


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 258 /2024

S.No	Date of order proceedings	Order or other proceedings with signature of judge
2	2	3
1	21.03.2024	<p>The implementation petition of Syed Suliman Shah submitted today by Roeeda Khan 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 given to counsel for the Petitioner.</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Executive Petition No. 258 /2024

In Service Appeal No. 16417/2020

Syed Suliman Shah

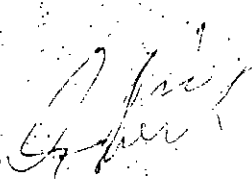
VERSUS

The Deputy Inspector General of Police, CTD Khyber
Pakhtunkhwa Peshawar & others


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Dated: 21/03/2024


Applicant

Through


Roeeda Khan

Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Executive Petition No. _____/2024

In Service Appeal No. 16417/2020

Syed Suliman Shah CTD Police Khyber Pakhtunkhwa
Peshawar.

.....*Petitioner*

VERSUS

1. The Deputy Inspector General of Police, CTD Khyber Pakhtunkhwa Peshawar.
2. The Superintendent of Police Headquarters CTD Khyber Pakhtunkhwa.

.....*Respondents*

**EXECUTION PETITION FOR
DIRECTING THE RESPONDENTS
TO IMPLEMENT THE JUDGMENT
OF THIS HON'BLE TRIBUNAL IN
LETTER AND SPIRIT**

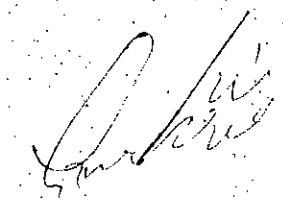
Respectfully Sheweth,

1. That the applicant/appellant filed Service Appeal No.16417/2020 in this August Tribunal which has been accepted on 10.01.2024. **(Copy of judgment is annexed as annexure "A")**
2. That this Hon'ble tribunal was pleased to accept the appeal of the appellant the impugned order is set aside and the appellant has been reinstated in service with all back benefit.

3. That the appellant submitted the judgment/order dated 10.01.2024 but no action has been taken by the department so far.
4. 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 judgment of this August Tribunal in its true sense. Furthermore the appellant submitted an application to respondent department for implementation for the said judgment, but in vain. (Copy of application is attached as annexure "B").
5. That the petitioner has no remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment of this August Tribunal in letter and spirit.

Dated: 21/03/2024



Applicant

Through


ROEDA KHAN

Advocate, High Court
Peshawar

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Executive Petition No. _____/2024

In Service Appeal No. 16417/2020

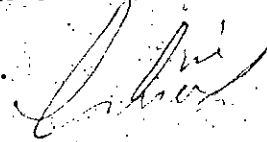
Syed Suliman Shah

VERSUS

The Deputy Inspector General of Police, CTD Khyber
Pakhtunkhwa Peshawar & others

Affidavit

I, Syed Suliman Shah CTD Police Khyber Pakhtunkhwa Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the instant Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent

(A) (9)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



BEFORE: SALAH-UD-DIN MEMBER (Judicial)
FAREEHA PAUL MEMBER (Executive)

Service Appeal No. 16417/2020

Syed Suleman Shah No. 1551 Ex-Constable CTD Police Khyber
Pakhtunkhwa Peshawar. (Appellant)

Versus

Deputy Inspector General of Police CTD Khyber Pakhtunkhwa
Peshawar and 01 other. (Respondents)

Present:

Ms. Roeeeda Khan, Advocate For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney For respondents

Date of presentation of Appeal 24.12.2020
Date of Hearing 10.01.2024
Date of Decision 10.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts forming the background of the instant appeal are that departmental action was taken against the appellant on the allegations that he was involved in case FIR No. 447 dated 02.04.2020 under sections 302/324/458/148/149 PPC Police Station Mathra Peshawar and had also remained absent from duty vide daily diary No. 417 dated 02.04.2020. On conclusion of the inquiry, he was awarded major penalty of dismissal from service vide the impugned order bearing OB No. 220/CTD dated 21.09.2020. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was also declined vide order dated 03.12.2020. The appellant then approached this

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Khyber Pakhtunkhwa

Tribunal by way of filing the instant appeal for redressal of his grievance.

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

3. Learned counsel for the appellant argued that the appellant was behind the bars at the time of inquiry and was not in a position to properly defend himself. He next argued that as the appellant was behind the bars, therefore, the inquiry proceedings were conducted at his back and no opportunity was provided to him to cross-examine the witness examined during the inquiry. He further argued that the appellant was not provided copy of the inquiry report and show-cause notice was also not issued to him, which fact has created serious dent in the inquiry proceedings rendering it as wrong and illegal. He also argued that the appellant was not even provided any opportunity of personal hearing and was thus condemned unheard. He also argued that the appellant was falsely charged in the concerned criminal case and the fact of his false involvement has been proved on his acquittal in the said case. He next contended that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents argued that the appellant was directly charged in

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Tribunal

(b)

heinous crime, therefore, departmental action was taken against him under the Khyber Pakhtunkhwa Police Rules, 1975. He next argued that a regular inquiry was conducted in the matter by complying all legal and codal formalities as prescribed under the Khyber Pakhtunkhwa Police Rules, 1975. He further argued that charge sheet as well as statement of allegations were served upon the appellant, however he remained unable to put forward any plausible reasons in rebuttal of the allegations leveled against him. He next contended that the allegations against the appellant stood proved in a regular inquiry, therefore, he was rightly dismissed from service.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant alongwith some other co-accused were charged in case FIR No. 447 dated 02.04.2020 under sections 302/324/458/148/149 PPC Police Station Mathra, Peshawar and he was placed under suspension vide order dated 06.04.2020. The DSP Headquarter CTD Khyber Pakhtunkhwa Peshawar, was appointed as inquiry officer in the matter. The inquiry report so submitted by the inquiry officer is available on the record, which would show that it is an admitted fact that charge sheet as well as statement of allegations were served upon the appellant, while he was in custody in central jail Peshawar. The inquiry officer had examined the investigation officer of the concerned criminal case as the only witness in the inquiry proceedings. The appellant was admittedly in custody in jail and no opportunity was provided to him to cross examine the said

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Peshawar

(7)

witness. Furthermore, the appellant was lying in jail but it is astonishing that the inquiry officer in the inquiry report has mentioned that he had willfully remained absent from duty till the date of submission of the inquiry report. The available record does not show that the appellant was provided any opportunity to defend himself in the inquiry proceedings.

7. While going the inquiry report, it can be observed that the inquiry was conducted in a cursory and perfunctory manners as if the inquiry officer was just complying a formality. This Tribunal has already held in numerous judgments that issuing of final show-cause notice as well as providing of copy of the inquiry report to the delinquent official/officer is must. Reliance is also placed on judgment of august Supreme Court of Pakistan reported as PLD 1981 Supreme Court 176, wherein it has been held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the inquiry report to the appellant has caused miscarriage of justice as in such a situation, the appellant was not in a position to properly defend himself regarding the allegations leveled against him.

8. The appellant was dismissed from service vide the impugned order dated 21.09.2020 passed by Superintendent of Police HQrs; CTD Khyber Pakhtunkhwa Peshawar. It has been mentioned in the said order that the appellant was called to appear in person for personal hearing but he did not appear before the competent Authority. The aforementioned observations recorded in the


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impugned order dated 21.09.2020 are quite astonishing and shows

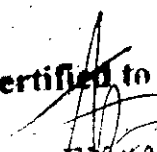
the casual attitude of the competent Authority for the reason that the appellant was behind the bars at that time and it could not be expected that he was capable to appear before the competent Authority for personal hearing. We are thus of the view that the appellant was not provided opportunity of personal hearing and he was condemned unheard.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders 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
10.01.2024


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

*Nasim Amin**
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

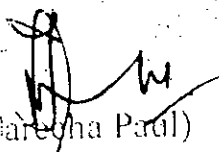
Date of Presentation of Application 29-01-2024
Number of Volumes _____
Copying Fee 2500
Urgent 500
Total 3000
Name of Copyholder _____
Date of Completion of Copy 29-01-2024
Date of Delivery of Copy 29-01-2024

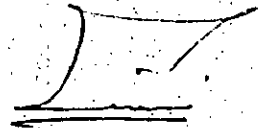
ORDER
10.01.2024

Learned counsel for the appellant present. Syed Amir Abbas, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders 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
10.01.2024


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)

Naeem Amin

(۱۵) "B"

حضرت جناب سید رشید شاہ کو اس کے بارے

میں درج ذیل سوالوں پر جواب دینا

سوال نمبر ۱۰

جناب عالی - سائل حسب ذیل عرض فرمائیں

۱) یہ کہ سائل کو علامت حضور کے بارے

میں ۱۰-۲۴ کو تو سائل کے بارے میں حال کیا ہے

لینا آپ سے کہ جن سے دعا ہے کہ علامت

حضور کی قسم کو Implement کرے

سائل سید رشید شاہ

سوال نمبر ۱۰

(15) "B"

مختصہ جہانگیر سیرکٹ ہاؤس ڈی اے کے ور

Implementation

صفحہ 10 1/24

جہانگیر علی - سائل حسین ذیل عرض رساں ہے

1 یہ کہ سائل کو عدالت حضور سے فوراً

24 10 کو نوٹوں پر بحال کیا جائے

لینا آپ صاحبان سے عاقلانہ عدالت

حضور کی قلم کو Implement

سائل سید سید محمد شاہ

2
15 1/24

This clearly brings the matter within the scope of fitness and this aspect of the matter escaped notice of the Tribunal. This Court has already held in the case of Muhammad Anis¹ that fitness is a subjective evaluation on the basis of objective criteria where substitution for an option of the competent authority is not possible by that of a Tribunal or of a Court and, therefore, the Tribunal has no jurisdiction on the question of fitness. This Court has also held in the case of Bashir Ahmed Badini² that eligibility is not a benchmark for promotion rather the most vital yardstick is fitness which can be judged from service record that includes ACRs, qualification, length of service, integrity, knowledge, proficiency in work, etc. Hence, the Tribunal was not vested with the jurisdiction to promote the Respondent w.e.f. 10.07.2017. His promotion date will be effective with immediate effect from 18.01.2022.

6. Under the circumstances, this Petition is converted into an appeal and allowed. The impugned judgment passed by the Tribunal is set aside.



Islamabad
15.02.2024
NOT APPROVED FOR REPORTING
Azmat

Sd/-J

Sd/-J

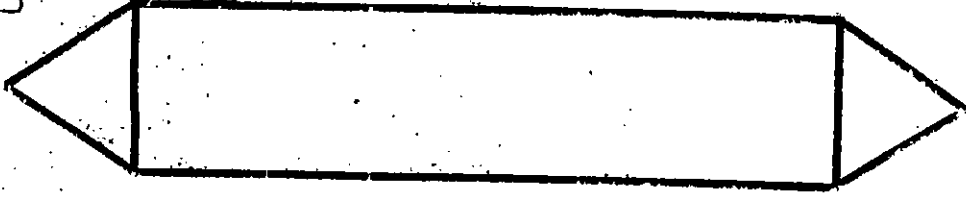
Sd/-J

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[Signature]
Senior/Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 2651/24
 Date of Presentation: 15.2.24
 No of Words: 1200
 No of Folios: 12
 Requisition Fee Rs: 500
 Copy Fee In: 7.44
 Court Fee Stamps: 10.00
 Date of Completion of Copy: 24.2.24
 Date of Delivery of Copy: 26.2.24
 Complied by/Prepared by: [Signature]
 Received by: [Signature]

بعدالت جناب سے ڈرائنگ کے ساتھ



الم 22 منجانب نائل

مورخہ

سید سلیمان شاہ نام لکھی

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب وہی وکل کاروائی متعلقہ

آن مقام صاحب کیلئے زونیک جاب اینڈ ڈولف

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب وہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی بزمگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ 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 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائتہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ 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 لکھ دیا کہ سند رہے۔

2026ء 21

المرقوم 21

العبد گواہ العبد

Acceptance
2026

سید