


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1077/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.09.2024	<p>The implementation petition of Mr. Muhammad Sohail submitted today by Syed Noman Ali Bukhari 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. 1078 /2024
IN
SERVICE APPEAL NO. 687/2017

Muhammad Sohail

VS


The IGP and others.

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PETITIONER

THROUGH:


(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

Room No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 03065109438

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION PETITION No. _____/2024

IN

SERVICE APPEAL NO. 687/2017

Muhammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office Peshawar.

(APPELLANT)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, HQrs Investigation Wing Central Police Office Peshawar.
3. Senior Superintendent of Police Investigation Wing Central Police Office Peshawar.

(RESPONDENTS)

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 03.06.2022 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....


RESPECTFULLY SHEWETH:

1. That the petitioner filed service appeal No. 687/202 against the impugned dismissal order dated 02.03.2017.
2. That the said appeal was finally heard by the Honorable Tribunal on 03.06.2022 and the Honorable Tribunal was kind enough to accept the appeal of the petitioner thereby impugned orders was set-aside and the appellant is reinstated into service with all back benefits. (Copy of judgment is attached as Annexure-A).
3. That in compliance of the Honorable Tribunal Judgment dated 03.06.2022 the respondents passed order dated 08/11/2022, whereby the appellant was re-instated and denovo inquiry was ordered but later on the order dated 08/11/2022 was withdraw vide


order dated 16/11/2022 and the appellant was re-instated into service with all back benefits. **Copy of order and charge report is attached as annexure-B & C.**

4. That the appellant submitted his charge report but till date the posting was not handed over to the appellant despite several requests, the grant of back benefits and other benefits even posting and current salary was verbally refused to the petitioner and till date compliance was not made practically but to the extent of peace of paper. **(Copy of Application is attached as Annexure-D).**
5. That the respondents were totally failed in taking action regarded the Hon'able Tribunal Judgment dated 03-06-2022 in true letter and spirit.
6. That the respondent totally violated the judgment of Hon'able Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
7. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the same in letter and spirit.
8. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 03/06/2022 of this august Tribunal in letter and spirit and the respondent may be directed to grant posting to the appellant and release the monthly and all pending salaries to the appellant and also grant all back benefits. And other benefits, if any, may also be granted to appellant as per judgment. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.


PETITIONER
Muhammad Sohail

THROUGH:


(SYED NOMAN ALI BUKHARD)
Advocate, High Court
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION PETITION No. _____/2024
IN
SERVICE APPEAL NO. 687/2017

Muhammad Sohail VS **The IGP and others**

AFFIDAVIT:

It is affirmed and declared 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 the Honorable Tribunal.


DEPONENT

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BEFORE THE KHYBER PAKHTUNKHWA TRIBUNAL
PESHAWAR

Service Appeal 687 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 736

Dated 30-6-2017

Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar.

.....Appellant

VERSUS

1. Additional Inspector General of Police KPK, Peshawar.
2. Deputy Inspector General of Police. Headquarters
(Investigation) KPK Central Police Office, Peshawar.
3. Senior Superintendent of Police Investigation Wing Central
Police Office, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST THE IMPUGNED ORDER
DATED 02/03/2017, PASSED BY THE
RESPONDENT NO. 01 WHEREBY THE
APPELLANT HAS BEEN DISMISSED FROM
SERVICE AGAINST WHICH THE
APPELLANT FILED DEPARTMENTAL
APPEAL AGAINST THE ORDER DATED
27/03/2017 WHICH WAS REJECTED ON
DATED 01/06/2017 ON NO GOOD GROUNDS.

Filed to day

Sohail
Registrar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 687/2017

Date of Institution ... 30.06.2017

Date of Decision ... 03.06.2022

Mohammad Sohail Ex-Constable No. 87/Computer Operator
Investigation Wing Central Police Office, Peshawar.

... (Appellant)

VERSUS

Additional Inspector General of Police Khyber Pakhtunkhwa,
Peshawar and two others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

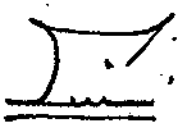
--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant, who was appointed as Constable, was serving as Computer Operator in the office of DSP (Legal) CPO Peshawar. Departmental action was taken against the appellant on the allegations of absence from duty with effect from 29.05.2013 and he was eventually dismissed from service vide order dated 03.04.2014. The appellant after exhausting of departmental remedy, filed Service Appeal No. 1069/2014 in this Tribunal, which was allowed vide judgment dated 06.09.2016 with the directions to the department for conducting of de-novo inquiry in the matter. De-novo inquiry was thus conducted against the appellant and he was again dismissed from service vide order



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dated 02.03.2017. The departmental appeal of the appellant was declined vide appellate order dated 01.06.2017, hence the instant service appeal.

02. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

03. Learned counsel for the appellant has contended that no charge sheet or summery of allegations was issued to the appellant during the de-novo inquiry proceedings and whole of the inquiry proceedings were conducted in haphazard manner; that the charge as was previously leveled against the appellant was absence from duty, however it is crystal clear from the record that as the appellant was being illegally arrested in a concocted case, therefore, he was unable to attend his duty; that during the de-novo inquiry proceedings, no witness was examined in support of the allegations leveled against the appellant; that the appellant has already been acquitted in case FIR No. 463 dated 03.06.2013 under Sections 419/420/468/471/411 PPC Police Station Chamkani Peshawar; that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

04. On the other hand, learned Deputy District Attorney for the respondents, while controverting the arguments of learned counsel for the appellant, has contended that the appellant had not only remained absent from duty but was also charged in various criminal cases pertaining to theft of vehicles; that stolen vehicles were recovered from possession of the appellant and he was also arrested and put behind the bars; that the appellant being involved in cases of theft of vehicles and sufficient material was available against him, therefore, he has rightly been dismissed from service.

05. Arguments heard and record perused.

06. A perusal of the record would show that the appellant had previously filed service appeal No. 1069/2014, which was decided

vide judgment dated .06.09.2016. Para-6 of the afore-mentioned judgment is reproduced as below:-

"We have carefully perused the record and have heard pro & contra arguments. A careful perusal of the enquiry report would show that the subject of inquiry is not in conformity with the allegations of the charge leveled against the appellant which charge is about absence from duty. To this charge reply of the appellant is that he was maliciously involved in a criminal case and his plea is that he was behind the bar in that case. The enquiry report does not show that the appellant was summoned from the judicial lockup to participate in the inquiry proceedings. It is thus clear that no chance of the defense has been given to the appellant. This is also worth mentioning that the criminal case against the appellant has not yet been decided. When the subject of enquiry is not in conformity with the charge of absence leveled against the appellant nor it was the charge that the appellant was involved in the offense of having possession of the stolen car which is the subject of inquiry, it is thus obvious that the proceedings against the appellant are not in accordance with rules and further that full opportunity of defense was not available to the appellant. In such a situation, the Tribunal is constrained to set aside the impugned orders. The same are set aside. The respondents are directed to put appellant to face proceedings de-novo in which full opportunity of defense be provided to the appellant. For the purpose of fresh proceedings, the appellant is reinstated into service. The proceedings shall be completed within a period of one month after receipt of this judgment. The matter of back benefits will be subject to the outcome of the de-novo proceedings. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room".

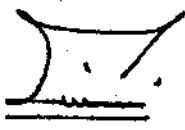
07. While going through the record we have observed that during the de-novo inquiry proceedings, vide office order dated 26.09.2016, Senior Superintendent of Police Investigation Khyber Pakhtunkhwa Peshawar had constituted an inquiry committee comprising of Mr. Tahir-ur-Rehman DSP and Mr. Shah Hassan DSP for de-novo inquiry into the matter. The relevant portion of the afore-mentioned office order dated 26.09.2016 is reproduced as below:-

"A committee comprising of Mr. Tahir-ur-Rehman and Mr. Shah Hassan DSPs Investigation of

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this unit is hereby constituted to initiate de-novo proceedings against the above named official in the light of charge sheet and summery of allegations already issued as well as in the light of the decision of the Honourable Provincial Service Tribunal".

08. It is thus evident from the contents of the above mentioned office order dated 26.09.2016 that no fresh charge sheet or summery of allegations were issued to the appellant and he was proceeded against on the same charge sheet and summery of allegations as were issued to him in the previous inquiry proceedings. Moreover, in his reply to the final show-cause notice, the appellant has categorically mentioned therein that no charge sheet and summery of allegations were issued to him during the de-novo inquiry proceedings. The charge sheet which was issued to the appellant in pervious inquiry proceedings is reproduced as below:-


"That you were posted in the office of DSP/Legal CPO, to work as computer operator, wherefrom you absented yourself without seeking any permission with effect from 29.05.2013 and hence DSP/Legal CPO reported the matter accordingly".

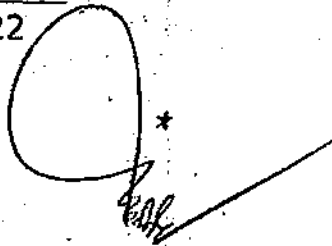
09. In view of the charge sheet issued to the appellant, the inquiry committee was required to have probed and submitted findings regarding absence of the appellant from duty but while going through the inquiry report, we have observed that main focus of the inquiry committee was on the allegations of involvement of the appellant in criminal cases pertaining to theft of vehicles. As far as the allegations of absence of the appellant is concerned, the appellant has mentioned in his reply to the show-cause notice that he rely on the reply submitted in response to charge sheet previously issued to him. In his reply to the charge sheet, the appellant has categorically mentioned that he was falsely implicated in case FIR No. 463/2013 of Police Station Chamkani and was confined in Central Jail Peshawar. The absence of the appellant was thus not willful, rather the same was due to his arrest in a criminal case, in which the appellant was later on acquitted vide judgment dated 10.03.2020 passed by Learned Judicial Magistrate-II Peshawar. During the previous inquiry proceedings, the fact of arrest of the appellant in a

criminal case, was well within the knowledge of the inquiry officer but even then the proceedings were kept continued which culminated into dismissal of the appellant from service vide order dated 03.04.2016. In view of material available on the record, it is evident that the inquiry proceedings were not conducted in the prescribed manner but carried out in a haphazard and slipshod way. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

10. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Findings in this judgment shall, however have no bearing upon the inquiry, if any, initiated against the appellant on the alleged allegations of his involvement in the concerned criminal cases. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

03.06.2022



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

OFFICE OF THE ADDL: INSPECTOR GENERAL OF POLICE,
INVESTIGATION, KHYBER PAKHTUNKHWA, PESHAWAR




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CORRIGENDUM

This office order issued over Endst:No.11915-20/EC/Inv dated 08.11.2022 is hereby withdrawn.

In light of the Khyber Pakhtunkhwa Service Tribunal Peshawar Judgement dated 03.06.2022, Ex-Constable/Computer Operator Muhammad Sohail is hereby reinstated in service w.e. from 03.06.2022 with all back benefits subject to the outcome of CPLA NO.660-P/2022 already filed in Apex Supreme Court of Pakistan, Islamabad.


(DR. ISHTIAQ AHMED MARWAT)PSP/PPM)
Addl: Inspector General of Police,
Investigation, CPO, Peshawar

No. 12087⁹³EC/Inv:dated Peshawar, the 16/11/2022
C.C for information & n/action to the:

1. Accountant General Khyber Pakhtunkhwa Peshawar
2. Registrar, Service Tribunal Khyber Pakhtunkhwa Peshawar
3. SSP/Investigation CPO, Peshawar
4. PA to Addl:IGP/Inv CPO, Peshawar
5. Accountant/Inv CPO, Peshawar
6. Official concerned.

VAKALAT NAMA

NO. _____ /20

IN THE COURT OF KP Service Tribunal, Peshawar,

Muhammad Sohail Appellant
Petitioner
Plaintiff

VERSUS

Police Deptt. Respondent (s)
Defendants (s)

I Muhammad Sohail (Petitioner) do hereby appoint and constitute the SYED NOMAN ALI BUKHARI Advocate High Court for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20

Sohail

(CLIENT)

ACCEPTED

Syed Noman Ali Bukhari

SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT
BC NO. 15-5643