Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 946/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.12.2023	The implementation petition of Mr. Irfan Ullah 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 the counsel for the petitioner. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 946 /2023
In
Appeal No. 2096/2019

IRFAN ULLAH **VS** **THE INSPECTOR GENERAL OF POLICE & OTHERS**

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Implementation Petition with Affidavit	.....	1-2
2.	Judgment dated 07/08/2023	"A"	3-8 9
3.	Copy of application	"B"	10
4.	Vakalatnama		11

PETITIONER

THROUGH:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 946 /2023
In
Appeal No. 2096/2019

Mr. Irfan Ullah
FC No 270, Police Lines, Lakki Marwat

.....PETITIONER

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2- The Regional Police Officer, Bannu Region, Bannu
3- The District Police Officer, District Lakki Marwat.

..... 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 07/08/2023 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 2096/2019 before this august Service Tribunal against the impugned inquiry orders dated 14/06/2019 & 08/11/2019, whereby the petitioner was removed from service.

2- That the appeal of the petitioner was finally heard, decided on 07/08/2023 and as such the ibid appeal was decided with the following terms by this august Service Tribunal:

"as a sequel to above discussion, the impugned dated 14/06/2019 passed by the respondent No 3 is hereby set aside and the matter is remitted back to department for denovo inquiry with direction to respondents to provide opportunity of self defence and cross examination to the appellants and to conduct fair inquiry within 90 days after receipt of copy of this judgment, costs shall follow the event. Consig.

Copy of the judgment dated 07/08/2023 is attached as annexure..... **A**

3- That after obtaining copy of the judgment dated 07/08/2023 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 07/08/2023 passed in appeal No. 2096/2019 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER
IRFAN ULLAH

THROUGH:
NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I Mr. Irfan Ullah FC No 270, Police Lines, Lakki Marwat, 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

WALI KHAN MASHWANI ADVOCATE Peshawar High Court ATTESTED NOTARY PUBLIC

"A" -3-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 2096 /2019

Mr. Irfan Ullah, FC No.270,
Police Lines, Lakki Marwat ..... **APPELLANT**

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2- The Regional Police Officer, Bannu Region, Bannu.
3- The District Police Officer, District Lakki Marwat.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 14.06.2019 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 08.11.2019 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYERS:

That on acceptance of this appeal the impugned orders dated 14.06.2019 and 08.11.2019 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Hearing to-day
Registrar
6/12/19

R/SHEWETH:
ON FACTS:.

1- That after fulfilling all the codal formalities the appellant was appointed as constable vide order dated 30.12.2016 through Departmental Selection Committee after vacancies have been advertised in the leading news paper. That after appointment the appellant was sent for condensed recruitment course by the respondent No.3. Copy of the appointment order is attached as annexure ..... **A.**

2- That after completion of the said course the appellant submitted his arrival and started performing his duty as constable at the concerned station quite efficiently and up to the entire satisfaction of his superiors.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2091/2019

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

Hafiz Ur Rehman, FC No. 71, Police Lines, Lakki Marwat

.... *(Appellant)*

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, District Lakki Marwat.

.... *(Respondents)*

Mr. Noor Muhammad Khattak
Advocate ... For appellant

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

Date of Institution.....06.12.2019
Date of Hearing.....07.08.2023
Date of Decision.....07.08.2023

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 appeal, the impugned orders dated 14.06.2019 and 08.11.2019 may very kindly be set aside and the appellants may be reinstated in service with all back benefits."**

ATTESTED
Khyber Pakhtunkhwa Service Tribunal

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 2092/2019 titled "Lal

-5-

Khan Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (ii) Service Appeal No. 2093/2019 titled "Jamshed Khan Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (iii) Service Appeal No. 2094/2019 titled "Shaukat Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (iv) Service Appeal No. 2095/2019 titled "Naheed Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (v) Service Appeal No. 2096/2019 titled "Irfan Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (vi) Service Appeal No. 2097/2019 titled "Rehmat Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal are, that appellants were appointed as Constables vide order dated 31.12.2016 through Departmental Selection Committee after vacancies were advertised in the leading newspaper. Thereafter the appellants were sent for condensed recruitment course by the respondent No.3. After completion of said course they submitted their arrival reports and started performing their duties at concerned station efficiently and up to the entire satisfaction of their superiors. During service an unknown complaint was received to their high ups regarding impersonation in the recruitment process of constables and on that complaint respondent constituted inquiry committee and the said committee suspected ten employees alongwith the appellants. Vide letter dated 10.03.2017 considered them disqualified on the basis of inquiry committee, vide order dated 29.03.2017 the appointment orders of the appellant's were withdrawn by the respondents. Feeling aggrieved the appellants filed writ petition before Hon'ble Peshawar High Court, Bannu Bench which was decided in favor of appellants who were enlisted as

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

constables vide order dated 28.03.2018. Respondents reinstated the appellants subject to CPLA vide letter dated 05.04.2019. Respondent also vide order dated 11.04.2019 order to conduct fresh departmental inquiry in violation of order passed by Hon'ble Peshawar High Court, Bannu Bench and without waiting for the outcome of CPLA filed by the respondent in apex court and after conclusion of inquiry vide order dated 14.06.2019 appellants were removed from service. Feeling aggrieved they filed departmental appeal which was rejected vide order dated 08.11.2019. Hence the instant service appeal.

4. 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.

5. Learned counsel for the appellant argued that orders passed by the respondents are against law, facts, norms of natural justice and material on the record hence not tenable in the eyes of law. He contended that appellant were not treated in accordance with law and rules and respondent violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that no regular inquiry has been conducted against the appellant nor any opportunity of personal hearing was afforded to the appellants. He submitted that before issuing dismissal order neither any explanation, show cause notice or statement of allegations were served upon the appellants. He, therefore, requested for acceptance of instant service appeal.

6. Learned Additional Advocate General contended that the appellants have been treated in accordance with law and rules. He further contended that

-7-

upon a complaint to respondent No.1 about the impersonation in NTS Exam conducted for the recruitment of constables, inquiry committee was constituted to probe into the matter about impersonation. The committee after scrutiny of the application forms and video clips of the appellants were found suspicious, proper inquiry was conducted against the appellants. Thereafter, after completing all codal formalities they were removed from service vide order 14.06.2019.

7. Perusal of record reveals that appellants were enlisted as Constables in District Lakki Marwat vide order dated 30.12.2016. It was on 29.03.2017 when orders of appointment of appellants were withdrawn by the respondents. They filed writ petition bearing No. 343-B/2017 before Worthy Peshawar High Court, Bannu Bench which was allowed vide order dated 28.03.2018 by setting aside order of withdrawal of the appointment order of the appellant with direction to respondents to enlist the appellants as constables in District Lakki Marwat. Respondent re-enlisted the appellants conditionally subject to decision of CPLA filed by them. Respondent at the same time initiated fresh departmental inquiry and after its completion imposed major penalty of removal from service vide impugned order dated 14.06.2019. Appellants filed departmental appeal, which was rejected vide order dated 08.11.2019. Main allegations against the appellants were that they themselves did not appear in NTS test conducted for the post of Constable and someone else having resemblance with the appellants sat in the test who passed the same and thus appellants were charged for misconduct on this allegation charge sheet alongwith statement of allegations were issued to the appellants. Competent authority appointed SP Investigation Lakki Marwat as Enquiry Officer, who submitted inquiry report on 07.05.2019 after conducting inquiry. Perusal of enquiry report would

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

reveal that no regular inquiry was conducted by providing chance of cross examination to the appellant. By now it is settled principle of law, that in case of awarding major penalty, a proper regular inquiry must be conducted in accordance with law, where a full opportunity of self-defence is to be provided to the delinquent officials which is mandate of rule 5 of Police Rules, 1975. In the instant case no opportunity of cross examination were given, which is basic requirement of regular inquiry and principle of natural justice. Although respondent alleged that inquiry was conducted but important piece of evidence i.e expert report about CD/video and facial identification of the appellants was not even available on record at the time of enquiry. Respondent had to place this piece of evidence before the appellant during inquiry and provide them chance to rebut it, but same was not put to appellant, this act show inquiry conducted in violation of rules.

8. Moreover perusal of inquiry report reveals that all the proceedings were conducted in haste without adopting proper procedure as provided in the rules and verdicts of apex court. It is also pertinent to mention here that departmental proceedings were initiated on the basis of complaint about impersonation in NTS Exam and recruitment process by Imran Ullah and Fahad Niaz. This fact is mentioned in para 3 of factual objection of parawise comment of respondent but both the above mentioned complaints did not appear before inquiry committee nor appellant was provided with an opportunity to cross examine them.

ATTESTED
EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

9. As a sequel to above discussion, the impugned orders dated 14.06.2019 passed by the respondent No. 3 is hereby set aside and the matter is remitted back to department for denovo inquiry with direction to respondents to provide opportunity of self defence and cross examination to the appellants

and to conduct fair inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7th day of August, 2023.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

Date of Presentation of Application 29-11-23
Number of Words 670
Copying Fee 30/-
Urgent
Total 30/-
Name of Co
Date of Co 30-11-23
Date of Delivery of Co 30-11-23

بخدمت جناب آئی جی جی، خیبر پختونخوا پشاور

درخواست بمداد Denovo Inquiry از
فیصلہ جناب سروس ٹریبونل خیبر پختونخوا
مورخہ 14-06-2019 .

جناب عالی!

1 - یہ کہ سائلان آپ کے ڈیپارٹمنٹ ہذا کے Employees ہیں۔

2 - یہ کہ سائلان نے Appeals از خیبر پختونخوا سروس ٹریبونل دائر کی تھی - جو کہ مورخہ 07-08-2023 کو ٹریبونل نے فیصلہ صادر کرتے ہوئے جناب D.P.O کی فروغ کا حکم مورخہ 14-6-2019 کو کالعدم کرار دیتے ہوئے کہا کہ اس بابت Denovo Inquiry کی جائے - (فیصلہ لف ہے)

لہذا استدعا کی جاتی ہے کہ بمنظور درخواست ہذا، خیبر پختونخوا سروس ٹریبونل مورخہ 07-08-2023 کو من وعن صادر فرمائے جاوے۔

المعرض: 22/9/23

عین نوازش ہوگی

الفاض

سائلان

① حفیظ الرحمن

② لعل خان

③ عرفان اللہ

④ نوید اللہ

⑤ جمشید

⑥ شوکت اللہ

⑦ رحمت اللہ

ATTESTED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution No_____/2023

Ihsan Ullah (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police (RESPONDENT)
(DEFENDANT)

I/We Mr Ihsan Ullah

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

عرفان اللہ

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

MUHAMMAD AYUB

&

MAHMOOD JAN
ADVOCATES

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