Form-A

FORM OF ORDER SHEET

Court of _____

Execution petition No. 932/2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	26/8/2024	The instant Execution petition presented today by Kabir ullah Khattak Advocate, may be entered in the relevant register and put up to the Court for proper order please. This restoration application is entrusted to S. Bench at Peshawar to be put up there on 9/9/2024. REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 932 /2024

In
Service Appeal: 1932/2023

Sher Aman (Naib Qasid) S/o Sardar Khan R/o Mian kallay Swabi.

..... Appellant

VERSUS

Secretary Elementary & Secondary Education KPK Peshawar & others

.....Respondents

INDEX

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition along with affidavit		1-2
2.	Copy of Judgment	A	3-7
3	Copy of application	B	8
4.	Wakalat Nama		9

Dated 26/08/2024

Appellant/Petitioner

Through

Kabir Ullah Khattak
Advocate High Court Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 932 /2024

In

Service Appeal: 1932/2023

Khyber Pakhtukhwa Service Tribunal
Diary No. 15191
Dated 26/8/24

Sher Aman (Naib Qasid) S/o Sardar Khan R/o Mian kallay Swabi.

..... **Appellant**

VERSUS

1. Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. The Director Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (male) Swabi.

.....**Respondents**

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 11/07/2024 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No. **1932/2023** before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 11/07/2024. (Copy of Judgment is annexed as Annexure-A).

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. And properly submitted an application to respondent Department for the implementation, however they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal. (copy of application is attached as Annexure-B).

3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.

4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

Dated 26/08/2024

Appellant/Petitioner

Through

Kabir Ullah Khattak

&

Roeeda Khan

Advocates High Court Peshawar

AFFIDAVIT

I, Sher Aman (Naib Qasid) S/o Sardar Khan R/o Mian Kallay Swabi 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

ATTESTED

(A) (3)

Khyber Pakhtunkhwa Service Tribunal Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

BEFORE: **AURANGZEB KHATTAK ... MEMBER (Judicial)**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No. 1932/2023

Date of presentation of Appeal.....19.09.2023
Date of Hearing.....11.07.2024
Date of Decision.....11.07.2024

Sher Aman (Naib Qasid) S/o Sardar Khan, R/o Mian Kalay Swabi .....*Appellant*

Versus

1. Secretary Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar at Civil Secretariat Peshawar.
2. The District Education Officer (Male) Swabi.
3. The Director Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar. .....(*Respondents*)

Present:

Mr. Yasir Khalid, Advocate .....For appellant.
Mr. Riaz Ahmad Paindakhel, Additional Advocate General ...For respondents

.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant Sher Aman, has impugned through the instant appeal, the order dated 21.12.2016, whereby major penalty of removal from service was imposed upon him on the allegations of absence from duty with effect from 25.05.2016. Feeling aggrieved from the order dated 21.12.2016, the appellant filed departmental appeal on 06.07.2023, which was rejected vide order dated 21.08.2023. The appellant has now approached this Tribunal through filing of instant service appeal on 19.09.2023 for redressal of his grievance.

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

30/7/24

2. The respondents were summoned, who contested the appeal by way of filing their respective replies/comments.

3. Arguments heard and case file perused.

4. The learned counsel for the appellant contended that the appellant was performing his duties as Naib Qasid in GMS Mian Killi Swabi and on 25.05.2016, he was arrested by the government agencies and detained him for about seven years, however, he was found innocent and released on 17.06.2023 and during the said period in his absence, the respondents illegally removed him from service on 21.12.2016. He next contended that the absence of the appellant from duty was not willful but was due to his arrest by the government agencies on the baseless allegations. He further contended that no show-cause notice, inquiry, or personal hearing was afforded to the appellant, violating principles of natural justice and making the removal order illegal. He also contended that the discriminatory treatment is evident in the successful reinstatement of Muhammad Ali, who was also removed from service on the same allegations, while rejecting the appellant's appeal. He next argued that the lack of due process, such as issuing a show-cause notice and conducting an inquiry, signifies malafide intentions by the respondents. In the last he contended that the removal order violates the appellant's fundamental rights, therefore, the appeal in hand may be accepted by reinstating the appellant in service with all back benefits.

5. Conversely, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appellant and contended that the removal was based on the appellant's prolonged absence, which disrupted the functioning of the institution. He next contended that the appellant kept the department unaware about his arrest by the government agencies, therefore, he was rightly proceeded under Rule-9 of Khyber Pakhtunkhwa Governments Servants (Efficiency & Discipline) Rules, 2011. He further contended that the due process was followed by issuing charge sheet as well as statement of allegations and making publication in two leading newspaper. He next argued that the decision regarding Muhammad Ali's reinstatement was based on specific mitigating factors that are not applicable in the appellant's case. He further argued that the appellant was removed from service vide order dated 21.12.2016 and he filed departmental appeal on 06.07.2023, which is badly barred by time, therefore, the appeal in hand is liable to be dismissed in this score alone. In the last he requested, that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

6. The perusal of the record would reveals that the appellant, while serving as Naib Qasid in Government Middle School Mian Killi, was arrested by the government agencies on 25.05.2016 and to this effect Head Master of the GMS Mian Killi also sent written report about the occurrence to the DEO Swabi on the same day. The appellant was then removed from service in his absence by the competent Authority i.e District Education Officer (Male) Swabi vide impugned order dated 21.12.2016 on the allegations of willful absence from duty. There is nothing on the case file to show that the appellant was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

convicted in any case or any FIR was registered against him during the period of his absence from duty. The record further reveals that the absence of the appellant was involuntary, resulting from his arrest by the government agencies, therefore, punishing the appellant for circumstances beyond his control is unreasonable and unjust. Furthermore, the removal of the appellant without a show-cause notice, inquiry, or the opportunity to defend him constitutes a gross violation of due process and principles of natural justice. Moreover, the removal order, based on alleged willful absence, while the appellant was in involuntary custody, lacks merit and factual basis, rendering it unsustainable in the eyes of the law. Muhammad Ali Sweeper of the same school was also arrested by the government agencies in 2016 and was remained absent from duties till the year 2023 but he was reinstated. As regard the reinstatement of Muhammad Ali, who faced similar circumstances, while rejecting the appellant's appeal, demonstrates clear discriminatory treatment, violating principles of equality and fairness, therefore, the removal order infringes upon the fundamental rights of the appellant as guaranteed under the constitution of Islamic Republic of Pakistan. Reliance is placed on the judgments of august Supreme Court of Pakistan cited in 2002 SCMR 71 and 2021 SCMR 1313.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7. As a sequel to the above, the impugned orders dated 21.12.2016 and 21.08.2023 are set-aside and the appellant is reinstated into service. However, the intervening period during which the appellant remained out of service till the announcement of this judgment shall

be treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11 day of July, 2024.*

AURANGZEB KHATTAK
Member (Judicial)

MUHAMMAD AKBAR KHAN
Member (Executive)

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Khyber Pakhtunkhwa Service Tribunal Peshawar

30/7/24

"Naeem Amin"

Date of Presentation of Application 29-7-24
Number of Words 57
Copying Fee 25/-
Urgent —
Total 25/-
Name of Copyist —
Date of Completion of Copy 30-7-24
Date of Delivery of Copy 30-7-24

(8) "B"

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر ضلع حلوائی

درخواست بمراد Implementation اپیل نمبر 1932/23

فیصلہ مورخہ 11-7-2024

جناب عالی :- سائل حسب ذیل عرض رساں ہے۔

1:- یہ کہ سائل کو بعدالت جناب سروس ٹریبونل نے فورم فیصلہ مورخہ 11-7-2024 کو نوکری پر بحال کیا۔ (فیصلہ کی کاپی لف ہے)

لہٰذا استدعا ہے کہ عدالت حضور کی فیصلہ کو Implement کرتے سائل کو نوکری پر بحال کرنے کا حکم صادر فرمائیں۔

سائل شبیر اعوان مورخہ 5-8-2024

نائب قاصد

قیمت 50 روپے

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PESHAWAR BAR ASSOCIATION

51717

ایڈوکیٹ: [signature]

بارکونسل / ایسوسی ایشن نمبر:

رابطہ نمبر: 03330216900

بعدالت جناب: سروس ٹربیونل پشاور

دعویٰ:	منجانب: اسد نثار
علت نمبر:	
مورخہ:	نثر اسد بنام ایلکشن
جرم:	
تھانہ:	

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام پشاور کیلئے کبیر اللہ خٹک ایڈووکیٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں۔ لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم: 26/ 8 /2024

PESHAWAR BAR ASSOCIATION KHYBER PAKHTOONKHWA

العبد   گواہ شد   العبد

مقام پشاور کے لیے منظور ہے۔

Accepted
RM

نوٹ: اس وکالت نامہ کی فوٹو کاپی نا قابل قبول ہوگی۔