


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 691/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3.
1	26.09.2023	<p>The implementation petition of Mr. Wajid Ali Shah submitted today by Mr. Muhammad Adam Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>28-09-2023</u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Wajid Ali Shah **Versus** *The Secretary; etc;*
 Appellant Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Muhammad Adam Khan Advocate High 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 _____		x
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 _____		x
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		x

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

Name:- Muhammad Adam Khan

Signature:- *Adam Khan*

Dated:- 19.09.23

Before The Service Tribunal KPK Peshawar.

Execution Petition No. 691 /2023.

IN

Service Appeal No. 854 /2017.

Wajid Ali Shah VS The Secretary, etc;

INDEX

S.No.	Description of Documents	Annexure	Pages	
			From	To
1.	Memo of Petition	---	1	3
2.	Order dated 15-05-2014.	"A"		4
3.	Judgment Appeal No.1292/2018.	"B"	5	9
4.	Arrival report and Postal receipt A/D card	"C to C/II"	10	12
5.	Wakalat Nama	---		13

Total- 13

Dated:-20-09-2022.

Appellant



(Wajid Ali Shah)



Through:-

Muhammad Adam Khan
Advocate Mardan.

Before The Service Tribunal KPK Peshawar.

Execution Petition No. 691 / 2023.

IN

Service Appeal No. 854 /2017.

decided on 26-06-2023.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7918

Wajid Ali Shah S/o Abdurrahman (Ex-Constable dated 26-09-23
No.2905 District Mardan) resident of Mohellah
Sharif Abad, Bughadada, Mardan.

Appellant.

Versus

1. The Secretary, Home Department, K.P.K,
Peshawar.
2. The District Police Officer, Mardan.
3. The Regional Police Officer, Mardan
Range-1, Mardan.

Respondents.

EXECUTION PETITION OF JUDGMENT/ORDER IN
SERVICE APPEAL NO. 854/2018 DECIDED ON 26-06-2023 TITAL
"Wajid Ali Shah VS The Secretary, Police Deptt;
etc;".

1. That the Petitioner was appointed as constable
with Bilt No.854/2017 in Mardan Police on
04-09-2009.
2. That the Petitioner was dismissed from service
disciplinarily on 15-05-2014 and the alleged

absence period was ordered to be treated as alleged absence from duty 02-03-2014.

(Copy Annexure-"A").

3. That the Petitioner challenged the said order, before this Honourable Tribunal vide Appeal No. 854/2017, which was accepted on 26-06-2023 and setting aside the impugned order, the Petitioner/Appellant was reinstated into Service with back service benefits.

(Copy is attached as Annexure-"B").

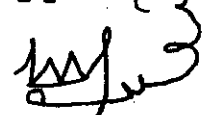
4. That the Petitioner/Appellant reported his arrival for duty to The Respondents submitting the copy of the relevant Judgment vide Application dated 01-08-2023. But, the Respondents are reluctant to implement the judgment in question. Although they are duty bound to implement the same. (Copy Annexure: "C").

5. That the Petitioner/Appellant is jobless since that the date of dismissal and he, along-with his kid are starving in these hard days.


It is prayed that the Respondents may be directed to implement the judgment in question in letter and spirits, with costs of this Petition.

Dated:-06-09-2023.

Appellant



(Wajid Ali Shah)

Through:- 

**Muhammad Adam Khan
Advocate Mardan.**

Before The Service Tribunal KPK Peshawar.

Execution Petition No. / 2023.

IN

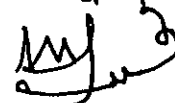
Service Appeal No. 854 /2017.

Wajid Ali Shah VS The Secretary, etc;

AFFIDAVIT

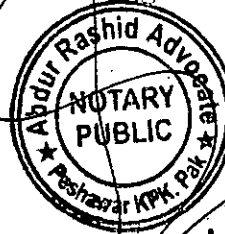
I, Wajid Ali Shah /the Appellant, do hereby state on solemn affirmation that the contents of this Execution Petition are true and correct to the best of my knowledge and belief.

Deponent



(Wajid Ali Shahs)

ATTESTED



26/9/2023

ORDERATTESTED
ADAM KHAN

Constable Wajid Ali Shah No. 2905, while posted at Police Station Sher Garh Mardan committed the following acts, which leads to gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975. Brief facts are that Constable Wajid Ali Shah No. 2905, while he was posted at Police Station Sher Garh Mardan deliberately absented himself from the lawful duty without prior permission/leave from his superiors vide DD No.33, dated 02.03.2014 (uptill now) And has been suspended due to involved in case FIR No. 130 dated 05.03.2014 u/s 395/109/PPC Police Station Mar Hussain.

In this connection, Constable Wajid Ali Shah No. 2905, was charge sheeted vide this office No. 525/R, date 20.03.2014 and he was also proceeded against departmentally through inquiry officer, Mr. Naiz Khan DSP/KTG: Mardan who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 18/KTG: dated 20.03.2014, in which the allegations has been established against the defaulter constable.

The undersigned agree with the findings of enquiry officer and the alleged Constable Wajid Ali Shah No. 2905, is hereby dismissed from service and his absence period counted as leave without pay, in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No: 1122

Dated: 14/5 /2014

(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 5330-35 dated Mardan the 15.5 /2014

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-I
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

(4)

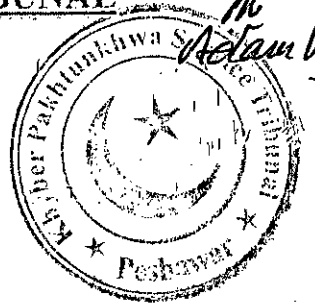
Annexure B

Attested
in
Adam Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 854/2017

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



Wajid Ali Shah S/O Abdur Rahman (Ex-Constable No. 2905 District Mardan)
resident of Mohallah Sharif Abad, Bughdada, Mardan. (Appellant)

Versus

1. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
2. The District Police Officer, Mardan.
3. The Regional Police Officer, Mardan Region-I, Mardan.....(Respondents)

Mr. Adam Khan,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution.....	15.08.2017
Date of Hearing.....	26.06.2023
Date of Decision.....	26.06.2023

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 15.05.2014 of the DPO/respondent No. 2, whereby the appellant was dismissed from service and the period of alleged absence was treated as leave without pay and the departmental appeal there-against was rejected by the RPO/respondent No. 3 vide order dated 23.06.2017. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated into service with back service benefits.


ATTESTED
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was employed as Constable in Mardan Police on 04.09.2009. While posted at Police Station Shergarh, Mardan, he was arrested on 03.03.2014, in connection with a case registered vide FIR No. 130 dated 04.03.2014 u/s 395/109 PPC P.S Yar Hussain, District Swabi and he remained in judicial lock up till his acquittal on 11.04.2017. On acquittal, the appellant attended the office of the DPO Mardan to resume duty where he learnt that he was dismissed from service. He procured the copy of impugned order dated 15.05.2014 from the office of the DPO Mardan on 02.05.2017 and represented there-against before the RPO/respondent No. 3, there and then. The appeal was rejected by the RPO vide order dated 23.06.2017, which was also not conveyed to the appellant, while the copy of the same was issued to him on his request on 13.07.2017; hence the present appeal.

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 Deputy District Attorney 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 the appellant never absented himself from the duty willfully nor he committed any criminal act. In fact, he was falsely dragged therein. Being in police custody since 03.03.2014 and thereafter in the judicial lockup, it was not possible for him to perform his duty. He further argued that arrest and detention of the appellant in judicial lockup was in the knowledge of the DPO

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Commission
Peshawar



and under the law he might have kept the departmental proceedings pending till the adjudication of the criminal case under the law. He further argued that while in judicial lockup, an ASI of Police, visited the appellant in the District Jail, Swabi and produced the copy of the charge sheet to him. The said ASI wrote-down the defence reply thereto of his own accord and compelled the appellant to sign the same. He further argued the appellant was not allowed to obtain copies of the show cause nor he was provided the right of defence properly and thus he was condemned unheard. He further argued that the departmental enquiry was conducted wherein the appellant was not provided the chance of participation nor the enquiry officer visited him in the jail in connection with the enquiry proceedings. According to him the point of suspension of the appellant from service although was mentioned by the DPO in the impugned order, yet the same was neither conveyed to him nor he was paid the suspension allowance; even he was not paid the salary for the period he remained on duty during the month of March 2014. He requested that the appeal might be accepted.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was involved in the criminal case which was proved through recovery made from him and to that effect Section 411 PPC was added during investigation of the case. He further argued that the appellant had deliberately absented himself from official duty for four days as reported vide Daily Diary No. 33 dated 02.03.2014 before lodging of FIR on 04.03.2014 which meant that he had smelled some legal consequences against him. He further argued that the appellant was provided

ATTESSED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

[Handwritten signature]

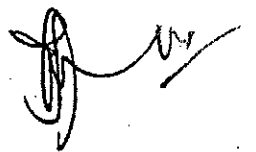
P/8

all opportunities of defence, required under the law and rules. Charge sheet & statement of allegations were duly served upon him which was evident from the thumb impression on the back of those documents. His statement was recorded by ASI Mudassir Khan at District Jail Swabi, duly attested by the Assistant Superintendent Jail. The learned Deputy District Attorney informed that the appellant was called upon and heard in person by the appellate authority on 24.05.2017 in orderly room but he failed to prove his innocence and had rightly been dismissed from service. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant while serving as Constable at P.S Shergarh Mardan was nominated in FIR dated 04.03.2014 u/s 395/109 PPC at P.S Yar Hussain Swabi. He was arrested, prior to the registration of FIR, on 03.03.2014, and remained in judicial lockup till his acquittal on 11.04.2017 by the court of Additional Sessions Judge, Lahor, Swabi. The DPO Mardan, when came to know about the event, placed the appellant under suspension vide order dated 10.03.2014. Without waiting for the outcome of the trial, the DPO Mardan vide his order dated 14.05.2014 dismissed the appellant from service with further order of counting his absence period as leave without pay. Before passing that order, he initiated disciplinary proceedings by issuing charge sheet and statement of allegations on 20.03.2014. Mr. Niaz Khan, DSP Katlang Mardan was appointed as Inquiry Officer. The inquiry report available with the reply of respondents indicates that the Inquiry Officer never visited the appellant, rather he deputed an ASI to get the statement of the appellant while he was in the judicial lock up. He

ATTESTED

 EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



P/9

further based his inquiry on a Roznamcha by the SHO P.S Shergarh. The entire enquiry revolved around his absence and the order of dismissal was also passed on the same ground.

7. From the perusal of record, it is evident that the DPO Mardan was aware of the fact that an FIR had been lodged in which, among others, the appellant had also been nominated and that he was behind the bar, therefore, he rightly placed him under suspension. Instead of waiting for the outcome of the trial in the court of law, the DPO Mardan, strangely became impatient and initiated departmental proceedings against the appellant on his absence, knowing that he was behind the bar. Record further indicates that the appellant was acquitted of all the charges and as maintained by the August Supreme Court of Pakistan "every acquittal is honourable". As far as absence of the appellant is concerned, it was not deliberate, rather it was beyond his control. This fact was known to his competent authority also.

8. In view of above the appeal in hand is allowed as prayed for and the impugned orders dated 15.05.2014 and 23.06.2017 are set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 26th day of June, 2023.*

(FAREHA PAUL)
Member (E)

Fazle Subhan, P.S

(RASHIDA BANO)
Member (J)

Certified to be true copy
EX-21111111
Khyber P. Antankhwa
Service Tribunal
Peshawar

Office copy.

P/10 Annexure - C

To
The DPO, Nardam.

Attested
Adam Khan

Subject:- Request for Reinstatement in Service/
Arrival report.

Sir,
Reference Judgment of UP Service Tribunal in Appeal No. 854/2017 dated 26.06.2023, whereby I am Re-instated into Service with back service benefits.
Copy attached.
I do hereby report my arrival for duty.

It is requested that I may be Re-instated into Service with back service benefits & oblige,

Dt 01.08.2023

Yours obediently
WJ3

(Wajid Ali Shah)
Constable No. 2905
Resident of Village Gujar Goshi
Nardam.

P/17

Annexure C/I

Attested

By
Adambhan

No. 374

For Insurance No. RGL117271560 : rsc. Rs. 90
of
uninsured letter No. RAD01251572 : than AD
prescribed in the
Post Office Guide or on which no
acknowledgement is due.

P/10

Received a registered*
addressed to

D P O

Date-Stamp

150

Initials of Receiving Officer Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Insured for Rs. (in figures)

M or 100 (in words)

If insured.

Insurance fee Rs. Ps. (in words)

Name and
address
of sender

Weight

Kilo Grams

25-8-00

RP-54

RBL 117271560

رسید P/02

P/02

Amneously C/0
1/11

Attested

Adam Khan

رجسٹری یا بیمہ بھیجنے والے کو پست پر دیئے گئے پتہ پر واپس بھیجا جائے۔

The D.P.O, نبر Mardam

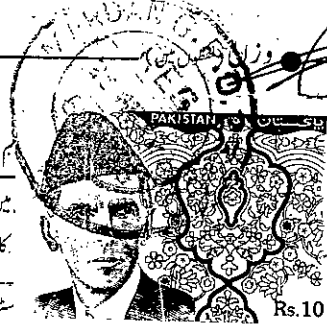
وصول پائی۔

گرام

28/08/2023
28

میں لفظ "بیمہ" پہلے تحریر کریں۔
کات دیا جائے۔

سرٹیفکیشن فیس تیس روپے - Rs.30/-



Rs.10

ذیشان احمدی
قیمت: تیس روپے - Rs.20/-



ACKNOWLEDGEMENT DUE CARD (Registered)

Wajid Ali Shah نام

C/o M. Adam Khan Advocate پتہ

ضلع تحصیل ڈاکخانہ Mardam



پوسٹ کوڈ

(پوسٹ کوڈ لکھنا نہ بولے)

P/13
VAKALAT NAMA

In the Court of Service Tribunal Peshawar
Case No. _____ of 2023

Wajid Ali Shah

(Petitioner)
(Plaintiff)
(Appellant)

VERSUS

The Secy; etc

(Respondent)
(Defendant)

I/~~we~~ Wajid Ali Shah the
above noted Appellant do
hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 06.09.23

N.W.F.P. Bar Council
ADVOCATE
High Court
ADAM KHAN
No. BC-09-0600
A. Jahan
Secretary's Signature

Father's Name: **BADSHAH GUL**
Address: **VILL: GOJAR GARHI DISTT: MARDAN**
Office/Tel: **0931-43011** / **0931-53450**
Enrolment Date A.C. **20/08/1975**
Enrolment Date B.C. **13/06/1996**
Place of Practice: **MARDAN**
Date of Birth: **04/04/1945**
Blood Group: **AB+VE**
N.I.C.No. **141024612813**

N.W.F.P. BAR COUNCIL

(Wajid Ali Shah)
(Signature of Client)

Adam Khan
Accepted