


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 733/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.07.2024	<p>The implementation petition of Mr. Iftikhar Ali submitted today by Mr. Muhammad Irshad Advocate. It is fixed for implementation report before Single Bench at Peshawar on 22.07.2024. 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  REGISTRAR</p>

Before The Service Tribunal, Peshawar.

Service Appeal No. _____/2024

*Execution Petition
No = 733 / 2024*

Iftikhar Ali Si

Versus

Govt of KPK & others

Execution / Implementation/COC

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Dated 15/07/2024

Petitioner

Through counsel

Muhammad Irshad

Advocate

High court at Mardan

Cell # 03438567931

mirshadhumraz@gmail.com

①

**BEFORE THE HONORABLE SERVICE TRIBUNAL
PESHAWAR**

Execution Petition no 733/2024 in S A No. 1210/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14260

Dated 15.07.2024

IFTIKHAR ALI S/O Mian Gul (SI 426/MR District Police Mardan),
Village Kalushah Haji Zarghon Shah Killi Tehsil Takht Bhai District
Mardan.

..... Appellant

Versus

Government of KPK through

1. Muhammad Abid Majeed The Secretary, Home Department, K.P.K
Peshawar
2. Akhter Hayat Gandapur The Inspector General of Police K.P.K
Peshawar
3. Najeeb ur Rahman Bagvi Regional Police Officer Mardan.
4. Zahoor Baber Afridi District Police Officer Mardan.

..... Respondents

**Execution/Implementation petition along with
contempt of court for implanting judgment of this
honorable Tribunal dated 27/03/2024 in its true letter
and spirit and initiating contempt of court proceedings
under article 204 of the constitution of Pakistan read
with sections 3/5 & 6 of the contempt of court
ordinance 2003, against the respondents.**

Respectfully Sir,

Petitioner submits as under

1. That the petitioner filed an appeal 1210/2022 before this honorable
tribunal which was allowed by this honorable tribunal vide order /

judgment dated 27/03/2024. (Copy of appeal & judgment attached as annex "A")

2. That after the judgment the petitioner is serving regularly and honestly but the respondents/contemnors nor paid any attention to the judgment of this honorable court and not ready to obey the order of this honorable tribunal.
 3. That the petitioner approached and filed written request before the respondents on 24/06/2024 & 25/06/2024 respectively but the respondents are reluctant to the matter on one pretext to another. (Copy of applications attached as annex "B")
 4. That the respondents clearly committed the contempt of court's order dated 27/03/2024.
 5. That the respondents may kindly be treated with iron hands for not obeying, complying and implementing rather denying the order of this honorable tribunal dated 27/03/2024.
- A. That the petition of the petitioner is one to be accepted in the interest of justice and equity.

In wake of the submissions made, It is requested & prayed that the respondents may graciously be directed to implement the judgment of this honorable Tribunal dated 27/03/2024 in its true letter and spirit in favor of petitioner for enlisting him for promotion and contempt of court proceedings against the respondents/contemnors may graciously be initiated. Any other remedy which this honorable tribunal deems proper and fit may also be awarded to the petitioner.

Date:- 15/07/2024

Petitioner

(Iftikhar Ali SI)

Through:-

Muhammad Irshad

Advocate High Court

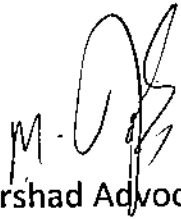
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at Mardan

Affidavit:-

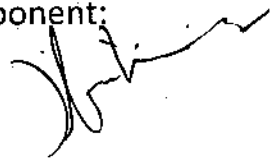
I, IFTIKHAR ALI S/O Mian Gul (SI 426/MR District Police Mardan), Village Kalushah Haji Zarghon Shah Killi Tehsil Takht Bhai District Mardan the Appellant do hereby state on Solemn affirmation that the contents of this Appeal Are true and correct to the best of my knowledge And belief.

identified by



Muhammad Irshad Advocate

Deponent:



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①

**BEFORE THE HONORABLE SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. _____/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 825

Dated 27/7/22

IFTIKHAR ALI S/O Mian Gul (SI 426/MR District Police Mardan),
Village Kalushah Haji Zarghon Shah Killi Tehsil Takht Bhai District
Mardan.

Appellant



Versus

Government of KPK through

1. The Secretary, Home Department, K.P.K Peshawar
2. The Inspector General of Police K.P.K Peshawar
3. Regional Police Officer Mardan.
4. District Police Officer Mardan.

Respondents

Appeal under section 4 of The service Tribunal Act, 1974 against the order of the Respondent No.1, vide order dated 06/07/2022 No 1476-83/22, whereby the Appellant's petition was partially accepted and was awarded punishment effective for sixty days despite the fact that the appellant has been discharged by the court in FIR 684 dated 13/06/2021 U/S 161, 162, 119B, 118D, Act-2017 PPC PS Toru as a result of disciplinary proceedings.

Prayer in Appeal:-

That the appellant may please be restored to the position prior to 13/06/2021 with back service benefits sand seniority may please be ordered in accordance with merit as appellant has been declared innocent by the concern judicial magistrate and orders of respondents bearing no's 2178 dated 19/11/2021, 1608—09/ES dated 25/02/2022 and 1476-83/22 dated 06/07/2022 may please be declared null and void and without lawful authority.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Sir,

Appellant submits as under

1. That the Appellant was posted as station house officer (SHO) at police station Toru in District Police Mardan.
2. That the appellant was malafidely charged in FIR 684 dated 13/06/2021 U/S 161, 162, 119B, 118D, Act-2017 PPC and was suspended. **Copy of FIR attached as annex "A"**
3. That the appellant was discharged of the allegation by the concern judicial magistrate. **Copy of order of Judicial Magistrate Mardan attached as annex "B"**
4. That the respondent no 4 in order OB no 2178 dated 19/11/2021 has awarded major punishment of reduction in pay by one stage. **Copy of DPO order attached as annex "C"**
5. That Appellant was aggrieved from the order of respondent no 4 moved appeal before RPO vide 1608—09/ES dated 25/02/2022 which order of DPO was enhanced as reduction in pay by one stage into reduction in rank from Sub Inspector to ASI. **Copy of appeal & order of RPO/DIG attached as annex "D"**
6. That the appellant moved petition to the Inspector General of Police KP where in it was held that punishment is effective only for sixty days vide order 1476-83/22 dated 06/07/2022. **Copy of petition & order of IG office attached as annex "E"**
7. That the impugned orders are illegal, unjustified and against the principles of naturel justice. Hence, the same is liable to be set-aside on the following amongst many other grounds:-
 - A. That the respondents had no authority to lodge FIR against petitioner as the allegations / matter pertains to anticorruption department, Hence, the respondents has acted beyond thier authority, by imposing major penalties.

ATTESTED

K. M. KHAN
Officer in Charge
Service Tribunal
Peshawar

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- B. That the impugned orders were passed as punishment, which are not provided under the relevant law and rules as no enquiry have been conducted.
- C. That the appellant was acquitted on 22/09/2021 by the judicial magistrate and was punished by DPO / respondent no 4 OB no 2178 dated 19/11/2021 which is utter disregard of the principles
- D. That the whole of the proceedings were carried-out in utter disregard to the relevant rules.
- E. That the Appellant is not provided the right of defense, under the law and he is condemned unheard.
- F. That Appellant seeks leave of this Honorable Tribunal to claim further grounds also.

It is prayed that on acceptances of this Appeal, the Impugned orders may please be set aside and the Appellant may be ordered in the seniority be considered as before 13/06/2021 with back service benefits. Any other remedy which this honorable tribunal deems proper and fit may also be awarded to the appellant.

Date:- 23/07/2022

Appellant

(Iftikhar Ali SI)

Through:-

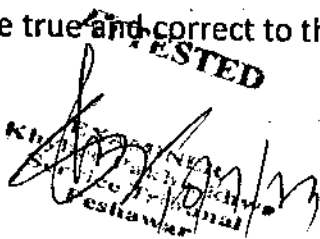
M. 
Muhammad Irshad

Advocate High Court

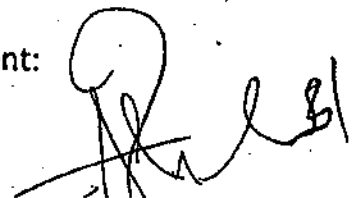
at Mardan

Affidavit:-

I, IFTIKHAR ALI S/O Mian Gul (SI 426/MR District Police Mardan), Village Kalushah Haji Zarghon Shah Killi Tehsil Takht Bhai District Mardan the Appellant do hereby state on Solemn affirmation that the contents of this Appeal Are true and correct to the best of my knowledge And belief.


Iftikhar Ali
Deponent

Deponent:



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 1210/2022

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

Iftikhar Ali S/O Mian Gul (SI 426/MR District Police Mardan), Village Kalushah Haji Zarghon Shah Killi Tehsil Takht Bhai District Mardan.
... (Appellant)

VERSUS

1. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
 2. The Inspector General of Police Khyber Pakhtunkhwa Peshawar.
 3. Regional Police Officer Mardan.
 4. District Police Officer, Mardan.
- ... (Respondents)

Mr. Muhammad Irshad
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....25.07.2022
Date of Hearing.....27.03.2024
Date of Decision.....27.03.2024

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:

“That the appellant may please be restored to the position prior to 13.06.2021 with back service benefits and seniority may please be ordered in accordance with merit as appellant has been declared innocent by the concern judicial magistrate and orders of respondents bearing No.2178 dated 19.11.2021 1608-09/ES dated 25.02.2022 and

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
10/17/24

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1476-83 dated 06.07.2022 may please be declared null and void and without lawful authority.

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was posted as SHO at Police Station Toru in District Police Office Mardan. During service, he was charged in FIR No. 684 dated 13.06.2021 U/S 161, 162, 119B, 118D, Act-2017 PPC on the basis of which he was suspended and later on major penalty of reduction in pay by one stage was awarded to the appellant vide order dated 19.11.2021. Feeling aggrieved, he filed departmental appeal on 24.11.2021, which was rejected on 25.02.2022. Then he filed revision petition upon which punishment is effective only for sixty days, hence, the present 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 and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned orders are illegal, unjustified and against the principles of natural justice, hence liable to be set aside; that the respondents had no authority to lodge FIR against the appellant as the allegations/matter pertains to anti corruption department, hence respondents had acted beyond their authority; by imposing major penalty; that appellant was acquitted on 22.09.2021 by the competent court of law and was punished by DPO which is utter disregard

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Service Tribunal
Peshawar

of the principles; that appellant was not provided opportunity of hearing and he was condemned unheard.

5. Conversely, learned District Attorney contended that he while posted as SHO PS Toru was placed under suspension on account of gross misconduct by demanding an amount of Rs. two lacs as bribe from a poor man named Adil S/O Nausher on account of extending help by Toru Police in recovering his missing goats, but due to non-availability of the said amount with the Adil, S.I Iftikhar Khan Ex-SHO PS Toru took two goats from him as illegal gratification vide FIR No. 684 dated 13.06.2021 Police Station Toru on the basis of which he was proceeded against departmentally by issuing charge sheet and statement of allegation and enquiry was entrusted to the then SDPO TakhtBhai. During the course of inquiry appellant submitted his reply which was found unsatisfactory and after fulfillment of all legal and codal formalities, competent authority imposed major penalty of reduction in rank from ASI to Head Constable.

6. Perusal of record reveals that appellant was serving in the respondent/department as Station House Officer (SHO) at Police Station Toru, Mardan when on 13.06.2021, he was charged in FIR No.684 U/S 161, 162, 119B, 118D, Act-2017 PPC due to which he was placed under suspension. Respondent initiated departmental disciplinary proceeding against the appellant on the allegation of demand of on amount of Rs.2 lacs as bribe from one Adil on account of extending help by him in tracing out his missing goats. Due to non-availability of said amount appellant

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allegedly took two goats with him in respect of which FIR No.684 was also lodged. ASP Muhammad Qais Khan, SDPO Takht Bhai was appointed as inquiry officer on 17.06.2021 who submitted his report after completion of formalities on 08.07.2021 with recommendation of major punishment. Authority issued final show cause notice and vide order dated 19.11.2021 awarded punishment of reduction in pay by one stage.

7. Appellant filed appeal against order dated 19.11.2021 wherein appellate authority i.e. RPO vide order dated 25.02.2022 enhanced punishment of reduction in pay by one stage into major penalty of reduction in rank from Sub Inspector to ASI. Appellant assailed order of enhancement in penalty passed by appellate authority in revision petition under Rule 11A wherein revisional authority vide order dated 06.07.2022 only specify the time period of reduction of lower rank as 60 days. Inquiry officer recorded statement of only one Adil who is also complainant of FIR No.684. Perusal of statement of said Adil reveals that missing goats were traced by him. When he traced missing goats himself, then in such a situation demand of huge amount of Rs.2 lac by appellant for extending help for tracing goats was not understand able to a prudent mind.

8. Moreover, he also stated that his owner himself gave two goats to the SHO and ordered him to accompany SHO to the police station, when police went there his owner demanded Rs.70000/- from him in lieu of those two goats. Statements of Owner/Master of Mr. Adil, complainant, Mr. Qadir Khan and his brother-in-law Bahar Ali were not recorded by the

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Service Tribunal
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(11)

inquiry Officer, who as per appellant, appeared before him for recording their statement. However, their statement recorded under section 164 CrPC before magistrate concerned is available on inquiry file wherein they stated that appellant had never demanded any bribe rather he helped them in tracing their missing goats. Therefore, they themselves offered him two goats as a gift which he refused to take. Owner Qadir further stated that he just to warn and to remain careful in future as punishment be concealed himself and kept in secret place his two goats with him and was not taken by the appellant as is alleged by the Adil.

9. It was duty of the inquiry officer that he must record statement of owner/master of Adil Khan when he appeared before him but non recording of his and his brother in law bahar Ali statement show the biasness of the inquiry officer, when master of Adil and owner of goats categorically stated that two goats were with him in such a situation question of demanding bribe of Rs.200000/- from Adil and in case of having no money appellant took two goats with him is not appealable to prudent mind. Otherwise too there is contradiction in respect of amount demanded as bribe because in criminal case, he stated it as Rs.70000/-, in an application to DIG, same was mentioned as Rs.200000/- which was mentioned in statement of allegation, where in an application to Chief Minister bribe amount is mentioned as Rs.100000/- , which shows that in fact no amount was demanded that Adil mentioned three different amount in three different application filed to different authorities which shows that

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 Service Tribunal
 Peshawar

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there was no such demand by the appellant and Adil just leveled allegation against him, otherwise if any bribe was demanded he should have mentioned that demanded amount in all three applications to three different forums.

10. It is also important to mention here that appellant was discharged from case FIR No.684 of Police Station Toru, Mardan vide order dated 22.09.2021. As per police Rules 16 (3) "If a civil servant is proceeded against on the basis of same charge upon which he was tried by the criminal court, then after earning acquittal he will have to be reinstated into service."

Moreover, inquiry officer had not provided chance of cross examination to the appellant upon Mr. Adil which is foremost essential requirement of fair trial and enquiry. It is very strange that appellate authority enhanced the penalty without giving any reasons upon appeal of the appellant and applying his mind by evaluating the only shaky statement of Mr. Adil that without providing any chance of defense to the appellant, which is not warranted having regards to the facts and circumstance of the case in hand.

11. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(13)

personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of audi alteram partem was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.


12. For what has been discussed above, we are unison to accept the appeal as prayed for. Costs shall follow the event. Consign.

13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

*M.Khan


ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Date of Presentation of Application 10/7/24
Number of Words 7 pages
Copying Fee 35/-
Urgent ✓
Total 40/-
Name of Copyist _____
Date of Completion of Copy 10/7/24
Date of Delivery of Copy 10/7/24

ORDER
27.03.2024

(14)

1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal as prayed for. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of March, 2024.*


(Farscha Paul)
Member (E)


(Rashida Bano)
Member (J)

24/05/24

DSP Alamy



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Before the Hon'ble Regional Police Officer Mardan

Through: Proper Channel

Subject: Compliance of KP Services Tribunal Judgment dated 27-03-2024 with restoration of all back benefits prior to 13-06-2021 and confirmation etc.

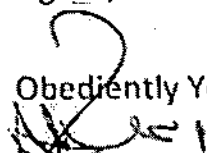
R/Sir

The petitioner respectfully submits as under.

1. The petitioner was awarded major penalty of reduction in pay by one stage by worthy DPO Mardan vide order dated 19-11-2021, further up held by worthy RPO vide order dated 25-02-2022, also enhanced the major penalty by imposing in reduction in rank from SI to ASI. In revision petition, the punishment was ordered to be operative for 60 days.
2. The orders at para 1 were challenged in the Hon'ble Services Tribunal which were set aside vide orders dated 27-03-2024.(copy enclosed)
3. Due to punishment orders, seniority of the petitioner was disturbed and also hindered the confirmation as Sub Inspector while also kept away of bringing on list "F".

Above in view, it is requested that the service record may please be updated and on confirmation as SI, I may be brought on list "F" as per merit with my colleagues, to meet the ends of justice.

Obediently Yours


SI Iftikhar Ali

No 426 MR,

presently posted

as PS Akora

Khattak District

Nowshera.

25/6

WAKALAT NAMA

17

BEFORE THE HONOSERVICE TRIBUNAL PESHAWAR

Execution/implementation/COC No. _____/2024 in SA 1210/2022

IFTIKHAR ALI SI

Versus

Govt of KPK & others

Execution/implementation/COC

I/we petitioners/plaintiffs/defendants/respondents the above noted case do hereby appoint and engage **MUHAMMAD IRSHAD** ADVOCATE HIGH COURT as our / mine counsel in subject proceeding , and authorize him to appear plead ,etc, compromise, withdraw or refer the matter for arbitration for me/us, without any liability for his default and with the authority to engage/ appoint any other advocate/ counsel at our/my expense and receive all sums and amounts payable to us/me and do all such acts , which he may deem necessary for protecting our/my interest in the matter. He is also authorized to file the appeal, revision, review, and application for restoration or application for setting aside ex-parte decree/order /proceeding on my/our behalf .

Date 15/07/2024

Sign _____

Petitioner

Muhammad Irshad Advocate

High Court at district Bar

Association Mardan (K.P.K)

ID BC-09-2340

CELL # 03438567931

Accepted and attested

Muhammad Irshad

Advocate High Court at Mardan

mirshadhumraz@gmail.com