


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 615/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.09.2023	<p>The implementation petition of Mr. Waseem Abbas submitted today by Mr. Mir Zaman Safi Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>08-09-2023</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

Implementation Petition No. 615 /2023

In

Appeal No.1351/2022

WASEEM ABBAS

VS

POLICE DEPTT:

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PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564
0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 615 /2023
In

Appeal No.1351/2022

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 7377
Dated 06-09-23

Mr. Waseem Abbas, Constable No. 74,
Police Lines, Swabi.

.....APPELLANT

VERSUS

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

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 10.07.2023 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 1351/2022 before this august Service Tribunal against the impugned order dated 13.05.2022 whereby major penalty dismissal from service was imposed on the petitioner.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 10.07.2023 and was decided in favor of the petitioner vide judgment dated 10.07.2023 with the view that *“Consequent upon the above discussion, the impugned orders are set aside and the appeal in hand is allowed as prayed for”*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 10.07.2023 the petitioner submitted the same before the respondents for implementation but till date the judgment of this august Tribunal has not been implemented by the respondents in letter and spirit.
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is, therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 10.07.2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

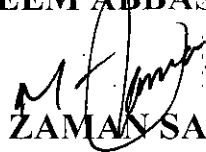
Dated: 25.08.2023.

PETITIONER



WASEEM ABBAS

THROUGH:



**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2023

In

Appeal No.1351/2022

WASEEM ABBAS

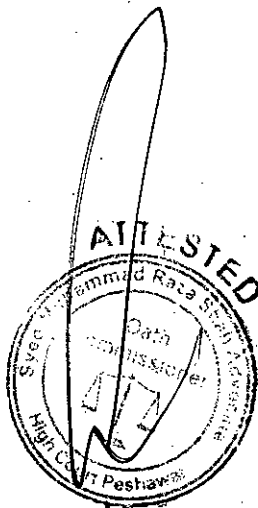
VS

POLICE DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


MIR ZAMAN SAFI
ADVOCATE



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A - (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 1351/2022

Date of Institution ... 12.09.2022

Date of Decision... 10.07.2023



Waseem Abbas, Ex-Constable No. 74, Police Lines, District Swabi.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. MIR ZAMAN SAFI,
Advocate

For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. RASHIDA BANO

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked the jurisdiction of this Tribunal with the prayer copied as below:-

"That on acceptance of this appeal the impugned orders dated 13.05.2022 and 08.08.2022 may very kindly be set-aside and the appellant be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."

2. Brief facts giving rise to filing of the instant appeal are that the appellant during the courses of his service, was involved in case FIR No. 583 dated 14.09.2014 under section 392 PPC Police Station Kalu Khan Swabi as well as case FIR No. 414 dated

ATTESTED

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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14.09.2014 PPC Police Station Yar Hussain Swabi. The inquiry proceedings against the appellant culminated into his dismissal from service vide order dated 05.03.2015. The departmental appeal of the appellant was also filed vide order dated 25.04.2016, where-after he preferred revision as well as review petitions, however the same were also declined. The appellant then filed Service Appeal No. 741/2017 before this Tribunal, which was allowed vide judgment dated 14.12.2021 and the respondents were directed to conduct de-novo inquiry against the appellant strictly in accordance with relevant law/rules within a period of 90 days of receipt of copy of the judgment. De-novo inquiry was conducted and on its conclusion, the appellant was again awarded major penalty of dismissal from service vide order dated 13.05.2022. The appellant challenged the same through filing of departmental appeal, however the same was rejected vide order dated 08.08.2022, hence the instant service appeal.

3. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by filing written reply, raising therein numerous legal as well as factual objections.

4. Learned counsel for the appellant argued that the appellant was falsely implicated in case FIR No. 583 dated 14.09.2014 under section 392 PPC Police Station Kalu Khan Swabi as well

ATTESTED

EXAMINER
KIDULTI, Swabi
Service Tribunal

M. J.

as case FIR No. 414 dated 14.09.2014 PPC Police Station Yar Hussain Swabi. He next contended that the appellant has already been acquitted in the afore-mentioned criminal cases, therefore, the very ground, on the basis of which departmental action was taken against the appellant, has vanished away. He further argued that the appellant was previously dismissed from service vide order dated 05.03.2015, which was set-aside by this Tribunal and respondents were directed to conduct de-novo inquiry against the appellant, however the de-novo inquiry proceedings were not conducted in accordance with mandatory provisions of Police Rules, 1975. He next contended that neither any witness was examined in presence of the appellant nor any opportunity of cross-examination as well as personal hearing was provided to the appellant, therefore, the impugned orders are illegal and liable to be set-aside. He further contended that one constable Ibad Khan No. 568 was also an accused in the above-mentioned criminal cases, however he was reinstated in service but the appellant was treated with discrimination, therefore, the impugned orders are illegal and liable to be set-aside. Reliance was placed on 2011 SCMR 1618, 2011 PLC (C.S.) 1111, 2021 PLC (C.S.) 683, 2022 PLC (C.S.) 508, 2022 PLC (C.S.) 1201 and 2022 PLC (C.S.) 1300.

5. On the other hand, learned Assistant Advocate General for the respondents argued that in light of judgment of this Tribunal dated 14.12.2021, de-novo inquiry proceedings were conducted

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THE EXAMINER
Services Tribunal
Islamabad

against the appellant by issuing him charge sheet as well as statement of allegations and a proper regular inquiry was conducted against the appellant. He further argued that the appellant was fully associated with the inquiry proceedings, however he failed to prove his innocence before the inquiry officer, therefore, he was rightly dismissed from service.

6. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.

7. The appellant was proceeded against departmentally on the allegations that he was involved in case FIR No. 583 dated 14.09.2014 under section 392 PPC Police Station Kalu Khan Swabi as well as case FIR No. 414 dated 14.09.2014 under section 392 PPC Police Station Yar Hussain Swabi, which amounted to gross misconduct on his part. While going through the inquiry report, we have observed that the inquiry officer has not at all recorded statement of any witness, which could support the allegations leveled against the appellant. The inquiry officer had not even bothered to record statements of the complainants of the concerned criminal cases in support of the allegations leveled against the appellant. No evidence regarding involvement of the appellant in the concerned criminal cases was recorded during the inquiry, therefore, it is not understandable as to how the inquiry officer came to the conclusion that the appellant was guilty of the allegations leveled against him. The onus to prove

ATTESTED
 EXAMINER
 KADUN P. KARIMKUNZ
 SECRETARY (GENERAL)
 PUNJAB

[Handwritten signature]

the allegations against the appellant was upon the shoulders of the respondent-department, however while going through the inquiry report, we have observed that the same was shifted to the appellant and the inquiry officer has observed in his findings that the appellant was given ample opportunities, however he failed to forward any cogent or justifiable reasons as to why he was nominated by the complainants. Such approach of the inquiry officer was legally incorrect and could not be approved.

8. According to the inquiry report, one constable Ibad Khan No. 568 was also an accused in the concerned criminal cases, however he has been reinstated in service. Moreover, it is an admitted fact that the competent court of law has acquitted the appellant in both the criminal cases. In such a situation, the competent Authority was legally not justified in awarding the impugned punishment to the appellant.

9. Consequent upon the above discussion, the impugned orders are set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.07.2023

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(RASHIDA BANO)
MEMBER (JUDICIAL)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

OF 2023

Waseem Abbas

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Waseem Abbas

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 24 / 08 / 2023

Waseem Abbas
CLIENT

M. Zaman Safi
ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:

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