Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No. 1003/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09.09.2024	The implementation petition of Mr. Ihsan Ullah submitted today by Uzma Syed Advocate. It is fixed for implementation report before Single Bench at Peshawar on 24.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner. By order of the Chairman REGISTRAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 1003 /2024
In

Service Appeal: 829/2022

Ihsan Ullah, Ex-Constable No. 820, District Police Officer Bannu. (Deceased) through legal heirs namely Mst. Sonila (Widow), 2. Mst Laiba D/o Ihsan Ullah Shah, 3. Mst. Horeen D/o Ihsan Ullah Shah, 4. Kaleem Ullah Shah S/o Ihsan Ullah and Muhammad Muheez Shah S/o Ihsan Ullah Shah

..... Appellants

VERSUS

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Bannu.
3. The Regional Policer officer Superintendent of Police Headquarter Counter Terrorism Department Peshawar.
4. The District Police Officer, Bannu

.....Respondents

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Dated 09/09/2024

Appellant
Through

Uzma Syed
Advocate High Court,
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 1003 /2024
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2. The Deputy Inspector General of Police, Bannu.
3. The Regional Policer officer Superintendent of Police Headquarter Counter Terrorism Department Peshawar.
4. The District Police Officer, Bannu

.....Respondents

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 07/05/2024 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioners filed Service Appeal No. **829/2022** before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 07/05/2024. (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 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 09/09/2024

Kaleem Ullah

Appellant/Petitioner

Through

Uzma Syed
Advocate High Court Peshawar

AFFIDAVIT

I, Ihsan Ullah, Ex-Constable No. 820, District Police Officer Bannu. (Deceased) through legal heirs namely Mst. Sonila (Widow), 2. Mst Laiba D/o Ihsan Ullah Shah, 3. Mst. Horeen D/o Ihsan Ullah Shah, 4. Kaleem Ullah Shah S/o Ihsan Ullah and Muhammad Muheez Shah S/o Ihsan Ullah Shah 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.

Kaleem Ullah

DEPONENT

ATTESTED
Zahoor Khan Advocate
Notary Public
Peshawar High Court & Session Courts, Peshawar

(3)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN... MEMBER (Executive)

Service Appeal No. 829/2022

Date of presentation of Appeal.....25.05.2022
Date of Hearing.....07.05.2024
Date of Decision.....07.05.2024

Ihsanullah Shah, Ex-Constable No. 820, District Police Officer Bannu. (Deceased) through legal heirs namely 1.Mst. Sonila (Widow), 2. Mst. Laiba D/o Ihsanullah Shah, 3. Mst. Hooreen D/o Ihsanullah Shah, 4. Kaleem Ullah Shah S/o Ihsanullah Shah and Muhammad Muheez Shah S/o Ihsanullah Shah .....***Appellants***

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Bannu.
3. The Regional Police Officer, Bannu Region.
4. The District Police Officer, Bannu.....(***Respondents***)

Present:

Miss. Uzma Syed, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney .....For respondents

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 19.07.2019 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 18.05.2022 WHEREBY THE APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUND.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record are that the appellant, while serving as Constable in Police Department, was proceeded against departmentally on the allegation of his involvement/arrest in case FIR No. 505 dated 11.06.2019 under sections 324/354/452/337L/15AA Police Station

Saddar District Bannu. On conclusion of the departmental proceedings, the appellant was awarded major punishment of dismissal from service with immediate effect vide order impugned order dated 18.07.2019. The punishment so awarded to the appellant, was challenged by him through filing of departmental appeal on 28.02.2022, which was rejected vide impugned order dated 18.05.2022. The appellant has now approached this Tribunal through filing of instant appeal on 25.05.2022 for redressal of his grievance.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing para-wise reply, raising therein numerous legal as well as factual objections. The defence setup by the respondents was a total denial of the claim of the appellant

3. It is pertinent to mention here, that the appellant died during the pendency of the instant appeal and the application submitted by his legal heirs for impleadment as appellants in the instant appeal was allowed vide order dated 25.10.2023.

4. Learned counsel for the appellant argued that the appellant was falsely charged in the case FIR No. 505 dated 11.06.2019 under sections 324/354/452/337L/15AA Police Station Saddar District Bannu and he was sent to jail on 12.06.2019. He next argued that charge sheet as well as statement of allegations and final show-cause notices was not served upon the appellant as he was behind the bar. He further argued that the inquiry proceedings were conducted at the back of the appellant without providing him any opportunity of personal hearing as well as self

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defence. He also argued that the disciplinary action was taken against the appellant on account of his involvement in the criminal case, however the appellant has already been acquitted by competent court of law vide judgment dated 16.02.2022, therefore, upon acquittal of the appellant in the concerned criminal case, the very ground on the basis of which he was proceeded against departmentally has vanished away. He next contended that under CSR-194/194-A the appellant was required to have been suspended till the decision of criminal case but the appellant was straightaway dismissed from service, which is against the law and rules. In the last, he argued that the impugned orders might be set-aside and the appeal in hand might be accepted as prayed for.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellant remained involved in case FIR No. 505 dated 11.06.2019 under sections 324/354/452/337L/15AA Police Station Saddar District Bannu and he was sent to jail on 12.06.2019. He next contended that the inquiry was conducted by complying with all legal and codal formalities. He further contended that criminal as well as departmental proceedings can run parallel and mere acquittal of the appellant in the criminal case could not be considered as a ground for his exoneration from charges in the departmental proceedings. He also contended that the appellant was not acquitted on merit, rather he was acquitted by extending him the benefit of doubts, therefore, his acquittal would not make him entitled to exoneration in the departmental proceedings. He next argued that the appellant was dismissed from service vide order dated 19.07.2019, therefore, he was required to have departmental appeal within 30 days, however the

appellant filed the departmental appeal on 28.02.2022, which is badly time barred. In the last, he argued that the impugned orders have been passed in accordance with law, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs.

6. We have heard the arguments of learned counsel for the appellants as well as learned Deputy District Attorney for the respondents and have perused the record.

7. A perusal of the record would show that the department had initiated disciplinary proceedings against the appellant on the ground that he was charged in case FIR No. 505 dated 11.06.2019 under sections 324/354/452/337L/15AA Police Station Saddar District Bannu, however, the appellant has already been acquitted in the said case vide judgment dated 16.02.2022 passed by learned Additional Sessions Judge-V, Bannu. The appellant was awarded major penalty on the sole ground that he was charged in criminal case. Admittedly, the appellant has been acquitted in the said case, therefore, the very ground on the basis of which disciplinary action was taken against the appellant, has vanished away. Nothing is available on the record, which could show that the acquittal order of the appellant has been challenged by the department by filing of appeal before the higher forum and the same has thus attained finality. Moreover, the competent Authority was required to have waited for outcome of criminal case but the competent authority without waiting for the outcome of criminal case, dismissed the appellant from service in a cursory manner.

8. Besides there is nothing available on the record, which could show that charge sheet as well as statement of allegations and final show-cause

notice were served upon the appellant as he was admittedly behind the bars due to his arrest in case FIR No. 505 dated 11.06.2019 under sections 324/354/452/337L/15AA Police Station Saddar District Bannu. Whole of the departmental proceedings against the appellant were conducted at his back and he was not provided any opportunity of personal hearing as well as self defence. August Supreme Court of Pakistan in its judgment reported as PLD 1981 SC-176 has graciously held that rules devoid of provision of final show cause notice alongwith inquiry report were not valid rules. Non issuance of final show cause notice and non-supply of copy of the findings of the inquiry officer to the appellant has caused miscarriage of justice as such in a situation, the appellant was not in a position to properly defend himself in respect of the allegations leveled against him, therefore, the impugned orders are liable to be set-aside.

9. So far as the question of limitation is concerned, the appellant was charged in FIR No. 505 dated 11.06.2019 under sections 324/354/452/337L/15AA Police Station Saddar District Bannu and he was sent to jail on 12.06.2019 and remained behind the bars till his acquittal on 16.02.2022. The appellant after his release from jail on 16.02.2022, submitted departmental appeal on 28.02.2022, which is well within time.

10. Consequently, the impugned orders stand set-aside and the appeal in hand is allowed as prayed for.

11. Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous

reinstatement into service will be ordered and he will be treated to have died during service. Costs shall follow the event. Consign.

12. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 07th day of May, 2024.*

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

"Naeem Amin"

09.01.2024 1. Appellant in person present. Mr. Muhammad Jan District Attorney for the respondent present.

2. Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 07.05.2024 before D.B. P.P given to the parties..

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

ORDER

07th May, 2024 1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the impugned orders stand set-aside and the appeal in hand is allowed as prayed for.

3. Before parting, we deem it necessary to expound for removal of difficulties in giving effect to operative part of the judgment that due to death of the appellant during pendency of appeal, his posthumous reinstatement into service will be ordered and he will be treated to have died during service. Costs shall follow the event. Consign.

4. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 07th day of May, 2024.*

(Muhammad Akbar Khan)
Member (Executive)

(Kalim Arshad Khan)
Chairman

Naeem Amin

بخدمت جناب ڈی۔ پی۔ آفیسر، صوابی

درخواست برائے عملدرآمد
فیصلہ ٹریبونل

جناب عالی: گزارش کی جاتی ہے۔

ہم سائلان نے سروس ٹریبونل میں اپیل جمع کی تھی
جو [illegible]-۶-۲۰۰۰ کو سائلان کے حق میں منظور ہوئی
ہے۔ آپ صاحبان سے گزارش کی جاتی ہے۔ کہ
فیصلہ پر عمل درآمد کر کے سائلان کو انکا
حق دیا جائے۔ آپ کی بڑی مہربانی ہوگی۔

احسان اللہ شاہ
بعوض دیگر
وارثان
بیوہ [illegible]
[illegible]، ابراہیم اللہ شاہ،
[illegible] شاہ

16-5-2024

Attested

وکالت نامہ

(1)

بعدالت جناب سروس ٹریبونل، پشاور

مقدمہ بعنوان

احسان اللہ شاہ بنام پولیس

مخالف

علت

مورخہ

دعویٰ

جرم

تھانہ

باعث تحریر آنکہ

مقدمہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ / جملہ

آن مقام پشاور کیلئے عظمیٰ سید ایڈووکیٹ سید لقمان ایڈووکیٹ

کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ 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 نظر ثانی وپیروی کرنے کا مختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جواب دہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول 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 ہونگے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

مقام پشاور کے لئے منظور ہے

دستخط ایڈووکیٹ