Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 637/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3.
1	14.09.2023	The implementation petition of Mr. Fazal Qadeem submitted today by Mr. Malik Sarfaraz Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. By the order of Chairman REGISTRAR

(1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Implementation Petition No 637 2023
In Re:
Service Appeal No 7822/2021

Fazal Qadeem S/O Asad R/O Surizai Miana Mohallah Hassan Khel Peshawar (Anti-Terrorism) Squared Poice Constable) District Peshawar.....(Applicant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa at Police Lane, Peshawar
2. Capital City Police Officer (CCPO), Peshawar
3. Assistant Insepctor General of Police (Legal), Peshawar
4. Mr. Ameer Rehman (Superintendent) of Police Through ASI (Legal), Peshawar.....(Contemnor/Respondents)

Application for implementation of order against Respondents for dis- obeying the orders dated 16th June, 2023 and 09th August, 2023 of this Honourable Tribunal

Respectfully Sheweth:-

Petitioner submits as under:-

1. That earlier the Petitioner filed service appeal No 7822/2021 against the order No OB 3522 dated 21st October, 2021 before this Honourable Court.

2. That after hearing the arguments, this Honourable Tribunal has admit the service appeal and also suspend the operation of impugned order OB 3522 dated 21-10-2021 and directed the Respondents not to make any hindrance in the performance of the duties of the Appellant/ Applicant. (Copy of the order dated 16-06-2023 is attached herewith).

3. That despite of the fact, the Appellant/Applicant has submitted the attested photocopies of the above mentioned order, but the Respondents are reluctant to obey the orders/directions of this Honourable Tribunal, hence the instant petition.

4. That the case of Applicant/Appellant produced before the Respondent No 3 and 4 for action to do the need full, but the Respondents No 3 and 4 not obey the order of this Honourable Tribunal.

5. That despite having knowledge about the above referred orders; the Respondents hurriedly not considering the Applicant/Petitioner and in this way flagrantly violated both the orders of the Honourable Tribunal.

6. That the Respondents had intentionally committed the contempt of Court by violating the orders passed by this Honourable Tribunal, therefore, this Honourable Court requested to initiate appropriate action against Respondents and implemented the order.

7. That any other ground will be raised at the time of arguments with the prior permission of this Honourable Tribunal.

It is, therefore, prayed that on acceptance of this Application, an appropriate action may kindly be initiated against the Respondents for disobeying the orders of this Honourable Tribunal passed by this Honourable Tribunal.

Any other relief, which deems proper in the matter, may kindly be passed against the Respondents in favour of Appellant/Applicant.

Applicant/Applicant

Through:

(MALIK SARFARAZ KHAN)
Advocate
High Court, Peshawar
&

(SADAM HUSSAIN)
Advocate,
Peshawar

Dated: -14-09-2023

(4)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Fazal Qadeem

VERSUS

IGP KP and others

AFFIDAVIT:-

I, Fazal Qadeem S/O Asad R/O Surizai Miana Mohallah Hassan Khel Peshawar (Anti-Terrorism) Squared Poice Constable) District Peshawar, do hereby solemnly affirm and declare on oath that all the contents of accompanied COC Petition are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.

ATTESTED

Muhammad Mustafa Khattak Advocate NOTARY PUBLIC Reg. No. 2023 Peshawar

DEPONENT

CNIC # 17301-0384816-7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7822/2021

BEFORE: SALAH-UD-DIN --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Fazal Qadeem S/o Asad Khan R/o Surizai Miana Mohallah Hassan, Khel, Peshawar (Anti-Terrorism) Squared Police Constable) District Peshawar.....*(Appellant)*

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa at Police Line, Peshawar.
2. Capital City Police Officer (CCPO) Peshawar.
3. Superintendent of Police (S.P) Police Headquarters, Peshawar.

..... *(Respondents)*

Present:-

KABIRULLAH KHATTAK,
Advocate --- For Appellant.

ASAD ALI KHAN,
Assistant Advocate General --- For respondents.

Date of Institution.....19.11.2021
Date of Hearing.....16.06.2023
Date of Decision..... 16.06.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal, the order No. OB 3522 dated 21.10.2021 may graciously be set aside and the services of the appellant may kindly be reinstated alongwith all back benefits."

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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02. Brief facts of the case are that the appellant, while serving as Constable in the Police department was imposed major penalty of dismissal from service vide order dated 28.12.2020 on the allegation of his involvement in criminal case vide FIR No. 92 dated 17.07.2016 U/S 302/34 PPC, 7-ATA PS CTD, PS Shaheed Gulfat Hussain Peshawar. The appellant was discharged vide order dated 19.05.2021 by the competent court, thereafter the appellant filed departmental appeal which was rejected vide order dated 21.10.2021, hence the present service appeal on 19.11.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant argued that the impugned orders dated 21.10.2021 is against the norms of justice, illegal, unconstitutional and without authority, therefore, not tenable. He further argued that upon registration of FIR against the appellant, the respondents were required to suspend the appellant till conclusion of criminal case pending against him, but the respondents did not wait for conclusion of the criminal case, rather initiated disciplinary proceedings at the back of the appellant. He further argued that the appellant was discharged by the trial court vide judgment dated 19.05.2021. He next contended that after discharge of the appellant in the criminal case, there was no material available with the respondents to maintain the major penalty of dismissal from service. In the last he argued that the fundamental rights of the appellant have blatantly been violated by

(7)

the respondents and the appellant has been discriminated and he has been denied his due rights under the Constitution of Islamic Republic of Pakistan 1973. To strengthen his arguments, he relied on 2003 PLC (C.S) 365, 2016 SCMR 108, PLD 2002 Supreme Court 84, 2008 SCMR 1369, 2000 SCMR 1743, and judgment of Service Tribunal in Service Appeal No. 1065/2019.

05. Learned Assistant Advocate General on the other hand contended that the appellant while posted at District Armed Reserved Peshawar was proceeded against on the allegations of his involvement in criminal case vide FIR No. 92 dated 17.07.2016 U/S 302/34-PPC/7-ATA PS CTD PS SGH and also absented himself from duty w.e.f 01.07.2018 to 21.01.2019 without leave/permission, therefore, disciplinary action was taken against him in accordance with Police Rules, 1975 and after conducting of proper inquiry, he was rightly dismissed from service. He further argued that the departmental appeal of the appellant is badly time barred. Furthermore, no violation of the Constitution of Islamic Republic of Pakistan, 1973 has been made by the respondents and the punishment given to the appellant was in accordance with the gravity of misconduct. In the last, he argued that the punishment order passed by the competent authority is in accordance with the law/rules.

06. Perusal of available record reveals that the appellant was serving as Constable in the Capital City Police, Peshawar since 2005. Departmental proceedings were initiated against him on the sole ground that he was involved in criminal case registered vide FIR No. 92/2016 dated 17.07.2016 under Section 302/34-PPC/7-ATA PS CTD Police Station Shaheed Gulfat Hussain, Peshawar. He was placed under suspension and inquiry officer was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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nominated. Charge sheet and statement of allegations were issued to the appellant. The inquiry officer in his inquiry report stated that the appellant was directly charged in the FIR. The inquiry officer pointed out that the appellant remained absent for six months and twenty days during different periods in the year 2018 and 2019. The appellant was served with the show cause notice to which he submitted proper reply. The competent authority imposed major penalty of dismissal from service upon the appellant on the ground of his involvement in a criminal case without any evidence substantiating the role of the appellant in the criminal case and decisive findings in the inquiry report. Another ground of the major punishment as mentioned in the inquiry report and the order of the major punishment dated 28.12.2020, is absence from duty for 06 months and 20 days which was not part of the charge sheet and statement of allegations leveled against the appellant and as such he was never provided any opportunity to put defense and explain his position for the alleged absence from duty. In fact the appellant was suspended from service after registration of FIR against him and there is nothing on record that he was reinstated into service and assigned any duty to perform. Moreover, there are explicit provisions in the Police Rules as well as Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules for dealing with the cases of absenteeism of Government Servants. Without observing the rules penalizing Government Servant (the appellant) tantamount to condemning unheard which is not justifiable under the law. The sole charge against the appellant for departmental proceedings was his alleged involvement in a criminal case. It is admitted fact that the appellant was, though charged in the criminal case however, later on the prosecution itself recommended for discharge of the

accused in the criminal case. The aforementioned fact shows that the criminal case against the appellant was too weak and it was the reason that the prosecution itself recommended for discharge of the accused. It is established from the record that charges of his involvement in criminal case ultimately culminated in his discharged by the competent court of law, therefore, the impugned orders are not sustainable in the eye of law and are liable to be set aside.

07. In view of foregoing discussion we are constrained to accept the appeal in hand by setting aside the impugned orders. The appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

08. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 16th day of June, 2023.

(Salah-Ud-Din)
Member (J)

(Muhammad Akbar Khan)
Member (E)

"Kamranullah"

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
14/8/23

Date of Presentation of Application	14/8/23
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ایڈووکیٹ:

بار کونسل ایسوسی ایشن نمبر: BC-11-2522

رابطہ نمبر: 0301-8906956

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PESHAWAR BAR ASSOCIATION

بعدالت جناب: ______

دعویٰ: Cool	منجانب: Petitioner
علت نمبر: ______	فضل قدیم
مورخہ: ______	بنام
جرم: ______	IGP Etc KPK
تھانہ: ______	

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام پشاور کیلئے سرفراز خان ایڈووکیٹ / صدام حسین ایڈووکیٹ کو وکیل 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 و تقرر 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 یکطرفہ 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 کاروائی 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 پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں۔ لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے

PESHAWAR BAR ASSOCIATION KHYBER PAKHTOONKHWA

المرقوم: 14/09/2023

العبد گواہ شد العبد

فضل قدیم

مقام پشاور کے لیے منظور ہے۔

Attested & Accepted by

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