Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 216/2024

	Order or other proceedings with signature of judge	
		3
1	04.03.2024	The implementation petition of Syed Habib Jan 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. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 216 /2024

IN

Service Appeal No. 1417 /2020

(Decided on 18.07.2023)

Syed Habib Jan .... **Petitioner**

Versus

The Govt. of KPK and others ..... **Respondents**

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Petitioner

Through

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: 23 /03/2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 216 /2024
IN
Service Appeal No. 1417 /2020
(Decided on 18.07.2023)

Syed Habib Jan
Sepoy (BPS-07),
Bajaur Levis, Bajaur Agency Khar ..... **Petitioner**

Versus

1. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar.

2. **The Secretary,**
Govt. of Khyber Pakhtunkhwa
Home & Tribal Affairs,
Civil Secretariat, Peshawar.

3. **The Deputy Commissioner**
District Khar.

4. **District Police Officer,**
District Khar..... **Respondents**

Execution Petition for directing the Respondents to implement the Judgment of this Hon'ble Tribunal dated 18.07.2023 passed in Service Appeal No.1417/2020.

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.1417/2020 which was allowed by the Hon'ble Tribunal vide Judgment dated 18.07.2023 (***Annex*:-A**).

2. That after obtaining attested copy of the judgment, petitioner submitted the same to the Department through application (***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.

Petitioner

Through

Khaled Rahman
Advocate, Supreme Court

&

Muhammad Amin Ayub

&

Muhammad Ghazanfar Ali
Advocates, High Court

Dated: 03 /03/2024

Affidavit

I, Syed Habib Jan, Sepoy (BPS-07), Bajaur Levis, Bajaur Agency Khar, 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.

Deponent

3

Ann A

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 821/2020

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

Imran, Sepoy (BPS-07) Bajaur Levis, Bajaur Agency, Khar.

.... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Civil Secretariat, Peshawar.
3. Deputy Commissioner District Khar.
4. District Police Officer, Khar.

.... (*Respondents*)

Mr. Khalid Rehman
Advocate ... For appellant

Mr. Fazal Shah Mohmand
Additional Advocate General ... For respondents

Date of Institution.....02.12.2020
Date of Hearing.....18.07.2023
Date of Decision..... 18.07.2023

JUDGEMENT

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 the instant service appeal, by modifying the impugned original order dated 14.06.2016 and setting aside the impugned order the impugned final appellate order dated 03.11.2020 the appellants may be reinstate into service with effect from 20.03.2008 with all back benefits. ."**

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 822/2020 titled "Asghar

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Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (ii) Service Appeal No. 823/2020 titled "Umar Ayub Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (iii) Service Appeal No. 824/2020 titled "Ghulam Younas Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (iv) Service Appeal No. 825/2020 titled "Noshad Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (v) Service Appeal No. 826/2020 titled "Abdullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (vi) Service Appeal No. 827/2020 titled "Shams Ur Rehman Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (vii) Service Appeal No. 828/2020 titled "Imran Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (viii) Service Appeal No. 829/2020 titled "Faiz Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (ix) Service Appeal No. 830/2020 titled "Imran Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (x) Service Appeal No. 831/2020 titled "Saeed Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xi) Service Appeal No. 832/2020 titled "Najeeb Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xii) Service Appeal No. 833/2020 titled "Mozamin Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others"(xiii) Service Appeal No. 834/2020 titled "Rooh Ul Amin Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xiv) Service Appeal No. 1417/2020 titled "Syed Habib Jan Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" as in all these appeals common question of law and facts are involved.

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3. Brief facts of the case, as given in the memorandum of appeal are, that the appellants were appointed in the respondent Department. During service they performed duties upto the entire satisfaction of their superiors. Vide order dated 20.03.2008, they were awarded major penalty of dismissal from service against which they filed departmental appeal followed by service appeal, which were disposed of jointly through consolidated judgment dated 11.05.2015. The respondents, being dissatisfied from the judgment, assailed the same before the Hon'ble Apex Court by way filing of CPLAs which came up for final adjudication on 20.05.2015 and Apex Court upheld the judgment of Tribunal dated 11.05.2015 by directing the respondents to hold an inquiry as per law. The respondents reinstated the appellants into service vide order dated 08.12.2015. Another order was issued on 11.12.2015 whereby it was held that the reinstatement order of the appellants is only for the purpose of conducting of inquiry and till the finalization of the inquiry none of them will be entitled for any financial benefits. Then inquiry committee was constituted who conducted the inquiry and submitted its findings, after which appellant alongwith others were reinstated into service vide order dated 14.06.2016 with immediate effect and were kept at the bottom of seniority list. Feeling aggrieved the appellant filed departmental representation on 29.07.2016 which was not responded. Then he filed service appeal before Federal Service Tribunal which was disposed of with direction to respondents to pass order on his departmental representation. Respondents failed to comply with the direction of the Federal Service Tribunal, hence appellants again filed service appeal before Federal Service Tribunal, Islamabad. During pendency of the appeal, respondents dismissed the departmental representation of the appellants, resultantly service appeals of the appellants were disposed of vide order dated 20.04.2017, which was again challenged through fresh appeal by the appellant and others but due to 25th Constitutional

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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Amendment of May 2018, FATA was merged with Khyber Pakhtunkhwa and Levy & Khasadar Forces stood provincialzed vide notification dated 12.03.2019. Vide judgment dated 04.12.2019 revision petition was remanded back to the respondents to consider it as departmental appeal and deemed it afresh after providing proper opportunity of personal hearing. Respondent after affording opportunity to appellant again turned down the request of giving back benefits vide impugned order dated 03.11.2020, 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 Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellants were not treated in accordance with law, rules and policy and respondents are violated Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973. He contended that impugned order passed by the respondents is unjust, unfair and hence not sustainable in the eyes of law. He further contended that the appellant's absence from duty till the date of reinstatement was neither willful nor deliberate rather appellant was unlawfully shown absent from duty, he, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Additional Advocate General argued that the appellants have been treated in accordance with rules and policy. He contended that the appellant alongwith others being members of disciplined force deliberately absented himself from lawful duty and to that effect the then Political Agent issued notices to them for joining duty but in vain. In the year 2007-10 the insurgency spread in the district and the appellant left the law and

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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order at the mercy of miscreants therefore, they were rightly dismissed from service.

6. Perusal of record reveals that appellants were appointed as Sepoy in respondent department and were dismissed form service vide order dated 20.03.2008. Appellants filed departmental appeal and then service appeal before Federal Service Tribunal which was decided through consolidated judgment dated 11.05.2015 by holding that:

> *"Consequently upon what has been discussed above, we are of the considered view that the impugned orders whether verbal or written, are not sustainable in the eyes of law as they are in violation of the dictum laid down by the Hon'ble Supreme Court of Pakistan. The impugned orders are, therefore, accordingly set aside and resultantly the instant appeals are accepted and appellants are ordered to be reinstated into service from the date of impugned orders. However, the question of back benefits shall be decided by the competent authority in accordance with the instruction contained at Serial No. 155, Vol.II of Civil Establishment Code (Estacode, 2007 Edition), and the dictum of law as laid down in judgment of the Hon'ble Supreme Court of Pakistan, reported as 2010 SCMR 11."*

Respondents challenged said order in CPLA before august Supreme Court of Pakistan which was decided on 20.10.2015 by upholding judgment of Federal Service Tribunal. Respondents as a result of it conducted inquiry and reinstated appellants in service vide order dated 14.06.2016 but with immediate effect and denied back benefits to them and kept all of them at the bottom of seniority list. Appellants challenged said order dated 14.06.2016 in departmental appeal on 29.07.2016 which was not responded. So they filed service appeal to Federal Service Tribunal and during pendency of that appeal, departmental appeal was dismissed vide order dated 25.04.2017, which was again challenged through fresh appeal by the appellants but due to 25th Constitutional Amendment of May

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

2018, FATA was merged with Khyber Pakhtunkhwa. Levy and Khasadar Forces stood provincialised vide notification dated 12.03.2019, therefore, through judgment dated 04.12.2019 revision petition was remanded back to the respondents to consider it departmental appeal and decided it afresh after providing proper opportunity of personal hearing. Respondent after affording opportunity of hearing to appellants again turned down, their request for giving back benefits etc vide impugned order dated 03.11.2020.

7. Federal Service Tribunal vide judgment and order dated 11.05.2015 has held about the back benefits that it shall be decided by the competent authority in accordance with the instruction contained at serial No. 155 vol.11 of Civil Establishment Code (Estacode 2007 Edition) and dictum of law as laid down in judgment of the Hon'ble Supreme Court of Pakistan reported as 2010 SCMR 11. This order about back benefits was upheld by Supreme Court of Pakistan vide order dated 20.10.2015. The representation of the appellants for grant of back benefits filed against order dated 29.04.2016 was decided by the Political Agent Bajaur on 24.02.2017 wherein factum of secret inquiry about the fact of appellant being on gainful business of earning was mentioned. If during secret inquiry it came into the knowledge of Political Agent Bajaur that appellant was earning money and was on job during intervening period, then he must put it to the appellant and provide opportunity to accept or to rebut it. So on the basis of secret inquiry holding that appellant was on gainful business during his dismissal period is not logical and is injustice, against the fair trial and inquiry. Moreover in accordance with verdicts of Superior Court and FR54, reinstatement of an employee, consequent to setting aside his dismissal/removal from service, the entitlement of employee to have the period of his absence from his service treated as on duty is a statutory consequence of his being reinstated on merits. The term reinstatement means to place a person in his previous position that has

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already been done in year 2016 in the present case when all the appellants were reinstated into service.

8. It is also pertinent to mention here that some colleagues of the appellant were reinstated with retrospective effect by the respondent vide order dated 03.07.2013 as a result of judgment of Federal Service Tribunal Islamabad passed on 01.03.2013. Federal Service Tribunal Islamabad also passed such like nature order in case of appellants vide judgment and order dated 11.05.2015 upheld by Supreme Court of Pakistan on 20.10.2015 and subsequent order of Federal Service Tribunal Islamabad dated 04.10.2019. It will not be out of place to mention here that 92 officials/sepoys were given back benefits by the respondent who were dismissed on the same charges, but present appellant's request for back benefits was turned down which is injustice with the appellant and against the principle of justice. Concept of fair trial and equality demands that when employees having identical and similar case were given back benefits by the respondent, then present appellants also deserve the same treatment, but respondent did not treat them like other officials, which is discrimination. Respondents are directed to reinstate the appellants with retrospective effect from the date of dismissal and not with immediate effect.

9. As a sequel to the above discussion, we allow this appeal in accordance with relevant rules and law. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2023.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J) *Kaleemullah

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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10 Annex "B"

بحضور جناب ڈسٹرکٹ پولیس افیسرصاحب باجوڑ؛

عنوان؛

درخواست بمراد بحالی سروس سنیارٹی،بشمول تمام بیک بینیفٹس؛

جناب عالی۔

مودبانہ گزارش کی جاتی ہے کہ سائیلان اپ صاحبان کے زیرسایہ ڈسٹرکٹ پولیس میں خدمات ایمانداری اور فرض شناسی سے انجام دے رہے ہین۔بندہ گان کا عنوان بالا کیس صوبایی سروس ٹریبونل میں زیر سماعت تہاجس کے شنوایی عدالت مزکورہ میں ہو کر بندہ گان کے حق میں تحریری فیصلہ بمورخہ 2023-07-18 کو جاری ہواجس پر تا حال کسی قسم کا عمل نہیں کیا گیا۔اور نہ ہی بالا عدالت سے مزکورہ فیصلہ کے روک تھام، منسوخی وغیرہ کے حوالے سے کویی احکامات جاری ہویی۔

لھزہ اپ صاحبان مہرابانی کر کے بالا فیصلہ کے مطابق بندہ گان کے سروس سینیارٹی اور تمام بیک بینیفٹس بحال کرنے کا احکامات صادر فرما کر مشکور فرمایں۔

بندہ گان تاحیات دعا گو رہینگے۔

العارض:

ایکا تابع حاکمان: 1۔ عمران 2۔ اصغر 3۔عمر ایوب 4۔غلام یونس 5۔ نوشاد 6۔عبداللہ 7 ۔ شمس الرحمان 8۔عمران اللہ 9۔فیض اللہ 10۔عمران 11۔سعیداللہ 12۔نجیب اللہ 13۔موزمین 14۔روح الامین 15۔سید حبیب جان

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IN THE COURT OF KP Service Tribunal Peshawar

Sayed Habib Jan

Appellant(s)/Petitioner(s)

VERSUS

The Govt of KPK and others *Respondent(s)*

I/We Petitioner do hereby appoint **Mr. Khaled Rehman,** Advocate, Supreme Court & **Mr. 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

Signature of Executants

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

&

Muhammad Ghazanfar Ali
Advocate, High Court

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