


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 550/2024

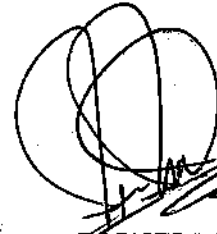
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.06.2024	<p>The implementation petition of Mr. Ihsan Ullah submitted today by Mr. Fawad Jan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 14.06.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

The execution petition in appeal no. 5920/2021 received today i.e. on 07.05.2024 is returned to the counsel for the petitioner with the following remarks.

A copy of application moved by the petitioners to competent authority for the implementation of judgment is not attached with the petition. If the application has already been preferred and reasonable period of 30 days has been expired be placed on file, If not, the same process be completed and then after approach to this Tribunal for the implementation of Judgment.

No. 1 /S.T,

Dt. 07/05 /2024.


7/5/24
REGISTRAR
KHYBER PAKHTUNKWA
SERVICE TRIBUNAL
PESHAWAR

Dr. Fawad Jan Adv.
High Court Peshawar.

Note. objection removed. Petitioner moved application before DPO Charsadda on various dates but in vain. Last application moved by petitioner on 12.10.2023 but the Highups are reluctant to do so. Hence this petition.



KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

CHECK LIST

Ihsan Ullah

Versus

Govt of KP

..... Appellant

..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: <u>Advocate</u> <u>Court</u>	√	
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?	x	
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:- Dr. Fawad Jan

Signature:-

Fawad

**BEFORE K.P.K, SERVICE TRIABUNAL, K.P.K,
PESHAWAR**

Execution Petitioner No. ^{550/}2024

Ihsan UllahAppellant

Versus

Govt of KPK & Others.....Respondents

INDEX

S.NO.	PARTICULARS	ANNEXURES	PAGES NO.
1	Memo of Petition		1-2
2	Copy of Appeal & Order	A	3-11
4	Wakalathnama		12

Appellant

Through

Dr. Fawad Jan

Advocates, Peshawar

Dated: 02.05.2024

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR
Khyber Pakhtunkhwa Service Tribunal

E.P. No. 550/2021

Diary No. 12566

Ihsan Ullah, Constable No 149, Investigation Wing of Police, Charsadda, Dated 07-05-2021

.....Petitioner

Versus

1. Government of KPK, through Secretary Home & Tribal Affairs KPK, Peshawar.
2. Inspector General of Police KPK, Peshawar.
3. Additional Inspector General of Police Investigation KPK, Peshawar.
4. Regional Police Officer, Mardan.
5. District Police Officer, Charsadda.

.....Respondents

Application for Implementation of the Order / Judgment of this Hon'ble Tribunal dated: 21.12.2022 passed in the Service Appeal No. 5920/2021 against the Respondent No. 1 to 5 and directing him to restore the previous position of the petitioner with all back benefits.

Respectfully Sheweth,

The petitioner most humbly submits as under:

1. That the petitioner filed Service Appeal No 5920/2021 against the order dated: 6.5.2021 of respondent No 4 and order dated 26.10.2020 of respondent No 5. (copy Appeal is Attached as Annexure A)
2. That this Hon'ble Tribunal was pleased to allow that appeal in favour of petitioner and directed the respondents to restore the previous position of the petitioner with all back benefits. (Copy of Judgment/ Order Is Attached As Annexure B)
3. That the respondents had not yet made compliance to the order / Judgment passed by this Hon'ble Tribunal and the petitioner has not been restored to his previous position nor any efforts has been made / initiated by the respondents in this respect, hence this petition.

It is therefore most humbly prayed that on acceptance of this application the respondents may kindly be directed to implement the order / judgment dated: 21.12.2022 of this Hon'ble Tribunal in true letter and spirit.

Any other relief which this Hon'ble Court deems fit and necessary for the safe administration of justice.

Dated: 25.4.2024

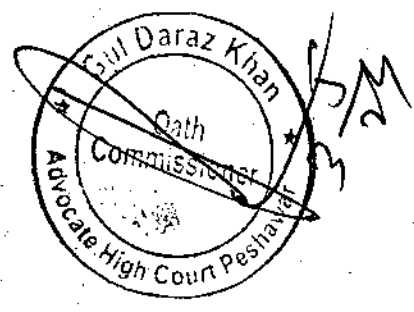
Advocate

Ihsan
Petitioner
Through *Fawad*
Dr Fawad Jan

AFFIDAVIT:

I Ihsan Ullah Constable No 149 Investigation Wing Of Police Charsadda solemnly affirm on oath that the contents of the above application is true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble tribunal.

Ihsan
Deponent



Handwritten signature and initials 'A' at the top of the page.

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 5920/2021

Date of Institution ... 04.06.2021
Date of Decision ... 21.12.2022



Ihsan Ullah, Constable No 149. Investigation Wing of Police, Charsadda.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs KPK, Peshawar and four others.

... (Respondents)

Dr. Fawad Jan,
Advocate

... For appellant.

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

Mrs. Rozina Rehman
Miss Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

“That on acceptance of this appeal the impugned order dated 06.05.2021 of respondent No. 4 and order dated 26.10.2020 of respondent No. 5 may please be set aside and the appellant position may kindly be restored with all back benefits.”

Handwritten signature on the left side of the page.

ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

2. Brief facts of the case are that appellant was serving as constable in the Investigation Wing of PS Serdheri, District Charsadda.

That the appellant appeared in the departmental exam (B-1) on 20.09.2020 at Salateen Wedding Hall, Charsadda and soon after closing time he handed over his answer sheet to the invigilator. He then took his ailing wife to hospital, where he received call from DSP for his alleged involvement in unfair means in the (B-1) exam. A charge sheet was issued and inquiry was conducted. Final show cause notice was issued to the appellant and major punishment of reduction in pay by one stage was awarded vide order dated 26.10.2020. He filed departmental appeal, which was dismissed; hence the present service appeal.

3. We have heard Fawad Jan, Advocate learned counsel for the appellant and Asif Masood Ali Shah, learned Deputy District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Fawad Jan Advocate, learned counsel for the appellant submitted that impugned orders were against law, facts and material on record, hence liable to be set aside as no opportunity of personal hearing was ever afforded to the appellant, that the impugned orders were passed on slipshod manner which were liable to be set aside. He further contended that the impugned orders were based on political influence and malafide intention, therefore, illegal and without jurisdiction. He therefore, requested for acceptance of present service appeal.

5. Conversely, learned AAG submitted that video was noticed by the high ups wherein it was found that police official identified as LHC Abid of elite platoon who was deputed for security duty at the main

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5

3

gate of examination centre was solving a paper of B-1 examination. To probe into the matter, a preliminary inquiry was conducted and during the course of inquiry LHC Abid was called and his statement was recorded who stated that the appellant had given his number and requested to solve the paper for him, so he (Abid) went to the washroom and started solving the paper. Some part of the paper was solved by LHC Irshad. The inquiry officer, therefore, recommended proper departmental inquiry. Paper of the appellant was also canceled by the ETEA authorities. Departmental inquiry against the appellant was also conducted wherein allegations were proved and he was awarded major penalty of reduction in pay by two stages according to law.

6. From the record it is evident that a preliminary inquiry was conducted by DSP Headquarter, Charsadda wherein he held responsible the appellant for the said act. Inquiry report is available in the file (annexed with the comments) wherein the inquiry officer categorically submitted that the inquiry was verbally marked to dig out the real facts which means that it was a fact finding inquiry and as per his recommendations the matter needed proper departmental inquiry as other officials were also involved and that if approved proper inquiries against LHC Abid, LHC Irshad and FC Ihsan Ullah may be ordered to identify the other unknown officials. For the purpose of scrutinizing the conduct of the appellant one Muhammad Riaz DSP Sardheri was deputed to conduct proper inquiry. His inquiry report is available on file and subject of the inquiry was fact finding inquiry against constable

8

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6


Ihsan Ullah. It means that no proper regular inquiry was conducted against the appellant, LHC Abid and LHC Irshad. Statements of Abid and Irshad were not properly recorded in presence of the appellant which means that department was not given any opportunity of cross examination. It has been held by the august Supreme Court of Pakistan that it was obligatory for the inquiry officer in regular inquiry to allow even handed and fair opportunity to the accused to place his defence and if any witness was examined against him then a fair opportunity should also be afforded to cross examine the witness. Whereas a discrete or fact finding inquiry was conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct was made out to initiate disciplinary proceedings. Reliance is placed on 2022 SCMR 745. No departmental proceedings were initiated against LHC Abid and LHC Irshad, so appellant was discriminated and major punishment was awarded to the appellant only.

7. In the wake of above discussion, this appeal is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
21.12.2022


(Fareeha Paul)
Member (E)

Certified to be true copy


(Rozina Rehman)
Member (J)

EXAMINER
Khyber-Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 24-4-24
Number of Words 47
Copying Fee 25/-
Urgent Yes
Total 25/-
Name of Applicant 24-4-24
Date of Copying 24-4-24
Date of Delivery of Copy 24-4-24



A/2 (7)

**BEFORE K.P.K, SERVICE TRIABUNAL, K.P.K,
PESHAWAR**

Appeal No. 5920 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5881

Dated 04-06-2021

Mr. Ihsan Ullah, Constable No.149, Investigation Wing of
Police, Charsadda

.....Appellant

Versus

1. Government of KPK, through, Secretary Home & Tribal Affairs KPK, Peshawar.
2. Inspector General of Police, KPK, Peshawar.
3. Additional Inspector General of Police Investigation, KPK, Peshawar.
4. Regional Police Officer, Mardan.
5. District Police Officer, Charsadda

.....Respondents

APPEAL U/S-4 OF THE KHYBER
PAKHTOONKHWA TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED:
06.05.2021 OF THE RESPONDENTS NO.4,
WHEREBY THE APPELLANT'S
DEPARTMENTAL APPEAL WAS DISMISSED
AND THE IMPUGNED ORDER
DATED:26.10.2020 OF THE RESPONDENT
NO.5 WAS MAINTAINED WHEREBY THE
APPELLANT AWARDED THE MAJOR
PUNISHMENT OF REDUCTION IN PAY BY
TWO STAGES, WITHOUT ANY REASONABLE
AND PROBABLE CAUSE, WHICH IS ILLEGAL,
AGAINST LAW AND FACTS AND LIABLE TO
BE REVERSED.

Re-submitted to -day
and filed.

Registrar
9/6/2021

ATTESTED

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2

Prayer in Appeal:

ON ACCEPTANCE OF THIS APPEAL THE IMPUGNED ORDER DATED: 06.05.2021 OF THE RESPONDENTS NO.4, AND THE IMPUGNED ORDER DATED: 26.10.2020 OF THE RESPONDENT NO.5 MAY PLEASE BE SET-ASIDE AND THE APPELLANT POSITION MAY KINDLY BE RESTORED WITH ALL BACK BENEFITS.

Respectfully Sheweth..

Facts:-

Appellant most humbly submits as under:

1. That the Appellant is serving as Constable, in the Investigation Wing, Police Station Serdheri, District Charsadda.
2. That the Appellant performing his job as constable in the Investigation Wing, Charsadda, he is punctual / regular in his duties and no complaint against the appellant.
3. That the appellant appear in departmental Exam "B-1" on 20.09.2020 at Salateen Wedding Hall, Charsadda, and soon after closing time, the appellant handover the answer sheet to the invigilator and left the hall.
4. That after the examination paper, the appellant took his wife to hospital, the appellant received phone call from Deputy Superintendent of Police (DSP) that you are involved in an unfair means in your B-1 Exam.
5. That during the paper time, no incriminating materials was recovered from my personal possession, and a fabricated, concocted and self engineered case was made against the appellant that the appellant is involved in cheating.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

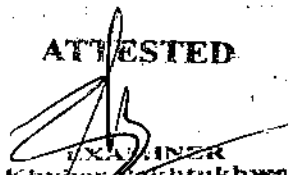
9

6. That thereafter, a charge sheet was issued to the appellant on 24/09/2020 and fact findings inquiry order were issued by the District Police Officer on 08/10/2020 nominated DSP Serdheri for probing the matter. After completing the inquiry, an inquiry report was produced before the Respondent No. 4. {Copy of Charge Sheet and Inquiry Order are Annexure "A" & "B"}
7. That thereafter a Final show cause notice was issued to the Appellant on 12/10/2020 and reply of the same was submitted on 13/10/2020. {Copy of Show Cause and Reply are Annexure "C" }
8. That the respondent No.5, without informing and awarding personal hearing to appellant, without any plausible reasons awarded the major punishment of reduction in pay by two stages vide impugned Order No.1248-51/HC dated. 26.10.2021, which have no concern with the reality, and against law and the appellant was kept in dark that the proceedings is in process against all the official. {Copy of impugned Order and salary slips are attached as annexure-D }
9. That the appellant was not informed about the impugned order dated: 26.10.2020 and when the appellant got knowledge, the Appellant filed departmental on 04.03.2021 but the respondent No.4 without scrutinizing the matter passed the impugned Order dated 06.05.2021 and dismissed the departmental appeal.
{Copy of the departmental appeal /Appeal and order are attached as Annexure- E & F}.
10. That feeling aggrieved from the impugned orders of respondent No. 4 & 5 preferring this service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUND:

- A. That the impugned orders of Respondent No.4 and 5 dated 06.05.2021 and 26.10.2020 is against law, facts and material on record, hence liable to be set-aside.
- B. That the impugned orders of awarding major punishment to the Appellant have been passed on political influence. It is evident from the impugned order

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

10

which is violation of rules and legal provision and the authority did not used his mind independently but impugned orders have been passed on mala fide intention.

- C. That the impugned orders are issued without giving any opportunity of hearing to appellant and passed the impugned orders without fulfilling the legal requirements and passed the impugned orders in slipshod manner, such practice adversely effects efficiency of incumbents and also reduces their confidence and faith in public.
- D. That the Appellant per policy of civil servant should be given an opportunity of hearing and the same has not been done, which seems to be injustice with Appellant.
- E. That the appellant belongs to very poor family and according to civil servant laws and impugned orders without fulfilling the legal requirements is nullity in the eye of law and also against all norms of natural justice.
- F. That the impugned Orders dated. 06.05.2021 and 26.10.2021 is totally based on political influence and mala fide intentions are illegal, malafide, without jurisdiction and without lawful authority, therefore, are liable to be set-aside.
- G. That the order of the Respondent No.4 & 5 suffers from legal and factual infirmities and mis-application of law as laid down by the August Supreme Court of Pakistan in subject.

IT IS, THEREFORE, RESPECTIVELY PRAYED
THAT ON ACCEPTANCE OF THIS APPEAL
THE IMPUGNED ORDER DATED: 06.05.2021
OF THE RESPONDENTS NO.4, AND THE

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

IMPUGNED ORDER DATED:26.10.2020 OF
THE RESPONDENT NO.5 MAY PLEASE BE
SET-ASIDE AND THE APPELLANT POSITION
MAY KINDLY BE RESTORED WITH ALL BACK
BENEFITS.

11

5

Appellant
Through:

Dr. Fawad Jan
Advocate, Peshawar

Dated: 04.06.2021

VERIFICATION:

It is verified that (as per information given me by my client) all the contents of the instant appeal are true and correct and nothing has been concealed intentionally from this Hon'ble Tribunal.

Advocate

Note:

That no such like petition / Appeal on this subject matter has earlier been filed before this Hon'ble Tribunal.

Advocate

ATTESTED

EXAMINER
Kayhan Paktukhwa
Serye Tribunal
Peshawar

۱۹۱۰

۱۹۱۰.۱۰.۲۰۲۳

۱۱۹۱

۱۱۹۱

۱۱۹۱

۱۱۹۱

۱۱۹۱

۱۱۹۱

۱۱۹۱

۱۱۹۱

(-WAKALAT NAMA-)

12

BEFORE THE
KP SERVICE TRIBUNAL, PESHAWAR

IHSAN ULLAH VERSUS GOVT OF KP

KNOW ALL to whom these presents shall come that I/We, the under appoint
Dr. Fawad Jan, Advocate High Court Peshawar having B.C No. 19-1109 for the
Pehman namely Ihsan Ullah in Execution.

To be the advocate for the High Court in the above-mentioned case to do all the
following acts, deeds and things or any of these that is to say:

- 1) To act, appear 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 revision or execution or in any other stage of its progress until its
final decision.
- 2) To present pleadings, appeals cross objections or petitions for execution, review,
revision, withdrawal, compromised or other petitions or affidavits or other
documents as shall be deemed necessary or advisable for the prosecution/
defense of the said case at all its stage,
- 3) To withdraw or compromise the said case or submit to arbitration any
differences or disputes that shall arise touching or in any manner relating to the
said case.
- 4) To receive monies and grant receipts therefore and to do all other act and things
which may be necessary to be done for the progress in the courses of the
prosecution / defense of the case.
- 5) To employ, authorize any other legal practitioner to assist or exercise the
power and authority hereby conferred on the Advocate whenever he may think
to do so.

And I/WE hereby agree to ratify whatever the Advocate for his substitute shall do in this
behalf, and I/We hereby agree not to hold the Advocate or his substitute responsible for the
result of the said case consequence of his absence from the court when the said case is called
up for hearing.

And I/WE hereby agree that in the event of the whole or any part of the fee agreed by me/us
to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the
prosecution/defense of the said case until the same is paid.

WHEREFORE I/We hereunder set my/our hands to these present the contents of which
have been explained to and understood by me/us.

The 02 day of May in the year 2024 accepted subject to the above
terms, and payment of the Full Fee

Fawad

Ihsan
Signature / Thumb Impression

Dr. Fawad Jan, Advocate High Court, Peshawar
CNIC: 17101-0278021-9
Cell No. 0314-9828818

1. 2000

20

1000

1000

1000

1000

1000

1000

1000

1000

1000

1000