


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 276/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.04.2024	<p>The implementation petition of Mr. Jahan Ali submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on <u>5-4-24</u>. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the Petitioner.</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution Petition No. 276 /2024
In Service Appeal No.15572/2020

Jehan Ali

V/S

Police Department.

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-03
2	Copy of judgment dated 18.01.2022	A	04- 09
3	Copies of order dated 05.07.2022 and order sheet dated 04.10.2022	B&C	10-11
4	Vakalat Nama	-----	12

PETITIONER

THROUGH:

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

Cell# 0333-9390916

E *Shakir*
Adv: Shakir Lillah Torani

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Execution Petition No. 276 /2024
In Service Appeal No.15572/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12111

Dated 04-04-2024

Jehan Ali, PASI,
Police Station Zaidi, Swabi.

(PETITIONER)

VERSUS

1. Provincial Police Officer (PPO), Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar.
2. Regional Police Officer, Mardan Region Mardan.
3. District Police Officer, (DPO), Swabi.

(RESPONDENTS)

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 18.01.2022 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 15572/2020 in this Honorable Tribunal against the order dated 22.10.2019, whereby the appointment order dated 02.02.2016 of the petitioner was withdrawn and against the order dated 31.01.202, whereby the departmental appeal of the petitioner has been rejected.
2. That the appeal of the petitioner was heard and decided by this Honorable Tribunal on 18.01.2022. The Honorable Service Tribunal accepted the appeal, set aside the impugned order dated 22.10.2019 and 31.01.2020 and reinstated the petitioner into service with all back benefit. **(Copy of judgment dated 18.01.2022 is attached as Annexure-A)**
3. That the respondents did not implement the judgment dated 18.01.2022, therefore, the petitioner filed execution petition No 146/2022 for implementation of judgment dated 18.01.2022 of this Honorable Tribunal and during the pendency of execution petition of the petitioner the respondent No.3 submitted order 05.07.2022 wherein the petitioner was reinstated in service conditionally and provisionally subject to the outcome of CPLA without back benefits

on which the counsel for the petitioner apprehended that order reinstating the petitioner has not been given specific effect as the regards the dates on which the gave observation that order is passed in compliance with the judgment, therefore, whatever were the terms of judgment those would be considered to be the part of this order and the execution of the petitioner was consigned in the above terms o 04.10.2022. **(Copies of order dated 05.07.2022 and order sheet dated 04.10.2022 is attached as Annexure-B&C)**

4. That the petitioner was reinstated into service with all back benefits by this Honorable Tribunal in its judgment dated 18.01.2022 and the respondents are legally bound to implement the judgment dated 18.02.2022 in its true letter and spirit by reinstating the petitioner into service with all back benefits and if the respondent department has filed CPLA against the judgment dated 18.01.2022 in the Apex Court the petitioner is ready to give written statement on stamp paper in this respect that if the Apex Court reverse the judgment dated 18.01.2022 of this Honorable Tribunal, he will refund the back benefits receive on the basis of judgment dated 18.01.2022.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 18.02.2022 of this Honorable Tribunal in letter and spirit.
6. That as the petitioner was reinstated into service by the respondent department without back benefits, therefore, he again wants to file execution petition in this Honorable Tribunal for implementation of judgment dated 18.02.2022 of this Honorable Tribunal in its true letter and spirit.

It is, therefore, most humbly prayed that the respondents may kindly be directed grant back benefits in compliance of judgment dated 18.02.2022 in order to implement the judgment dated 18.02.2022 of this Honorable Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.


PETITIONER

Jehan Ali

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

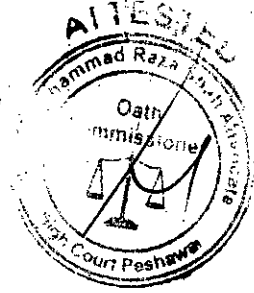
& 
SHAKIR ULLAH TORANI
ADVOCATE

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT



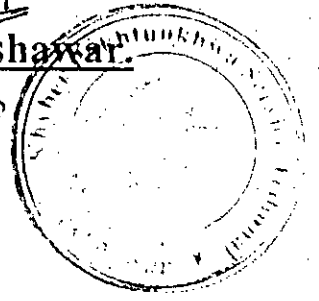
04 APR 2024

(3) (4) A

Before the Peshawar high court Peshawar.

S.A. No. 15572/20

1972-
In Ref: to WP No. _____ -P/2020.



Jehan Ali, Ex-Probationer Assistant Sub Inspector (PASI) Police, No. 509 and S/O Amir Sher R/O Village Naragi, Tehsil Razzarh, District Swabi.....**PETITIONER.**

VERSUS

- 1) Provincial Police Officer (PPO), Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar.
- 2) Regional Police Officer, Mardan Range Mardan.
- 3) District Police Officer (DPO) Swabi.
- 4) Mst: Nargas Widow of Nawaz Ali, Shaheed/martyred Police Constable, R/O Village Naragi, Tehsil Razzarh, District Swabi.....**RESPONDENTS.**

Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 as amended up-to date.

PRAYERS IN WRIT PETITION:

On acceptance of this petition, this Honourable Court may very graciously:

- A) Hold and declare the first impugned order passed by the respondent No. 3 dated 22-10-2019 whereby the initial appointment order dated 02-02-2016, made against Shaheed Son's/Brother's Quota, was withdrawn and the subsequent final impugned order dated 31-01-2020 passed by the respondent No. 2 whereby departmental representation of the petitioner was rejected/filed as illegal, unlawful, without lawful authority, discriminatory, unjustified, unconstitutional, un-Islamic, ineffective/ inoperative upon the rights of the petitioner and be set-aside.
- B) Further declare the status of petitioner as permanent and regular employee, duly appointed as PASI against Shaheed.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

-FILED TODAY

Deputy Registrar

02 MAR 2020

ATTESTED

A (5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15572/2020

Date of Institution ... 03.12.2020.

Date of Decision ... 18.01.2022



Jehan Ali, Ex-Probationer Assistant Sub Inspector (PASI) Police No. 509 and S/O Amir Sher R/O Village Naragi, Tehsil Razzarh, District Swabi.

(Appellant)

VERSUS

Provincial Police Officer (PPO), Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar and (03) others.

(Respondents)

Usman Khan Turlandi,
Advocate

For Appellant

Muhammad Adeel Butt,
Additional Advocate General

For respondents

AHMAD SULTAN TAREEN ...
ATIQ-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that brother of the appellant namely; Nawaz Ali being employee in the Police Department met martyrdom during performance of duties on 12-01-2014.

Mr. Nawaz Ali, being issueless and on no objection of his widow, brother of Nawaz Ali (the present appellant) was appointed as PASI in Police Department against the Shuhada sons/brothers quota vide order dated 02-02-2016 keeping in view the government policy on the subject. His appointment order, however was withdrawn vide order dated 22-10-2019. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 31-01-2020, thereafter, the appellant filed Writ Petition No. 1864-P/2020, which was converted into service appeal vide judgment dated 26-11-2020 and was referred to this

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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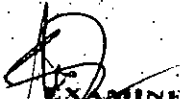
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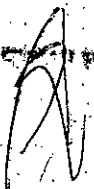
Tribunal with prayers of the appellant that the impugned orders dated 22-10-2019 and 31-01-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that appellant was real brother of Shaheed constable Nawaz Ali and as per policy notification dated 18-05-2007 issued by the respondents, the appellant being real brother of the Shaheed Constable was recruited as PASI against 5% quota reserved for police Shuhada vide order dated 02-02-2016; that withdrawal of his appointment order through impugned order dated 22-10-2019 is illegal and without lawful authority and against the norms of natural justice; that policy formulated later on vide order dated 02-02-2017, whereby some amendments were brought, cannot be retrospectively applied upon the appellant and is not applicable to the case of the appellant; that the action and inaction of the respondents shows malafide, which is contrary to Article-4, 25 and 27 of the constitution; that the appellant has not been treated in accordance with law, as appointment order of the appellant was withdrawn without serving any notice or affording opportunity of defense to the appellant, hence substantive as well as procedural law has vehemently been violated; that doctrine of locus poenitentiae vigorously refrains from any adverse action on part of the respondents, once an act even illegal has taken its field cannot be taken back, which principle on the touchstone of instant case is applicable, as the impugned policy being later in time could not be permitted to take effect retrospectively.

03. Learned Additional Advocate General for the respondents has contended that the appellant was enlisted as PASI in Police Department against Shuhada quota as per prevailing policy at the time; that after submission of revised succession certificate by widow of Shaheed Nawaz Ali, minor child of Shaheed Nawaz Ali was declared as heir to the Shaheed, hence appointment order of the appellant was withdrawn being illegal; that at the time of issuance of succession certificate, the fact of a child in the womb of widow of Shaheed Nawaz Ali was

ATTESTED


 EXAMINER
 Pakhailiwa
 Service Tribunal
 Peshawar



(7)

concealed from the court as well as from the department for a long time and when the relationship of widow of Shaheed with her in-laws become strained, she came to know about the legal rights of her minor daughter and applied for revised succession certificate, which was accepted vide order dated 30-07-2019; that in presence of minor child of the Shaheed, brothers and sisters are not entitled for the relief as per standing order dated 02-02-2017; that the respondents treated the appellant in accordance with law and no discrimination has been done with the appellant.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that brother of the appellant namely; Nawaz Ali being employee in the Police Department met martyrdom during performance of duties on 12-01-2014. For the purpose of compensation to the legal heirs of the Shaheed, a succession certificate was issued by the competent court of law on 02-04-2014, where widow, father and mother of Shaheed Nawaz Ali were declared as legal heirs of the Shaheed constable and Shaheed package (cash compensation) was distributed amongst them accordingly. In addition, as per notification dated 17-10-2003 as amended on 16-05-2007, 5% quota was also reserved for Shuhada sons and in absence of son; the real brothers were entitled to be appointed as PASI in place of Shaheed. Since Mr. Nawaz Ali being newly wedded had no offspring at that particular time, hence with no objection of his widow and in accordance with the policy, the appellant being real brother of the appellant was appointed as PASI vide order dated 02-02-2016. Widow of Shaheed Nawaz Ali has given birth to a baby on 05-08-2014, who was named as Aneesa Begum. Widow of the Shaheed Nawaz Ali, came to know at a later stage, that minor Aneesa Begum, who born seven months after death of her father can also claim Shaheed Package (cash compensation), hence she approached the competent court of law for revocation/ amendments in the succession certificate, which was accepted and previous succession certificate issued on 02-04-2014

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

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(before birth of Aneesa begum) was cancelled and revised succession certificate was issued on 30-07-2019, thereby including the minor Aneesa begum in legal heirs of Shaheed Nawaz Ali. Accordingly, Shaheed package was re-collected from the legal heirs and was distributed afresh with due share to the minor.

06. In a meeting of Police Policy Board, held on 01-12-2016, it was decided that brother/sister of the Shaheed shall not be considered for appointment as ASI, where minor child of the Shaheed is available, even if the widow has given consent in this behalf because she is not entitled to forego right of the minor and notification to this effect was issued on 02-02-2017. Since the appellant was appointed as PASI on 02-02-2016 under the previous policy, but the policy dated 02-02-2017 was retrospectively applied on appellant and was removed from service under the plea that he was not entitled for such relief in presence of minor of the deceased. Available record would suggest that cash compensation to legal heirs as well as recruitment of Shaheed son/real brother were two parts of such compensation, which were simultaneously allowed as per policy. The cash compensation was proportionately distributed amongst father mother widow and minor (Aneesa Begum), whereas his real brother was appointed as PASI as per law and rule with no irregularity committed to this effect. The issue erupted when widow of the deceased applied for revised succession certificate to make sure claim of her minor in cash compensation, which was done accordingly, but the respondents retrospectively applied the policy dated 02-02-2017 with the stance that the appellant had concealed the minor (Aneesa Begum) for a longer time, facts however are otherwise. The appellant neither concealed any fact nor committed any irregularity, rather he was appointed as per policy in vogue. The baby was born after seven months of death of Nawaz Ali, who could only be made entitled for the cash compensation and the revised succession certificate was never intended for dislodging the appellant, but in the meanwhile new policy came into field and the respondents misinterpreted the succession certificate in light of a policy dated 02-02-2017, which was formulated much after his

ATTESTED

EXAMINER
 Cyber Pakhtunkhwa
 Service Tribunal
 Peshawar

ATTESTED

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appointment. It is well settled legal proposition that policy/notification can be applied prospectively and not retrospectively.

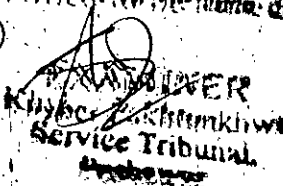
07. We have also observed that the appellant being a civil servant, was not supposed to be struck down with a single stroke of pen, rather he was required to be afforded appropriate opportunity of defense, which however was not warranted. Appointment of the appellant was made by competent authority by following the prescribed procedure, the appellant having no nexus with the mode of selection process and he could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice; order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 585: In the instant case, appointment of the appellant was never illegal; rather it was made in accordance with law under the prevailing policy.

08. We are of the considered opinion that the appellant has not been treated in accordance with law and was illegally kept away from his lawful duty. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 22-10-2019 and 31-01-2020 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
18.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


MEMBER (E)


MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ORDER

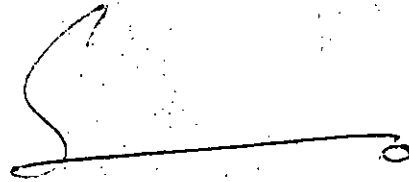
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In compliance of judgment dated 18.01.2022 of Khyber Pakhtunkhwa Service Tribunal Peshawar passed in Service Appeal No. 15572/2020 and in the light of directions dated 13.06.2022 passed in Execution Petition No. 146/2022 in above Service Appeal, Ex-PASI Jehan Ali is hereby reinstated in service conditionally and provisionally subject to the outcome of CPLA.

OB No 634

Dated 05-07 /2022.



MUHAMMAD SHOAIB KHAN (PSP)

District Police Officer,
Swabi

No. 5268-76 EC, dated Swabi the 05/07 /2022.

Copy of above is forwarded for information to the:

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar with to his office Memo: No. 3060/Legal, dated 22.06.2022, please.
2. Regional Police Officer, Mardan.
3. Registrar, Khyber Pakhtunkhwa, Services Tribunal, Peshawar.
4. District Account Officer, Swabi.
5. DSP/HQrs, Swabi.
6. Inspector Legal Swabi.
7. Pay Officer.
8. Establishment Clerk.
9. Official concerned.

APPROVED



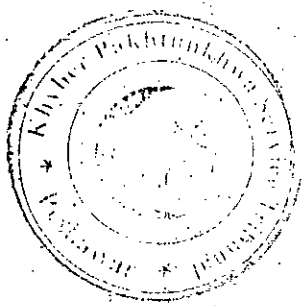
C (11)

04th Oct. 2022

1. Petitioner alongwith his counsel present. Mr. Kabirullah Khattak. Addl: AG alongwith Mr. Fazle Subhan. H.C for respondents present.

2. Representative of the respondents submitted order bearing endorsement No. 5268-76/EC dated 05.07.2022. whereby in compliance with the judgment of the Tribunal dated 18.01.2022, the petitioner has been reinstated in service conditionally and provisionally subject to the outcome of the CPLA. Learned counsel for the petitioner apprehends that the order reinstating the petitioner has not been given specific effect as regards the dates. It is in this respect observed that the order is passed in compliance with the judgment, therefore, whatever ^{here} as the terms of judgment those would be considered to be the part of this order. The instant execution petition is disposed off in the above terms. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 04th day of October, 2022.*



(Kalim Arshad Khan)
Chairman

ATTESTED

SCANNED
KIRBY
PESHAWAR

VAKALAT NAMA

NO. _____/2024

IN THE COURT OF KP Service Tribunal, Peshawar.

Jehan Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Department

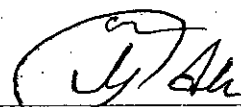
(Respondent)
(Defendant)

I/We, Jehan Ali

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2024



(CLIENT)

ACCEPTED

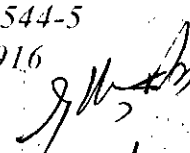


TAIMUR ALI KHAN
Advocate High Court

BC-10-4240

CNIC: 17101-7395544-5

Cell No. 03339390916


Adv: Shakirullah Torani