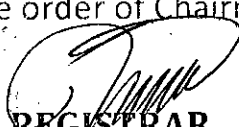


Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No. 232/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.03.2024	<p>The implementation petition of Mr. Faqir Hussain submitted today by Mr. Fazal Shah Mohmand 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>By the order of Chairman</p> <p> <b>REGISTRAR</b></p>

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

Implementation Petition No 232 /2024

In

Service Appeal No 594/2019

Faqir Hussain

.....Appellant.

**V E R S U S**

The Capital City Police Officer, Peshawar & others

.....Respondents

**I N D E X**

S.No	Description of documents	Annexure	Pages
1.	Implementation Petition with Affidavit		1-2
2.	Copy of the Order and Judgment dated 01-12-2023	A	3-6
3.	Copy of Application dated 07-02-2024	B	7
4.	Wakalat Nama		8

Dated:- \_\_\_/\_\_\_/\_\_\_

  
Applicant/Petitioner

Through

  
**Fazal Shah Mohmand ASC**

  
**Baseer Ahmad Shah**

&

  
**Ibad Ur Rehman Khalil**  
Advocates Peshawar

**OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell # 0301-8804841**

①

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

Implementation Petition No 232 /2024  
In  
Service Appeal No 594/2019

Khyber Pakhtunkhwa  
Service Tribunal

Case No. 11706

Dated 01-03-2024

Faqir Hussain, Constable No.4171 Capital City Police Officer Peshawar.

.....Appellant.

**V E R S U S**

1. The Capital City Police Officer, Peshawar.
2. The Superintendent of Police Headquarters, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

**IMPLEMENTATION PETITION UNDER SECTION 7 OF THE**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974**  
**FOR THE IMPLEMENTATION OF ORDER/JUDGMENT**  
**DATED 01-12-2023 PASSED BY THIS HONORABLE**  
**TRIBUNAL IN THE ABOVE TITLED SERVICE APPEAL.**

**Respectfully Submitted:-**

1. That the applicant/appellant earlier filed Service Appeal No 594/2019 before this hon'ble Tribunal for his reinstatement in service with all back benefits wherein the major penalty of dismissal from service was converted into minor penalty of stoppage of increment for two years while inventing period was treated as leave without pay vide order/judgment dated 01-12-2023 . **(Copy of the Order/Judgment dated 1.12.2023 is enclosed as Annexure A).**
2. That the applicant/appellant time and again approached respondents for the implementation of the Order/Judgment dated 01-12-2023 of this honorable Tribunal but of no use. Even he submitted application for the purpose but of no avail. **(Copy of Application dated 07-02-2024 is enclosed as Annexure B).**
3. That the respondents are not ready to implement the Order/ Judgment of this honorable Tribunal dated 01-12-2023 in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 01-12-2023 of this honorable Tribunal.

(2)

4. That noncompliance of the order of this hon'ble Tribunal, speaks malafide on part of the respondents and they are bent upon to lower the position of the judiciary in the eyes of the public at large.

**It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 01-12-2023 passed in Service Appeal No 594/2019 in its true letter and spirit.**

Dated:- \_\_\_/\_\_\_/\_\_\_

  
Applicant/Appellant

Through

  
**Fazal Shah Mohmand ASC**

**Baseer Ahmad Shah**

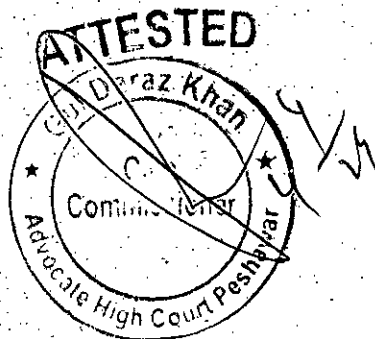
&

  
**Ibad Ur Rehman Khalil**  
Advocates Peshawar

### **AFFIDAVIT**

I, Faqir Hussain, Constable No.4171 Capital City Police Officer Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Implementation Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

  
**DEPONENT**

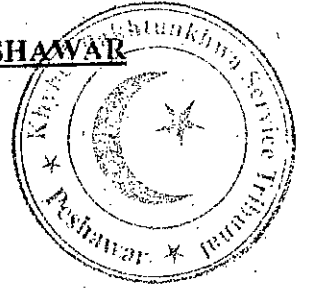


3 A

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.594/2019

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



Faqir Hussain, Ex. Constable No. 4171 Capital City Police Officer Peshawar.  
.... (Appellant)

**VERSUS**

1. The Capital City Police Officer, Peshawar.
  2. The Superintendent of Police Headquarters, Peshawar.
  3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- .... (Respondents)

Mr. Fazal Shah Mohmand  
Advocate ... For appellant

Mr. Muhammad Jan  
District Attorney ... For respondents

Date of Institution.....29.03.2019  
Date of Hearing.....01.12.2023  
Date of Decision.....01.12.2023

**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 the impugned order dated 24.04.2019 and order dated 31.01.2019 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.”**

2. Brief facts of the case are that the appellant was enlisted as constable in police department on 23.07.2007 and was performing duty upto the entire satisfaction of his superiors. During service he was charged in case FIR No. 1185 dated 04.10.2018 U/S 9(C) CNSA/15AA registered at Police Station Sher Garh. Departmental proceedings were initiated against the appellant

**ATTESTED**

**ATTESTED**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

which is resulted into his dismissal from service. Feeling aggrieved, appellant filed departmental appeal on 19.02.2019 which was rejected vide order dated 24.04.2019, 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 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 are illegal and void ab-initio and appellant has not been treated in accordance with law and rules. He further argued that no proper inquiry was conducted in the matter which is mandatory requirement of law. He submitted that respondents were required to wait till the decision of criminal case, as charges against the appellant was only involvement in criminal case. Lastly, he submitted the neither opportunity of personal hearing was afforded to the appellant nor he was cross examined he was condemned unheard, therefore, he requested that instant appeal might be accepted.

5. Conversely, learned District Attorney contended that the appellant has been treated in accordance with law and rules. He further contended that the appellant while posted at police station Badhaber Peshawar was involved in criminal case vide FIR No. 1185 dated 04.10.2018. In this regard he was issued with charge sheet and statement of allegations. DSP/Coordination was appointed as enquiry officer who conducted detail enquiry into the charges framed against him and was found guilty and recommended him for major punishment. After completion of all codal formalities he was awarded major punishment of dismissal from service.

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 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

⑤

6. Perusal of record reveals that appellant was enlisted as constable in District Police Peshawar vide order dated 23.07.2007 and performed his duties to the entire satisfaction of his superiors till 04.10.2018 when he was charged in criminal case FIR No. 1185 under section 9CNSA/15AA registered at police station Sher Garh Mardan. Appellant was released on bail vide order dated 28.11.2011 by the court of competent jurisdiction. Departmental proceedings were initiated against the appellant by issuing charge sheet and statement of allegation on 07.11.2018 on the ground of involvement in a criminal narcotics case which was replied by the appellant who refuted the allegations. Where after appellant was issued final show cause notice on 29.11.2018 and finally appellant was dismissed from service vide impugned order dated 30.01.2019.

7. Perusal of record transpired that that although the charges against the appellant in FIR is that only one unlicensed pistol was recovered from the possession of the appellant while contraband was recovered from beneath the seat of the co-accused Amir Khan. Pistol which was shown in the FIR unlicensed by the complainant of FIR No. 1185 was returned to the appellant as same was licensed one by competent court of law. Appellant was acquitted from the charges leveled against him by the court of competent jurisdiction vide order dated 22.02.2021.

8. 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 which subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

*[Signature]*  
 ATTORNEY

ATTORNEY  
*[Signature]*  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

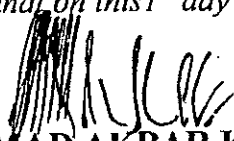
6


9. 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.

10. Moreover, inquiry officer recorded statement of Mr. Shafiq Ahmad complainant of FIR No. 1185, alleged recovery witnesses Constable Imran, Constable Majid, Constable Wahab and no opportunity of cross examination was provided to the appellant which is essential for regular inquiry and fair trial and appellant was condemned unheard.

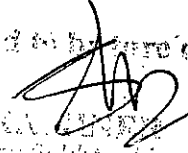
10. The main allegation against the appellant was not proved and he was acquitted then in accordance with settled law and principle of justice dismissal from service is very harsh punishment which does not commensurate with the punishment of misconduct. Therefore, we set aside the impugned orders and reinstate the appellant into service and convert major penalty of dismissal from *Service* into minor penalty of stoppage of increment for two years while inventing period was treated as leave without pay. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1<sup>st</sup> day of December, 2023.

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*Kaleemullah

Certified to be true copy  
  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application: 06-02-2024  
Number of Words: 4-pages  
Copying Fee: 20/-  
Urgent:   
Total: 20/-  
Name of Copy: \_\_\_\_\_  
Date of Copy: 06-02-2024  
Date of Receipt: 06-02-2024

  
ATTES...



(7)

B  
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بمضور جناب چیف کمیشنل سٹی پولیس آفیسر CCPO پشاور

جناب عالی!

بذریعہ درخواست گزارش ہیکہ من سائل مورخہ 30/01/2019 کو محکمہ پولیس پشاور CCP سے ملازمت سے برخاست ہو چکا تھا اب سرورسز ایپول خیر بختون خواہ پشاور نے اپیل نمبر Service Appeal No 594/2019 انسٹی ٹیوشن مورخہ

29/03/2019 منظور کرتے ہوئے من سائل کو مورخہ 01/12/2023 ملازمت پر بحال کیا ہے Dismissal کا order کو Set aside کر کے میجر مزا کو نئے سزائیں تبدیل کیا گیا ہے، اور ساتھ ہی سالانہ اینکریمنٹ کی Stopage کا

آرڈر جاری کیا گیا ہے۔ سرورسز ایپول خیر بختون خواہ آرڈر کا پی ہمراہ لف درخواست ہے

لہذا آپ صاحبان سے استدعا کیا جاتا ہے کہ من سائل کو ملازمت پر بحال کرنے کا حکمانہ آرڈر جاری کر کے

ممنون و مشکور فرمادیں۔

نوازش ہوگی۔

العارض  
7.2.2024  
من سائل: فقیر حسین کنیشنل نمبر 4171 کنیشنل سٹی پولیس پشاور

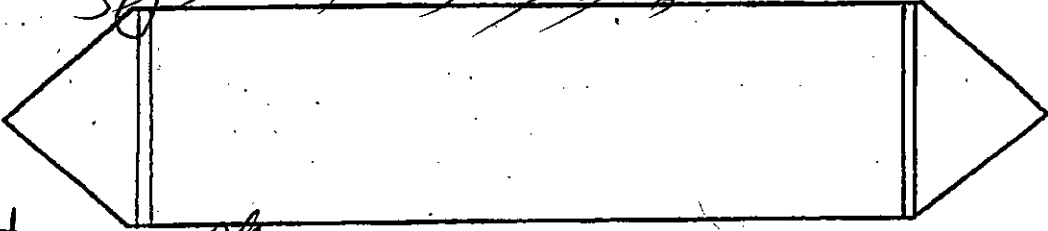
Date

موبائل نمبر: 03159195964

ATTEC

(8)

بعدالت حسب اختيار خواه کروں پس مندرجہ



Appellant

مخائب

Appellant

مفتی حسین بنام

موزخہ

مقدمہ

دعویٰ

جرم

### باعث تحریر آنکہ

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دینے جواب دی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لے جانے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو ہمیں وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائز التوائے مقدمہ کے سبب سے ہوگا۔ 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 مندر ہے۔

المرقوم ۵۲ ماہ ۲۰

بمقام لکھ  
واہ العیب  
Accept  
Earl Shastri