


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 991/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.09.2024	<p>The implementation petition of Ms. Yasir Ali submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 23.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Execution petition No. ⁹⁹¹ /2024
In Service Appeal No.1554/2023

Yasir Ali

V/S


Police Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition	-----	01-02
2	Copy of judgment dated 19.04.2024	A	03-07
3	Copy of application	B	08
4	Vakalat Nama	-----	09

PETITIONER

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Execution Petition No. 991 /2024
In Service Appeal No.1554/2023

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15683

Dated 11-09-2024

Yasir Ali, Ex-Constable No.236,
Posted at Barrier Hayat Qalandar Hangu.

(PETITIONER)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Hangu.

(RESPONDENTS)

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 19.04.2024 OF THIS HONOURABLE
TRIBUNAL IN LETTER AND SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 7374/2021 in this Honorable Tribunal against the order dated 24.01.2023, whereby the petitioner was dismissed from service and against the order dated 29.05.2023, whereby the departmental appeal of the petitioner has been rejected.
2. The appeal of the petitioner was heard and decided by this Honorable Tribunal on 19.04.2024. The Honorable Tribunal set aside the impugned order and the petitioner was reinstated into service with all back benefits, however minor penalty of withholding of two annual increments for two years, without cumulative effect has been imposed him on his careless attitude towards the official rifle alongwith ammunition provide to him. The period he remained out away from service as a result of order dated 24.01.2023, may be treated as leave of kind due. **(Copy of judgment dated 19.04.2024 is attached as Annexure-A)**
3. That the petitioner also field application on 04.06.2024 for implementation of judgment dated 19.04.2024 of this Honorable

Tribunal but action has taken by the respondents on his application by the respondents by implementing the judgment dated 19.04.2024 of this Honorable Tribunal. (Copy of application is attached as Annexure-B)

- 4. That the Honorable Service Tribunal reinstated the petitioner into service with all back benefits in its judgment dated 19.04.2024, but after the lapse of about more than four months, the respondents reinstate him into service by implementing the judgment dated 19.04.2024 of this Honorable Tribunal.
- 5. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 19.04.2024 of this Honorable Tribunal in letter and spirit.
- 7. That the petitioner has having no other remedy except to file the instant execution petition in this Honorable Tribunal for implementation of judgment dated 19.04.2024 of this Honorable Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 19.04.2024 of this Honorable Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

PETITIONER
Yasir Ali

THROUGH:

(TAIMURALI KHAN)
ADVOCATE HIGH COURT
&
(SHAKIR ULLAH TORANI)
ADVOCATE

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

DEPONENT



A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1554/2023

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



Yasir Ali, Ex-Constable No. 236, posted at Barrier Hayat Qalandar Hangu, (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Hangu. (Respondents)

Mr. Taimur Ali Khan,
Advocate ... For appellant

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

Date of Institution.....	12.07.2023
Date of Hearing.....	19.04.2024
Date of Decision.....	19.04.2024

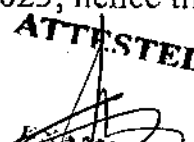
JUDGEMENT

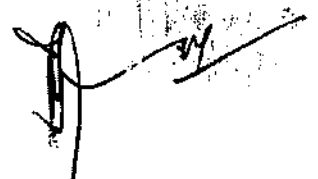
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.01.2023, whereby the appellant was dismissed from service and against the order dated 29.05.2023, received by the appellant on 16.06.2023, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 24.01.2023 and 29.05.2023 might be set aside and the appellant be reinstated into service with all back and consequential benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Police Department as Constable, in the year 2009. He

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

was posted at Barrier Hayat Qalandar Hangu and as the Department had not provided any place to keep his lodges, he hired a house at Muslim Abad, alongwith another constable, for keeping their lodges alongwith the weapons in the box allotted by the department. A person, namely Bismillah S/O Rizwan Ullah, often came to the house as he was in relation with the persons residing in the house. On 19.10.2022, the appellant, after performing his duty, kept the SMG Riffle in the box meant for it in the house and locked it. In the morning, when he came to the house, he saw that lock of his box was broken and his SMG Riffle was missing. He straightaway went to the Police Station City Hangu and brought the matter into the notice of SHO, who told him that the police, during search and strike operation, recovered SMG No. HA 1328 with 03 spare charges having 90 rounds of 7.62 bore from the possession of the said Bismillah. The appellant was kept in quarter guard and an FIR No. 1115 dated 20.10.2022 u/s 15-AA was lodged against Bismillah, however, the recovered weapon was not mentioned in the FIR. Charge sheet was issued to the appellant, in reply to which he denied the allegations and gave the real facts about the issue. An inquiry was conducted against him in which no proper opportunity was provided to him as neither statements were recorded in his presence nor any opportunity of cross examination was given to him and he was held guilty of the charges leveled against him. Show cause notice was issued to him which was duly replied and again he denied the allegations. He was dismissed from service vide order dated 24.01.2023. Feeling aggrieved, he filed departmental appeal which was rejected on 29.05.2023 which was received by the appellant from the office of respondent No. 3, through an application dated 16.06.2023; hence the instant service appeal.

ATTESTED

Khayal Khan
Service Tribunal
Peshawar



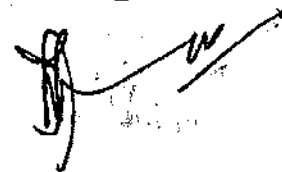
3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned orders were against the law, facts, norms of justice and material on record, therefore not tenable in the eyes of law and liable to be set aside. He argued that no proper and regular inquiry was conducted against the appellant as no proper opportunity of defence was provided to him. Neither statements were recorded in his presence nor any opportunity of cross-examination was provided to him. Even the inquiry report was not provided to him, which was violation of law and rules. Learned counsel argued that on missing of SMG riffle from the box of the appellant, he timely informed the concerned SHO which was recovered from one Bismillah during search and strike operation. As per statement of Bismillah during investigation, the said riffle was handed over to him by the appellant upon which the whole action was taken against the appellant without conducting regular inquiry to dig out the reality and he was punished on the basis of presumptions. He requested that the appeal might be accepted.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant handed over his official riffle to a private person which was recovered from the accused, Bismillah. On account of such misconduct, the appellant was proceeded against departmentally. He was served with charge sheet and during the

ATTESTED

EX. ATTORNEY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



enquiry, charges leveled against him stood proved. After fulfillment of all codal formalities, he was dismissed from service through a speaking order. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, who was posted at Hangu, found his official weapon, which was a SMG rifle, which was kept in a locked box, missing from there. He immediately went to the SHO of P.S Hangu City for its report where he found that his SMG was recovered from one Bismillah, who used to visit the other constable residing with the appellant in the same house. As far as Bismillah was concerned, the FIR dated 20.10.2022 was lodged against him, whereas departmental proceedings were initiated against the appellant. An inquiry was conducted, the report of which has been annexed by the respondents with their reply. One of the charges against the appellant was that as per statement of the accused Bismillah in the FIR dated 20.10.2022, the appellant handed over the SMG to him. Perusal of the Inquiry Report shows that the inquiry officer did not bother to probe into that allegation properly. No statement of Bismillah was recorded by him, neither any opportunity of cross examination was provided to the appellant. Another allegation that the appellant was using drugs has been proved by the inquiry officer based on some secret information. Here again, that secret information had to be revealed to the appellant during his inquiry proceedings and opportunity of cross examination had to be provided to him. It was noted that the Inquiry Officer did not fulfill the requirements of a fair trial. The competent authority, without taking into account the fact whether a fair opportunity had been provided to the appellant to defend his case during inquiry, passed the order whereby major penalty of dismissal from service had

ATTESTED


Khushi Khatun
Secretary
Tribunal
Lahore


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been imposed upon him. The punishment appears harsh in such a scenario. However, it is felt that the appellant showed carelessness when he remained away from his room and the box in which he placed his official rifle, despite being locked, remained unattended.

7. In view of the above discussion, we set aside the orders impugned before us and the appellant is reinstated into service with all back benefits. However minor penalty of withholding of two annual increments for two years, without cumulative effect, be imposed upon him on his careless attitude towards the official rifle alongwith ammunition provided to him. The period he remained away from service, as a result of order dated 24.01.2023, be treated as leave of the kind due. Cost shall follow the event. Consign.

8. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19th day of April, 2024.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

FazleSubhan P.S

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 31/5/24
Number of Words 5 P
Copying Fee 20/-
Urgent 20/-
Total 20/-
Name of Copyist 31/5/24
Date of Completion of Copy 31/5/24
Date of Delivery of Copy 31/5/24

Date 4/6/2024

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بھارتی ایئر لائنز
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VAKALAT NAMA

NO. _____ /2024

IN THE COURT OF Khyber Pakhtunkhwa Service Tribunal Peshawar

Yasir Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS
Police Department

(Respondent)
(Defendant)

I/We, Yasir Ali


Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT AND SHAKIR ULLAH TORANI ADVOCATE**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

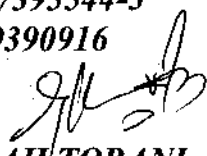
Dated _____ /2024


(CLIENT)

ACCEPTED


TAIMUR ALI KHAN
Advocate High Court

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SHAKIR ULLAH TORANI
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