


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 744/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.10.2023	<p>The implementation petition of Mr. Javed Khan submitted today by Syed Noman Ali Bukhari Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. Parcha peshi is given to the counsel for the petitioner.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 744 /2023
In Service Appeal No: 4278/2021

Javed Khan

V/S

police Deptt:


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PETITIONER
Javed Khan

THROUGH:


SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT
&


(UZMA SYED)
ADVOCATE, PESHAWAR

Cell No: 0306-5109438

(1)

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

Execution Petition No. 744 /2023
In Service Appeal No.4278/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8280

Dated 11/10/23

Mr. Javed Khan, Ex-IHC/No.2008
CCP Peshawar.

(Petitioner)

VERSUS

1. The Capital City Police Officer Peshawar
2. The Senior Superintendent of Police (operations) Peshawar.

(Respondents)

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 10/07/2023 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:


1. That the applicant/Petitioner filed Service Appeal No-4278/2021 against the removal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 10/07/2023. The Honorable Tribunal is kind enough to allow this appeal of appellant and reinstated the appellant into service from the date of dismissal and is entitled to all back benefits..
(Copy of judgment is attached as Annexure-A).
3. That the appellant also filed application to respondents for the implementation of judgment. The respondents were totally failed in taking any action regarded the Hon'able Tribunal judgment

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dated 10/07/2023. Copy of application is attached as annexure-B.

4. That the law deptt also unfit the case for filling CPLA. Copy of the law deptt: opinion is attached as annexure-C.
5. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 10/07/2023.
6. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
7. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the same in letter and spirit.
8. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 10/07/2023 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.


PETITIONER
Javed Khan

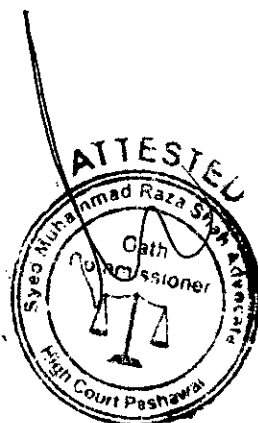
THROUGH:


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.


DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1278 /2021

Mr. Javed Khan, Ex-IHC/No.2008
CCP Peshawar.

(Appellant)

VERSUS

1. The Capital City Police Officer Peshawar
2. The Senior Superintendent of Police (operations) Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 31.12.2020 WHEREIN THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 02.03.2021 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 31.12.2020 AND 02.03.2021 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOR OF APPELLANT.



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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4278/2021

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Mr. Javid Khan, Ex-IHC No. 2008, CCPO, Peshawar.
..... (Appellant)

Versus

1. The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Senior Superintendent of Police, (Operations) Peshawar.
..... (Respondents)

Mr. Syed Noman Ali Bukhari
Advocate

For appellant

Mr. Asad Ali Khan
Assistant Advocate General

For respondents

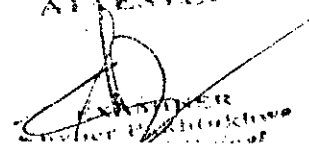
Date of Institution.....30.03.2021
Date of Hearing.....10.07.2023
Date of Decision.....10.07.2023

JUDGMENT

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:

“That on acceptance of this appeal the orders dated 31.12.2022 and 02.03.2021 may please be set aside and the appellant be reinstated in service with all back benefits.”

ATTESTED


RASHIDA BANO
Member (Judicial)

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2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as constable in police department in the year 1996. He was performing his duties up to the entire satisfaction of his superiors. The appellant was posted at Chief Minister Secretariat, when his wife committed suicide but his brother in law charged the appellant for murder of his wife. Case FIR No. 495 dated 25.07.2019 was registered against the appellant, who was arrested and then released on bail vide order dated 30.09.2019 by the competent court of law. The appellant was issued charge sheet and he submitted reply of the same. An enquiry was conducted and enquiry officer in his finding report requested that the enquiry may be kept pending till the finalization of criminal case. The case of the appellant was under trial in the competent court of law and again inquiry was conducted against the appellant without showing any reason and without associating the appellant with the inquiry proceeding. Neither any statement of witness was recorded nor opportunity of defense was provided to the appellant and without any show cause notice, the impugned order dated 31.12.2020 was passed before finalization of the criminal case. Feeling aggrieved, the appellant filed departmental appeal for reinstatement in service which was rejected vide order dated 02.03.2021, 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 Assistant Advocate General and perused the case file with connected documents in detail.

ATTESTED

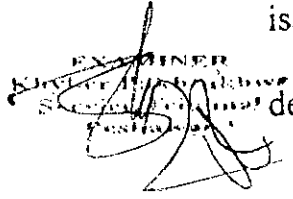


4. Learned counsel for appellant submitted that the impugned order is against law and facts and norms of justice, therefore, not tenable and liable to be set aside. He next contended that the appellant was not treated in accordance with law and rules and respondents acted in violation of Article 4, 25 & 38 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that no show cause notice or statement of allegation were served upon the appellant thus he condemned unheard and the impugned order has no legal effect. He submitted that under CSR-194/194-A the appellant was suspended till the order of the competent court but the appellant was dismissed from which against the law and rules. Lastly he submitted that under the principle of natural justice, fair play and equity, the appellant is entitled for reinstatement into service and the impugned orders are illegal, wrong, unwarranted, hence liable to be set aside, he therefore, requested for acceptance of instant service appeal.

5. Conversely, learned Assistant Advocate General contended that the appellant has been treated in accordance with law and rules. He further contended that appellant being member of discipline force, committed gross misconduct and after fulfillment of all codal formalities he was dismissed from service. He submitted that criminal and departmental proceedings are distinct in nature, can run side by side and order of one authority is not binding on the other. He submitted that appellant was issued charge sheet alongwith statement of allegation and detailed departmental inquiry was conducted as per law/rules and was also

ATTESTED

EXAMINER
 Director of Public Instruction
 Government of Punjab
 Lahore




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provided full opportunity of defense, but he failed to defend himself and he rightly dismissed from service.

6. Perusal of record would reveals that appellant was nominated in Case FIR No. 495 dated 25.07.2019 registered U/S 302/34 PPC Police Station Katlang, Mardan. Appellant was arrested by the local police and was released on bail by Additional Session Judge, Katlang Mardan vide order dated 30.09.2019. Competent authority after getting information of appellant's being nominated in the above mentioned criminal case, initiated disciplinary proceedings and issued him charge sheet and statement of allegations on 02.10.2019 by appointing SP Rural as Enquiry Officer. Appellant submitted reply of charge sheet on 08.10.2019 by professing innocence. Enquiry officer after providing opportunity of personal hearing to the appellant, recommended that enquiry may be kept pending till decision of the court. But all of sudden without waiting for the decision of criminal case by the competent court of law, respondents again started enquiry vide order dated 28.12.2020 with direction to enquiry officer to conclude it within 24 hours and submit his decisive finding for further disposal. Enquiry officer without summoning appellant again, and recording statements of complainant of criminal case who nominated complainant in a criminal case and other witnesses submitted his enquiry report with recommendation of suitable punishment to the appellant vide enquiry report dated 28.12.2020.

ATTESTED


 Khair-ud-Din
 Senior Assistant
 Registrar

Consequently, the appellant was dismissed from service by the competent authority vide impugned order dated 31.12.2020. When once

competent authority held that enquiry be kept pending till the decision

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of criminal case by the competent court of law, then record is silent about the urgency or element which compel the competent authority to decide it without waiting for result of the criminal case. Moreover, it is against the settled norms of law, rules and fair play that no opportunity of personal hearing and cross examination was provided to appellant. No regular enquiry was conducted by the enquiry officer. He just relied upon the proceedings of criminal case conducted by the police during investigation without waiting for its decision by the court of law. It is also pertinent to mention here that appellant was acquitted vide judgment/order dated 24.11.2022 by Additional Sessions Judge, Katlang in the said criminal case.

7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. The charging on of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Commission

8. For what has been discussed above, this appeal in hand is accepted and the impugned order dated 31.12.202 is set aside and the appellant is

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reinstated in service from the date of his dismissal from service and is entitled to all back benefits. Parties are left to bear their own costs.

Costs shall follow the event. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10th day of July, 2023.

(SALAH UD DIN)
Member (J)

*Kaleemullah

(RASHIDA BANO)
Member (J)

Certified to be true copy

Date of Presentation of Application 02/8/23
 Number of Page 6
 Copying Fee 30/-
 Urgent _____
 Total 35/-
 Name of Copyist _____
 Date of Court _____ 02/8/23
 Date of Delivery of Copy 02/8/23

درخواست براد دوباره بحالی مطابق فیصلہ سرور سٹریٹ بیونل جینرل خواہ لٹور

جناب عالی ا

مگر آرٹیکل 514 سائل کو مورچہ 31.12.2020 کو حکم پولیس لٹور سے
برخواست کیا گیا تھا۔ حکم فیصلہ کو سرور سٹریٹ بیونل جینرل خواہ
لٹور میں صلح کر عدالت سائل کو دوبارہ بحال فرمایا ہے
عدالتی فیصلہ بابت بحالی کو کری ہمراہ لفظ ہے۔

بزرگیہ درخواست فیصلہ سائل کو مطابق عدالتی فیصلہ کو کری پر
بحالی کے احکامات صہادر نما کر مشکور فرماویں۔ دعا گو رہیوں گا۔

شکر 03-08-2023

الوارث احمد

جاوید خان (سابہ آئی ڈی فلور) ولد افضل صاحب کائنات سردان

0333-9344621

AT 10/08/2023



C-11

**GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT**

MINUTES OF THE SCRUTINY COMMITTEE MEETING.

(AGENDA ITEM NO. 25)

SUBJECT: SERVICE APPEAL NO. 4278/2021 JAVID KHAN VERSUS CAPITAL CITY POLICE OFFICER, KHYBER PAKHTUNKHWA AND OTHERS.

A meeting of the Scrutiny Committee was held on 08-2023 at 11:00 A.M. in the Conference Room of Law, Parliamentary Affairs & Human Rights Department under the Chairmanship of Secretary Law to determine the fitness of the subject case for filing of Appeal/CPL before the Supreme Court of Pakistan. Advocate-on-Record (Mr. Mian Saad Ullah Jondoli) and Assistant Advocate General (Mr. Kamran Murtaza) represented the Advocate General Office, Khyber Pakhtunkhwa.

The representatives of Home Department Mr. Mian Mr. Amia ur Rehman, Office Supdt., CPO apprised the Committee that the Appellant filed the subject Service Appeal with the prayer that the case be set aside and the Appellant be reinstated in service with all back benefits. Tribunal vide order dated: 10.07.2023 accepted the subject Service Appeal and reinstated the Appellant in service from the date of his dismissal from service. The Scrutiny Committee after examining the case in detail decided to return the subject case on the following grounds:

GROUND/DISCUSSIONS:

- I. Perusal of the record revealed that the Appellant was appointed as Constable in Police Department in the year, 1996 and during his posting at Chief Minister Secretariat, the Appellant was charged in case FIR No. 45 dated: 25.07.2019 under section 302/34 PPC, Police Station, Katlang, Mardan. Perusal of the record further revealed that due to involvement of the Appellant in criminal case, the inquiry officer in the subject case proceeded against and the inquiry officer in the subject case may be kept pending till the finalization of the criminal case. Perusal of the record revealed that without waiting for the decision of the Court in criminal case, the Respondents/Department again started inquiry against the Appellant was not conducted against the Appellant was not conducted according to law / rules in vogue. No opportunity of personal hearing and cross examination was afforded to the Appellant. Perusal of the record further revealed that the Appellant has been acquitted by the Court of competent jurisdiction in the criminal case. Perusal of the record further revealed that the Appellant in criminal case ibid was the sole ground for departmental proceedings against the Appellant already been acquitted by the Court of competent jurisdiction. In response to a query the Departmental Representative apprised the Scrutiny Committee that no appeal against the order of acquittal of the Appellant has been filed in upper forum.
- II. Perusal of the record revealed that inquiry against the Appellant was not conducted according to law / rules in vogue. No opportunity of personal hearing and cross examination was afforded to the Appellant. Perusal of the record further revealed that the Appellant has been acquitted by the Court of competent jurisdiction in the criminal case. Perusal of the record further revealed that the Appellant in criminal case ibid was the sole ground for departmental proceedings against the Appellant already been acquitted by the Court of competent jurisdiction. In response to a query the Departmental Representative apprised the Scrutiny Committee that no appeal against the order of acquittal of the Appellant has been filed in upper forum.
- III. The Scrutiny Committee held that no plausible grounds exist on the basis of which an Appeal/CPLA in the subject case before the Supreme Court of Pakistan could be filed.

ADVICE:

Hence in view of above, it was decided with consensus by the Scrutiny Committee that the subject case may be returned to the Administrative Department.

(TIRIQBAL KHATTAK)
SOLICITOR

بعدالت

خمسبر محفو عنوان سرس لم و سونل مشام

مورخہ	حامد خان	2 منجانب
مقدمہ	بنام	بنام
دعویٰ		لوئس دوسنار مندر
جرم		

باعث تحریر آنک

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

آن مقام پیشاور کیلئے سید نعمان علی مجاویہ عظمیٰ سید

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 دہی 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 مقررہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا متاثر تازنی کو اپنے رائے یا اپنے بنائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم 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 سندر ہے۔

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ماہ

المرقوم

العبد د گ العبد