Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No. 282/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05.04.2024	The implementation petition of Mr. Zia ur Rehman submitted today by Mr. Yasir Saleem 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. By the order of Chairman REGISTRAR

The execution petition of Mr. Zia-ur-Rehman received today i.e. 03.04.2024 is returned to the counsel for the petitioner for removing the following deficiencies and resubmit the same within 15 days.

1- Petition be page marked according to the index.
2- Petition has not been flagged/marked with annexures marks.
3- Copy of Judgment and order attached with the petition is illegible be replaced by legible/better one.

No. 737 /S.T,

Dt. 4/4 /2024.

4/4/24

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Yasir Saleem Adv.
High Court Peshawar.

R/sir

All objections are remove today re-submitted

ys
5/4/24

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Ziaur Rehman vs Provincial Police

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?		✓
10	Whether annexures are legible?		✓
11	Whether annexures are attested?		✓
12	Whether copies of annexures are readable/clear?		✓
13	Whether copy of appeal is delivered to AG/DAG?		✓
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?		✓
15	Whether numbers of referred cases given are correct?		✓
16	Whether appeal contains cutting/overwriting?		✓
17	Whether list of books has been provided at the end of the appeal?		✓
18	Whether case relate to this court?		✓
19	Whether requisite number of spare copies attached?		✓
20	Whether complete spare copy is filed in separate file cover?		✓
21	Whether addresses of parties given are complete?		✓
22	Whether index filed?		✓
23	Whether index is correct?		✓
24	Whether Security and Process Fee deposited? On		✓
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		✓
26	Whether copies of comments/reply/rejoinder submitted? On	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		✓

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Yasir Saleem

Signature:

Dated: 3/4/24

BEFORE THE KHYBER PAKHTUNKHUWA SERVICES TRIBUNAL PESHAWAR

Execution Petition No. 282 /2024
In
Service Appeal No. 625/2022.

Zia-ur-Rehman, Ex-Constable 1172 Police Lines Nowshera..... **(Applicant/ appellant)**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and others..... **(Respondents)**

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Petitioner/ Appellant

Through

YASIR SALEEM
Advocate Supreme Court
of Pakistan
Office FR, 4 Forth Floor
Bilour Plaza Peshawar Cantt.
Cell: 0331-8892589
Email: yasirsaleemadvocate@gmail.com

(2)

BEFORE THE KHYBER PAKHTUNKHUWA SERVICES TRIBUNAL PESHAWAR

Execution Petition No. 282 /2024
In
Service Appeal No. 625/2022.

Zia-ur-Rehman, Ex-Constable 1172 Police Lines Nowshea..... **(Applicant/ appellant)**

VERSUS

1. **Provincial Police Officer,** Khyber Pakhtunkhwa Peshawar.
2. **Regional Police Officer,** Mardan.
3. **District Police Officer,** Nowshera.

..... **(Respondents)**

APPLICATION FOR IMPLEMENTATION OF ORDER AND JUDGMENT DATED 15.02.2024

Khyber Pakhtunkhwa Service Tribunal
Diary No. 12402
Dated 03-04-2024

Respectfully sheweth,

The applicants humbly submit as under;

1. That Petitioner/ appellant filed his appeal along-with connected service appeals before this honorable court with the following prayer;

"On the acceptance of this appeal, the impugned dismissal order dated 29.12.2021 and appellate order dated 30.03.2022 may kindly be set-aside and the appellant may kindly be re-instated in service with all back benefits".

2. That the captioned appeal was pending before this Honorable Tribunal which has been allowed vide Order and Judgment dated 15.02.2024. the operative part is as under;

"In view of the above discussion, instant appeal along-with the connected appeal, is allowed as prayed for. Cost shall follow the event".

(Copies of Service Appeal and Judgment dated 10.05.2023 are attached as Annexure A & B)

3. That after the order and judgment of this Honorable Tribunal dated 15.02.2024, the petitioner continuously approached the respondent to implement the judgment vide his application. ***(Copy of application is attached as Annexure C)***

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4. That despite of all these facts the respondents are bent upon violating the orders of this Honorable Tribunal dated 15.02.2024.

5. That this Honorable Tribunal has ample power to implement its judgment dated 15.02.2024.

It is therefore prayed that the respondents may kindly be directed to implement the Judgment dated 15.02.2024 in its true letter and spirit

Petitioner/ Appellant

Through

YASIR SALEEM
Advocate Supreme Court
of Pakistan

AFFIDAVIT

It is solemnly affirm and declare on oath that the contents of the petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Zia Rahman
DEPONENT

ATTESTED
Gul Daraz Khan
Oath Commissioner
Advocate High Court Peshawar

(13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 625/2022

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

Zia-ur-Rehman, Ex-Constable Police Lines Nowshera.
..... ***(Appellant)***

Versus

1. **The Provincial Police Officer, Khyber Pakhtunkhwa.**
2. **The Regional Police Officer Mardan, Khyber Pakhtunkhwa.**
3. **The District Police Officer, Nowshera.**

.....***(Respondents)***

Mr. Yasir Salim, Advocate ... For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney ... For respondents

Date of Institution..... 26.04.2022
Date of Hearing..... 15.02.2024
Date of Decision..... 15.02.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 626/2022, titled "Muhammad Abbas Versus the Provincial Police Officer, Khyber Pakhtunkhwa etc." and Service Appeal No. 627/2022, titled "Muhammad Abid Versus Provincial Police Officer, Khyber Pakhtunkhwa etc.", as in all the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the

impugned order dated 29.12.2021, whereby the appellant was awarded major punishment of dismissal from service, against which his departmental appeal dated 10.01.2022 was regretted vide office order dated 30.03.2022. It has been prayed that on acceptance of the appeal, the impugned orders dated 29.12.2021 and 30.03.2022 might be set aside and the appellant might be reinstated into service with all back benefits.

3. Brief facts of the case, as given in the memorandum of appeal, are that various posts of Police Constable BPS- 07 were advertised seeking applications from candidates. The appellant, having qualification of intermediate, duly applied for the post through online application and roll number was issued to him. He appeared in the test and qualified the test and physical test also. He was appointed by the competent authority on the recommendations of Departmental Selection Committee. After appointment, he took over the charge of his post and started performing his duties. While performing his duties, on some anonymous complaint having allegations against him, a fact finding inquiry was conducted vide letter dated 10.12.2021. The appellant appeared before the Inquiry Officer (I.O) and denied all the allegations, however, the I.O submitted his report vide letter dated 24.12.2021 and held the appellant guilty of all charges. One, Khalilullah, owner of Shaheen Printing Press, also appeared and recorded his statement before the I.O. Without issuing any charge sheet and without conducting regular inquiry, the appellant was issued final show cause notice on 28.12.2021 giving him 07 days to

submit his reply. On 03.01.2021, when he went to the office of DPO Nowshera to submit his reply to the show cause notice, he was informed that he had already been dismissed from service vide order dated 29.12.2021. Feeling aggrieved, he filed departmental appeal on 10.01.2022, which was regretted vide office order dated 30.03.2022; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellant, after presenting the case in detail, argued that no proper procedure was followed before the dismissal order dated 28.12.2021 was issued. He stated that no charge sheet was served upon him nor any regular inquiry was conducted rather only a fact finding inquiry was conducted and that too in a biased manner. He further argued that without waiting for reply to show cause notice, the appellant was awarded major penalty of dismissal from service vide order dated 29.12.2021. Learned counsel further argued that the appellant was not provided fair opportunity to defend himself nor opportunity of personal hearing was afforded to him and hence he was condemned unheard! He further argued that inquiry officer had admitted in his report that the appellant, alongwith other dismissed candidates, himself appeared for the examination. During the fact finding inquiry, it

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was never proved that the paper of the appellant was actually filled by one Sifatullah or that he helped the appellant in solving the paper. So far as putting wrong entry of date of birth in application form was concerned, learned counsel for the appellant argued that it was not filled by the appellant himself, rather it was filled by a person sitting in Shaheen Computers Kheshgi Payan who mistakenly and unintentionally put wrong entry and the same had been stated by the I.O in his report also. Learned counsel stated that after noticing his mistake, the appellant himself brought it into the notice of ETEA administration upon which it was replied that it was not a big issue and could be rectified at the time of verification of documents. He requested that the appeal might be accepted as prayed for.

6. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that a complaint was received to the then District Police Officer, Nowshera, wherein it was highlighted that a person namely Sifat Ullah S/O Farzand Ali R/O Kheshgi Bala, a school teacher, appeared for other candidates in ETEA test held for recruitment of Police Constables. Complaint further stated that Zia-ur-Rehman, Muhammad Abbas and Muhammad Abid sons of Inam Ali got their test passed through the said Sifat Ullah, who received Rs. 600,000/- from each candidate. A fact finding enquiry was conducted wherein the enquiry officer highlighted that according to ETEA report, the appellant, as well as his two brothers and one person namely Sifatullah, while submitting online application forms mentioned

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their date of birth as 01.01.1998 and ETEA authorities allotted them roll numbers according to their dates of birth. When they were asked about their similar date of birth, they replied that they had not applied themselves rather their application forms were submitted by a person namely Khalil, owner of Shaheen Computer Kheshgi Payan, who in his statement disclosed that it was a human mistake. He further argued that the enquiry officer collected all relevant material from the ETEA authorities and recommended major punishment for the appellant. He was issued final show cause notice to which he submitted his reply on 29.12.2021 but the same was found unsatisfactory, hence he was awarded major punishment of dismissal from service. He requested that the appeal might be dismissed.

7. Arguments and record presented before us shows that the appellants, who are brothers, were awarded major punishment of dismissal from service on the ground of using fraudulent means to pass their test arranged by ETEA for appointment as Constable in the provincial police. A fact finding inquiry was conducted after receipt of an anonymous complaint wherein it was highlighted that one Sifatullah, a school teacher, appeared for some candidates, in ETEA test. Names of the appellant Ziaur Rehman, Muhammad Abbas and Muhammad Abid, had been mentioned by the complainant for whom Sifatullah appeared and solved their test papers by receiving rupees six lacs each from them. During the inquiry, it was revealed that date of birth of all the three appellants, as well as Sifatullah, was the same and they were provided

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roll numbers in series, based on that date. However, during the inquiry, it was clarified that the online forms were not filled by the appellants, rather a computer operator filled them and put the wrong information unintentionally. Inquiry Report further states that all the three appellants appeared in the examination physically, as verified through the video clip provided by ETEA.

8. If we look at the procedure adopted by the Inquiry Officer in conducting the inquiry, it is found that he simply got the statements of the appellants, Sifatullah and the Computer Operator who filled the online application forms. After getting their statements, he arrived at a conclusion according to his own wisdom. He failed to take into consideration the statement of the complainant of the anonymous complaint that he had all the evidence which he was ready to share with the DPO Nowshera. No effort seems to be made by the Inquiry Officer in getting to know the complainant and the evidence that he had to present, in support of the allegations he was leveling against the appellants.

9. After going through the details of the appeal in hand, it has been noted that the entire proceedings were initiated on the basis of an anonymous complaint without trying to get any information about the complainant and documentary evidence to prove the allegations. In this regard the provincial government has issued clear instructions that anonymous complaints should not be entertained. Moreover, there is no denial of the fact that the appellants appeared in the written test, in

(9)

person, and got it passed. They also passed the physical test and were resultantly recommended for appointment. As far as order of dismissal is concerned, despite the fact that seven days were given for reply to the final show cause notice, the competent authority passed the order of dismissal in a hasty manner, on the very next day of issuance of the notice, which is against the rules. They had to wait for the reply, which was submitted on the seventh day of the receipt of the show cause notice.

10. In view of the above discussion, instant appeal, alongwith the connected appeals, is allowed as prayed for. Cost shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of February, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

SA 625/2022

15th Feb. 2024 01. Mr. Yasir Saleem, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, the appeal is allowed as prayed for. Cost shall follow the event. Consign.

03. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of February, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member(J)

Fazal Subhan PS

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بخدمت جناب ضلعی پولیس سربراہ ضلع نوشہرہ

عنوان: درخواست برائے بحالی ملازمت

جناب عالی!

گزارش ہے کہ سائل کو محکمہ پولیس سے سابقہ سربراہ ضلع نوشہرہ نے بحوالہ او بی نمبر 1305 مورخہ 29/12/2021 کو محکمہ پولیس سے برخاست کیا۔

بعد ازاں سائل نے محکمانہ اپیل کر دی۔ جناب ریجنل پولیس سربراہ کو ایک اپیل کر دی۔ جو کہ مورخہ 30/3/22 بذریعہ حکم نامہ نمبر 2565/ES سائل کو مسترد کر دیا۔

بعد ازاں سائل سروس ٹریبونل پشاور میں ایک اپیل نمبر 625 برائے بحالی ملازمت جو کہ مورخہ 15/2/2024 کو منظور کر کے ملازمت پر بحالی کے احکامات صادر فرمائے جائے۔

لہذا استدعا کی جاتی ہے کہ سائل کو عدالتی حکم کے مطابق نوکری پر بحال کیا جائے۔ سائل تاعمر دعاگو رہیگا۔

العارض 22/2/2024

عرض گزار

آپ کا تابعدار ضیاء الرحمن ولد اللہ ... سابق پولیس کانسٹیبل بلٹ نمبر 1172

Zia Ur Rehman

Attested to be true Copy

POWER OF ATTORNEY

In the court of KP Service Tribunal, Peshawar

Zia Ur Rahman **Versus** PPO

..... Petitioner/Plaintiff/Appellant .....Respondent/Defendant

KNOW ALL to whom these presents shall come that I the undersigned appoint:

Mr. YASIR SALEEM, Advocate Supreme Court of Pakistan, (herein after called the advocate) to be the Advocate for the Petitioner/Plaintiff/Appellant or Respondent/Defendant in the above mentioned case, to do all the following acts, deeds and things or any of them ,that is to say

1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
2) To sign, verify and present pleadings, appeals, cross- objections ,petitions for execution, review , revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case and in consequence of his absence from the court when the said case is called up for hearing

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid., He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this ____day of _____ 2023.

Executant/Executants Zia Rahman

Accepted subject to the terms regarding Professional Fee

YASIR SALEEM
Advocate Supreme Court of Pakistan
Legal Advisor, Services & Labor Law Consultant
FR-4, 4th Floor, Bilour Plaza, Peshawar Saddar.
Cell No. 0331-8892589 Email: yasirsaleemadvocate@gmail.com