES اور Khyber Pakhtunkhwa Service Tribunal کے عین مطابق من مسائل کو مذکورہ پوسٹ پر چارج دلوا کر اپنی ڈیوٹی من وعن سرانجام دینے کا موقع دیں۔ من مسائل تازہ دست دعا گور ہے گا۔

العبد

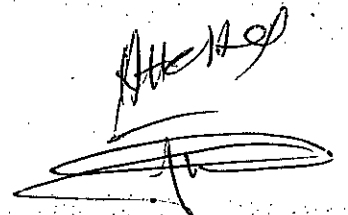
ضیاء الرحمن ولد عبدالرحیم سکنہ محلہ حیات آباد، ضلع ہنگو 1-9680788-14101-NIC

رابطہ نمبر 0335-4768368

مورخہ 15/08/2023



دستخط انگوٹھا



وگالت نامہ

بعدالت صاحب خیر کھٹون خواہ سروس ٹریننگ لیسٹ اور
ضلع۔ جمنگو
مقدمہ فوجداری ادویاتی
منجانب۔ سیکرٹری عدالت

ملت۔ مورخہ۔ جرم۔ تھانہ۔
ضاد المجران بنام سیکرٹری عدالت کراچی خیر کھٹون خواہ
باعث تحریر آنکہ

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

محمد الیاس اور کرنی ایڈوکیٹ سپریم کورٹ آف پاکستان مقرر کر کے
اتر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و
فیصلہ بر حلف دیئے جواب دعویٰ اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ 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 نیرواز
کرنے اپیل نگرانی 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 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات 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 وگالت نامہ لکھ دیا تاکہ سند ہے۔

المرقوم:- 04 ماہ ستمبر 2023ء

Signature

Handwritten notes in Urdu on the right margin.

العبد بمقام شہساز کلئے منظور

Attested & Accepted

Signature of Muhammad Ilyas Orakzai

Muhammad Ilyas Orakzai
Advocate Supreme Court of Pakistan
SC Enrollment No:- 5801
BC No:- 10-3471
CNIC 14101-0798923-7
Cell 0333-9191892