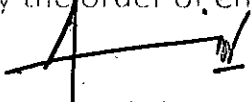


Form-A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 761/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.10.2023	<p>The implementation petition of Mr. Noor Rehman submitted today by Naila Jan 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  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 761 /2023

In

Service Appeal No: 727/2016

Constable Noor Rehman

Versus

Government of Khyber Pakhtunkhwa and others

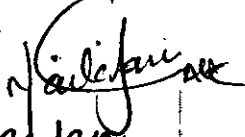
INDEX

S#	Description of Documents	Annex	Pages
1.	Execution Petition with Affidavit		1 to 2
2.	Addresses of Parties		3
3.	Copy of Judgment	1	4 to 9
4.	Wakalat Nama		10

Dated: 13/10/2023

Through


Petitioner


Naila Jan
Advocate, High Court
Peshawar

D

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 761 /2023

In

Service Appeal No: 727/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8293

Dated 13-10-2023

Constable Noor Rehman (No.95) S/o Abdul Diyan R/o
Nai Abadi, Bahader Kot, District Kohat.

.....Petitioner

Versus

1. Government of Khyber Pakhtunkhwa, through Inspector General of Police, Peshawar.
2. Regional Police Officer, ~~Peshawar~~ *Kohat*
3. District Police Officer, Kohat.
4. Mr. Lal Farid Khan, Enquiry Officer/ DSP City Kohat.

..... Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
727/2016 DECIDED ON
21/08/2023

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 21/08/2023 (Copy of the judgment is annexed as annexure "A")
2. That the relevant portion of the judgment is reproduced "*in view of the above discussion, the appeal in hand is allowed by setting-aside the*

impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room".

- 3. That the Petitioner after getting of the attested copy of same approached the Respondents several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.
- 4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
- 5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 13/10/2023

[Signature]
Petitioner

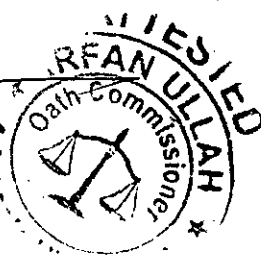
Through

[Signature]
Naila Jan
Advocate, High Court
Peshawar

AFFIDAVIT:-

I, Constable Noor Rehman (No.95) S/o Abdul Diyan R/o Nai Abadi, Bahader Kot, District Kohat, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

[Signature]
Deponent

[Signature]
13/10
27


BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2023

In

Service Appeal No: 727/2016

Constable Noor Rehman

Versus

Government of Khyber Pakhtunkhwa and others

ADDRESSES OF PARTIES

PETITIONER

Constable Noor Rehman (No.95) S/o Abdul Diyan R/o
Nai Abadi, Bahader Kot, District Kohat.

RESPONDENTS

1. Government of Khyber Pakhtunkhwa, through
Inspector General of Police, Peshawar.
2. Regional Police Officer, Peshawar.
3. District Police Officer, Kohat.
4. Mr. Lal Farid Khan, Enquiry Officer/ DSP City
Kohat.

Dated: 13/10/2023

Through

Petitioner

Naila Jan
Advocate, High Court
Peshawar

4

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 727 /2016



Constable Noor Rehman (No. 95)

S/o Abdul'Diyan

R/o Nai Abadi Bahader Kot, District Kohat.

.....*APPELLANT*

VERSUS

1. Government of KPK through
Inspector General of Police, Peshawar.
2. Regional Police Officer, Kohat Region.
3. District Police Officer, Kohat.
4. Mr. Lal Farid Khan, Enquiry Officer/ DSP City Kohat.


.....*RESPONDENTS*

(AMENDED) APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNAL ACT 1973 FOR SETTING ASIDE THE IMPUGNED ORDER OF DISMISSAL FROM SERVICE DATED 09.04.2015 PASSED BY RESPONDENT NO. 3 AND ORDER OF REJECTION OF DEPARTMENTAL APPEAL DATED 25.05.2016 PASSED BY RESPONDENT NO. 2, AND APPELLATE BOARD ORDER DATED 18/11/2016 AND FOR REINSTATEMENT OF THE APPELLANT INTO HIS SERVICE WITH ALL BACK BENEFITS.

Respectfully Submitted.

1. That the appellant was lastly serving in the Kohat District Police as Constable (No. 95) and was posted as a Rider in Rescue 15, Kohat.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

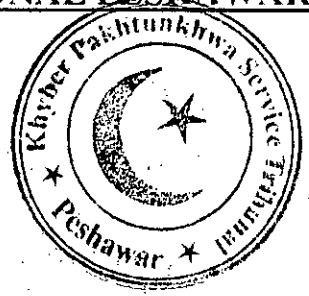
5

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 727/2016 *

Date of Institution ... 28.06.2016

Date of Decision... 21.08.2023



Constable Noor Rehman (No. 95) S/O Abdul Diyan. R/O Nai Abadi Bahader
Kot, District Kohat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Inspector General of Police,
Peshawar and 04 others.

... (Respondents)

MR. MUHAMMAD JAHANGIR MOHMAND.

Advocate

--- For appellant.

MR. ASAD ALI KHAN,

Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN

MR. SALAH-UD-DIN

--- CHAIRMAN

--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise averments as raised by the

appellant in his appeal are that he while posted as Rider in Rescue 15

Kohat, was charged in case FIR No. 02/2015 dated 21.01.2015 under section

09 CNSA registered at Police Station Anti-Narcotics, Kohat. On conclusion

of the departmental inquiry, the appellant was awarded major

punishment of dismissal from service vide order bearing O.B No. 294

dated 09.04.2015. The appellant preferred departmental appeal on


21.04.2016, which was rejected vide order bearing Endst: No. 2262-63/PA

dated 25.05.2016, however the same was communicated to the appellant on

02.06.2016. The appellant then filed instant service appeal on

28.06.2016, however during the pendency of the same, that the appellante

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

board rejected the revision petition of the appellant vide order dated 18.11.2016, constraining the appellant to file amended appeal, wherein the order dated 18.11.2016 regarding rejection of revision petition of the appellant was also challenged.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal and factual objections.

3. Learned counsel for the appellant contended that the appellant was falsely implicated in case FIR No. 02/2015 dated 21.01.2015 under section 09 CNSA registered at Police Station Anti-Narcotics, Kohat and has already been acquitted by competent court of law in the said case vide judgment dated 04.04.2016; that upon acquittal of the appellant in the concerned criminal case, the very ground on the basis of which he was proceeded against departmentally has vanished away, therefore, appellant is legally entitled to reinstatement in service with all back benefits; that the alleged departmental inquiry proceedings were conducted at the back of the appellant as he was behind the bar; that the appellant was not provided any opportunity of personal hearing as well as self defence and that the principle of *Audi-altram-partem* was violated; that instead of waiting for outcome of the criminal case, the appellant was wrongly and illegal dismissed by the competent Authority, therefore, the impugned orders are liable to be set-aside by reinstating the appellant with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant was arrested in Narcotics case and

ATTESTED

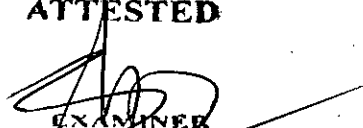
WITNESSES
 M. J. WAINER
 District Judge
 District Tribunal
 Peshawar

the same has brought bad name to the Police Force; that criminal as well as departmental proceedings can run parallel and mere acquittal of the appellant in the criminal case could not be considered as a ground for his exoneration from the charge in the departmental proceedings; that the appellant was not acquitted on merit, rather he was acquitted by extending him the benefit of doubt/technicality, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings; that all legal and codal formalities were complied with in the departmental inquiry proceedings and the appellant was provided opportunity of self defense as well as personal hearing; that the impugned order of dismissal from service of the appellant was passed on 09.04.2015, therefore, the appellant was required to have filed departmental appeal within next 30 days, however the he has filed the departmental appeal on 21.04.2016, which is badly time barred; that the impugned orders have been passed in accordance with law, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6 The appellant was proceeded against departmentally on the allegations of his involvement and arrest in case FIR No. 02 dated 21.01.2015 under section 09 (c) CNSA registered at Police Station Anti-Narcotics Force, Kohat. Copy of the inquiry report as available on the record would show that the appellant was in jail at the time of inquiry proceedings as well as at the time of passing of the impugned order bearing O.B No. 294 dated 09.04.2015, whereby he was dismissed from service. The available record does not show that any evidence whatsoever was recorded by the inquiry

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


officer in support of the allegations leveled against the appellant. Similarly, the appellant was also not provided any opportunity to defend himself during the inquiry proceedings. In absence of any incriminating evidence being collected during the inquiry proceedings, it is surprising as to how the inquiry officer came to the conclusion that the appellant was guilty of the charge leveled against him.

7. The appellant was proceeded against departmentally on the charge of his involvement in case FIR No. 02/2015 dated 21.01.2015 under section 09 CNSA registered at Police Station Anti-Narcotics Force, Kohat. The appellant has already been acquitted in the aforementioned criminal case vide judgment dated 04.04.2016 passed by the competent court of law. In view of acquittal of the appellant, the very charge, on the basis of which the appellant was proceeded against, has vanished away. Nothing is available on the record, which could show that the acquittal order of the appellant has been challenged by the department through filing of appeal before the higher forum and the same has thus attained finality.

8. It is an undeniable fact that the appellant was arrested on 21.01.2015 and remained in custody till his acquittal by the Trial Court vide judgment dated 04.04.2016. The appellant after his acquittal on 04.04.2016 had filed departmental appeal on 21.04.2016, which could not be considered as barred by limitation. Even otherwise too, his departmental appeal was rejected vide order dated 25.05.2016 on merit and not on the ground of limitation.


9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service


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Service Tribunal
Peshawar

with all back benefits. Parties are left to bear their own costs. File be
consigned to the record room.

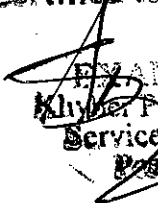
ANNOUNCED
21.08.2023


(KALIM ARSHAD KHAN)
CHAIRMAN


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Naeem Amin

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/16/23
Number of Words page 5
Copying Fee 25/-
Urgent 5/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 12/10/23
Date of Delivery of Copy 12/16/23

وکالت نامہ

بعدالت صبا — KP سوس لٹریچر و سوشل سائنس
 فورجان بنام
 منجانب: petition تاریخ: 13/10/2023

علت نمبر: مورخہ: جرم: تھانہ:

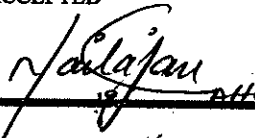
باعث تحریر آنکہ
 مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی وجوابدہی بمقام کے
 لینے ہے۔


نانکہ جان ایڈوکیٹ ہائی کورٹ پشاور

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص روبروئے عدالت حاضر ہوتا ہوں گا اور ہونگی اور بوقت پکارے جانے مقدمہ
 وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے
 برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا
 بروز تعطیل یا پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس
 کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داختم
 صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل
 و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہو گا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید
 دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد نامہ و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہو گا۔ اور بصورت
 اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقنی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختیار نامہ
 پیروی کا اختیار ہو گا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہو گا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل،
 اپیل کے واسطے کسی دوسرے وکیل یا پیر سٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں نیز ایسے مشیر قانون کو ہر امر میں وہی اور ایسے ہی اختیارات حاصل
 ہوں گے جیسے کہ صاحب موصوف کو حاصل ہیں اور پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت
 میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہو گا۔ لہذا یہ مختیار نامہ لکھ دیا تاکہ سند رہے۔ مورخہ: 13/10/2023

مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

ATTESTED & ACCEPTED


 نانکہ جان ایڈوکیٹ ہائی کورٹ پشاور


 فورجان (petitioner)

رابطہ نمبر: 0312-9215473