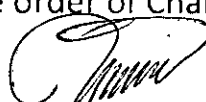


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 316/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.04.2024	<p>The implementation petition of Mst. Shamim Igeir of Ibrarullah submitted today by Muhammad Usman Khan Turlandi 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.

In Ref: to E.P No. 316 /2024.
In
Service Appeal No. 4997/2021.
Date of Hearing/Decision 08-12-2023.

Ibrar Ullah, Ex-Constable No. 1629....VS....PPO & others.

INDEX

S.No.	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE.
1.	Implementation Petition.	----	01-04
2.	Affidavit.	----	05
3.	Copy of Judgment dated 08-12-2023.	"A"	06-10
4.	Copy of the Application to the PPO.	"B"	11



PETITIONER.

(Mst: Shamim, widow of the deceased
Ibrar Ullah, Ex-Constable No. 1629)

Through:

Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated; ___/04/2024.

Office; Flat, C-1, Murad Plaza, Dalazak Road Peshawar City.

Contact # 0333-9153699**0300-5895841**

(2)

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

In Ref: to E.P No. 316 /2024.
In
Service Appeal No. 4997/2021.
Date of Hearing/Decision 08-12-2023.

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 12444
Dated 29/4/24

Ibrar Ullah, (Deceased) through the legal heir, Mst: Shamim,
widow of the deceased Ibrar Ullah, Ex-Constable No. 1629,
previously posted at Police Station Takht Bhai, Mardan.....**Petitioner.**

Versus

1. Inspector General of Police / Provincial Police Officer (PPO) Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar.
2. Regional Police Officer, Mardan Range, Mardan.
3. District Police Officer Mardan.....**RESPONDENTS.**

Execution Petition under all enabling laws on the subject for execution/implementation of the orders/Judgment passed by this august Tribunal dated 08-12-2023, rendered in Service Appeal No. 4997/2021, filed by the appellant Ibrar Ullah (Deceased) and the delinquent respondents be asked to ensure the early implementation thereof in letter and spirit.

RESPECTFULLY SHEWETH:

- 1) **That** the petitioner while aggrieved of the action, inaction and omission on part of the respondents to deprive the petitioner (Mst: Shamim) being the widow/legal heir of the deceased Ibrar Ullah, Ex-Constable No. 1629, previously posted at Police Station Takht Bhai, Mardan from her legitimate right of all pensionary/Service benefit including all packages/incentives etc. admissible in accordance with law and payable to a deceased Civil Servant under the rules and hence, the petitioner being the widow/legal heir of the deceased Ibrar Ullah is eligible and entitled to get the said benefits as such in accordance with the injection of Islam.

2) That the appellant, deceased Ibrar Ullah when could not succeeded to get the legitimate right of reinstatement in service at the door-step, ultimately approached this august Tribunal and upon his untimed death, the petitioner being the widow/legal heir was latter-on was succeeded to get the well elaborated judgment on the subject in her favor by directing the Respondents in its pronounced wordings given at concluding Para in the following terms vide decision dated 08-12-2023: (*Annexure - "A"*)

(9) *"As a sequel to what has been discussed above, we consider that the appeal in hand merits acceptance. It is, therefore, allowed as prayed for.*

(10) *Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service."*

3) That despite well elaborated judgment on the subject in her favor, even then till date, the petitioner has not yet been treated fairly, justly and in accordance with law which was utterly wrong, illegal, unlawful and unconstitutional and against her fundamental rights.

4) That it has been held by the higher and superior judiciary that "Once any Rule, Regulation or Statute is ex-facie found to be discriminatory, encroaching & invading upon fundamental rights, like in the present case, where serious discriminatory treatment is meted out to the petitioner for no reason much less than plausible then, the respondents are guilty for committing violence to the command of the Constitution and the strict prohibitory language, contained in Article 25 of the Constitution, therefore, no principle of estoppel would operate against the petitioners because the cause of action is a recurring & continuous in nature".

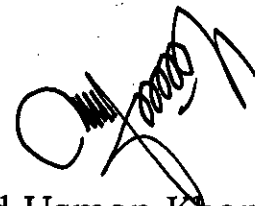
- 5) **That** the petitioner after availing the precious orders supra, passed by this august Tribunal, approached herself before the respondents and tabled the well-elaborated and well-transparent precious orders supra and waited for its proper implementation till date but to no avail.
- 6) **That** the respondents while throwing back the well transparent, well-reasoned, legally well-sound direction and precious orders passed by this august Tribunal referred to above, have committed gross illegality.
- 7) **That** the respondents, by enjoying their own innovation and monopoly, have totally disregarded the orders/ judgment of this august Tribunal.
- 8) **That** Further submissions would be advance with the prior permissions of this august court at the time of hearing the petitioner at the bar.

In view of the foregoing facts, circumstances and submissions, it is, therefore, humbly prayed that on acceptance of the instant petition, the Respondents may please be directed to ensure the early implementation of the well transparent and well speaking orders/Judgment in Service appeal No. 4997/2021 dated 08-12-2023 in its true liter and spirit just to avoid deprivation, anomaly and discrimination and in order to meet the ends of justice.

Any other remedies if available may also be granted in favor of the petitioner please.

PETITIONER

Through



Muhammad Usman Khan
Turlandi

Dated: 26 /04/2025.

Advocate Supreme Court.

Dawood Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Ref: to E.P No. _____/2024.
In
Service Appeal No. 4997/2021.
Date of Hearing/Decision 08-12-2023.

Ibrar Ullah, Ex-Constable No. 1629....VS....PPO & others.

AFFIDAVIT.

I, Mst: Shamim, widow & legal heir of the deceased Ibrar Ullah, Ex-Constable No. 1629, previously posted at Police Station Takht Bhai, (Mardan), the Petitioner, do hereby solemnly affirm and declare on oath that the contents of the accompanying CM for implementation of the Judgment rendered in Service appeal No. 4997/2021 dated 08-12-2023 are true and correct to the best of my knowledge and belief and nothing has been kept secret or concealed therein from this august Tribunal.

DEPONENT.

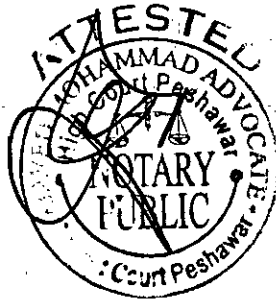


(Mst: Shamim, widow & legal heir of the
deceased Ibrar Ullah, Ex-Constable No. 1629)

CNIC No. 16103-0689489-6

Identified by!

[Signature]
Dawood Khan
AHC Peshawar.



6

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR



BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 4997/2021

Ibrar Ullah, Ex-Constable No. 1629, posted at Police Station Takht Bahi, Mardan (now dead) through Mst. Ruqiyya (Widow), Mst. Shamim Bibi (Widow), Iqrar Ullah, Waqar Ullah and Izhar Ullah (Sons) Residents of Moti Banda Post Office Dheri Lakpani Tehsil Katlang District Mardan. (Appellants)

Versus

Inspector General of Police/Provincial Police Officer (PPO) Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar and 02 others. (Respondents)


Present:

Muhammad Usman Khan Turlandi, Advocate For the appellant
Mr. Asad Ali Khan, Assistant Advocate General For respondents

Date of presentation of Appeal.....06.05.2021
Date of Hearing.....08.12.2023
Date of Decision.....08.12.2023

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise facts giving rise to the instant appeal are the departmental action was taken against the appellant on the allegations that he while posted at Police Station Takht Bhai, Mardan was found involved in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act, 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order bearing OB No. 415 dated 26.02.2021 passed by District Police Officer

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(7)

Mardan. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was also rejected vide order dated 22.04.2021 passed by Regional Police Officer Mardan. The appellant then approached this Tribunal through filing of 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. It is pertinent to mention here that the appellant died during the pendency of the instant appeal and his L.Rs were impleaded as appellants vide order dated 22.08.2022.

4. Learned counsel for the appellant contended that disciplinary proceedings were taken against the appellant only on the allegations of his involvement in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi, however he was discharged vide order dated 10.03.2022 passed by competent court of law. He next contended that as the appellant has been discharged in the criminal case registered against him, therefore, the very ground, on the basis of which disciplinary action was taken against the appellant, has vanished away. He further contended that statements of the witnesses were recorded in absence of the appellant without providing him an opportunity

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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cross-examination, therefore, the same could not be legally taken into consideration for awarding major punishment to the appellant. He also contended that neither final show-cause notice was issued to the appellant nor copy of the inquiry report was provided to him and he was thus not in a position to properly defend himself in the inquiry proceedings. He next argued that the mandatory provisions of Police Rules, 1975 were not complied with, therefore, the impugned orders are not sustainable in the eye of law. He further argued that the appellant has though died during pendency of the instant appeal, however his L.Rs are legally entitled to pursue the appeal as in case of acceptance of the same, they might be entitled for pensionary benefits, which is a survivable right.

5. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant was involved in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act, 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi, therefore, departmental action was taken against him and as the allegations against him stood proved in a regular inquiry, therefore, he was rightly dismissed from service. He next contended that charge sheet as well as statement of allegations were issued to the appellant and a regular inquiry was conducted in the matter by complying all legal and codal formalities. He further argued that the appellant was provided opportunity of personal hearing as well as self defence, however he failed to produce any cogent material in rebuttal of the allegations leveled against

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

him. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

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

7. A perusal of the record would show that disciplinary action was taken against the appellant on the sole allegation of his involvement in case FIR No. 1494 dated 23.12.2020 under Section 62 Antiquity Act, 2016 read with Section 15AA registered at Police Station Kalu Khan District Swabi. During the departmental proceedings, statements of Shad Muhammad S.I (complainant of the concerned criminal case) as well as statement of Raees Khan ASI (I.O of the concerned criminal case) were recorded, however no opportunity was afforded to the appellant for cross-examination of the said witnesses, therefore, their evidence could not be legally taken into consideration for awarding major punishment to the appellant. Moreover, the appellant was neither issued final show-cause notice nor was he provided copy of inquiry report. This Tribunal has already held in its various judgments that issuance of final show-cause notice along with the inquiry report is must even under Police Rules, 1975. Reliance is also placed on the judgment of worthy apex court reported as PLD 1981 SC-176, wherein it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

in such a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him.

8. Furthermore, there is no denial of the facts that the appellant was discharged in the said criminal case vide order dated 10.03.2022 passed by competent court of law. The copy of the said order is available on the record, which would show that the case against the appellant was so weak that the State had itself submitted an application for discharge of the appellant as well as other co-accused under Section 4C (II) of the Prosecution Act, 2005 read with Section 494 Cr.PC.

9. As a sequel to what has been discussed above, we consider that the appeal in hand merits acceptance. It is, therefore, allowed as prayed for.

10. Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.12.2023

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(KALIM ARSHAD KHAN)
CHAIRMAN

Date of Presentation of Application 25-4-24

Number of Words 59

Copying Fee 25

Urgent 25

Total 29

Name of Clerk -

Date of Completion 25-4-24

Date of Delivery of Copy 28-4-24

Naveem Amin

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ORDER

08.12.2023

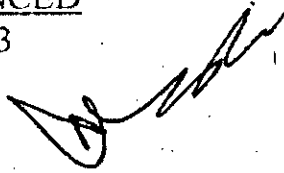
Learned counsel for the appellants present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed as prayed for.

Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

08.12.2023



(Kalim Arshad Khan)
Chairman



(Salah-Ud-Din)
Member (Judicial)

محکم دلائل سے مزین و متنوع ومنفرد موضوعات پر مشتمل مفت آن لائن مکتبہ

درخواست پھر مناسب فائدائی پر قبضہ وعدہ
صوبائی سروس ٹریننگ فورم 8/20/12 سروس اپیل نمبر 4977
لعنوان ابراہیم بی بی 21

چنانچہ دعویٰ: سائیل حسب ذیل عرضاں

- 1- یہ کہ سائیل اپیل انٹ سیمی ابراہیم بی بی سابقہ فائیل نمبر 4977 اور قانونی وارڈ ہے۔
- 2- یہ کہ اپیل لعنوان بالا فورم 8/12/2023 کو صوبائی سروس ٹریننگ فورم سے منظور ہوئی ہے۔

چونکہ قبضہ مذکورہ بالا کی بروقت اجراء کی اندر ضرورت ہے
لہذا آپ کو فرم اپیل انٹ سے من سائیلک ٹریننگ فورم و دیگر بال
تعمیم جھوٹے ہیں۔ جنکی اب صورت حال میں من سائیلک واحد
کوشش ہے۔

لہذا اگرچہ کہ من سائیلک درخواست لدا قبضہ مذکورہ
بال کی عمل درآمد فرمائی جائے سائیلک تاخیرات دعا کو
رہی گی انقل قبضہ منسک ہے

29/12/2023

ابراہیم بی بی ابراہیم بی بی
سماۃ

Attest to be True Copy
[Signature]

بعدالت حساب خسرو بخون انخواہ سروس ٹریبونل ایس ایف

EP No. 12024

S. Appeal No. 4997/2021

9-82

مورخہ 2023ء منجانب: _____
 مقدمہ بعنوان امیر اللہ ذلیفہ سہ شمیم بیوہ بنام PPO
 مقدمہ نمبر Execution Petition رجوعہ 26-4-2024
 نوعیت مقدمہ Execution Petition in Service Appeal No. 4997/2021
 مقدمہ علت نمبر Dated 08-12-2023
 جرم / تھانہ / مورخہ /

50
روپے

باعث تحریر آنکہ



مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام ایس ایف کیلئے محمد عثمان خان ٹرانزنی ASC ڈاؤڈ ڈال کو وکیل مقرر (ایم ڈی کیسنگ) کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقرر ی ثالث و فیصلہ بر حلف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب،، عذر داری، درخواست زبردفعہ (2) 12 ض د، درخواست برآمدگی و غیرہ کی مقدمہ و درخواست میرا دستسوزی کاروائی و ڈگری کی طرف دائر کرنے جواب، جواب الجواب وغیرہ درخواست کاروائی اجراء دائر کرنے و وصولی چیک و رقم اور درخواست از قسم کی تصدیق زراس پر دستخط وغیرہ کرنے کا اختیار ہوگا۔ اپیل، اپیل دراپیل، نگرانی، نظر ثانی، رست و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت ضرورت مذکورہ کے عمل یا جزوی کاروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشت منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب ہونگے جو خرچہ دہر یا وکیل صاحب کو بھی تقرر کیا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہو یا خود سے باہر ہو یا بیمار ہو یا کوئی ضرورتی کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 26-04-2024

مقام کے لئے منظور ہے۔

نوٹ: اس وکالت نامہ کو نوکالی، تامل، قبول ہوگی۔

Muhammad Usman Khan
Murandi
ASC Peshawar.

Attested & Accepted

Advocate I.D: 26-4-2024
 Bar Council bc 20-2212
 Bar Association 26-4-2024
 Contact #: 0300-5895841

Emboss 26-4-2024