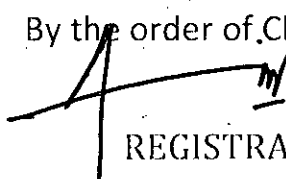


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 15/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.01.2024	<p>The implementation petition of Mr. Sher Shah submitted today by Mr. Amin ur Rehman Yousafzai 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  REGISTRAR</p>

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

EP No 15

Misc. Application No. _____ of 2023
IN
Service Appeal No. 4836 / 2021

Sher Shah..... Applicant/ Appellant

V E R S U S

Government of Khyber Pakhtunkhwa & 3 others Respondents

I N D E X

S. No.	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Application with affidavit		1
2.	Copy of Judgment dated: 02.08.2023 alongwith Service Appeal No.4836/2021	A	2-6
3.	Copy of application dated: 16.11.2023	B	7
4.	Wakalatnama		8

Applicant / Appellant
Through

Amin ur Rehman Yusufzai

Khalid Khan Mohmand

&

Muaz Ashraf Khan
Advocates, Peshawar

Dated: 04.12.2023

1

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

EP No: 15

Misc. Application No. _____ of 2024
IN
Service Appeal No. 4836 / 2021

SHER SHAH S/O PIR SHAH JEHAN

Village Piran Manga, Tehsil & District Mardan **Applicant/ Appellant**

Ex-constable Police Line, Mardan, **VERSUS**

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Inspector General of Police (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Regional Police Officer/Deputy Inspector General of Police, Mardan.
4. District Police Officer (DPO), Mardan. **Respondents**

Khyber Pakhtunkhwa
Service Tribunal

APPLICATION U/S 7(2)(d) OF THE KP SERVICE TRIBUNAL ACT, 1974 (KP ACT NO. I OF 1974), READ WITH ALL ENABLING PROVISIONS OF LAW GOVERNING THE SUBJECT, FOR EXECUTION/IMPLEMENTATION OF JUDGMENT DTAED: 02.08.2023 IN THE TITLED APPEAL.

Diary No. 10229
Dated 3-1-2024

=====

Respectfully Sheweth:

1. That Applicant/Appellant approached this Hon'ble Tribunal through Service Appeal Nos.4836/2021, which was allowed, vide Judgment dated: 02.08.2023. **(Copy of Judgment dated: 02.08.2023 alongwith Service Appeal No.4836/2021 is attached as Annexure "A").**
2. That Judgment dated: 02.08.2023 supra was announced by this Hon'ble Tribunal in open Court, in presence of the representatives of the Respondent Department, however, the same has not been implemented so far, although applicant/appellant also communicated the Judgment ibid alongwith application dated: 16.11.2023, but to no avail so far, hence the instant application. **(Copy of application dated: 16.11.2023 is attached as Annexure "B").**
3. That more than 4 months time has been elapsed, however, Respondent Department is reluctant to implement Judgment dated: 02.08.2023 supra of this Hon'ble Tribunal in letter and spirit, which has caused grave miscarriage of justice, moreover, this Hon'ble Tribunal has got ample jurisdiction to implement the Judgment ibid, by issuing appropriate directions to the delinquents for the desired relief.
4. That any other ground with the permission of this Hon'ble Tribunal will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant application, Judgment dated: 02.08.2023 of this Hon'ble Tribunal may be ordered to be implemented in letter and spirit, so as to secure the ends of justice and equity.

Applicant / Appellant
Through

(Signature)
Amin ur Rehman Yusufzai

(Signature)
Khalid Khan Mohmand

&

(Signature)
Muaz Ashraf Khalil
Advocates, Peshawar

Dated: 04.12.2023

① A

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

Misc. Application No. _____ of 2023
IN
Service Appeal No. 4836 / 2021

Sher Shah Applicant/ Appellant

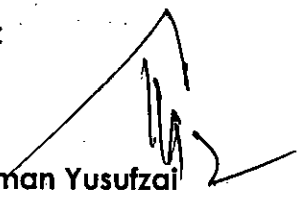
VERSUS

Government of Khyber Pakhtunkhwa & 3 others Respondents

FFIDAVIT

I, **SHER SHAH** S/O PIR SHAH JEHAN Village Piran Manga, Tehsil & District Mardan, do hereby solemnly affirm declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief, and that nothing has been concealed from this Hon'ble Tribunal.

Identified By:



Amin ur Rehman Yusufzai
Advocate, Peshawar



DEPONENT
CNIC #: 16101-2009454-9
Cell #: 0345-9539565

ATTESTED
MOHAMMAD AKBAR KHAN MARWAT
OATH
COMMISSIONER
Advocate High Court Peshawar

05/12/23

Annexure "A"

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 4836/2021

SHER SHAH S/O PIR SHAH JEHAN

Village Piran Manga, Tehsil & District Mardan **Appellant**

.... **V E R S U S**

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Inspector General of Police (IGP), Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Regional Police Officer/Deputy Inspector General of Police, Mardan.
4. District Police Officer (DPO), Mardan. **Respondents**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974, READ WITH ALL ENABLING PROVISIONS OF LAW, GOVERNING THE SUBJECT, AGAINST:

OFFICE ORDER OB NO.1536, DATED: 09.09.2020 OF RESPONDENT NO.4, VIDE WHICH APPELLANT HAS BEEN AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE, ORDER NO.6304/ES, DATED: 12.10.2020 OF RESPONDENT NO.3, VIDE WHICH DEPARTMENTAL APPEAL DATED: 27.09.2020 OF APPELLANT, AGAINST ORDER DATED: 09.09.2020 IBID HAS BEEN REJECTED AND ORDER NO.S/1159/21, DATED: 17.03.2021 OF RESPONDENT NO.2, VIDE WHICH REVISION PETITION OF APPELLANT, AGAINST BOTH THE AFOREMENTIONED ORDERS OF RESPONDENTS NO.3 & 4, WAS TURNED DOWN.

PRAYER-IN-APPEAL:

On acceptance of instant appeal, impugned orders dated: 09.09.2020 (of Respondent No.4), 12.10.2020 (of Respondent No.3) and 17.03.2021 (of Respondent No.2) may be set aside and appellant may be re-instated in service with all consequential benefits.

=====

Respectfully Sheweth:

1. That appellant, being qualified, was enlisted as Constable, in the Khyber Pakhtunkhwa Police Department, by the Competent Authority, vide order dated: 04.01.2011 and, since then till issuance of impugned order dated: 09.09.2020, performed duties with zeal/devotion and utmost satisfaction of superiors.
(Copy of enlistment order dated: 04.01.2011 is attached as Annexure "A").
2. That Appellant has unilaterally been dismissed from service by Respondent No.4, vide Order dated: 09.09.2020, without fulfillment legal/codal formalities i.e. Charge Sheet, Regular Inquiry & Show Cause Notice etc., on the sole ground of registration of FIR No.338, dated: 09.04.2020, Under Sections 324, 353, 186, 224, 225, 148, 149 read with 15 AA, Police Station MPS, Saddar Mardan.
(Copies of order dated: 09.09.2020 & FIR No.338, dated: 09.04.2020, are attached as Annexures "B" & "C" respectively).

ATTACHED

Annex "A"



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

"Service Appeal No.4836/2021"



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

Sher Shah S/O Pir Shah Jehan, Village Piran Mango, Tehsil & District Mardan. ... (Appellant)

3

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
 2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 3. Regional Police Officer, Mardan.
 4. District Police Officer, Mardan.
- ... (Respondents)

Mr. Amin Ur Rehman Yousafzai
Advocate ... For Appellant.

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For Respondents.

Date of Institution ... 15.04.2021
Date of Hearing ... 02.08.2023
Date of Decision ... 02.08.2023

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 instant appeal the impugned orders dated 09.09.2020, 12.10.2020 and 17.03.2021 may be set aside and appellant may be reinstated in service with all back benefits."

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2. Brief facts of the case are that appellant was enlisted in Police Department as Constable vide order dated 04.01.2011. He was performing

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his duties up to the entire satisfaction of his superiors. He was charged in FIR No. 338 dated 09.04.2020 under Section 324, 353, 186, 224, 25, 148 and 149 read with 15 AA registered at Police Station MPS Saddar Mardan. On the strength of that FIR the appellant was dismissed from service. Feeling aggrieved he filed departmental appeal against the impugned order which was rejected on 12.10.2020. Thereafter he filed revision petition which was also rejected on 17.03.2021, hence the instant service appeal.

2. We have heard learned counsel for the appellant and Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Learned counsel for appellant contended that the impugned orders passed by the respondents are against the law and rules, hence liable to be set aside. He further contended that neither regular inquiry was conducted nor any opportunity of personal hearing was given to the appellant and he was condemned unheard which attracts the doctrine of *audi alteram partem*. Lastly, he submitted that he was proceeded against departmentally on the allegations that he was involved in case F.I.R No.338 dated 09.04.2020 and that was the only stigma but the appellant was acquitted by competent court of law, therefore, the impugned orders may kindly be set aside.

4. Conversely learned Deputy District Attorney submitted that appellant was treated in accordance with law and rules. He contended that appellant was placed under suspension on account of involvement in case F.I.R No.338 dated 09.04.2020 at Police Station Saddar, Mardan. On account of the aforementioned allegations, he was issued charge sheet alongwith statement of allegations and Inquiry Officer during the course of inquiry, provided all lawful opportunities to the appellant to produce evidence in his defense but

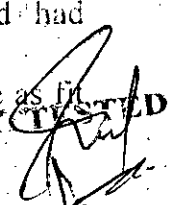
ATTESTED
EXAMINER
Hyder Pakhtekhiw
Service Tribunal
Peshawar

fiasco and that after fulfillment of all codal formalities, report was submitted and appellant was rightly dismissed from service.

5. From the record, it is evident that appellant was proceeded against departmentally on the allegations that during service he was involved in case FIR No.338 dated 09.04.2020 U/S 452, 354, 506/34 P.P.C Police Station Saddar, Mardan. The appellant was issued charge sheet on 22.04.2020 with the allegation that he alongwith his brother behaved violently when police tried to disperse the public for the purpose of main lockdown due to Covid-19. On 09.04.2020 appellant submitted his reply to the said charge sheet on 01.05.2020 and claimed innocence and denied his presence on the spot of occurrence. Enquiry Officer had not provided opportunity of cross examination to the appellant upon complainant and witnesses of FIR No. 338 in which appellant was charged which is mandatory for a fair trial. So when appellant was not provided with opportunity of cross examination and self defense then in such a situation inquiry is not conducted in accordance with settled rules, procedure and law. Therefore, same cannot be relied upon for giving major punishment of dismissal from service.

6. As discussed earlier that the only allegation against the appellant was his involvement in the criminal case but the appellant was acquitted in the criminal case registered against him vide F.I.R No.338 by the competent court of Law on 30.04.2022.


7. It has been held by the superior fora that all the acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in the criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared, therefore, his acquittal, made him re-emerge as fit and proper person and entitle him to continue his service.


ACCEPTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

8. For what has been discussed above, we consider that the appeal in hand merits acceptance. It is, therefore, allowed as prayed for. Costs shall follow the event. Consign.

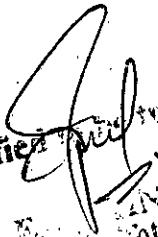
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9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 2nd day of August, 2023.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

Kaleemullah


Certified true copy
E. JAVED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

21/08/2023
4/-
20/-
5/-
25/-
Date of Delivery of Copy 21/08/2023

Annex "B"
بخدمت جناب DPO صاحب ضلع مردان

7

درخواست بمراد: بحالی اسروس بمطابق فیصلہ بعدالت جناب سروس ٹریبونل پشاور

مورخہ 02-08-2023

جناب عالی!

- ۱۔ یہ کہ سائل محکمہ پولیس میں کانسٹیبل بھرتی ہوا تھا اور محکمہ پولیس نے مورخہ 09-09-2020 کو درخواست کیا۔
- ۲۔ یہ کہ سائل نے محکمہ کو بہت درخواستیں بابت بحالی گزاری لیکن کوئی قانونی شنوائی نہ ہوئی۔ اس کے بعد سائل نے بعدالت جناب سروس ٹریبونل اپیل دائر کی۔ جو کہ سائل کے حق میں فیصلہ صادر فرمایا گیا ہے (فیصلہ کو کاپی لف ہے)

- ۳۔ یہ کہ سائل ایک شادی شدہ آدمی ہے اور اس کے دو بچے بھی ہیں۔ اس کے علاوہ سائل کے گھر کا مالی حالات بہت خراب ہے اور اس کا کوئی ذریعہ آمدنی نہ ہیں۔

لہذا آپ صاحبان سے گزارش ہے کہ سائل کو عدالت حضور کے فیصلہ کے مطابق اسروس اڈیوٹی پر بحال کی جائیں۔
عین نوازش ہوگی۔

المرقوم 16-11-23

الحاض الشاہ

شیر شاہ ولد پیر شاہ جہان

بلیٹ نمبر 3580

موبائل نمبر: 0345-9539565

ATTESTED

وکالت نامہ

(8)

بعدالت سرسہ لکسٹریٹو کورٹ لیسٹا ہر

بانی بنیاد نام گدرضیت

مخانب Applicant دعویٰ اجرم

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جواب ہی بمقام لیسٹا ہر کے لئے

امین الرحمن یوسفزئی و خالد خان مہمند

ایڈووکیٹس ہائی کورٹ

کو بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظهر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچھری کے کسی اور جگہ یا کچھری کے مقررہ اوقات سے پہلے یا پیچھے یا بزور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچھری کے کسی اور جگہ سماعت ہونے یا بزور تعطیل یا کچھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پروا ختمہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ذمہ داری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا قرقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو کبھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند رہے مورخہ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

امین الرحمن یوسفزئی
ایڈووکیٹ ہائی کورٹ اینڈ فیڈرل شریعت کورٹ آف پاکستان

ایڈووکیٹ آئی ڈی نمبر: BC-10-7562

موبائل نمبر: 0321-9022964

شناختی کارڈ نمبر: 17301-5813582-3

خالد خان مہمند

ایڈووکیٹ ہائی کورٹ، پشاور

ایڈووکیٹ آئی ڈی نمبر: BC-18-1115

آفس: 3A، پھنس پلازہ، پارک ایونیو، یونیورسٹی ٹاؤن چوک،

صالحہ اسرافیل
ایڈووکیٹ