Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 798/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.10.2023	The implementation petition of Mr. Shams-ur-Rehman submitted today by Mr. Shakir-ud-Din 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. By the order of Chairman REGISTRAR

Before The Honourable Service Tribunal Peshawar

Khyber Pakhtunkhwa

Execution Petition No
in Appeal No 2957/2021

Shams ur Rehman VS Inspector General of Police

Application for Fixation
of above Title Execution
Petition before principle
Seat Peshawar

Respectfully Sheweth:

(1) That the above Title Execution Petition has filed before this Hon'ble Tribunal which has not been fixed yet.

(2) That the above Title Case is decided on 08-08-2023 by This Hon'ble Tribunal.

(3) That the applicant is a very poor man and he is working a private job in Peshawar, he can not Travel from Peshawar To Swat.

(4) That the Applicant want To Fixation The above Title Execution petition before The Principle Seat in Peshawar

It is therefore humbly requested that on acceptance of this application the Execution petition may kindly be fixed before principle Seat Peshawar in the best interest of justice.

Dated: 25-10-2023

Through

Applicant

Counsel

BEFOR THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Execution Petition No. 798 /2023

Appeal No. 2957/2021

Shams ur Rahman son of Gul Rahman Resident of Singoor,District Chitral

Appellant

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Malakand Division, Saidu Sharif Swat.
3. District Police Officer, District Lower Chitral

Respondents

INDEX

Dated : 25-10-2023

Appellant/Petitioner

Through

Shakir uddin shahid
Advocate High Court
Peshawar

(1)

BEFOR THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Execution Petition No. 798 /2023

Appeal No. 2957/2021

Shams ur Rahman son of Gul Rahman Resident of Singoor,District Chitral

Appellant

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Malakand Division, Saidu Sharif Swat.
3. District Police Officer, District Lower Chitral

Respondents

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGEMENT DATED: 09-08-2023 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT

Respectfully Sheweth:

1. That the appellant/ petitioner filed service Appeal No.2957/2021 before this Honorable Tribunal which has been accepted by this Honorable tribunal vide judgment dated 09-08-2023 which was accepted and the impugned order dated 22-04-2020 is set aside and the appellant is reinstated in service with all back benefits.(copy of judgment is attached as Annexure- A)

2. That the Petitioner after getting of the attested copy along with application approached the respondents several times for implementation of the above mention judgment and properly moved an application to respondent Department. However they using delaying and reluctant to implement the judgment of this Honorable Tribunal. (Copy of application is attached as Annexure B)

3. That the Petitioner has no other option but to file the instant Petition for implementation of the judgment of this Honorable Tribunal.

4. That the respondents Department is bound to obey the order of this Honorable 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 dated 09-08-2023 of this Honorable Tribunal.

Appellant/Petitioner

Through

Shakir Ud Din Shahid
Advocate High Court

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2957/2021

Shams-ur-Rehman S/o Gul Rehman R/o Singoor, District Chitral. . . . . **Appellant**

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Malakand Division, Saidu Sharif Swat.
3. District Police Officer, District Lower Chitral.
4. Inquiry Officer Mr. Zafar Ahmed SDPO Chitral.

. . . . . **Respondents**

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDERS DATED: 22.04.2020 AND 27.07.2020.

Respectfully Submitted;

The Appellant humbly submits as under;

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2957/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Shams Ur Rehman S/O Gul Rehman R/O Singoor, District Chitral.
.... *(Appellant)*

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Malakand Division. Saidu Shareef Swat.
3. District Police Officer, District Lower Chitral.
4. Inquiry Officer Mr. Zafar Ahmad SDPO Chitral.

.... *(Respondents)*

Mr. Shakir Ud Din
Advocate ... For appellant

Mr. Fazal Shah Mohmand
Additional Advocate General ... For respondents

Date of Institution.....12.02.2021
Date of Hearing.....31.07.2023
Date of Decision.....09.08.2023

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:

> **"On acceptance of this service appeal, the impugned orders may kindly be set aside and appellant may kindly be reinstated in service with all back benefits."**

2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as constable in police department. He was implicated in a case under Section 9D CNSA Police Station Hayat Abad, while travelling a passenger vehicle from Hospital. He applied for his release on bail to the court of Additional Sessions Judge Peshawar, which

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was granted. An inquiry was initiated against the appellant and he was issued charge sheet where after he joined inquiry and produced his evidence/statement before the inquiry officer. After the conclusion of inquiry proceedings, inquiry officer submitted his report wherein he recommended for major penalty of dismissal from service. Thereafter, final show cause notice was issued, which was replied by the appellant and was dismissed from service vide order dated 22.04.2020. Feeling aggrieved he submitted departmental appeal to the RPO which was dismissed. He file revision petition against the order dated 22.07.2020 to Inspector General of Police Khyber Pakhtunkhwa which was not responded within statutory period of 90 days, hence the instant 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 Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that that the appellant had not been treated in accordance with law and rules. He contended that in-action of the respondent is against the law, rules and principle of natural justice hence void ab-initio and not sustainable in the eyes of law. He further contented that the allegations levelled in the charge sheet and the in the show cause notice are totally baseless and without any substance as he has not been convicted of the offence with which he has been charged and unless and until one is convicted he will be considered innocent and cannot be dismissed from service.

5. The learned Additional Advocate General contended that the appellant was treated in accordance with law and rules. He further contended that he was charged in case FIR No. 380 under Section 9D

CNSA dated 21.02.2020 P.S Hayatabad Peshawar and contraband from his possession was recovered by police. Appellant was charge sheeted and inquiry was initiated and after conclusion of departmental enquiry he was rightly dismissed from service.

6. Record transpires that appellant was charge sheeted on 17.03.2020 upon allegation of involvement in criminal case registered under Section 9D at police Station Hayatababad Peshawar beside leaving for Peshawar without prior permission of authority. Appellant submitted his reply which was found unsatisfactory. Inquiry officer after fulfillment of all codal formalities submit his inquiry report on 08.04.2020. Appellant was issued final show cause notice by the authority and who after hearing him awarded major punishment of dismissal from service vide impugned order dated 22.04.2020.

7. Appellant was issued with show cause notice and statement of allegations on basis of that he was implicated in a criminal case at Peshawar. It is demand of law and principle of natural justice, that when respondents are in knowledge of appellant's implication in a criminal case than they must placed him under suspension till final decision of the court of that very case in which appellant/civil servant was charged. But in the instant case respondent without waiting for decision of competent court of law in hurry decided fate of the appellant by awarding major penalty of dismissal from service which is not in accordance with settled norms of justice. Appellant was acquitted from the charges leveled against him in case FIR No. 380 dated 21.02.2020 under Section 9D of P.S Hayatabad Peshawar vide order dated 08.02.2022 by Additional District & Sessions Judge-X Peshawar.

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8. 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 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.

9. As regard the charge of leaving place of duty for Peshawar without prior permission by the appellant, the appellant in his reply to show cause and final show cause categorically stated that he performed his polio duties for three days and after completion of his Polio duty on forth day he went to DHQ Hospital Chitral for check up of his leg of which surgery was done earlier. He was referred to Hayatabad Medical Complex Peshawar by DHQ Chitral's Doctors due to severe pain in that leg, he also annexed hospital prescription and referring sheet of DHQ Chitral to HMC Peshawar but inquiry officer did not bother to verify the same. Appellant also mentioned that factum of performance of his duties during Polio can be ascertained from Lady Health Worker (LHW) with whom he was deputed on polio duty but inquiry officer also had not associated the LHW with inquiry proceedings which means proper chance of self defense was not provided to him which is against the spirit of Rule 5 & 6 of Police Rules, 1975.

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10. For what has been discussed above, we allow the appeal and impugned orders passed by respondents are set aside and appellant is

reinstated in service with all back benefits. Cost shall follow the event. Consign.

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

(Muhammad Akbar Khan)
Member (E)

(RASHIDA BANO)
Member (J)

Kaleemullah

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/10/23
Number of words page 6
Copying Fee 18/-
Urgent 4/-
Total 38/-
Name of Copyist
Date of Completion of Copy 23/10/23
Date of Delivery of Copy 23/10/23

(9)

بخدمت جناب ڈسٹرکٹ پولیس افیسر صاحب ضلع چترال لوئر

عنوان: **بحالی ملازمت**

مودبانہ گزارش ہے کہ سائل کو سال 2020 میں ایک جھوٹے مقدمہ میں ملوث کرکے نوکری سے برخاست کیا گیا تھا حکم برخاستگی کے خلاف محکمہ پولیس کے افسران بالا کو درخواست / اپیل کی گئی جو کہ مسترد ہوئے، تو سائل سروس ٹریبونل میں اپیل بعنوان شمس الرحمن بنام آئی جی پی خیبر پختونخوا وغیرہ سروس اپیل نمبر 2957/2021 دائر کی جو کہ مورخہ 09.08.2023 کو سائل کے حق میں فیصلہ ہوا۔

ارڈر سروس ٹریبونل مورخہ 09.08.2023 لف درخواست ہذا ہے۔

لہذا استدعا ہے کہ سائل کو ازروئے ارڈر سروس ٹریبونل حکم مورخہ 09.08.2023 ملازمت پر بحال فرمائی جاوے۔

عین ماتحت پروری ہوگی۔

العارض:

سابقہ کنسٹیبل شمس الرحمن ولد گل رحمن

سکنہ سنگور چترال لوئر

مورخہ 19.08.2023

قیمت 50 روپے

31261

ایڈووکیٹ:

بار کونسل/ایسوسی ایشن نمبر: BC-19-1237

رابطہ نمبر: 0345-8698850

PESHAWAR BAR ASSOCIATION PBA

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس ٹریبونل پشاور

منجانب: شمس الرحمن ولد گل رحمن سکنہ چترال

بنام

آئی جی پی وغیرہ

دعویٰ:

علت نمبر:

مورخہ

جرم:

تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ آن مقام .... کیلئے .... 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 برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زر یں 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 بھی جملہ مذکورہ بااختیارات 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

المرقوم: 25-10-2024

PESHAWAR BAR ASSOCIATION
KHYBER PAKHTOONKHWA

العبد   گواہ شد   العبد

مقام .... کے لیے منظور ہے

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی