


## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 619/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.09.2023	<p>The implementation petition of Mr. Asif Khan submitted today by Mr. Hassan U.K Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>12-09-2023</u>. Original file be requisitioned. AAG has noted the next date.</p> <p style="text-align: right;">By the order of Chairman    REGISTRAR</p>

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

Execution petition No. 619 /2023  
In  
Service Appeal No. 182 /2022

Asif Khan.....**Appellant**

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Secretary Home &  
Civil Secretariat KP & others.....**Respondents**

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Application for implementation		1-2
2.	Affidavit		3
3.	<b>Copy of the judgment dated 03.07.2023</b>	A	4-7
4.	<b>Copy of application etc</b>	B	8-10
5.	Wakalatnama		11

Appellant,  
Through

**Hassan U.K Afridi**  
Advocate Supreme Court  
Cell No.0300-9151963

Dated 08.09.2023

1

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

Execution petition No. 619 /2023  
In  
Service Appeal No. 182 /2022

Khyber Pakhtunkhwa  
Service Tribunal  
Diary No. 7404  
Dated: 08/09/23

Asif Khan S/o Wasil Khan R/o Mohallah new Abadi, Jungle  
Khel, Kohat.....**Appellant**

**VERSUS**

1. Govt. of Khyber Pakhtunkhwa through Secretary  
Home & Civil Secretariat, Khyber Pakhtunkhwa,  
Peshawar
2. Inspector General of Police, Khyber Pakhtunkhwa,  
Peshawar
3. Deputy Inspector General of Police/Regional Office  
Officer, Kohat
4. District Police Officer, Kohat.....**Respondents**

**Application for implementation/compliance  
of judgment of this Hon'ble Tribunal vide dated  
03.07.2023.**

**Respectfully Sheweth:-**

1. That the applicant/appellant has filed service  
appeal before this Hon'ble Tribunal, which was  
decided in favour of applicant vide judgment  
dated 03.07.2023. **(Copy of the judgment dated  
03.07.2023 is attached as Annexure "A").**

2

2. That the appellant moved an application before the respondents implementation of the said judgment of this Hon'ble Tribunal but vain. **(Copy of application is attached as annexure "B")**.
3. That the respondents turn deaf ear and not interested to implement the judgment of this Hon'ble Tribunal yet.
4. That any other ground if any will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is therefore humbly prayed that on acceptance of this application the respondents may kindly be directed to implement the judgment dated 03.07.2023 of this Hon'ble Tribunal.

Appellant  
Through

Dated 08.09.2023

**Hassan U.K Afridi**  
Advocate Supreme Court

3

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

Execution petition No. \_\_\_\_\_/2023

In

Service Appeal No. 182 /2022

Asif Khan.....**Appellant**

**VERSUS**

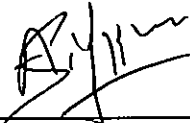
Govt. of Khyber Pakhtunkhwa through Secretary Home &  
Civil Secretariat KP & others.....**Respondents**

**AFFIDAVIT**

I, Asif Khan S/o Wasil Khan R/o Mohallah new Abadi,  
Jungle Khel, Kohat, do hereby solemnly affirm and declare  
on oath that the contents of the accompanying **Application**  
are true and correct to the best of my knowledge and belief  
and nothing has been concealed from this Hon'ble Court.

Identified by

**Hassan U.K Afridi**  
Advocate Supreme Court



**DEPONENT**

CNIC#: 14301-1098591-3

Cell #: 0344-9243240



4

KHYBER PAK HTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 182/2022

BEFORE: MR. KALIM ARSHAD KHAN ...  
MRS. RASHIDA BANO ...

CHAIRMAN  
MEMBER (J)



Asif Khan S/O Wasil Khan, R/O Mohallah New Abadi, Jungle Khel,  
Kohat.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police/Regional Police Officer, Kohat.
4. District Police Officer, Kohat.

.... Respondents)

Mr. Hasan U.K Afridi  
Advocate

For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

For respondents

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Date of Institution.....08.02.2022  
Date of Hearing.....03.07.2023  
Date of Decision..... 03.07.2023


JUDGEMENT

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 the instant service appeal both the impugned orders may kindly be set aside and the respondents may kindly be directed to order for constitution of fresh medical board for examination of appellant and if appellant medically fit, then the appellant

B

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CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

5

may please be reinstated in service, in accordance with law with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as constable in police department on 02.06.2006. The appellant performed his duties to the entire satisfaction of his high-ups and also qualified lower school course A1 and B1 examinations. That during service the appellant fell ill, a medical board was constituted as a result of which he was retired from service on 04.10.2020 on medical grounds. The appellant continued his treatment and after regaining his health, he submitted application for his reinstatement with a request to constitute a medical board for his medical examination which was rejected by respondent No.3 vide order dated 13.09.2021. He filed revision against said order was also rejected by respondent No.2 on 25.01.2022, hence the present 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders passed by the respondents are against law and justice hence liable to be set aside. He further contended that under the rules if any civil servant who had been invalidated during service could be reinstated if subsequently it was declared that he could efficiently his duty, even if he had availed his pension and dues. He argued that the appellant has fundamental right under constitution for his medical checkup by constituting medical board. Lastly, he submitted, that the appellant has not been treated in accordance with law and rules, therefore, he requested for acceptance of the instant service appeal.

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**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal

6

5. The learned Deputy District Attorney argued that on the request of the appellant he was invalidated out from service on the opinion of Standing Medical Board. He contended that the appellant was treated in accordance with law and rules. He further argued that the appellant is retired police personnel and he is no more at the strength of Police Department he has been granted all pensionary benefits and his re-instatement in service is not admissible under the rules.

6. Perusal of record would reveals that appellant was appointed as constable in the respondent department on 02.06.2006, who qualified lower school course A1 and B1 examination. Appellant was allowed to retire from service w.e.f 15.09.2020 on medical grounds vide order dated 04.10.2020. After regaining health and being found fit by his doctor, appellant applied for his reinstatement with request to constitute medical board for his medical examination but his application was rejected /filed by respondent No.3 vide order dated 13.09.2021 and revision petition against said order was also rejected by respondent No.2 on 26.01.2022. Perusal of both the impugned orders reveals that no reason for rejection /filing of it was given by respondents No. 2 & 3 but in reply it is mentioned that the appellant himself applied for medical board and as such he has not challenged the proceedings of medical board within stipulated time. It is also mentioned that after retirement on medical grounds appellant remains no more government servant and he got all pensionary benefits and also getting his pension regularly. Appellant's main contention is that after gaining health and being declared fit by his doctor he was entitled to be examined by medical board and reinstatement in service on the strength of Rule 519 of Civil Service Regulation which says that:

**"There is no bar to the re-employment of an officer who has regained health after obtaining invalid pension, or if an officer is invalidated as being incapacitated from employment in a**

**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar



particular branch of the service, to his re-employment in some other branch of the service. The rules in such a case as to refunding gratuity, drawing pension, and counting service, the same as in the case of re-employment after compensation pension."

So bare perusal of this Rule 519 reveals that any government servant who was declared invalidated by medical board and getting invalid pension after regaining health could be re-employed and there exist no bar in respect of his re-employment/reinstatement. When there is no bar upon re-employment into service then in such a situation refusal to constitute medical board for medical check-up of the appellant for the purpose of determination of his regaining health and to declare him fit or otherwise for re-employment/reinstatement into service by the respondent are unjustified and against law, rules and arbitrary in nature. Learned counsel for the appellant relied upon 1994 PLC (C.S) 957, which is applicable to the facts and circumstances of the appellant case, so far as plea taken by the respondents is concerned, that same is not in accordance with rules and law on subject, therefore, has no force in it and cannot be relied upon.

8. As a sequel to the above discussion, we allow this appeal with direction to respondents to constitute medical board for medical check-up of appellant within 30 days of the receipt of this judgment and if appellant was declared fit by the medical board then he may be reinstated/re-employed strictly in accordance with relevant rules and law. Costs shall follow the event. Consign.

9. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 3<sup>rd</sup> day of July, 2023.

(RASHIDA BANO)  
Member (J)

(KALIM ARSHAD KHAN)  
Chairman

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 11-7-23  
Number of Words 4-P  
Copying Fee 20/-  
Urgent ✓  
Total 25/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 11-7-23  
Date of Delivery of Copy 11-7-23

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بھنور جناب ڈسٹرکٹ پولیس آفیسر صاحب کو ہاٹ

درخواست بمرد بارہ تعیناتی میڈیکل بورڈ بمطابق فیصلہ خیبر پختونخواہ سروس ٹریبونل پشاور مورخہ 3-7-2023

جناب عالی اسائل ذیل عرض کرتا ہے۔

- ۱۔ یہ کہ سائل مورخہ 2-6-2006 کو پولیس ڈیپارٹمنٹ میں بھرتی ہوا اور احسن طریقہ سے اپنی ڈیوٹی سرانجام کرتا ہے۔
  - ۲۔ یہ کہ سائل دل کی بیماری کی وجہ سے اپنی سروس جاری نہ رکھ سکا اور میڈیکل بورڈ کی بنیاد پر مورخہ 4-10-2020 کو ریٹائرمنٹ لے لی۔
  - ۳۔ یہ کہ سائل کچھ عرصہ بعد علاج معالجہ کر کے جب اپنا چیک اپ کیا تو صحت یاب تھا اس لیے سائل دوبارہ میڈیکل بورڈ کے لیے درخواست دی لیکن وہ خارج ہوئی۔
  - ۴۔ یہ کہ سائل نے سروس ٹریبونل میں اپیل دائر کی جو کہ منظور ہوئی اور عدالت نے یہ ہدایات دی کہ سائل کی دوبارہ میڈیکل بورڈ کیا جائے اور اگر سائل صحت مند ہو تو سائل کو دوبارہ تعینات کیا جائے
- لہذا استدعا ہے کہ بمطابق فیصلہ سروس ٹریبونل مورخہ 3-7-2023 سائل میڈیکل بورڈ کروایا جائے اگر سائل صحت مند ہو تو سائل کو دوبارہ تعینات کیا جائے۔

بدھ ۱۲ جولائی ۲۰۲۳

عرض

*Ajmal Khan*

آصف خان LHC 657/ وکد واصل خان

سکنہ نئی آبادی جنگل خیل کوہاٹ

رابطہ نمبر 0344-9243240

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1/8/23

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Office of the  
District Police Officer, (10)  
Kohat

File #: 0922-9260116 Fax #: 0922-9260123

No. 5169 dated Kohat the 21/7 /2023

To: The Assistant Inspector General of Police,  
Legal, Khyber Pakhtunkhwa,  
Peshawar.

Subject: SERVICE APPEAL NO. 182/2022, TITLED ASIF KHAN EX-CONSTABLE NO. 657 VS GOVT OF KP THROUGH SECRETARY HOME & TAS DEPTT: & OTHERS

Memo:

Kindly in continuation to this office Letter No. 4961-62/LB dated 10.07.2023.

Enclosed please find herewith copy of the order / judgment of Khyber Pakhtunkhwa, Service Tribunal in the subject cited appeal is submitted for kind perusal and appropriate orders, please.


Encl:

  
DISTRICT POLICE OFFICER,  
KOHAT

No. 5170 /

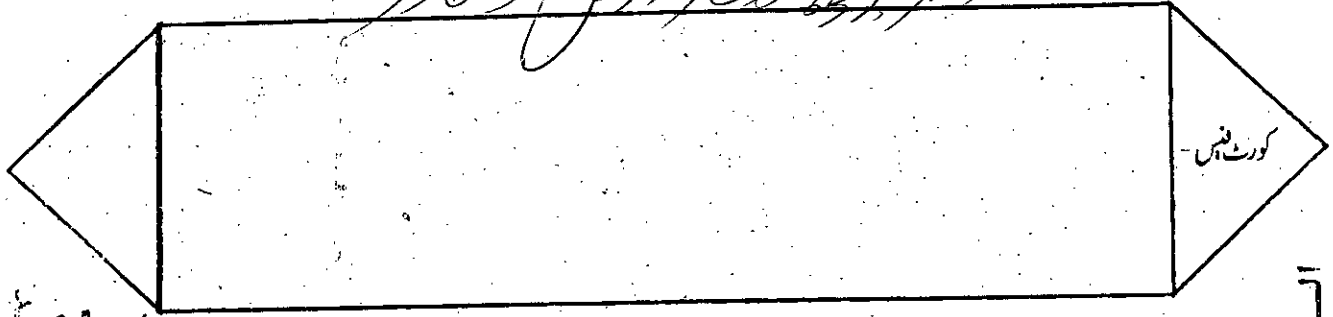
Copy of above is submitted to the Regional Police Officer, Kohat for favour of information w/r to this office quoted above no, please.

  
DISTRICT POLICE OFFICER,  
KOHAT

  
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بعدالت جناب جسٹس محمد رفیع الرحمن (سٹاور)



۲۰ منجانب صاحب

مقدمہ  
علت نمبر  
جرم زیر دفعہ  
مورخہ  
تھانہ  
نام گورنمنٹ ایف ڈی  
Execution Petition

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی کل کارروائی متعلقہ آں مقام کے لیے  
مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر  
ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجرا اور وصولی چیک در روپیہ اور عرضی دعویٰ اور  
درخواست ہر قسم کی تصدیق زر اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور  
منسوخی و نیز دائر کرنے اپیل نگرانی نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزو کارروائی  
کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا  
اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے  
سبب سے ہوگا اس کے مستحق کیا صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی  
مقام دورہ پر ہو یا حد سے باہر ہو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المترجم

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ماہ

یہ منظور ہے

مقام کواٹ

*[Handwritten signature]*

bc 104342

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