Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 781/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3.
1	24.07.2024	The implementation petition of Mr. Zahid Ali submitted today by Mr. Mir Zaman Safi Advocate. It is fixed for implementation report before Single Bench at Peshawar on 26.07.2024. Original file be requisitioned. AAG has noted the next date. Parcha peshi given to counsel for the petitioner. By the order of Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No. 781 /2024
In

Appeal No.6876/2020

ZAHID ALI **VS** **POLICE DEPTT:**

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PETITIONER/APPLICANT

THROUGH:

MIR ZAMAN SAFI
ADVOCATE
MOBILE NO.0333-9991564
0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No. 781 /2024
In
Appeal No.6876/2020

Mr. Zahid Ali, Senior Clerk,
Special Branch, Peshawar.

.....APPELLANT

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2- The Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT OF THIS AUGUST TRIBUNAL DATED 08.01.2024 IN LETTER AND SPIRIT

R/SHEWETH:

1- That the petitioner filed Service appeal bearing No. 6876/2020 before this august Service Tribunal against the impugned order dated 27.01.2020 whereby major penalty of dismissal from service was imposed upon the petitioner.

2- That appeal of the petitioner was finally heard by this august Tribunal on 01.08.2024 and was decided in favor of the petitioner vide judgment dated 01.08.2024 with the view that ***"For what has been discussed above, we are unison to set aside the impugned order and re-instate the appellant with all back benefits".*** Copy of the judgment is attached as annexure.....**A.**

3- That after obtaining attested copy of the judgment dated 01.08.2024 the petitioner submitted the same alongwith application before the respondents for implementation but till date the judgment of this august Tribunal has not been implemented by the respondents in letter and spirit. Copy of the application is attached as annexure.....**B.**

4- That the petitioner has no other remedy but to file this implementation petition.

It is, therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 01.08.2024 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 24.07.2024.

PETITIONER

ZAHID ALI

THROUGH:

MIR ZAMAN SAFI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Implementation Petition No._____/2024
In

Appeal No.6876/2020

ZAHID ALI **VS** **POLICE DEPTT:**

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

ATTESTED
Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

MIR ZAMAN SAFI
ADVOCATE

24 JUL 2024

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

"A"

Service Appeal No. 6876/2020

BEFORE: MR. KALIM ARSHAD KHAN... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Zahid Ali, Ex-Senior Clerk, Special Branch, Peshawar.
.... *(Appellant)*

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar.
.... *(Respondents)*

Mr. Noor Muhammad Khattak
Advocate ... For appellant

Mr.Muhammad Jan
District Attorney ... For respondents

Date of Institution.....18.01.2020
Date of Hearing.....08.01.2024
Date of Decision.....08.01.2024

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 on acceptance of this appeal the impugned order dated 27.01.2020 may very kindly be set aside and the appellant be re-instated into service with all back benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant."**

2. Brief facts of the case are that appellant was serving in the Police Department when he was charged in FIR No.436 dated 24.05.2017 and accordingly was arrested. That on 28.07.2017 he was released on bail by the Peshawar High Court. That on 19.08.2018 he was dismissed from service, therefore, he filed Service Appeal No.590/2018 and vide order dated

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

04.10.2019 of this Tribunal, he was reinstated into service for the purpose of de-novo inquiry. Consequently, de-novo inquiry was conducted and charge sheet alongwith statement of allegations were issued. That show cause notice was also issued which was replied by the appellant. That vide impugned order dated 27.01.2020, he was dismissed from service. Feeling aggrieved, he filed departmental appeal, which was not responded, hence, the instant 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 the appellant argued that the impugned order dated 27.01.2020 was against law, facts and norms of natural justice, hence, liable to be set aside. He submitted that the appellant had not been treated in accordance with law and rules and the respondents had violated Articles-4 & 10 of the Constitution of Islamic Republic of Pakistan, 1973. Further argued that no regular inquiry had been conducted before issuing the impugned order dated 27.01.2020 which act was not in accordance with law. Lastly, he concluded that no chance of personal hearing had been given to the appellant and the impugned order was liable to be set aside.

5. Conversely, learned District Attorney submitted that proper procedure under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 was adopted. He submitted the impugned order was in accordance with law and rules and no violation had been committed. Further submitted that after proper de-novo inquiry and after fulfillment of all codal formalities, the impugned order was passed, hence, the appellant had rightly been dismissed from service. Therefore, he requested for dismissal of the instant service appeal.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

6. Perusal of record reveals that appellant was serving in respondent/department as Senior Clerk when on 24.05.2017, he was charged in a criminal case registered vide bearing FIR No.436 under sections 460/452/302 PPC of Police Station Mathra, Peshawar. Appellant was arrested on the day of occurrence and was released on bail by worthy Peshawar High Court vide order 28.07.2017. Appellant was issued with charge sheet and statement of allegation upon his involvement in the criminal case and after observance of codal formalities, he was dismissed from service vide order dated 19.01.2018, which dismissal was challenged by the appellant in service appeal bearing No.590/2018, which was partially accepted for purpose of de-novo inquiry vide order dated 04.10.2019. Appellant was again charge sheeted on 22.11.2019 with the same charge of involvement of that FIR No.436 mentioned above, inquiry committee, after providing chance of hearing and defense, submitted report wherein appellant was held responsible for misconduct on the ground of his involvement in the criminal case.

7. Authority vide order dated 27.01.2020 imposed upon appellant major penalty of dismissal from service. The only charge against the appellant is his involvement in a criminal case bearing FIR No.436 dated 24.05.2017 under section 302/457 PPC on the basis of which appellant was departmentally proceeded culminating into his dismissal from service vide impugned order. Appellant was also tried by the competent court of law on the charge mentioned in FIR No.436, and after completion of trial, the appellant was acquitted from the charge on the ground that appellant, in his self-defense, opened fire upon the deceased, who had entered his house at night. The relevant para of the judgment of trial court i.e. AD&SJ VII Peshawar dated 29.11.2023 is reported here for ready reference;

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Keeping in view the state of affairs discussed above, the prosecution badly failed to discharge its duty of proving the charge against the accused, rather sufficient material is available on case file to substantiate initial report of the accused to the effect that the occurrence has taken place in exercise of right of private defence of body and property which right of private defence was further fortified even to the extent of causing death of trespasser, therefore, the accused facing trial Zahid Ali s/o Sardar Ali is hereby acquitted of the charges leveled against him vide captioned case FIR.

8. It is also pertinent to mentioned here that in accordance with S.96 PPC general exception mentioned in Pakistan Penal Code 1860 act done in private defense is not offense section 96 & 97 are given as under.

"Nothing is an offence which is done in the exercise of a right of private defense".

"Right of private defense of the body and of property. Every person has a right subject to restriction contaminated in Section 99, to defend, First; His own body, and the body of any other person, against any offence the human body. Sending; the property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence failing under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass. The trial court in its judgment dated 29.11.2023 held in a clear words that appellant exercise his right of self and private defense. So the very reason on the basis of which appellant was departmentally proceeded that commission of offence mentioned in FIR No.436 declare not an offence by the trial court of that criminal case and there is no other charge against the appellant then appellant deserve reinstatement."

9. Conviction of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper

ATTESTED

ENGINEER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

person entitled to continue his service, especially when the occurrence had not taken place during discharge of official duties nor is there any allegation that the appellant had misused his official position.

10. It is established from the record that charges of his involvement in murder case ultimately culminated in acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

11. For what has been discussed above, we are unison to set aside the impugned order and reinstate appellant with all back benefits. Costs shall follow the event. Consign.

12. *Pronounced in open court atPeshawar and given under our hands and seal of the Tribunal on this 8th day of January, 2024.*

(KALIM ARSHAD KHAN)
Chairman

(RASHIDA BANO)
Member (J)

*Kaleemullah

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

Date of Presentation of Application 12/02/24
Number of Words 570
Copying Fee 24/-
Urgent 6/-
Total 30/-
Name of Copyist
Date of Completion of Copy 12/02/24
Date of Delivery of Copy 12/02/24

"B" -9-

جناب عالی!

مودبانہ گزارش ہے۔کہ من سائل سال 2017 میں بوجہ کیس FIR علت نمبر 436 مورخہ 24-05-2017 جرم 302/457 تھانہ متھرا ضلع پشاور میں بہ امر مجبوری بعدازاں محکمانہ انکوائیری میں مورخہ 19-01-2018 سے محکمہ ہذا اسپشل برانچ سے ڈسمس ہوگیا تھا۔اب من سائل کو عدالت معظّمہ نے کیس میں باعزت بری قرار دیا اور پھر من سائل نے اپنی ملازمت کی بحالی کیلئے سروس ٹربیونل میں درخواست دئے۔جو کہ سروس ٹربیونل نے میرے درخواست قبول کرتے ہوئے من سائل کو تمام بقایاجات کے ساتھ نوکری پر بحال کیا ہے۔

(عدالت کا فیصلہ اور سروس ٹربیونل کا فیصلہ ہمراہ لف ہے)۔

گزارش ہے۔کہ من سائل کا محکمانہ بحالی حکمنامہ جاری کرکے مشکور فرمائیں۔

سینئر کلرک زاہد علی

مورخہ 19-02-2024

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

_____ *OF 2024*

Zahid Ali *(APPELLANT)*
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt: *(RESPONDENT)*
(DEFENDANT)

I/We Zahid Ali

Do hereby appoint and constitute ***MIR ZAMAN SAFI, Advocate, Peshawar*** *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.____/____/2024

CLIENT

ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:
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Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
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