Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 993 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.12.2023	The implementation petition of Qazi Muhammad Hussain submitted today by Syed Roman Ali Shah 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. 993 /2023
In
Service Appeal No.544/2023

Qazi Muhammad Hussain V/S Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-09
3.	Copy of application	-B-	10
4.	Vakalat Nama	------	11

PETITIONER
Qazi Muhammad Hussain

THROUGH:

SYED NOMAN ALI BUKHARI
&
(UZMA SYED)
ADVOCATEs, HIGH COURT

Cell No: 0311-9440376

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 993 /2023
In
Service Appeal No.544/2023

Qazi Muhammad Hussain, EX-ASI NO. 1058
IO at PS Shahpur.

PETITIONER

VERSUS

1. The Capital City Police Officer, KP, Peshawar.
2. The Senior Superintendent of Police (operation) Peshawar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED: 13-10-2023 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No.710/2017 against the dismissal order.

2. That the said appeal was finally heard by the Honorable Tribunal on 13-10-2023 and the Honorable Tribunal is kind enough to accept the appeal vide judgment dated 13-10-2023 and appellant was re-instated in service with all back benefits. **(Copy of judgment is attached as Annexure-A).**

3. That the appellant also filed application to respondents for the implementation of judgment. The respondents were totally failed in taking any action regarded the Hon'able Tribunal judgment

dated 13-10-2023. **Copy of application is attached as annexure-B.**

4. That the respondent violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.

5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the same in letter and spirit.

6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 13-10-2023 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

PETITIONER
Qazi Muhammad Hussain

THROUGH:

SYED NOMAN ALI BUKHARI
&
(UZMA SYED)
ADVOCATEs, HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.

DEPONENT

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

A (3) (D)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 544 /2023

Qazi Muhammad Hussain, Ex-ASI NO.1058
IO at PS Shahpur Peshawar.

.....**(Appellant)**

VERSUS

1. The Capital City Police Officer, KPK Peshawar.
2. The Senior Superintendent of Police (operations) Peshawar.

.....**(Respondents)**

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 16/11/2022 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM THE SERVICE AND AGAINST THE ORDER DATED 27/02/2023 WHEREBY, THE DEPARMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS AND WITHOUT INDEPENDENT MIND.

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 16-11-2022 AND 27-02-2023 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPOPRIATE THAT MAY ALSO BE AWARADED IN FAVOUR OF APPELLANT.

(9)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE:

SALAH UD DIN ...**MEMBER (JUDICIAL)**
FAREEHA PAUL ...**MEMBER (EXECUTIVE)**

Service Appeal No. 535/2023

Misal Khan, Ex-Inspector, Police Lines Peshawar.
(***Appellant***)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others. (***Respondents***)

Present:

Mr. Khalid Rahman, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General
...For the Respondents.

Date of Institution.....10.03.2023
Date of Hearing.....11.10.2023
Date of Decision.....13.10.2023

Service Appeal No. 536/2023

Zarshad Khan, Ex-Sub-Inspector, Police Lines Peshawar.
(***Appellant***)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others. (***Respondents***)

Present:

Mr. Khalid Rahman, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General,
...For the Respondents.

Date of Institution.....10.03.2023
Date of Hearing.....11.10.2023
Date of Decision.....13.10.2023

Service Appeal No. 544/2023

Qazi Muhammad Hussain, Ex-ASI No. 1058 IO at PS Shahpur.
(***Appellant***)

Versus

The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar and 01 other. (***Respondents***)

Present:

Syed Noman Ali Bukhari, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General,
....For the Respondents.

Date of Institution.....13.03.2023
Date of Hearing.....11.10.2023

(5)

Date of Decision.....13.10.2023

Service Appeal No. 545/2023

Mohsin Khan, Head Constable No. 2853 PS Shah Qabool Peshawar. (*Appellant*)

Versus

The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar and 01 other. (***Respondents***)

Present:

Syed Noman Ali Bukhari, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General,
...For the Respondents.

Date of Institution.....13.03.2023
Date of Hearing.....11.10.2023
Date of Decision.....13.10.2023

Service Appeal No. 546/2023

Tahir Ali, Head Constable No. 911 ATS Squad CCP, Peshawar. (*Appellant*)

Versus

The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar and 01 other. (***Respondents***)

Present:

Syed Noman Ali Bukhari, Advocate ... for the Appellant.
Mr. Asad Ali Khan, Assistant Advocate General,
...For the Respondents.

Date of Institution.....13.03.2023
Date of Hearing.....11.10.2023
Date of Decision.....13.10.2023

CONSOLIDATED JUDGMENT

SALAH-UD-DIN, MEMBER:- Through this single judgment we intend to dispose of the above titled service appeals as common questions of law and facts are involved therein.

2. Precise facts forming the back ground of the appeals are that the appellants were proceeded against departmentally on the allegations reproduced as below:-

"i) It has allegedly been reported that you have been indulged in illegal activities and misconduct as you have

maintained links with notorious criminals as well as proclaimed offenders (POs) of case vide FIR No. 583 dated 03.06.2022 u/s 365/302/109/7-ATA PS Shahpur.

ii) It is further alleged that you have leaked secret information in arrest of P.Os in above mentioned FIR and allied with criminals.

iii) He has tarnished the image of police department in the eyes of general public.

iv) All this amounts to gross misconduct on your part and rendered you liable for punishment under Police (E&D) Rules, 1975."

3. On conclusion of the inquiries against them, the appellant namely Misal Khan was awarded penalty of removal from service, while rest of the appellants were awarded the penalties of dismissal from service vide separate impugned orders dated 16.11.2022. The penalties so awarded to the appellants were challenged by them through filing of separate departmental appeals, which were rejected vide separate orders dated 27.02.2023, hence the instant appeals.

4. On receipt of the appeals and their admission to regular hearing, respondents were summoned, who put appearance through their representative and contested appeals by way of filing written replies raising therein numerous legal as well as factual objections.

5. Mr. Khalid Rahman, Advocate representing the appellants in Service Appeals No. 535/2023 and 536/2023 has argued that no incriminating material was brought on the record in the inquiry proceedings, which could support the allegations against the appellants. He next contended that statement of even a single witness had not been recorded in the inquiry proceedings and the same were conducted by way of questionnaire, which procedure has

(7)

been deprecated time and again by the Supreme Court of Pakistan in its various judgments. He further argued that the appellants as well as accused and complainant party of case FIR No. 583 dated 03.06.2022 u/s 365/302/109/7-ATA PS Shahpur are co-villagers, therefore, in case of any telephonic contacts between them, it cannot be presumed that the appellants were leaking any information to them. He also argued that 22 Police Officials were proceeded against on the same allegations but some of them were exonerated, while the appellants were awarded major penalties by treating them with discrimination. He next argued that the departmental appeals of the appellants were decided in a cursory manner through un-speaking orders, which are not in accordance with the provision of Section 24-A of the General Clauses Act, 1897 read with Rule-5 of the Khyber Pakhtunkhwa (Appeals) Rules, 1986. He further contended that the rights of the appellants as guaranteed as under Article 4 & 25 of the Constitution of Islamic Republic of Pakistan were badly violated. In the last he requested that the impugned orders may be set-aside and the appellants may be reinstated in service with all back benefits. Reliance was placed on 1980 SCMR 850, 1982 SCMR 321, 1993 SCMR 1440, 2001 YLR 834, 2006 PLC (C.S.) 604, 2010 PLC (C.S.) 1299, 2010 PLC (C.S.) 1299, 2013 SCMR 741, 2015 PLC (C.S.) 501, 2015 PLC (C.S.) 537, PLD 2017 Supreme Court 173, 2018 PLC (C.S.) 997 and 2019 SCMR 640.

6. Syed Noman Ali Bukhari, Advocate representing the appellants in Service Appeals No. 544/2023, 545/2023 & 546/2023 adopted the arguments advanced by Mr. Khalid Rahman, Advocate

representing the appellants in Service Appeals No. 535 and 536 of the year 2023.

7. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellants were having links with the accused of case FIR No. 583 dated 03.06.2022 under sections 365/302/109 PPC read with 7-ATA Police Station Shahpur, which fact stood proved in regular and proper inquiries conducted against the appellants. He next contended that the CDR of cell phones of the appellants as well as accused of the concerned criminal case would show that they were having telephonic contacts. He further argued that the appellants were well aware of the fact that the accused of the concerned criminal case were hardened and desperate criminals but despite that, the appellants maintained links with them and thus brought bad name to the whole police department. He next argued that the appellants were provided opportunities of personal hearing as well as self defence, however they failed to put forward any plausible evidence in rebuttal of the allegations leveled against them. In the last he requested that the impugned orders may be kept intact and the appeals in hand may be dismissed with costs.

8. Arguments have already been heard and record perused.

9. A perusal of the record would show that not a single witness has been examined in the inquiry proceedings in support of the allegations leveled against the appellants. The copy of the inquiry report as available on the record would show that the inquiry proceedings were carried out in shape of questionnaire. It has been mentioned in the inquiry report that the statements of the appellant

were recorded, however on our query and even granting of time to the respondents, their representative categorically stated before the court that the statements of the appellants allegedly recorded during the inquiry were not available in their record. Even the questionnaire as reproduced in the inquiry report could not be produced by the respondents. No incriminating evidence in support of the allegations was recorded during the inquiry. Mere reliance on CDR and that too without confronting the appellants with the same has no legal worth. No doubt the allegations against the appellants are grave in nature but the inquiry proceedings were conducted in a whimsical manner and no evidence in support of the allegations was brought on the record. In such view of the matter, the impugned orders are not sustainable in the eye of law and are liable to be set-aside.

10. Consequently, the appeals are allowed by setting-aside the impugned orders and all the appellants are reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.10.2023

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(FAREEHA PAUL)
MEMBER (EXECUTIVE)

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Naeem Amin

Date of Presentation of Application — 22/12/2023

Number of Words — 67

Copying Fee — 30/-

Urgent — 5/-

Total — 35/-

Name of Copyist —

Date of Completion of Copy — 22/12/2023

Date of Delivery of Copy — 22/12/2023

B-10

جناب عالی!

گزارش ہے کہ سائل مورخہ 16/11/2022 کو مرکز
برحاست پوچھا گیا۔ اب سائل کو ہدایت ہوئی
کہ وہ کل سے نوکری پر بحال کرنے کا حکم جاری کیا جائے
اور سائل کو نوکری پر بحال کرنے کا حکم
صادر فرمایا جائے۔

العارض

22/11/2023 ASI 1058 اشفاق کمیدار قاضی محمد حسین سابقہ

Attested

2023.11.22 13:05

CamScanner

(1)

بعدالت

KP Service Tribunal, Peshawar

مورخہ ــــــــ سنہ 2ء منجانب

مقدمہ Qazi Muhammad Hussain بنام

دعویٰ vs

Police Deptt

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے سید نعمان علی بخاری ایڈووکیٹ سپریم کورٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہو گا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہو گا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہو گا۔ 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 ہو گا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہو گا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ ہوں گے سبب سے وہ ہو گا۔ 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 لکھدیا کہ سند رہے۔

Attested & Accepted

المرقوم ــــــــ ماہ ــــــــ سنہ 20ء

العبد گواہ العبد