Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 842/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.11.2023	The implementation petition of Mr. Ghuncha Din submitted today by Mr. Noor Muhammad Khattak 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 counsel for the petitioner. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution NO. 842 /2023

Ghuncha Din VS GOVT OF KPK

APPLICATION FOR FIXATION OF THE ABOVE TITLED Execution AT PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned Execution is pending adjudication before this Hon`ble Tribunal in which no date has been fixed so far.

2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.

3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.

4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application, the appeal may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Appellant/Applicant

Dated: 22/11/23

Through

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 842 /2023
In
Appeal No. 1372/~~2023~~ 2018.

GHUNCHA DIN VS E&SE DEPTT: & OTHERS

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PETITIONER

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 842 **/2023**
In
Appeal No. 1372/~~2023~~ 2018

Mr. Ghuncha Din
PSHT (BPS-15), GPS Chagam No 2,
Poran, District Shangla.

.....PETITIONER

VERSUS

1- The Director E&SE Department, Khyber Pakhtunkhwa, Peshawar.
2- The District Education Officer, District Shangla.
3- The District Accounts Officer, District Shangla.

..... RESPONDENTS

EXECUTION PETITION UNDER SECTION 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT 1974, RULE 27 OF THE KP SERVICE TRIBUNAL RULES 1974 READ WITH SECTIONS 36 AND 51 OF THE CIVIL PROCEDURE CODE AND ALL ENABLING LAWS ON THE SUBJECT FOR THE IMPLEMENTATION OF THE JUDGMENT DATED 03/04/2023 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 1372/2023 before this august Service Tribunal against the impugned orders dated 14/05/2018 & 08/10/2018 and seeking directions to the respondents to treat the intervening period i.e. w.e.f 14/05/2013 to 15/04/2015 as period spend on duty before this Honourable Tribunal.

2- That the appeal of the petitioner was finally heard and decided on 03/04/2023 and as such the ibid appeal was disposed off with the following relief by this august Service Tribunal:
"In view of what has been discussed, we accept the appeal in hand as prayed for and set aside the orders dated 14/05/2018 & 08/10/2018 with all back benefits to the appellant.
Copy of the judgment dated 03/04/2023 is attached as annexure..... **A**

3- That after obtaining copy of the judgment dated 03/04/2023 the same was submitted with the respondents for implementation of his grievance coupled with an application by post, but the respondents/department failed to do so, which is the violation of the judgment supra. Copies of application and receipt are attached as annexure.....**B**

4- That petitioner having no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of the instant execution petition the respondents may kindly be directed to implement the Judgment dated 03/04/2023 passed in appeal No. 1372/2023 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER
GHUNCHA DIN

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Mr. Ghuncha Din PSHT (BPS-15), GPS Chagam No 2, Poran, District Shangla, do hereby solemnly affirm that the contents of this Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

DEPONENT

"A" -3-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1372/2018

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Ghucha Din, PSHT (BPS-15), GPS Chagam No. 2, Poran, District Shangla .....*(Appellant)*

VERSUS

1. The Director E&SE Department Khyber Pakhtunkhwa Peshawar.
2. The District Education Officer, District Shangla.
3. The District Accounts Officer, District Shangla.....*(Respondents)*

Present:

KAMRAN KHAN,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney, --- For respondents

Date of Institution.....06.11.2018
Date of Hearing.....03.04.2023
Date of Decision.....03.04.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"That on acceptance of this appeal the impugned orders dated 14.05.208 and 08.10.2018 may very kindly be set aside and the respondents may be directed to treat the intervening period i.e. w.e.f. 14.05.2013 to 15.04.2015 may be treated as period spend on duty. That it is

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

further prayed that the recovery amounting to Rs. 28000/- in terms of PTC fund may be declared as illegal and may be set at naught. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant."

02. Brief facts of the case are that the appellant while performing his duty as PSHT, GPS Kooh Puran was charge sheeted on the allegations of absence, misconduct and inefficiency during service. When he was posted at GPS Kooh Puran, disciplinary action was taken against him, he was awarded four penalties on 26.05.2015 which included recovery of salary, demotion, transfer and recovery of school Fund. The said penalties were challenged in the first round of litigation before the Service Tribunal through service appeal No. 1090/2015 and the Service Tribunal accepted his appeal on 31.01.2018, set aside the penalties awarded to the appellant and the department was left at liberty to hold de-novo proceedings within a period of ninety days from the date of receipt of the judgment. In pursuance of the directions contained in the judgment, respondent department conducted de-novo inquiry and issued the impugned order dated 14.05.2018 whereby, the appellant was awarded the minor penalty of recovery of salaries w.e.f. 15.04.2013 to 23.04.2015 converting the period into leave without pay and the recovery of 28000/- PTC Fund to be deposited in PTC Account. Feeling aggrieved the appellant filed departmental appeal on 11.06.2018 which was rejected on 08.10.2018 hence the instant service appeal.

ATTESTED

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03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders dated 14.05.2018 and 08.10.2018 are against the law, facts, norms of natural justice, hence not tenable and are liable to be set aside. That the appellant has not been treated in accordance with law, rules and respondents have violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan. Learned counsel for the appellant contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing provided to the appellant. He has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory as per the judgment of the Supreme Court of Pakistan. In the last, learned counsel for the appellant prayed that the impugned orders dated 14.05.2018 and 08.10.2018 are against the law and are liable to be set aside. To strengthen his arguments, he relied on 2000 SCMR 1743, 2007 SCMR 1860, 2003 PLC (C.S) 365, 2020 PLC (C.S) 1291& 2011 PLC (C.S) 1111.

05. Learned Deputy District Attorney argued that the respondent department conducted de-novo inquiry as per the judgment of Service Tribunal in Service Appeal No. 1090/2015 dated 13.01.2018. He next argued that the de-novo inquiry was conducted and the appellant was

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recommended for imposition of minor penalty of recovery of salaries w.e.f. 15.04.2013 to 23.04.2015 treating the period as leave without pay and the recovery of 28000/- as PTC Fund to be deposited in PTC Account. He submitted that the proper charge sheet/statement of allegations as well as Show Cause Notice was served on the appellant. Proper chance of personal hearing was given to the appellant but he failed to justify his position. He further submitted that all the codal formalities were fulfilled and the proceedings were carried out as per Government of Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011. The impugned orders is therefore legal, passed by the competent authority according to law and rules, therefore, be maintained in favor of the respondent department and the service appeal be dismissed.

06. The charge sheet/statement of allegations against the appellant contained the following four charges/allegations:-

a) ***Guilty of misconduct as per visit report of SDEO(M) Alpurai vide letter under Endst: No. 806 dated: 12/05/2015 alongwith statement of School PTC, School staff as well as the statement of an alternate teacher working in the school.***

b) ***Inefficiency as no proper record was maintained during utilization of huge amount of DFID/PTC Fund while carrying out the construction work in the concerned school.***

c) ***Habitual Absenteeism w.e.f. 15/03/2013 to 23/04/2015 (739 days) i.e 2 years and 09 days.***

d) ***Embezzlement of PTC Fund amounting to Rs. 28000/- as per report of ASDEO(M) Circle Puran dated 09/10/2015.***

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Most of the contents of the charges/allegations are generalized which is quite difficult to be substantiated with plausible evidence and as such the major part of the inquiry report contains generalized statements. Quite considerable part of the inquiry report deals with procedural matters/instructions how to conduct inquiry. Instead of focusing on the conduct of the accused civil servant viz-a-viz the charges/allegation the inquiry committee conducted the inquiry in fact finding style pointing out some other supervisory officers of the department responsible for inefficiency and lack of interest towards their official responsibilities. Nothing is available on record whether the department has taken any action against them. The charges of absence and embezzlement of Rs. 28000 on part of the appellant were quite specific and measurable to prove or otherwise. The appellant produced documentary evidence of his presence for the period of his alleged absence from 15.04.2013 to 23.04.2015. The evidence included his signature on the attendance register/students Admission Register and School leaving Certificates issued to the school leaving students. The appellant produced these evidence with his written statement to the inquiry committee as well as the competent authority with reply to the show cause notice. These evidentiary documents were submitted to the appellate authority alongwith appeal by the appellant. At all the three stages these evidences were neither taken into consideration nor refuted. Similarly the documentary evidence regarding expenditure incurred on construction of boundary wall of the Primary School out of PTC Fund produced by the appellant was not analyzed properly to substantiate the allegation of

embezzlement of RS 28000. In fact no proper audit of utilization of the PTC Fund was carried out to substantiate the charge.

07 In the given circumstances we reach the conclusion that the allegations/charges against the appellant have not been proved through evidence. The evidence produced by the appellant available on record were not scrutinized at the level of inquiry committee, competent authority and the appellate authority which tantamount to the condemning the appellant unheard.

08. In view of what has been discussed, we accept the appeal in hand as prayed for and set aside the orders dated 14.05.2018 and 08.10.2018 with all back benefits to the appellant. Costs shall follow the event. Consign.

09. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 3rd day of April, 2023.

(ROZINA REHMAN)
MEMBER (J)

(MUHAMMAD AKBAR KHAN)
MEMBER (E)

Kamranullah

Date of Presentation of Application 11-4-23
Number of Words Page 6
Copying Fee 30/-
Urgent
Total 30/-
Name of Copyist Shahzad
Date of Completion 07/07/23
Date of Delivery of Copy 07/07/23

"B" -9-

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر صاحبہ ضلع شیخوپورہ۔

عنوان: بقایا جات۔

جناب عالی!

ذیل گزارشات پیش خدمت ہے۔

① Honourable court Decision درخواست کے ساتھ لف ہے۔
کی روشنی میں بقایا جات ریلیز کرنے کا حکم صادر فرمائیں۔

② مد بقایا جات کی مختصر تفصیل کچھ یوں ہے۔

(i) ڈاؤنلیٹر صاحبہ KPK. 231953 -

(ii) GPS کوہ ہزارہ صاحبان 28000 -

(iii) جنوری 2016 میں تنخواہ ٹوٹل۔ 22359 -

(iv) 2015-16 کے سلیب میں فنشن رقم: 110336 -

(v) دسمبر 2016 میں Deduct 11222 -

ٹوٹل = 139890
- 25587
= 114,017

ٹوٹل :- بقیہ رقم =

(ایک لاکھ چودہ ہزار سترہ روپے مطلوب)

عرض گزار: عنبر دین ولد شیر محمد DSHT - تعلقہ سندوی (لودھراں)

موبائل نمبر: 0334-8369682

مورخہ 25 جولائی 2023ء

781 RGL106068798 erse. Rs. Ps.

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istered* _____

DHQ Stamp

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25/7/23

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution No_____/2023

Ghuncha DIN (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Govt of Kpk (RESPONDENT) (DEFENDANT)

I/We Ghuncha DIN

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme Court** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated._____/_____/202

Ghuncha DIN

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

MUHAMMAD AYUB

&

MAHMOOD JAN
ADVOCATES

OFFICE:
Flat No. (TF) 291-292 3rd Floor,
Deans Trade Centre, Peshawar Cantt.
(0311-9314232)