


Form- A

FORM OF ORDER SHEET

Court of _____

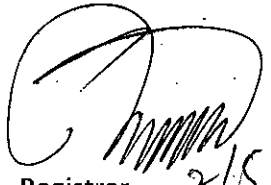
Implementation Petition No. 336/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	02.05.2024	<p>The implementation petition of Mr. Saeed ur Rehman resubmitted today by Roeeda Khan 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.</p> <p style="text-align: right;">By the order of Chairman</p> <div style="text-align: right;">  REGISTRAR </div>

The Execution petition of Mr. Saeed ur Rehman received today is returned to the counsel for the petitioner with the remarks that Two more copies/sets of the petition along with annexures i.e. complete in all respect may also be submitted with the petition within 15 days.


No. 1011 /S.T.

Dt. 2-5 /2024.


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar. 2/5/24

Kabir Ullah Khattak Adv.
High Court Peshawar.

Re-submitted
objection has
been removed


2-5-24

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7953/2021

Execution Petition No. 336 /2021

Saeed Ur Rehman Constable No 1246, S/o Gul Sharif R/o Akbar Pura Tehsil and District Nowshera.

..... Appellant/Petitioner

VERSUS

1. Regional Police Officer Mardan.
2. District Police Officer Nowshera.
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar
4. Inspector General of police Mardan Region-I Mardan.

..... Respondents

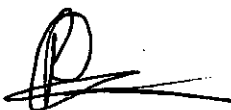
Index

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition with affidavit		1-2
2.	Copy of Judgment dated 10.10.2023	A	3-6
3	Copy of application	B	
4.	Wakalat Nama		

Dated 08/12/2023


Appellant/Petitioner

Through


Rooeda Khan
Advocates High Court,
Peshawar.

(1)

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7953/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12460

Dated 30/4/24

Execution Petition No. 336/2021

Saeed Ur Rehman Constable No 1246, S/o Gul Sharif R/o Akbar Pura Tehsil
and District Nowshera.

..... Appellant/Petitioner

VERSUS

1. Regional Police Officer Mardan.
2. District Police Officer Nowshera.
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar
4. Inspector General of police Mardan Region-I Mardan.

..... Respondents

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS FOR IMPLEMENTATION THE
JUDGMENT DATED 10/10/2023 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No. 7953/2021 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 10/10/2023. (Copy of Judgment is annexed as Annexure-A).
2. That after getting the attested copy of the above mention judgment the respondent department visited to respondent department and properly submitted an application for implementation of the said judgement but no response has been given by the respondent department. (Copy of application is attached as Annexure-B).

(2)


3. That the respondent Department is legally bound to obey the order of this Hon' able Tribunal in letter and spirit.
4. That the Petitioner has no other option but to file the instant execution petition for implementation of the Judgment of this Hon' able Tribunal.

It is therefore requested that on acceptance of this Petition the respondent Department may kindly be directed to implement the judgment passed by Hon' able Tribunal on 10.10.2023 in letter and spirit.

Dated 08/12/2023


Appellant/Petitioner

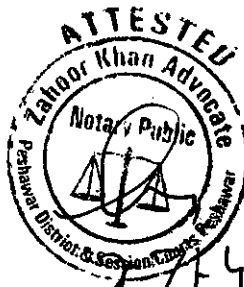
Through


Kooeda Khan
Advocates High Court Peshawar

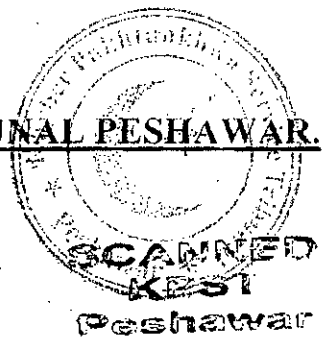
AFFIDAVIT

I, Saeed Ur Rehman Constable No 1246, S/o Gul Sharif R/o Akbar Pura Tehsil and District Nowshera do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.


DEPONENT _____



(A) (3)



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7953/2021
Date of Institution ... 30.12.2021
Date of Decision... 10.10.2023

Saeed-Ur-Rehman Constable No. 1246 S/o Gul Sharaf, R/o Akbar Pura Tehsil & District Nowshera.
... (Appellant)

VERSUS

Regional Police Office Mardan and 02 others.
... (Respondents)

MS. ROEEDA KHAN,
Advocate --- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General --- For respondents.

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant appeal are that during posting of the appellant in District Nowshera, departmental action was taken against him on the allegations of absence from special duty and he was awarded minor penalty of stoppage of one year increment with cumulative effect vide order bearing OB No. 810 dated 23.07.2010. The same was challenged by the appellant through filing of departmental appeal, which was rejected vide order dated 12.07.2019 passed by Regional Police Officer Mardan. The appellant then preferred revision petition before the Inspector General of Police Khyber

ATTESTED

Pakhtunkhwa Peshawar, which was also declined vide order dated 06.08.2021, hence the instant appeal.

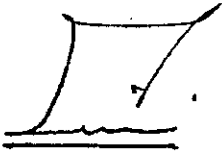
2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that no charge sheet, statement of allegations as well as show-cause notice were issued to the appellant and whole of the proceedings were carried out at his back without providing him any opportunity of self defence as well as personal hearing. He further argued that the appellant had never remained absent from duty and that the allegations of absence from duty were never proved against him through any regular inquiry proceedings. He next contended that the penalty in question was though imposed upon the appellant in the year 2010 but the same was not communicated to him and he got knowledge of the same in the month of May 2019 and thus challenged the same by way of filing departmental appeal. He further argued that the issue in question is one of financial nature, therefore, the same was not hit by bar of limitation. In the last he requested that the impugned orders are not sustainable in the eye of law, therefore, the same may be set-aside and the appeal in hand may be accepted as prayed for.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the allegations of absence from special

duty stood proved against the appellant in a proper inquiry, however record of the same was destroyed in the devastating flood of 2010 and is thus not available. He next contended that inquiry against the appellant was conducted by complying all legal and codal formalities and the appellant was provided opportunity of personal hearing as well as self defence. He further argued that the departmental appeal of the appellant was badly barred by time, therefore, the appeal in hand is not competent. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have gone through the record.



6. The alleged absence of the appellant from special duty was a factual controversy requiring conducting of regular inquiry, however respondents have failed to prove that any inquiry was conducted against the appellant regarding his alleged absence from special duty. The available record does not show that the appellant was provided any opportunity of personal hearing as well as self defence. The principle of natural justice enshrined in the maxim "*audi alteram partem*" is one of the most important principle and its violation is always considered enough to vitiate even most solemn proceedings. Supreme Court of Pakistan in its judgment reported as 2008 SCMR 934 has held that where adverse action is contemplated to be taken against the person/persons, he/they has/have a right to defend such action, notwithstanding the fact that the statute governing their rights does not contain provision of the principle of natural justice and even


(61)


in absence thereof it is to be read/considered as part of such statute in the interest of justice.

7. The appellant was awarded the impugned penalty vide impugned order bearing OB No. 810 dated 23.07.2010, however the same was admittedly not implemented till the year 2018. The respondents have though raised an excuse that the punishment could not be implemented as official record was destroyed due to devastating flood in the year 2010, however the afore-mentioned plea of the respondents holds no force for the reason that they have failed to produce any documentary proof, which could show that any official correspondence was made for reconstructing of official record allegedly destroyed in the year 2010. Moreover, the issue is one of financial nature and would not be hit by bar of limitation.

8. Consequently, the appeal in hand is allowed by setting-aside the impugned orders and one annual increment stands restored to the appellant with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.10.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified true copy
Naeem Amin
Khy. Service Tribunal
Peshawar

Date of Presentation _____ 07/11/23
Number of Words _____ 4-10
Copying Fee _____ 20/-
Urgent _____ 8/2
Total _____ 25/-
Name of _____
Date of _____
Date of _____

07/11/23
07/11/23

(B) (7)

To

the District Police Officer Nowshera.

Subject:

Application For Implementation of
judgment dated 10 $\frac{10}{23}$ in Service
appeal NO 7953/21

Respected Sirs

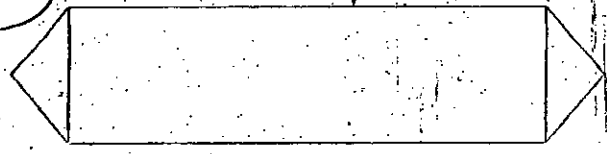
with due respect that the
applicant filed Service
appeal NO 7953/21 which was
accepted on 10 $\frac{10}{23}$ may kindly
Be Implemented

S applicant
Saeed-ur-Rahman

22 $\frac{1}{24}$



بعدالت حجاب سے طر اسٹول سے



2024 منتخب اسٹول

بیام و لیسو سعید الحسن

مورخہ
مقدمہ
دعوی
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے بیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کے لیے روک رکھا گیا

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و گواہی پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم بیروی یا ڈگری یا کٹرفہ یا اپیل کی برادگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداخت منظور و قبول ہوگا و دران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب یا بندہ ہوں گے۔ کہ بیروی مذکور کریں۔ لہذا وکالت نام لکھ دیا کہ سندر ہے۔

الرقوم 29 ماہ 20

الع د گ و الع کے لئے منظور ہے۔

Handwritten signatures and initials, including a large signature and the letter 'B'.