Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 717/2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.07.2024	The application for restoration Execution Petition No. 948/2023 submitted today by Mr. Noor Muhammad Khattak Advocate. It is fixed for hearing before Single Bench at Peshawar on 12.07.2024. Original file be requisitioned. Parcha Peshi given to the counsel for the applicant. By the order of Chairman REGISTRAR

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

R.A
~~CM~~ NO. 717 /2024
In
Execution NO. 948 /2023
In
Appeal NO. 2093/2019

JAMSHED KHAN VS POLICE DEPTT:

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PETITIONER

Through:

NOOR MOHAMMAD KHATTAK,
ADVOCATE
SUPREME COURT OF PAKISTAN

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

R.A
CM NO. 717 /2024
In
Execution NO. 948 /2023
In
Appeal NO. 2093/2019

Mr. Jamshed Khan
FC No 269, Police Lines, Lakki Marwat

.....PETITIONER

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2- The Regional Police Officer, Bannu Region, Bannu
3- The District Police Officer, District Lakki Marwat.

..... RESPONDENTS

APPLICATION FOR RESTORATION OF THE ABOVE TITLED EXECUTION PETITION WHICH WAS CONSIGNED BY THIS HONOURABLE TRIBUNAL VIDE ORDER DATED 13/06/2024.

R/SHEWETH:

1- That the petitioner filed the above tilted Service Appeal before this Honourable Tribunal against the impugned orders dated 14/06/2018 & 08/11/2019 whereby the petitioner was removed from service

2- That this Honorable Service Tribunal vide judgment/order dated 07/08/2023 decided the service appeal in favor of the petitioner. Copy of judgment dated 07/08/2023 is attached as annexure.....A

3- The applicant/petitioner after obtaining the attested copy of the order dated 07/08/2023, submitted the said order before the respondent, which was not complied in its true spirit.

4- That thereafter the petitioner filed execution petition mentioned above against the lethargic approach of the respondents by not implementing the judgment dated 07/08/2023 of this Honourable Tribunal.

5- That during the pendency of the instant execution petition, the representative of respondent department is present and stated that denovo inquiry has been conducted and concluded, which is placed on file, learned counsel for the petitioner submitted that a specified date might be given to hand over copy of any order passed as a consequence of inquiry report to petitioner not later than 25th fo this June, 2024, the aforesaid execution petition has

been consigned on the above statement of the respondent, but the respondents are reluctant and till date not handed over the inquiry report to the petitioner. Copy of order dated 13/06/2024 of this Honourable Tribunal is attached as annexure.....**B**

6- That as the deadline i.e. 25th June, 2024 ordered by this Honourable Tribunal has since been passed, but no plausible action on the part of respondents has been taken so far, hence the instant application for restoration of the above titled Execution Petition.

7- That the petitioner time and again approached the respondents and produced order of Honorable Tribunal, and requested for compliance, but they refused and in this way brought disregard to order of August Tribunal.

8- That as the matter pertaining in the instant execution petition has not been redressed by the respondent in true letter and spirit as promised before this Honouralbe Tribunal, therefore the mentioned execution petition may be restored for the sack of justice.

9- That there is no legal bar in restoring the mentioned Execution

10- That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Court.

It is therefore, most humbly prayed that on acceptance of this application, the above mentioned Execution may very kindly be restored OR any other order deemed proper in the matter may be passed.

Applicant/ Petitioner

Through:

NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

UMAR FAROOQ MOHMAND

WALEED ADNAN
ADVOCATES HIGH COURT

AFFIDAVIT

I, Mr. Jamshed Khan, FC No 269, Police Lines, Lakki Marwat, (the appellant), do hereby solemnly affirm on oath that the contents of the above application are true and correct to the best of my knowledge and believe and nothing has been concealed from this Honorable Tribunal.

DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2091/2019

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

Hafiz Ur Rehman, FC No. 71, Police Lines, Lakki Marwat

.... (*Appellant*)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, District Lakki Marwat.

.... (*Respondents*)

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr. Fazal Shah Mohmand
Additional Advocate General .... For respondents

Date of Institution.....06.12.2019
Date of Hearing.....07.08.2023
Date of Decision.....07:08.2023

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 orders dated 14.06.2019 and 08.11.2019 may very kindly be set aside and the appellants may be reinstated in service with all back benefits."**

2. Through this single judgment we intend to dispose of instant service appeal as well as connected (i) Service Appeal No. 2092/2019 titled "Lal

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Khan Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (ii) Service Appeal No. 2093/2019 titled "Jamshed Khan Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (iii) Service Appeal No. 2094/2019 titled "Shaukat Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (iv) Service Appeal No. 2095/2019 titled "Naheed Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (v) Service Appeal No. 2096/2019 titled "Irfan Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" (vi) Service Appeal No. 2097/2019 titled "Rehmat Ullah Vs. Inspector General of Police, Khyber Pakhtunkhwa and others" as in all these appeals common question of law and facts are involved.

3. Brief facts of the case, as given in the memorandum of appeal are, that appellants were appointed as Constables vide order dated 31.12.2016 through Departmental Selection Committee after vacancies were advertised in the leading newspaper. Thereafter the appellants were sent for condensed recruitment course by the respondent No.3. After completion of said course they submitted their arrival reports and started performing their duties at concerned station efficiently and up to the entire satisfaction of their superiors. During service an unknown complaint was received to their high ups regarding impersonation in the recruitment process of constables and on that complaint respondent constituted inquiry committee and the said committee suspected ten employees alongwith the appellants. Vide letter dated 10.03.2017 considered them disqualified on the basis of inquiry committee, vide order dated 29.03.2017 the appointment orders of the appellant's were withdrawn by the respondents. Feeling aggrieved the appellants filed writ petition before Hon'ble Peshawar High Court, Bannu Bench which was decided in favor of appellants who were enlisted as

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constables vide order dated 28.03.2018. Respondents reinstated the appellants subject to CPLA vide letter dated 05.04.2019. Respondent also vide order dated 11.04.2019 order to conduct fresh departmental inquiry in violation of order passed by Hon'ble Peshawar High Court, Bannu Bench and without waiting for the outcome of CPLA filed by the respondent in apex court and after conclusion of inquiry vide order dated 14.06.2019 appellants were removed from service. Feeling aggrieved they filed departmental appeal which was rejected vide order dated 08.11.2019. Hence the instant service appeal.

4. 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 Additional Advocate General and perused the case file with connected documents in detail.

5. Learned counsel for the appellant argued that orders passed by the respondents are against law, facts, norms of natural justice and material on the record hence not tenable in the eyes of law. He contended that appellant were not treated in accordance with law and rules and respondent violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He further contended that no regular inquiry has been conducted against the appellant nor any opportunity of personal hearing was afforded to the appellants. He submitted that before issuing dismissal order neither any explanation, show cause notice or statement of allegations were served upon the appellants. He, therefore, requested for acceptance of instant service appeal.

6. Learned Additional Advocate General contended that the appellants have been treated in accordance with law and rules. He further contended that

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upon a complaint to respondent No.1 about the impersonation in NTS Exam conducted for the recruitment of constables, inquiry committee was constituted to probe into the matter about impersonation. The committee after scrutiny of the application forms and video clips of the appellants were found suspicious, proper inquiry was conducted against the appellants. Thereafter, after completing all codal formalities they were removed from service vide order 14.06.2019.

7. Perusal of record reveals that appellants were enlisted as Constables in District Lakki Marwat vide order dated 30.12.2016. It was on 29.03.2017 when orders of appointment of appellants were withdrawn by the respondents. They filed writ petition bearing No. 343-B/2017 before Worthy Peshawar High Court, Bannu Bench which was allowed vide order dated 28.03.2018 by setting aside order of withdrawal of the appointment order of the appellant with direction to respondents to enlist the appellants as constables in District Lakki Marwat. Respondent re-enlisted the appellants conditionally subject to decision of CPLA filed by them. Respondent at the same time initiated fresh departmental inquiry and after its completion imposed major penalty of removal from service vide impugned order dated 14.06.2019. Appellants filed departmental appeal, which was rejected vide order dated 08.11.2019. Main allegations against the appellants were that they themselves did not appear in NTS test conducted for the post of Constable and someone else having resemblance with the appellants sat in the test who passed the same and thus appellants were charged for misconduct on this allegation charge sheet alongwith statement of allegations were issued to the appellants. Competent authority appointed SP Investigation Lakki Marwat as Enquiry Officer, who submitted inquiry report on 07.05.2019 after conducting inquiry. Perusal of enquiry report would

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reveal that no regular inquiry was conducted by providing chance of cross examination to the appellant. By now it is settled principle of law, that in case of awarding major penalty, a proper regular inquiry must be conducted in accordance with law, where a full opportunity of self-defence is to be provided to the delinquent officials which is mandate of rule 5 of Police Rules, 1975. In the instant case no opportunity of cross examination were given, which is basic requirement of regular inquiry and principle of natural justice. Although respondent alleged that inquiry was conducted but important piece of evidence i.e expert report about CD/video and facial identification of the appellants was not even available on record at the time of enquiry. Respondent had to place this piece of evidence before the appellant during inquiry and provide them chance to rebut it, but same was not put to appellant, this act show inquiry conducted in violation of rules.

8. Moreover perusal of inquiry report reveals that all the proceedings were conducted in haste without adopting proper procedure as provided in the rules and verdicts of apex court. It is also pertinent to mention here that departmental proceedings were initiated on the basis of complaint about impersonation in NTS Exam and recruitment process by Imran Ullah and Fahad Niaz. This fact is mentioned in para 3 of factual objection of parawise comment of respondent but both the above mentioned complaints did not appear before inquiry committee nor appellant was provided with an opportunity to cross examine them.

9. As a sequel to above discussion, the impugned orders dated 14.06.2019 passed by the respondent No. 3 is hereby set aside and the matter is remitted back to department for denovo inquiry with direction to respondents to provide opportunity of self defence and cross examination to the appellants

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and to conduct fair inquiry within 90 days after receipt of copy of this judgment. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7th day of August, 2023.*

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*Kaleemullah

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Service Tribunal
Peshawar

10-2-23

Date of Presentation of Application 10-2-23
Number of Words 67
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Date of Complection of Copy 10-2-23
Date of Delivery of Copy 10-2-23

"B" -9-

Execution Petition No. 948/2023 titled "Jamshed Khan versus The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and others".

ORDER

13th June, 2024 **Kalim Arshad Khan, Chairman**: Learned counsel for the petitioner present. Mr. Azeem Khan, DSP (Legal) alongwith Mr. Umair Azam, Additional Advocate General for the respondents present.

2. This application is for execution of judgment dated 07.08.2023 passed in Service Appeal No. 2091/2019 titled "*Hafiz Ur Rehman Vs. Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others*", wherein the Tribunal had directed to conduct of de-novo inquiry. Mr. Azeem Khan, DSP (Legal) is present on behalf of the respondents and stated that de-novo inquiry had been conducted and concluded, which is placed on file. Learned counsel for the petitioner submits that a specified date might be given to hand over copy of ~~the inquiry report as well as~~ any order passed as a consequence of the inquiry report to the petitioner not later than 25th of this June, 2024. Order accordingly. Consign.

3. *Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal on this 13th day of June, 2024.*

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10-7-24

(Kalim Arshad Khan)
Chairman

Naeem Amin

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Restoration No _____/2024

Jamshed Khan (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Police Deptt (RESPONDENT) (DEFENDANT)

I/We Jamshed Khan.

Do hereby appoint and constitute **Noor Mohammad Khattak Advocate Supreme 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 cost. 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.

Dated._____/_____/202

جمشید خان

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

WALEED ADNAN

UMAR FAROOQ MOHMAND

MAHMOOD JAN

&

ABID ALI SHAH
ADVOCATES

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