


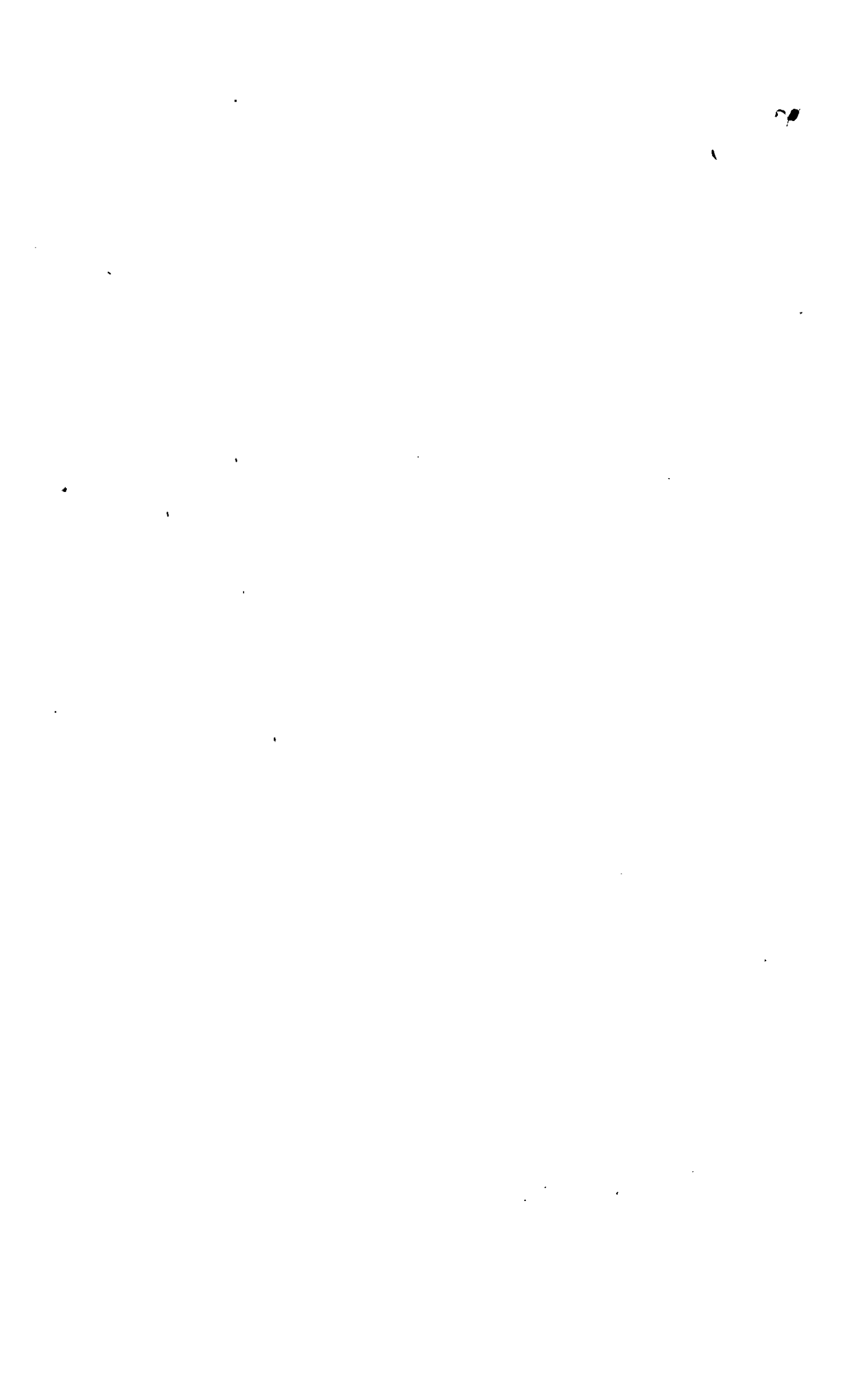
Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 978/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.12.2023	<p>The implementation petition of Mr. Muhammad Tahir submitted today by Roeeda Khan 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. 978 /2023

In .

Service Appeal: 1097/2019

Muhammad Tahir, Constable No. 442, Police Line, District
Nowshera.

..... Appellant

VERSUS

1. The Provincial Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Region-I, Mardan.
3. The District Police Officer, Nowshera.


..... Respondents

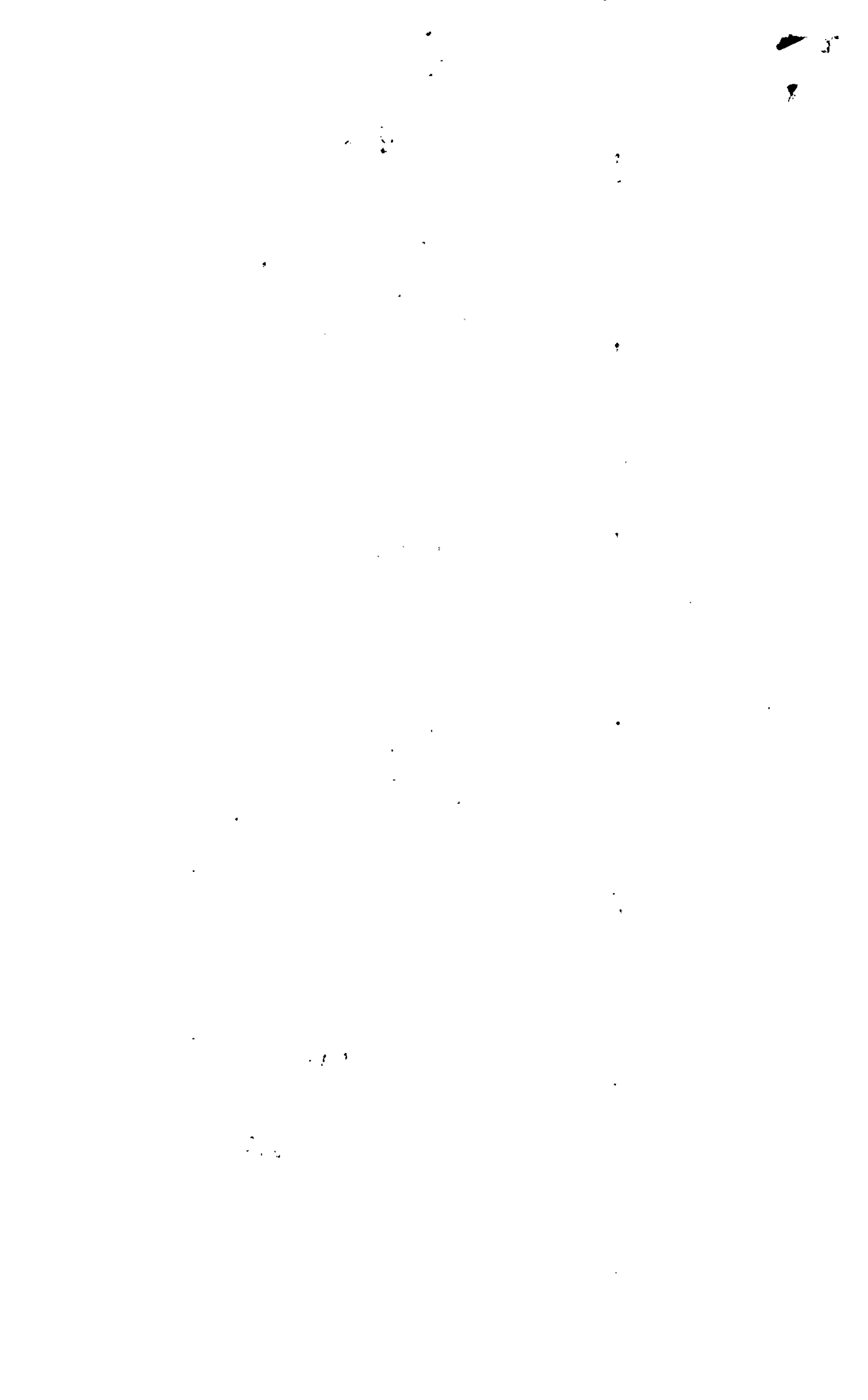
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S.No.	Description of documents	Annexure	Pages
1.	Copy of petition with Affidavit		1-2
2.	Copy of Judgment	A	3-8
3	Copy of application	B	
3.	Wakalat Nama		


Appellant

Through


Roeda Khan
Advocate High Court,
Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 978 /2023
In
Service Appeal: 1097/2019

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 9955
Dated 18-12-2023

Muhammad Tahir, Constable No. 442, Police Line, District
Nowshera.

..... Appellant

VERSUS

1. The Provincial Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Region-I, Mardan.
3. The District Police Officer, Nowshera.

..... Respondents

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 22/11/2022 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No. 1097/2019 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 22/11/2022. (Copy of Judgment is annexed as Annexure-A).
2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. However they using delaying and reluctant to implement

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12.

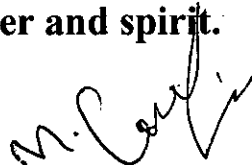
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the Judgment of this Hon' able Tribunal and properly submitted an application for implementation of the above mentioned Judgment. (Copy of application is attached as Annexure-B).

3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is bound to obey the order of this Hon' able 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 of this Hon' able Tribunal letter and spirit.



Appellant/Petitioner

Through



Roecda Khan

Advocate High Court Peshawar

AFFIDAVIT

I, Muhammad Tahir, Constable No. 442, Police Line, District Nowshera do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.



DEPONENT





"A" (3)

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**



Service Appeal No. 1097 /2019

1. Muhammad Tahir, Constable No. 442 Police Line, District Nowshera.

APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1205

Dated 27/8/2019

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Mardan Region-I, Mardan.
3. The District Police officer, Nowshera.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER DATED 27-07-2010 PASSED BY
THE DISTRICT POLICE OFFICER,
NOWSHERA (RESPONDENT NO. 3)
WHEREBY THE APPELLANT WAS
AWARDED MINOR PENALTY OF
STOPPAGE OF TWO INCREMENTS
WITH ACCUMULATIVE EFFECT
AGAINST WHICH A DEPARTMENTAL
APPEAL WAS FILED WITH THE
REGIONAL POLICE OFFICER
(RESPONDENT NO. 2) ON 11-06-2019 BUT
THE SAME WAS REJECTED ON

Filed to-day

Registrar

27/8/19

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1097/2019

Date of Institution... 27.08.2019

Date of Decision... 22.11.2022



Muhammad Tahir, Constable No. 442 Police Line, District Nowshera.

... (Appellant)

VERSUS

The Provincial Police Officer, Government of Khyber Pakhtunkhwa and 02 others.

... (Respondents)

MR. RIZWANULLAH,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service appeal, the appellant has invoked jurisdiction of this Tribunal with the prayer copied as below:-

"By accepting this appeal, the impugned orders of the respondents dated 27.07.2010, 21.06.2019 & 31.07.2019 may very graciously be set-aside and the disputed increments of the

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Service Tribunal
Peshawar

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appellant may kindly be restored from the date of stoppage.

Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.

2. As per averments in the appeal, the appellant was appointed as Constable on 31.01.2002 and was receiving equal pay as were received by his colleague. It was in the month of January 2019 that the appellant received less salary than his batch-mates, therefore, he visited the Establishment Branch on 11.02.2019 for query and came to know that vide order dated 27.07.2010, he has been awarded minor penalty of stoppage of two increments with cumulative effect on account of his absence from duty. The appellant challenged the aforementioned penalty through filing of departmental appeal, which was rejected. The appellant then filed revision petition before the Provincial Police Officer Khyber Pakhtunkhwa Peshawar, which was also declined, hence the instant service appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents. He also submitted an application that as the original record has now been found, therefore, the

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same may be perused by the Tribunal as well as learned counsel for the appellant.

4. A perusal of the record would show that the appellant has annexed copy of character role of the appellant as annexure-B with his appeal, which would show that as the appellant had remained absent from special duty on 25.07.2010, therefore, vide order bearing OB No. 816 dated 27.07.2010, he was awarded minor punishment of stoppage of two increments with cumulative effect. The genuineness of copy of character role, annexed by the appellant as annexure-A with his appeal has not been specifically questioned by the respondents in their comments. It is the contention of the appellant that no show-cause notice was issued to him regarding his alleged absence from duty on 25.07.2010 and the impugned order dated 27.07.2010 was passed at his back without giving him any opportunity of self defence as well as personal hearing. The impugned order dated 27.07.2010 was though incorporated in character role of the appellant, however no formal order of the competent Authority could be produced by the respondents regarding the penalty awarded to the appellant. The excuse raised by the respondents in this respect is to the effect that the record had been destroyed due to devastating flood. If the plea of the respondents is admitted as correct, then they were required to show as to whether any step had been taken by them for reconstruction of the record. The respondents have, however

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Service Tribunal
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badly failed to produce any documentary proof, which could show that any correspondence was made for reconstruction of the record allegedly destroyed due to flood. Learned Assistant Advocate General has though submitted an application for perusal of the record brought by representative of the respondents namely Mr. Muhammad Fayaz Head Constable, however on our query, the aforementioned representative of the respondents has categorically admitted that the record brought by him does not pertain to any departmental proceedings being taken by the competent Authority regarding allegations of absence of the appellant.

5. The alleged absence of the appellant from duty was a factual controversy requiring conducting of a regular inquiry, however the respondents have failed to prove that any inquiry was conducted against the appellant regarding his alleged absence from duty on 25.07.2010. The appellant was allegedly absent from duty for only one day i.e 25.07.2010, who was awarded penalty on 27.07.2010, which fact also indicates that no regular inquiry was conducted in the matter. The principle of natural justice enshrined in the maxim "*audi alteram partem*" is one of the most important principle and its violation is always considered enough to vitiate even most solemn proceedings. Worthy apex court in its judgment reported as 2008 SCMR 934 has held that where adverse action is contemplated to be taken against the person/persons, he/they

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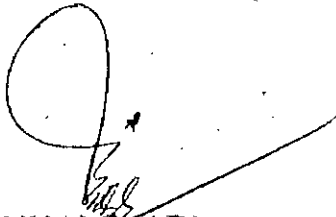
EXAMINER
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has/have a right to defend such action, notwithstanding the fact that the statute governing their rights does not contain provision of the principle of natural justice and even in absence thereof it is to be read/considered as part of such statute in the interest of justice. Moreover, it is strange enough that the appellant was awarded minor penalty on 27.07.2010 but the same was implemented after considerable period in the year 2019.

6. In view of the above discussion, the impugned orders are set-aside and the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

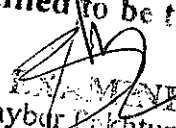
ANNOUNCED
22.11.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 04/01/23

Number of Words 2000

Copying Fee 22/-

Urgent 22/-

Total 22/-

Name of Applicant _____

Date of Receipt of Copy 05/01/23

Date of Delivery of Copy 05/01/23

(B) (9)

To
The District Police Officer Nowshera

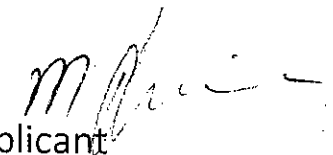
Subject: APPLICATION FOR IMPLEMENTATION OF THE JUDGMENT
PASSED IN SERVICE APPEAL 1097/2019 DATED
22.11.2022.

Respectfully Sheweth:

1. That the applicant filed the above mentioned Service appeal before the Khyber Pakhtunkhwa Service Tribunal Peshawar which has been accepted on 22.11.2022. (copy of Judgement is attached).

It is therefore most humbly prayed that on acceptance of this application the Judgment of the Honourable Tribunal may kindly be implement.

Dated 14.12.2022


Applicant
Muhammad Tahir

بعدالت حساب سندوسہ کی طرف سے



2023ء منجانب اہل حق

بنام محمد طاهر علی شاہ

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

آن مقام کیلئے لکھنا

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 و رائیں 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 مقدمہ مذکور 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 دہی جملہ مذکور با 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 وہ ہوگا۔ 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 سند ہے۔

2023ء

ماہ دسمبر

المقام ۱۶

اہ العبد

By