


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1113/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.09.2024	<p>The implementation petition of Mr. Rafi Ullah submitted today by Mr. Afrasiab Khan Wazir Advocate. It is fixed for implementation report before Single Bench at Peshawar on 30.09.2024. 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 order of the Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 1113 /2024
IN APPEAL NO.513/2023

RAFI ULLAH

VS

POLICE DEPTT:

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PETITIONER

THROUGH:


AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 113 /2024

IN APPEAL NO.513/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16052

Dated 25-09-2024

Mr. Rafi uliah, Constable No.7596, posted at seraie naurang, P.P manjiwala, bannu, Rang, District Lakki Mawrat.

.....PETITIONER.

VERSUS

- 1- The additional IGP/Commandant, frontier reserve police, Khyber Pakhtunkhwa, Peshawar.
- 2- Provincial police officer, Khyber Pakhtunkhwa, Peshawar.
- 3- Superintended of police, frontier reserve police, district bannu.

.....RESPONDENTS.

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 05.03.2024 IN THE ABOVE TITLED APPEAL IN LETTER AND SPIRIT

R/SHEWETH:

1- That the above mentioned appeal has been decided by this August Service Tribunal vides judgment dated 05.03.2024 in favor of the Petitioner.

2- That the petitioner filed the appeal against the impugned order 17.07.2018 and thereby it is allowed in favor of the petitioner vide judgment dated 05.03.2024 with direction reproduced as under;

“in light of the above discussion, the appeal in hand is allowed as prayed and the appellant is held entitled to all back benefits. Costs shall follow the event. Consign. Copy of Judgment dated 05.03.2024 is attached as annexure.....A.

3- That the petitioner repeatedly knocked the door of the respondents for implementation of the aforementioned judgment but they are not paying heed to it nor implementing the same.

It is therefore, most humbly prayed that on acceptance of this execution petition the respondents may please be directed to execute the judgment dated 05.03.2024 in letter and spirit.

Dated: 18.09.2024

PETITIONER

Rafi Ullah

THROUGH:

AFRASIAB KHAN WAZIR

&

SALMAN KHAN WAZIR

ADVOCATE(s) HIGH COURT

AFFIDAVIT:

I Mr. Rafi ullah, Constable No.7596, seraie naurang, P.P manjiwala, bannu, Rang, District Lakki Mawrat, do hereby solemnly affirm and declare that the content of the execution petition is true and correct to the best of my knowledge and belief and nothing has been concealed from this August Tribunal so far.

DEPONENT.

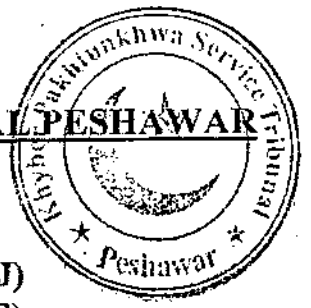
CERTIFICATE:

That no other execution petition has been filed between the parties before this August tribunal.

DEPONENT.



AA-3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 513/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Rafi Ullah, Constable No.7596, Posted at Seraie Naurang, P.P
Manjiwala, Bannu, Range, District Lakki Marwat.
... (Appellant)

VERSUS

1. Additional IGP/Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
 2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 3. Superintendent of Police, Frontier Reserve Police, District Bannu.
- ... (Respondents)

Mr. Afrasiab Khan Wazir
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....07.03.2023
Date of Hearing.....05.03.2024
Date of Decision.....05.03.2024

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:

R

ATTESTED *[Signature]*

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

“On acceptance of this instant service appeal of the appellant the impugned order dated 17.07.2018 may very kindly be set aside and the respondents may further please be directed to treat the total absence/out of service period with pay, 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, as given in the memorandum of appeal, are that appellant is serving Police Department as Constable and was performing his duty with zeal and zest; that the appellant was dismissed from service on the basis that he failed to combat terrorist when attacked on their check post, against which the appellant and his colleagues filed service appeal before this Tribunal, which was allowed vide judgment dated 16.04.2018 with direction to respondents to conduct de-novo inquiry. In compliance of judgment, respondents after conducting de-novo inquiry, reinstated the appellant into service and the absence period was treated as leave without pay. Feeling aggrieved, they again filed service appeal before this Tribunal, which was allowed vide order dated 26.07.2021. The appellant, being similarly placed employee, feeling aggrieved from the impugned order dated 17.07.2018, preferred 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 Deputy District Attorney and perused the case file with connected documents in detail.

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11-7-21
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4. Learned counsel for appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned orders passed by the respondents are against the law, facts, norms of natural justice and materials on record, hence not tenable and liable to be set aside. He further argued that absence of the appellant was not on his part but because of the illegal and unlawful suspension and dismissal from service by the respondents. He requested that appellant being similarly placed employee is entitled for the same benefits of judgment dated 27.06.2021 passed in favor of his colleagues, therefore, same be also extended to the appellant. He further argued that appellant was not found guilty during de-novo inquiry; he is entitled to all back benefits.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that respondents reinstated the appellant into service for the purpose of de-novo inquiry, hence proper inquiry was conducted. After completion of inquiry appellant was reinstated in service and his absence period was treated as leave without pay as he is legally not entitled for back benefits. He further contended that leave without pay does not fall in the ambit of any penalty as per police rules, 1975 and he is not entitled for back benefits on the principle of no work no pay.

6. Perusal of record reveals that the only issue, which needs to be resolved, whether the period, during which the appellant did not perform any duty, could legally be considered as leave without pay, when the appellant has

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not been found guilty during the de-novo inquiry. A perusal of the record would show that in wake of the unfortunate incident, occurring on the night falling between 4-11-2013 at 23:15hrs, disciplinary action was initiated against the appellant, which resulted in his dismissal from service vide order dated 06.01.2014, passed by the competent authority. The Service Appeal of the appellant was, however accepted by the Service Tribunal vide judgment dated 16.04.2018 and it was ordered that de-novo inquiry may be conducted into the matter. During the de-novo inquiry, the appellant was not found guilty of any charges leveled against him.

7. It is thus clear that the appellant remained absent from duty on account of his suspension and subsequent wrongful dismissal from service as a result of the previous inquiry. The absence of the appellant from duty was not due to any fault of the appellant, therefore, he shall be considered to have remained on duty during the period of his absence on account of his suspension and wrongful dismissal, as the appellant did not remained gainfully employed during the period of his absence.

8. In light of the above discussion, the appeal in hand is allowed as prayed and the appellant is held entitled to all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5th day of March, 2024.*

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

11/7/23
Date of Presentation of Application
40
Number of Words
Copying Fee
200
Urgent
Total
Name of Copyist
11/7/23
Date of Completion of Copy
11/7/23
Date of Delivery of Copy

(7)

The Superintendent of Police,
Further reserve Police, District Bannu.

Subject: Application for implementation of the
Judgment of Honorable Service Tribunal
in appeal No. 513/2023.

Sir,

- It is stated that you had filed Service
appeal before the Service Tribunal Peshawar Appeal
No. 513/2023 which is allowed and I have been
notified to all back benefits. So, it is requested
to grant me all the back benefits as per
spirit of the Honorable Service Tribunal Judgment,
as my it is right of back benefit.

Dated # 5-6-2024

Applicant
Kaf Ullah Khan

Constable No. 7596, P.P.

Mangiwala, Bannu Range
District Lakki Marwat

B-7

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POWER OF ATTORNEY/VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR

Rafi Ullah

VERSUS

Police Dept

Appeal No. _____-P/2024

On behalf of Petitioner/Appellant No.

I/ we the **petitioners/appellant** hereby appoint **Mr. Afrasiab Khan Wazir** Advocate in the above-mentioned case, to do all or any of the following acts, deeds things.

1. To appear, act, sign, record Statement, and plead for me/us in the above-mentioned case in this court /Tribunal or any other Court /Tribunal in which the same may be tried or heard, and other proceedings arising out of or connected therewith.
2. To sign, verify compromise and file or withdraw all proceedings, petitions, appeals, affidavits, and any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at its stages.
3. To receive payments of, and issue receipts for, all money that may be or become due and payable to us during the course or on the conclusion of the proceedings.
4. To do all other acts and things which may be deemed necessary or advisable during the proceedings.

AND HEREBY AGREE:

- a. To ratify whatever the said advocate may do in the proceedings.
- b. Not to hold the Advocate responsible if the said case be proceeded ex-parte or dismissed in default in consequence of absence from the Court/Tribunal when it is called for hearing.
- c. An advocate shall not be responsible for any concealment, fraud, misrepresentation made by the client before any tribunal, court or forum.
- d. That the Advocate shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid.

In witness whereof, I/We, have signed this power of Attorney/ Vakalatnama hereunder, the contents of which have been read/ explained to me/us and fully understood by me/ us.

Terms Accepted

Signatures

Accepted & Attested

Afrasiab Khan Wazir & Salman Khan Wazir

Advocates Peshawar High Court, Peshawar.

Office:

Room No. B-16, Govt College Chowk,

Nimra Plaza, Peshawar.

Cell: 0312-9888752.