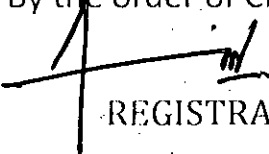


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 04/2023/

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	02.01.2024	<p>The implementation petition of Mr. Misal Khan submitted today by Mr. Khaled Rehman 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>

KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Misael Khan

Versus

Police

..... Appellant

..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	x	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Misael Khan

Signature:- 

Dated:- 4-12-23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 04 /2023

IN

Service Appeal No. 535 /2023

(Decided on 13.10.2023)

Misal Khan Petitioner

Versus

Provincial Police Officer, Khyber Pakhtunkhwa and others Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Execution Petition with Affidavit			1-2
2.	Judgment of this Hon'ble in Appeal No. 535/2023	13.10.2023	A	3-9
3.	Application	23.11.2023	B	10
4.	Wakalat Nama			11

Through

Petitioner


Khaled Rahman

Advocate, Supreme Court

(BC# 10-5542)

Khaledrahman.advocate@gmail.com

&


Muhammad Amin Ayub

&


Muhammad Ghazanfar Ali

Advocates, High Court

4-B, Haroon Mansion

Khyber Bazar, Peshawar

Off: Tel: 091-2592458

Cell # 0345-9337312

Dated: 07/12/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 04 /2023
 IN
 Service Appeal No. 535 /2023
 (Decided on 13.10.2023)

Khyber Pakhtunkhwa
 Service Tribunal

Diary No. 10206

Dated: 07-1-2024

Mr. Misal Khan

Ex-Inspector, Police Lines Peshawar..... Petitioner

VERSUS

1. The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer Peshawar.
3. The Senior Superintendent of Police (Operations),
Peshawar..... Respondents

Execution Petition for directing the Respondents to implement the Judgment of this Hon'ble Tribunal dated 13.10.2023 passed in Service Appeal No.535/2023.

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.535/2023 which was allowed by the Hon'ble Tribunal vide Judgment dated 13.10.2023 (*Annex:-A*) in the following terms:

“Consequently, the appeals are allowed by setting aside the impugned orders and all the appellants are reinstated into service with all back benefits. Parties are left to bear their own costs. File be consign to record room.”

2. That after obtaining attested copy of the judgment, petitioner submitted the same to the Department through application dated 23.11.2023 (*Annex:-B*) for implementation in accordance with law.
3. That similarly, the Registrar of the Tribunal has also transmitted the copy of the Judgment to the Respondents for compliance of the orders of the Tribunal and even at the time of announcement of the Judgment the

representative of the Respondents was also available, however, till date the Judgment has not yet been implemented which has constrained the Petitioner to approach the Tribunal for implementation of the Judgment.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for non-implementation of the judgment of the Hon'ble Tribunal.

Through

Misal Khan
Petitioner

Khaled Rahman
Khaled Rahman

Advocate, Supreme Court

&

Muhammad Amin Ayub
Muhammad Amin Ayub

&

Muhammad Ghazanfar Ali
Muhammad Ghazanfar Ali

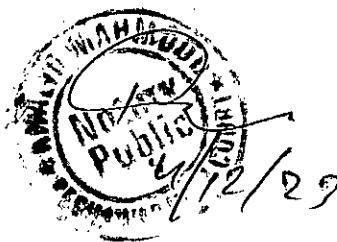
Advocates, High Court

Dated: 09/12/2023

Affidavit

I, Mr. Misal Khan, Ex-Inspector, Police Lines Peshawar, do hereby affirm and declare on oath that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Misal Khan
Deponent



- 3

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

BEFORE:

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



Service Appeal No. 535/2023

Misal Khan, Ex-Inspector, Police Lines Peshawar.

Asad A
(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

ATTESTED

Asad A
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 4

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 5

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


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

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.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

- 7


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 appellants

ATTESTED


F. N. MINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

- 8

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



(FAREEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

Naeem Amin

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-11-23
Number of Words 6-p
Copying Fee 30/-
Urgent ✓
Total 35/-
Name of Copyist _____
Date of Completion of Copy 30-11-23
Date of Delivery of Copy 30-11-23

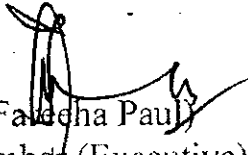
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ORDER
13.10.2023

Appellant alongwith his counsel present. Mr. Zahoor Ahmed, Sub-Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed consolidated judgment of today, separately placed on file, the appeal in hand is allowed and the appellant is 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


(Faezha Paul)
Member (Executive)


(Safah-Ud-Din)
Member (Judicial)

Naeem Amin

A to Q

A and B²

10

کے لئے - 10 - 11

صبا - حال

تذکرہ پیشہ سائنس اور $\frac{11}{22}$ کا نوٹری سے

بہر خاستہ رہو جانے ۱۰۔ سائنس اور بھلائی کے سروس
تذکرہ سائنس اور نوٹری میں فعال کرنا کا حکم جاری کیا ہے۔

رہتہ حاصلہ سائنس اور نوٹری میں فعال کرنا کا حکم صادر فرمایا

جانے

العارضی

سینا

ایک ایڈیٹر میں خالی سائنس اور انسٹیٹیوٹ

$\frac{11}{22}$

Ate

WAKALAT NAMA

IN THE COURT OF KP Service Tribunal Peshawar

Misal Khan

Appellant(s)/Petitioner(s)

VERSUS

Police and officers

Respondent(s)

I/We Petitioner do hereby appoint **Mr. Khaled Rehman**, Advocate, Supreme Court, **Mr. Muhammad Amin Ayub & Muhammad Ghazanfar Ali**, Advocates in the above mentioned case, to do all or any of the following acts, deeds and things.

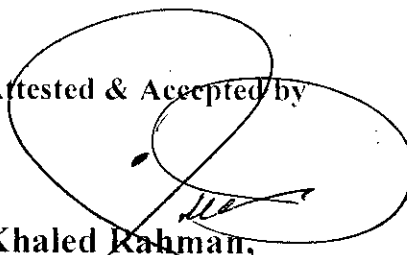
1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-


- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____


Attested & Accepted by


Khaled Rahman,
Advocate,
Supreme Court of Pakistan

&


Muhammad Amin Ayub
Advocate, High Court

&


Muhammad Ghazanfar Ali
Advocate, High Court

4-B, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458


Signature of Executants