Form- A

FORM OF ORDER SHEET

Court of				

Implementation Petition No. 279/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	. ` 3
1	04.04.2024	The implementation petition of Mr. Fayyaz
		Badshah submitted today by Mr. Attiq ur Rehman
	,	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
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		REGISTRAR
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BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No. 279/2024

In Re: Execution Petition No. 297/2023

In the matter of

Service Appeal No. 5365/2020

Decided on 02.03.2023

Fayyaz BadshahApplicant / Appellant
VERSUS

IGP, KPK & others..... Respondents

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Appellant / Applicant

Through

Dated: 04.04.2024

ATTIQ UR REHMAN Advocate, High Court

Peshawar

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No. 279 /2024

In Re: Execution Petition No. 297/2023

In the matter of

Service Appeal No. 5365/2020

Decided on 02.03.2023

Service Tribunal

Diary No. 12134

Dated 64-64-2024

Fayyaz Badshah Ex-Inspector Kohat Police Kohat

..... Applicant / Appellant

VERSUS

- 1. Inspector General of KPK Police Peshawar.
- 2. Deputy Inspector General of Police Kohat Region Kohat.
- 3. District Police Officer Kohat.

..... Respondents

APPLICATION FOR THE IMPLEMENTATION OF

THE JUDGMENT AND ORDER DATED

02.03.2023 IN THE CAPTIONED SERVICE

APPEAL OF THIS HON'BLE TRIBUNAL.

Respectfully Sheweth:

- 1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 02.03.2023.
- 2. That vide judgment and order dated 02.03.2023 this Hon'ble Tribunal allowed the appeal and set aside the impugned Orders dated 10.02.2020 and 17.02.2020 and the Appellant was ordered to be reinstated in service with all back benefits. (Copy of the Judgment and Order dated 02.03.2023 is attached as Annexure A)
- 3. That the Judgment and Order of this Hon'ble tribunal was duly communicated to the Respondents by the Petitioner vide various **Applications** for implementation. Thereafter the Petitioner is continuously approaching the Respondents for the implementation of the Judgment and Order dated 02.03.2023, however they are reluctant to implement the same.
- 4. That thereafter the appellant / Petitioner filed Execution petition No. 297/2023 before this Hon'ble Tribunal, wherein the respondents had submitted an Office Corrigendum OB No. 582/SRC dated 05.07.2023 whereby the Petitioner has been reinstated in service with all back benefits and the Execution Petition was disposed off as stand implemented vide Order dated 09.08.2023. (Copy of

Execution Petition and Order dated 09.08.2023 are attached as annexure B)

- 5. That later on the petitioner came into knowledge that the services of the Petitioner has been reinstated but no back benefits were granted to the Petitioner. Moreover the Petitioner moved Applications before High Ups for implementation of the Order and for grant of back benefits to the Petitioner, but in vain. (Copies of Applications and Postal receipts are attached as annexure C)
- 6. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 02.03.2023 in its true letter and spirit without any further delay, which has already been delayed due to the malafide intention of the Respondents and the respondents are duly bound to grant all back benefits to the Petitioner as per the Judgment of this Hon'ble Tribunal.
- 7. That the valuable rights of the Petitioner are involved in the instant case and the Respondents are violating the legal and fundamental rights of the Petitioner by not granting back benefits to the Petitioner.
- 8. That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

On acceptance of this Application, the Order and Judgment dated 02.03.2023 of this Hon'ble Tribunal may Kindly be implemented in its true letter and spirit. And the Respondents may graciously be directed to grant/ allow all back benefits to the Petitioner with the larger interest of justice.

Appellant / Applicant

Through

Dated: 04.04.2024

ATTIQ UR REHMAN Advocate, High Court

Peshawar

BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition No. ____/2024

In Re: Execution Petition No. 297/2023

In the matter of

Service Appeal No. 5365/2020

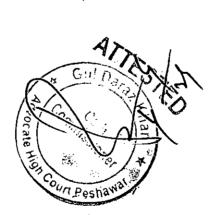
Decided on 02.03.2023

Fayyaz BadshahApplicant / Appellant
VERSUS

IGP, KPK & others...... Respondents

AFFIDAVIT

I, Fayyaz Badshah Ex-Inspector Kohat Police, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 5365/2020

Date of Institution ... 04.06.2020

Date of Decision... 02.03.2023



Fayyaz Badshah Ex-Inspector Kohat Police.

... (Appellant)

VERSUS

Inspector General of Khyber Pakhtunkhwa Police Peshawar and 02 others.

(Respondents)

MR. ATIQ-UR-REHMAN, Advocate

For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL, Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN MS. FAREEHA PAUL

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts surrounding the instant service appeal are that the appellant was proceeded against departmentally on the allegations re-produced as below:-

"i. That on 05.01.2019, an incident of assault on Police was taken place in the jurisdiction of Sub-Division Darra and you alongwith other 10/12 officials duly armed was present at the distance of 150/200 meters from place of incident, but you deliberately did not respond/rescue the Police.

ii That in consultation with other stakeholders,
Police has made nakabandis outlets of Darra i.e.,
mattani, highway and Gulshan Abad checkposts in

ATTESTED

Chyber Pakhtukling Service Tribungt

F

order to apprehend the suspects/culprits and their vehicles, particularly coal trucks.

iii. That you have facilitated about 70/75 vehicles to proceed on un-frequented routes and took Rs. 300/-per vehicles as illegal gratification from them.

- iv. That reportedly, you are getting illegal gratification from officials deployed at Eagle Fort and grant them illegal leave.
- v. That you are ill-reputed caused embarrassment for the entire department and reportedly involve in anti-merger activities."
- 2. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service by Commandant Darra Sub-Division/ District Police Officer Kohat vide order bearing O.B No. 90 dated 10.02.2020. The same was challenged by the appellant through filing of departmental appeal before DIG Kohat Region Kohat, which remained un-responded within the statutory period of 90 days, therefore, the appellant filed the instant service appeal on 04.06.2020. It was during the pendency of the instant service appeal that the departmental appeal of the appellant was decided vide order dated 25.06.2020 and his revision petition was then also rejected vide order dated 04.03.2021 issued from the office of Inspector General of Police Khyber Pakhtunkhwa Peshawar.
- 3. After admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by ways.

TESTED

(B)

of filing of joint reply, wherein they refuted the assertion raised by the appellant in his appeal.

- 4. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.
- 5. Arguments have already been heard and record perused.
- 6. The appellant was proceeded against departmentally by issuing him charge sheet as well as statement of allegations on 08.01.2020 and ASP Saddar Kohat was appointed as Inquiry Officer in the matter. We have gone through the inquiry report submitted by the inquiry officer, wherein it is mentioned that the testimony of the SHO, Driver, Subedar etc amply prove that the accused Fayaz Badshah displayed cowardice and did not respond to the call of duty. The respondents have, however not annexed statement of any of the witnesses recorded during the inquiry proceedings. On our query, representative of the respondents categorically stated that no other statement except the documents annexed as page-16 to page 20 with the reply of the respondents are available in record of the respondents. We have gone through the afore-mentioned documents and have observed that the documents as page 17 to 20 are undated applications of Naib

Subedar Khan Aslam, addressed to various officers regarding an

amount of Rs. 14300/-, which was spent by him on arrangement of vehicles and Generator for election duty and was not paid to him by the appellant. Similarly, on page-16 of the reply is an application submitted by Subedar Ilyas to the District Police Officer regarding the incident, which took place on 05.01.2020. The said application was submitted on 13.01.2020, while the charge sheet was received by the appellant on 14.01.2020. Even if the afore-mentioned application of the appellant is considered as statement of Subedar Ilyas, no opportunity was afforded to the appellant to cross-examine him, therefore, the same could not be considered as evidence against the appellant. The allegations against the appellant are though grave in nature, however the same have not been substantiated through recording of any cogent evidence during the inquiry proceedings against the appellant.

show-cause notice was issued to the appellant and he was provided copy of the inquiry report. This Tribunal has already held in numerous judgments that issuance of final show-cause notice along with the inquiry report is must under Police Rules, 1975. Reliance is also placed on the judgment delivered by august Supreme Court of Pakistan 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

(10)

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

8. In view of the above discussion, the appeal in hand is accepted by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 02:03.2023

(FARTEHA PAUL) MEMBER (EXECUTIVE) (SALAH-UD-DIN) MEMBER (JUDICIAL)

Certified to be true copy

Date of Presentation of Application

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99.08.2023

01. Learned counsel for the petitioner present. Mr. Asif

Masood Ali Shah, Deputy District Attorney alongwith Mr. Arif Saleem, Stenographer for the respondents present.

02. Representative of the respondents submitted copy of corrigendum OB No. 582/SRC dated 05.07.2023 whereby the petitioner has been reinstated in service with all back benefits conditionally/provisionally subject to the outcome of CPLA pending before the august Supreme Court of Pakistan. Placed on file and copy thereof provided to learned counsel for the petitioner who expressed his satisfaction. The Service Tribunal judgment delivered in service appeal No. 5365/2020 dated 02.03.2023 stands implemented. Consign.

03. Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 09th day of August, 2023.

Certified to be true copy

EXAMINER
Khi ber Pakhtukhwa
Service Tribunal

(Muhaminad Akbar Khan)
Member (E)

Astronallah*

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BEFORE THE LEARNED SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Execution Petition no 297/2023

CM No. ____/2023

In the matter of

Service Appeal No. 5365/2020

Decided on 02.03.2023

Paliting & Buted 12 5 2023

Fayyaz Badshah Ex-Inspector Kohat Police

..... Applicant / Appellant

VERSUS

- 1. Inspector General of KPK Police Peshawar.
- 2. Deputy Inspector General of Police Kohat Region Kohat.
- 3. District Police Officer Kohat.

...... Respondents

APPLICATION FOR THE IMPLEMENTATION OF THE JUDGMENT AND ORDER DATED 02.03.2023 IN THE CAPTIONED SERVICE APPEAL OF THIS HON'BLE TRIBUNAL.

ATTESTED

EXAMINER
Khyber Takhtukhwa
Service Tribunsi

Machasyar



Respectfully Sheweth:

- 1. That the above noted Service Appeal was pending adjudication before this Hon'ble Tribunal and was decided vide Judgment and order dated 02.03.2023.
- 2. That vide judgment and order dated 02.03.2023 this Hon'ble Tribunal allowed the appeal and set aside the impugned Orders dated 10.02.2020 and 17.02.2020 and the Appellant was ordered to be reinstated in service with all back benefits. (Copy of the Judgment and Order dated 02.03.2023 is attached as Annexure A)
- 3. That the Judgment and Order of this Hon'ble tribunal was duly communicated to the Respondents by the Petitioner vide various Applications for implementation. Thereafter the Petitioner is continuously approaching the Respondents for the implementation of the Judgment and Order dated 02.03.2023, however they are reluctant to implement the same.
- 4. That the Respondents are legally bound to implement the judgment of this Hon'ble Tribunal dated 02.03.2023 in its true letter and spirit without any further delay, which has already been delayed due to the malafide intention of the Respondents.
- 5. That the valuable rights of the Petitioner are involved in the instant case and the Respondents are violating

Service Tribunal

the legal and fundamental rights of the Petitioner by not reinstating the Petitioner into his service with all back benefits.

6. That other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

On acceptance of this Application, the Order and Judgment dated 02.03.2023 of this Hon'ble Tribunal may Kindly be implemented in its true letter and spirit. And the Respondents may graciously be directed to reinstated the Petitioner on his respective post/position with all back benefits.

Appellant / Applicant

Through

true copy

Restauras

Dated: 12.05.2023

ATTIQ UR REHMAN Advocate, High Court

Peshawar

(15).

BEFORE THE HON'BLE DEPUTY INSPECTOR GENERAL KOHAT

Subject: REQUEST/APPLICATION TO GRANT BACK BENEFITS
IN EXECUTION PETITION NO. 297/2023 IN SERVICE
APPEAL NO. 5365/2020 TITLED FAYAZ BADSHAH VS
POLICE DEPARTMENT

Respected Sir,

It is submitted as under;

- 1. That, petitioner is serving under your command as a constable.
- 2. That, petitioner was dismissed from service with unknown reasons but later on field a case in service tribunal against his dismissed.
- 3. That, the petitioner was reinstated vide judgment and order dated: 02.03.2023 by Hon'ble Service Tribunal allowed the appeal and set aside the impugned order dated 10.02.2020 and 17.02.2020 and the petitioner was order to be reinstated in Service with all back benefits. (Copy of Service Appeal with judgment is attached as annexure A)
- 4. That, the Hon'ble DPO Kohat passed an order dated 20.06.2023 for reinstated in Service conditionally/provisionally, but not with all back benefits, hence, petitioner again approached to Hon'ble Service Tribunal with execution petition No. 297/2023. (Copy of Petition is attached as annexure B).



- 5. That, in the instant execution petition Hon'ble Court directed to issue order with all back benefits, hence, in this regard with the direction of AIG Legal to Hon'ble DPO vide letter No. 2326/legal dated 13.06.2023 issued ordered. (Copy of letter is attached as annexure C).
- 6. That, thereafter Hon'ble DPO issued an order No. 4788-89/SRC dated 05.07.2023 again with the following remarks.

"This office order OB No. 352/SRC dated 20.06.2023 issued in compliance with judgment dated: 02.03.2023 passed by Khyber Pakhtunkhwa, the Service Tribunal Peshawar in Service Appeal No. 5365/20 and approval of competent authority vide CPO Letter No. 2326/Legal dated 13.06.2023 may be read as Ex-Constable Fayaz No. 1963 is hereby reinstated with all back benefits conditionally provisionally with immediate effect"

- 7. That, petitioner time and again approached to the concerned accountant/pay officer namely Shoaib Khan, but he denied to give me the instant payment.
- 8. That, time and again I given him the concerned orders/direction of High ups but not availed.
- 9. That, he is continuously denied from the orders of Hon'ble Courts and high ups, and is not giving me a single penny, which is not fair and transparent.



10. That, the Act of the concerned accountant is not according to the rules, law, and constitution, which is embaracing situation and may lead further litigation process which is not a good situation.

11. That, he is denying the orders of high-up's and court.

12. The act of the concerned accountant is not according to police rules 1934.

13. The, concerned accountant said to me no one give you the instant money.

14. That, petitioner is a poor man and belong to a respectable family of Pakistan, without this job there is no source of income, and during out of service period petitioner has taken a lot of loan from different peoples.

It is therefore, requested before your honour to given direction/order to the concerned accountant to give me the payment i.e (back benefits) and implement the court order as well as the concerned high ups order direction with true letter and spirit.

ATTESTED

Thanks

Your Obediently

No. 1953 District Kohat

Cell: 0334-3706072

BEFORE THE HON'BLE INSPECTOR GENERAL OF POLICE KOHAT

Subject: REQUEST/APPLICATION TO GRANT BACK BENEFITS
IN EXECUTION PETITION NO. 297/2023 IN SERVICE
APPEAL NO. 5365/2020 TITLED FAYAZ BADSHAH VS
POLICE DEPARTMENT

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- 2. That, petitioner was dismissed from service with unknown reasons but later on field a case in service tribunal against his dismissed.
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ATTESTED

- 5. That, in the instant execution petition Hon'ble Court directed to issue order with all back benefits, hence, in this regard with the direction of AIG Legal to Hon'ble DPO vide letter No. 2326/legal dated 13.06.2023 issued ordered. (Copy of letter is attached as annexure C).
- 6. That, thereafter Hon'ble DPO issued an order No. 4788-89/SRC dated 05.07.2023 again with the following remarks.

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It is therefore, requested before your honour to given direction/order to the concerned accountant to give me the payment i.e (back benefits) and implement the court order as well as the concerned high ups order direction with true letter and spirit.

Thanks

Your Obediently

CONSTABLE FAYYAZ BADSHAH

No. 1953 District Kohat Cell: 0334-3706072

(21)

BEFORE THE HON'BLE ASSISTANT INSPECTOR GENERAL LEGAL PESHAWAR

Subject: REQUEST/APPLICATION TO GRANT BACK BENEFITS
IN EXECUTION PETITION NO. 297/2023 IN SERVICE
APPEAL NO. 5365/2020 TITLED FAYAZ BADSHAH VS
POLICE DEPARTMENT

Respected Sir,

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"ATTESTED]

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"This office order OB No. 352/SRC dated 20.06.2023 issued in compliance with the judgment dated: 02.03.2023 passed by Khyber Pakhtunkhwa, the Service Tribunal Peshawar in Service Appeal No. 5365/20 and approval of competent authority vide CPO Letter No. 2326/Legal dated 13.06.2023 may be read as Ex-Constable Fayaz No. 1963 is hereby reinstated with all back benefits conditionally provisionally with immediate effect"

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Thanks

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Your Obediently

CONSTABLE FAYYAZ BADSHAH

No. 1953 District Kohat Cell: 0334-3706072

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Jestinos subjection of the sub PREMANT (Execution) Appellant وعوى ماعث تحريراً نكبه مقدمهمندرج عنوان بالامين ابي طرنب سے دامسطے بير دی د جواب د ہی وکل کا ردا کی متعلقہ أن مقام مساويرون الروم كياء عليه المرام المرادو مقرر کرے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کومقد میک کل کاروا کی کا کامل اختیار ہوگا۔ نیز ومیل صاحب کوراضی نامه کرنے وتقرر دالت و فیصله برحلف دیئے جواب دہی اورا تبال دعوی اور بهورت ومرك كرني اجراءاورصولي چيك وروبيدارعرضي دعوى اور درخواست برتسم كي تقيدين زرایں پردستخط کرانے کا اختیار ہوگا۔ نیزصورت عدم بیروی ماڈگری پیطرفہ یا بیل کی برامدگی ادرمنسوخی نیز دائر کرنے اپیل مکرانی ونظر ثانی و بیروی کرنے کا ختیار ہوگا۔ از بصورت ضرورت مقدمہ ندکور کے کل با جزوی کاروائی کے واسطے اوروکیل یا مخارقا نونی کوایئے ہمراہ یا اپنے بجائے تقرر کا اختیار موگا۔اورصاحب مقررشدہ کوبھی وہی جملہ مذکورہ بااختیارات حاصل ہوں مے اوراس کا ساخت برواخت منظور تبول موگا۔ دوران مقدمہ میں جوخ چدد ہرجاندالتوائے مقدمہ کے سبب سے دہوگا۔ کوئی تاریخ بیشی مقام دوره پر ہویا جدے باہر ہوتو وکیل صاحب پابند ہوں ھے کہ بیروی ند کورکریں۔لہذاوکالت نامیکھدیا کے سندرہے۔ .2024 - 10 ol مر کردول وس فروس کے منظورے۔ Be# 12-3560 Cell # 184,0334-9/24 534

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