

Form-A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 145/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.02.2024	<p>The implementation petition of Mr. Dildar Hussain submitted today by Mr. Shabir Hussain Gigyani 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. 145 /2024
IN
Service Appeal No. 199/2022

Dildar Hussain

Versus

IG P_{olice} KPK etc

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Dildar Hussain (Petitioner)

Through


Shabbir Hussain Gigyani

&

Numan khan Lodhi

Advocates

Access to Justice Law Chamber

Office No.206, 2nd Floor

City Gate Tower, Main G. T. Road,

Opposite City No.1 School, Peshawar

0300-8912921, 0333-9152592

Dated: 16-02-2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALKhyber Pakhtunkhwa
Service Tribunal**PESHAWAR**Diary No. 11200Execution petition. No. 145 /2024 16-02-2024

IN

Service Appeal No. 199/2022

Dildar Hussain S/O Zaman Ali

Head Constable/Hawaldar District Police Officer Kurram ...**P**etitioner**V**ersus

1. The Inspector General of Police, KPK, Peshawar
2. Regional Police Officer, Kohat Region.

3. District Police Officer District Kurram.....**R**espondents

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGEMENT OF THIS
HONORABLE SERVICE TRIBUNAL DATED 14/11/2023
PASSED IN SERVICE APPEAL NO. 199/2022.**

Respectfully Sheweth:

Facts leading the institution of this Execution petition are as below;

- 1) **T**hat, this august Court was gracious enough to allow appeal of the Appellant vide judgment dated 14-11-2023.

Judgment dated 14-11-2023 is annexed-"A"

- 2) **T**hat, the petitioner, has filed service appeal No.199/2022 which was allowed by the honorable Tribunal dated: 14/11/2023 in the following terms:

"On acceptance of this appeal, both the impugned orders of the respondents may graciously be set aside and the appellant may kindly be reinstated in service with all back benefits along with grant of any other remedy deemed fit by this Honorable Bench."

- 3) **T**hat, after obtaining attested copy of the judgement, petitioner submitted the same to the Department through

application Dated: 19/12/2023 for implementation in accordance with law.

Copy of application is annexed-"B"

- 4) **T**hat, similarly, the Registrar of the Tribunal has also transmitted the copy of the Judgment to the Respondents for compliance of the order of 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.
- 5) **T**hat, non-implementation of orders and directions of this august Court on plea of filling of C.P.L.A before the Hon'ble Supreme Court in near future is against the **Order-XX of the Supreme Court Rules, 1980** where even filling of any C.P.L.A. or appeal shall not prevent execution of decree or order appealed against.

The filing of a petition for leave to appeal or an appeal shall not prevent execution of the decree or order appealed against, but the Court may, subject to such terms and conditions as it may deem fit to impose, order a stay of execution of the decree or order, or order a stay of proceedings, in any case under appeal to this Court.

PRAYER:

It is, therefore, humbly prayed that on acceptance of this petition, this august Court may very graciously be pleased;

a) *To issue directions for strict compliance of the Judgment dated 14-11-2023; for Execution.*

b) *To grant any other adequate remedy deemed fit by this august Court.*

Dildar Hussain (Petitioner)

Through

Shabbir Hussain Gigyani

Dated: 06/02/2024

Numan Khan Lodhi
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition. No. _____/2024
IN
Service Appeal No. 199/2022

Dildar Hussain

Versus

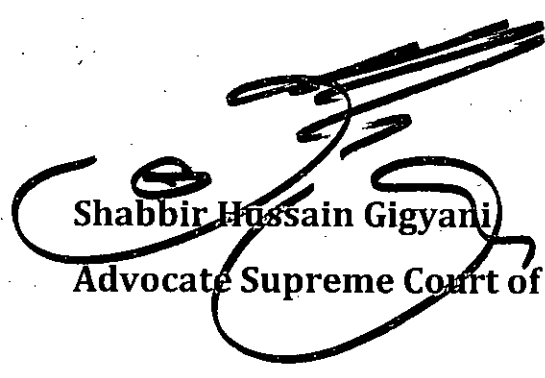
IG Police KPK etc

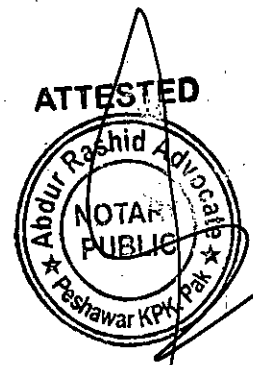
AFFIDAVIT

I DILDAR HUSSAIN S/O ZAMAN ALI do here by solemnly affirm and declare on oath that the instant appeal is first one on the subject issue before this august Court by or on behalf of the appellant and all the contents mentioned above are true and correct to the best of my knowledge and beliefs.

DEPONENT: دیلدار حسین
CNIC#: 21303-3098503-3
CELL#: 0300-0091497

Identified by


Shabbir Hussain Gigyani
Advocate Supreme Court of Pak.

ATTESTED

Abdur Rashid Advocate
NOTARY PUBLIC
Peshawar KPK Pak

16 FEB 2024

4

A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.199/2022

BEFORE: **MRS. RASHIDA BANO** ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)



Dildar Hussain S/O Zaman Ali, Head Constable/Hawaldar District Police Officer Kurram. ... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region.
3. District Police Officer, District Kuram.

... (Respondents)

Syed Noman Ali Bukhari
Advocate

... For Appellant

Syed Asif Ali Shah
Deputy District Attorney

... For Respondents

Date of Institution.....17.02.2022
Date of Hearing.....14.11.2023
Date of Decision.....14.11.2023

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, both the impugned orders of the respondents may graciously be set aside and the appellant may kindly be reinstated in service with all back benefits alongwith grant of any other remedy deemed fit by this Hon’ble Bench.”

2. Brief facts of the case are that the appellant was appointed as Sepoy in kurram Levy Force on 03.06.1996 and on merger of FATA was designated as Head Constable/Hawaldar in Khyber Pakhtunkhwa Police. During service

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

criminal case was registered under section 302 PPC on 28.01.2015 on 28.01.2015 and he surrendered before the law on 08.02.2015. He was convicted and sentenced under section 302 PPC to 14 years R.I by worthy Additional Sessions Judge Kurram vide judgment dated 23.09.2020. The appellant assailed the above referred conviction before the august High Court which was allowed vide order dated 11.11.2021 and the appellant was acquitted from the entire charges of the prosecution. During conviction respondent imposed major penalty of dismissal from service vide order dated 08.07.2021. Feeling aggrieved, he filed departmental appeal, which was dismissed, hence the instant service appeal.

3. 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders passed by respondents are illegal, without justification, without law authority and in utter violation of law and rules, hence liable to be set aside. He further argued that no charge sheet and statement of allegations were served upon the appellant and the appellant was condemned unheard. He contended that no show cause notice was issued to appellant before imposition of major penalty therefore, the impugned order is not tenable in the eyes of law. Lastly, he submitted that despite having the knowledge of detention of the appellant in judicial lockup, neither he apprised of the impugned action/order nor he was given opportunity of personal hearing and he was condemned unheard, therefore, he requested that instant appeal might be accepted.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5. Conversely, learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that proper inquiry was conducted and after fulfillment of all codal formalities he was awarded major penalty of dismissal from service vide order dated 08.07.2021. He further argued that criminal case proceedings and departmental proceedings are distinct in nature and both can run side by side. He further contended that the appellant has been provided with ample opportunity of self defense but he badly failed to advance plausible reason.

6. Perusal of record reveals that appellant while serving as constable in respondent department involved in criminal case under section 302 PPC on 2011.2015 who was convicted by the learned Additional Sessions Judgment Kuram to undergo 14 years rigorous punishment on two counts. Respondent competent authority initiate disciplinary proceedings against the appellant and vide impugned order dated 08.07.2021 dismissed him from service, against which appellant filed departmental appeal after released from jail which too was dismissed vide order dated 18.01.2022. It is pertinent to mention here that appellant was acquitted by the Worthy Peshawar High Court from the charges by setting aside conviction on 11.11.2022. It merit to mention here that when appellant was in custody and upon appellant's conviction enquiry officer recommended him for major penalty. The very reason of recommendation of the enquiry officer i.e conviction of the appellant came to an end when appellant was acquitted by the worthy Peshawar High Court, Peshawar vide order dated 11.11.2021 in criminal appeal bearing No. 811-P/2020. Moreover, appellant was condemned unheard as record is silent about proof of receiving charge sheet and statement of allegation by the appellant and opportunity of self-defence provided by officer to the appellant.

ATTESTED


BAKHTIYAR
Rhyder Daktukhwa
Service Tribunal
Peshawar

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

8. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

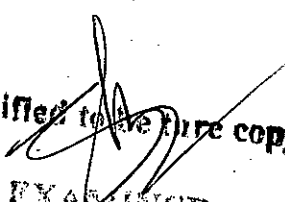
9. In view of above discussion, we are unison to set aside the impugned orders and reinstate the appellant into service with all back benefits. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of November, 2023.


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

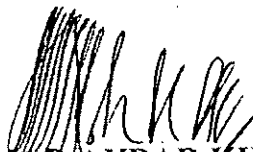
*Kaleemullah


Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Date of Presentation of Application 01-02-24
Number of Words 4-P
Copying Fee 20/-
Urgent 31
Total 28/-
Name of Copy _____
Date of Completion of Copy 01-02-24
Date of Delivery of Copy 01-02-24

ORDER14th Nov, 2023

1. Appellant alongwith his counsel present. Mr. Muhammad Jan, District Attorney Mr. Arif Saleem, Stenographer for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned orders and reinstate the appellant into service with all back benefits. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of November, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

کچھ صاحب ڈی۔ پی۔ اوزنٹالک پیج کراچی

دوبارہ
درخواست بطور ادبیالی فرم مین سائل
بجسٹس سینڈ کینٹیل اووالدار

کتاب۔ عالی

گزارش ہے کہ عینبرہ بخو بخوان سہروس ٹر ہونل
لشنادہ نے من سائل کی اپیل نمبر 20/199 منظور فرماتے ہوئے
موزوں 2023. 11. 14 کے صادر شدہ فیصلہ کے مطابق میری
دوبارہ بجالی کا حکم صادر فرمایا ہے۔ (نقل فیصلہ ہے)

SRC
For w/ action
as per files

اللہ ایسا جان سے مطالبہ انہ التماس ہے
کہ بطوری صادر شدہ فیصلہ من سائل کی دوبارہ ملازمت
پر بجالی کا حکم صادر فرما کر داد رسی فرمائیں

اپیل کنندہ
12/2023

دلازمین دلازمین علی (سینڈ کینٹیل اووالدار)
دلازمین

Attested
to be true
18/2/24



ACCESS TO JUSTICE LAW CHAMBER

POWER OF ATTORNEY

Before The Before Honorable KP Service Tribunal, Peshawar
Dildar Hussain VERSUS I.G Police KP etc

Nature of Case Execution Petition On behalf of Petitioner / Appellant

FIR # _____ Dated _____ U/Ss _____ PS _____

I do here by appoint **M/S Shabbir Hussain Gigyani & Associates** (hereinafter called as Advocates), as my counsel in this case with the following terms & conditions:-

- 1- That to sign and verify, pleading & all kind of application including those for notices, appeal, review, execution etc;
 - 2- To withdraw, compromise, refer to arbitration, bind me by oath, receive documents & money and give discharge;
 - 3- To appoint with him another lawyer and Generally for me & in my name and on my behalf to do all acts, deeds, matters & things relating to the case in all its stages that I personally could do if this instrument had not been executed.
 - 4- If at any time, the said counsel is unable to attend the court through illness or absence from station, he will make arrangement with some lawyer to appear for him, but he shall not be responsible for any lose caused to me, if his arrangement fails.
 - 5- I will make my own arrangement for attending the court on every hearing, to inform my said counsel, when the case is called. The counsel shall in no way be responsible for any loss caused to me through my failure to so inform him.
 - 6- The fee paid, or agreed to be paid, to the said counsel is for his work in this court alone, the retainer, however shall continue and remain in the court though I will make separate arrangement as to his fees in respect of appeal, revision, review, transfer proceeding and execution of decree or orders.
 - 7- Unless the whole amount of fee is paid, the said counsel is no bound to prosecute my case, nor is he bound to do so (unless specially paid in separate arrangement) at any place other than the court house beyond the usual court hours, on a public holiday or in any other court.
 - 8- Not part of the said counsel's fee is returnable under any circumstances and cost of adjournments payable by the opposite party will be received and retained by him in addition to his fee payable by me.
- I have read the above terms & conditions & the same have been explained to me and I accept them as binding in witness whereof I have set my hand this _____ day of _____ 2024 at _____

Executants:

1. دلدار حسین ولد زمان علی، سکنہ بازار صلح، مہراں ایجنسی

2. دلدار حسین

3. دلدار حسین



Accepted & Attested Subject to the terms mentioned above

Shabbir Hussain Gigyani Yawar Hussain Yousafzai Noman Khan Lodhi

Muhammad Shoab M. Idrees Tufail Khan

Access to Justice Law Chamber

Zakir Khan Izhar Khan Aizaz Khan

 <p>Peshawar High Court Bar Association</p> 	<p>BC No. 10-6369 CNIC: 17101-0375292-7 Cell#: 0300-8912921, 0333-9152592 Web: www.gigyani-lawfirm.com E-mail: shabbirgigyani@gmail.com</p>	<p>Registration # 1887 Firm Name: GIGYANI & ASSOCIATES ALC No: 17101-0375292-7 Date of Birth: 18 May 2024 Address: Office 206, 2nd Floor, City Gate Tower, Opposite City No. 1 School, G.T. Road, Peshawar City of District Muz G.T. Road, Peshawar Contact No: 0300-8912921, 0333-9152592 PESHAWAR HIGH COURT BAR ASSOCIATION Phone: 031-4210180, 8210027, Fax: 031-4210143</p>
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