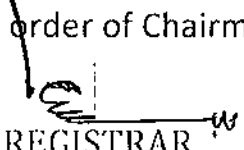


Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 115/2023

S.No	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28.02.2023	<p>The execution petition of Mr. Naveed Khan submitted today by Roeeda Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p>By the order of Chairman  REGISTRAR</p>

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

Execution Petition No. 115 /2023

In Service Appeal: 3871/2021

Mr. Naveed Khan son of Umar Khan, Constable Belt No. 5260
R/o Umar Miana Mohallah Toheed Abad, Peshawar.

..... **Appellant**

VERSUS

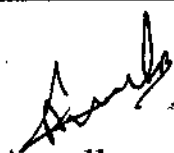
1. Inspector General of Police/PPO, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Peshawar.
4. Superintendent of Police (Headquarter), Peshawar.
5. Deputy Superintendent of Police, (Security), Civil Secretariat, Peshawar.

..... **Respondents**


INDEX

S.No.	Description of documents	Annexure	Pages
1.	Copy of Petition		1-2
2.	Copy of Judgment	A	3-6
3.	Wakalat Nama		

Dated 28/02/2023


Appellant

Through


Rooeda Khan
Advocate High Court,
Peshawar

CN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 115 /2023

In Service Appeal: 3871/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3948

Dated 28/2/2023

Mr. Naveed Khan son of Umar Khan, Constable Belt No. 5260
R/o Urmar Miana Mohallah Toheed Abad, Peshawar.

..... **Appellant**

VERSUS

1. Inspector General of Police/PPO, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Peshawar.
4. Superintendent of Police (Headquarter), Peshawar.
5. Deputy Superintendent of Police, (Security), Civil Secretariat, Peshawar.

..... **Respondents**

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 20/12/2022 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioners filed Service Appeal No. 3871/2021 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 20/12/2022. (Copy of Judgment is annexed as Annexure-A).

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment however they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

Dated 28/02/2023


Appellant/Petitioner

Through


Rooeda Khan
Advocate High Court Peshawar

AFFIDAVIT

I, Naveed Khan, Constable do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.


DEPONENT



1 (3)



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 3871/2021

BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Naveed Khan son of Umar Khan, Contable Belt No. 5260 R/O Urmar
Miana, Mohallah toheed Abad, Peshawar. (Appellant)

Versus

1. Inspector General of Police/PPO, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police, Peshawar.
4. Superintendent of Police (Headquarters), Peshawar.
5. Deputy Superintendent of Police (Security), Civil Secretariat,
Peshawar. (Respondents)

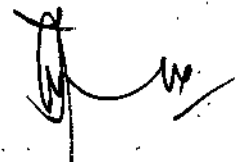
Mr. Muhammad Saeed Khan,
Advocate ... For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General ... For respondents

Date of Institution..... 16.03.2021
Date of Hearing..... 20.12.2022
Date of Decision..... 20.12.2022

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 29.12.2020, against which departmental
appeal dated 15.01.2021 was dismissed on 02.03.2021 by respondent No. 2.
It has been prayed that on acceptance of the appeal, the impugned order
dated 29.12.2020 might be set aside and the appellant be reinstated in
service with all arrears and consequential back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable on 06.04.2011 in Police Department after the due process of the law. He was suspended from service vide order dated 08.04.2020 as a result of being charged in a murder case vide FIR No. 273 dated 02.04.2020 u/s 302/34 PPC P.S Urmār, District Peshawar. The appellant was placed under suspension by respondent No. 4 vide order dated 08.04.2020 due to involvement in the criminal case and absents himself from duty w.e.f. 11.09.2019 till the issuance of suspension order. A charge sheet and statement of allegations was also served upon him on 08.04.2020 on the grounds of involvement in a criminal case and absents himself from duty w.e.f. 31.03.2020. On 28.04.2020, the appellant appeared in police lines and joined the duty once again. Departmental inquiry against the appellant was initiated in which he was recommended for major punishment. He was dismissed from service vide order dated 29.12.2020. The appellant, being aggrieved and dissatisfied from the impugned order dated 29.12.2020, preferred departmental appeal on 15.01.2021 before respondent No. 2 which was rejected on 02.03.2021; hence the present 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 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 contended that no show cause notice was served upon the appellant which

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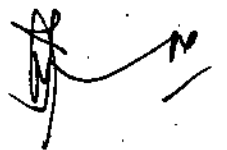
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was not a formality but a mandatory provision of law and no opportunity of personal hearing was afforded to him before imposition of major penalty. He further contended that the competent authority was required to conduct a proper inquiry and provide opportunity of hearing, cross examination and defense to the appellant before imposition of major penalty which was not done. He further contended that the impugned order dated 29.12.2020 was violative of Section 24-A of General Clauses Act as the competent authority failed to pass a speaking order with sound reason and to substantiate allegation in the light of evidence on record. According to him, the appellant was falsely charged in the said FIR wherein the appellant was not convicted and the case was still pending before the competent court of law till the submission of the instant service appeal. Learned counsel presented the order of Additional Sessions Judge-XIII Peshawar dated 16.12.2022 vide which the appellant had been acquitted of the charges leveled against him.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the appellant was proceeded against departmentally on the charge of his involvement in a criminal case and his prolonged willful absence from duty. He was suspended from service vide order dated 08.04.2020 and charge sheet alongwith statement of allegations was served upon him. He further contended that proper departmental inquiry was conducted against him, wherein he was given opportunity of defence but he failed to rebut the charges leveled against him and was found guilty beyond any shadow of doubt. Besides there were 27 bad entries and 03 minor punishments in his

TESTED

 ASSISTANT ADVOCATE GENERAL
 PESHAWAR



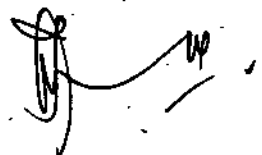
service record. Learned AAG requested that the appeal might be dismissed with cost.

6. After hearing the arguments and going through the record present before us, it transpires that the appellant was charged in a murder case vide FIR dated 02.04.2020. He was put under suspension on 08.04.2020 by his competent authority. His appeal for bail before arrest was rejected on 07.09.2020 by the Additional Sessions Judge-IV, Peshawar and he was arrested on that date and put behind bar. He was granted bail by the august Supreme Court of Pakistan vide its judgment dated 05.11.2020. On 08.04.2020, when the appellant was suspended, an inquiry was initiated against him by issuing him a charge sheet and statement of allegations. The Inquiry Officer, a Deputy Superintendent of Police, submitted his report dated 29.12.2020 which consisted of proceedings of one sentence according to which, "the alleged official was summoned by the parwanas and on his mobile cell No. 0301-8808140 several times but he could not appear before the undersigned to attend the inquiry proceedings." It is difficult to understand that an officer of DSP rank had no idea of conducting inquiry in case of an accused who was behind the bar. Proceedings of inquiry indicate that it was not ensured whether the accused received the charge sheet and statement of allegations. As he was behind the bar, the Inquiry Officer had to go to him to conduct the inquiry, which was not done, despite the fact that he was bound under the rules to provide reasonable opportunity of hearing to the accused, as was clearly mentioned in the statement of allegations also.

ATTESTED

The competent authority also did not ascertain whether all the legal


 W. NER
 Vice-Chief
 Peshawar




(b)

formalities for conducting the inquiry were fulfilled or not. The inquiry report was, therefore, faulty and full of lacunas, but the competent authority of the appellant passed the order of dismissal based on the same report. The appellate authority (The CCPO Peshawar) rejected the departmental appeal of the appellant based on the same findings of the Inquiry Officer/report.

7. It would have been in the fitness of the matter that the appellant would have been kept under suspension till the outcome of the trial in the competent court of law. During the course of proceedings in this Tribunal, the appellant was acquitted of all the charges by the court of Additional Sessions Judge-XIII, Peshawar vide its judgment dated 16.12.2022.

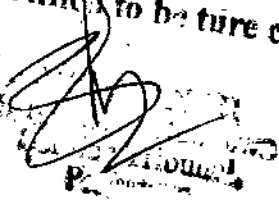
8. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 20th day of December, 2022.*


(ROZINA REHMAN)
Member (J)


(FARZHA PAUL)
Member (E)

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2023 منجانب السلام اللہ

مورثہ

مقدمہ

دعویٰ

جرم

لفیہ حاکم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب وہی وکل کاروائی متعلقہ

آن مقام پشاور

کیلئے روئے حاکم

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب وہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2023ء

ماہ جولائی

28

المرقوم

العبد گدا واہ العبد گدا

کے لئے منظور ہے۔

Accepted

مقام لکھنؤ

(Signature)