Form- A

FORM OF ORDER SHEET

Court of_____

Implementation Petition No. 1252/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.10.2024	The implementation petition of Mr. Aslam Nawaz submitted today by Mr. Kabir Ullah Khattak Advocate. It is fixed for implementation report before Single Bench at Peshawar on 24.10.2024. 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 PAKHTUNKHWASERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 1252 /2024

In

Service Appeal: 352/2023

Mr Aslam Nawaz Water Carrier GHS Baka Khel Sub Division Wazir District Bannu.

..... **Appellant**

VERSUS

The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education & Others

..... respondents

INDEX

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition along with affidavit		1-2
2.	Copy of Judgment	A	3-10
3	Copy of application	B	11
4.	Wakalat Nama		

Aslam

Appellant/Petitioner

Through

Kabir Ullah Khattak
Advocate High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 1252 **/2024**

In

Service Appeal: 352/2023

Mr Aslam Nawaz Water Carrier GHS Baka Khel Sub Division Wazir District Bannu.

..... **Appellant**

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. The Director Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. The Assistant director (Establishment) Directorate Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
4. The District Education Officer (male) Bannu.

.....**Respondents**

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 18/03/2024 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No. **352/2023** before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 18/03/2024. (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.

Appellant/Petitioner

Through

Kabir Ullah Khattak

&

Roeeda Khan

Advocates High Court Peshawar

AFFIDAVIT

I Mr Aslam Nawaz Water Carrier GHS Baka Khel Sub Division Wazir District Bannu 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

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 165/2023

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

Mr. Sher Khan Ex-Chowkdiar GHS Baka Khel Sub Division Wazir, District Bannu. ..... *(Appellant)*

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
2. Director Elementary and Secondary Education Peshawar.
3. Assistant Director (Establishment) Directorate Elementary and Secondary Education Peshawar.
4. District Education Officer (Male) Bannu.

.....*(Respondents)*

Miss. Roeeda Khan, Advocate ... For appellant

Mr. Muhammad Jan, District Attorney ... For respondents

Date of Institution..... 19.01.2022
Date of Hearing..... 18.03.2024
Date of Decision..... 18.03.2024

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

CONSOLIDATED JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 143/2023, titled "Muhammad Saeed Khan Versus Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar and others", Service Appeal No. 166/2023, titled "Qamar Ali Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar and others", Service Appeal No. 328/2023, titled "Majeed

(5)

Ullah Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar and others", Service Appeal No. 352/2023, titled "Aslam Nawaz Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar and others" and Service Appeal No. 353/2023, titled "Habib Ur Rehman Versus Government of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar and others" as in all the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 20.05.2022 whereby major penalty of removal from service was imposed upon the appellant against which his departmental appeal dated 15.06.2022 was not decided within the statutory period of ninety days. It has been prayed that on acceptance of the appeal, the impugned order dated 20.05.2022 might be set aside and the appellant might be reinstated into service, with all back benefits.

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Chowkidar with respondent department in 2018. On 19.05.2022 a surprise visit was conducted by respondent No. 3 at GHS Baka Khel at about 12.15 PM during Matric Board Examination. After conducting the said visit, the respondent No. 3 sent a letter to respondent No. 1 on 20.05.2022 and the appellant was removed from service on 20.05.2022 by the respondent department.

(6)

Feeling aggrieved, he submitted a departmental appeal on 15.06.2022,followed by application dated 20.12.2022 for the response of departmental appeal but it was not responded; hence the instant service appeal.

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

5. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order dated 20.05.2022 was passed without fulfilling the codal formalities. No charge sheet and statement of allegations was issued to him. No publication was made in two leading newspapers nor regular inquiry was conducted. He further argued that no statement of witnesses was recorded nor any opportunity was afforded to him to cross examine them. According to him, the impugned order was passed by the authority who was not competent to do so. He argued that there was no absentia on the part of the appellant which was clarified from the applications submitted by the Principal GHSS Baka Khel Bannu to respondent No. 4. He requested that the appeal might be accepted as prayed for.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that respondent No. 2, the Director of Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar, made a surprise visit to GHS Bakka Khel Sub Division

(7)

Waziristan Bannu, where all class-IV employees, including the appellant, were found absent and the school was closed. All the teaching staff was suspended and the Principal was reported. Inquiry was initiated through an inquiry committee. Charges against the appellant were found genuine and the committee further noticed that the appellant was in a gulf country at the time of the surprise visit. He further argued that the charges on the appellant were substantiated by the FIA and he was rightly removed from service. He requested that the appeal might be dismissed.

7. From the arguments and record presented before us, it transpires that the appellants in all the appeals were serving as class-IV employees in the respondent department at Government Higher School, Bakka Khel Sub Division Wazir, Bannu. A surprise visit was conducted by the Assistant Director (Establishment) Directorate of Elementary and Secondary Education (Respondent No. 3) of the school and it was found that the school was closed and the entire staff was absent. Resultantly, they were removed from service. Reply submitted by the respondents shows that some inquiry was conducted in which charges were proved and the appellants were thus, awarded major penalty. No record of inquiry was produced before us during the hearing ,nor was it attached with the reply. When confronted, the learned District Attorney failed to assist that proper procedure was followed as per rules before awarding the punishment.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

8. It was noted that the respondent department simply stated that they conducted some inquiry but they did not attach any charge sheet and statement of allegations with their reply, neither any inquiry report was attached or produced during arguments, which is enough to conclude that whatever the respondent department stated in their reply was a mis-statement before us.

9. In view of above, we are of the view that necessary procedure under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 had to be followed before awarding the major penalty. The case is, therefore, referred back to the respondent department to reinstate the appellants in service for the purpose of inquiry, conduct a formal inquiry by serving proper charge sheet and statement of allegations as per rules, and associate them in the inquiry. The entire process of inquiry shall be completed within sixty days of the receipt of copy of this judgment. Issue of back benefits is subject to the outcome of inquiry. Cost shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of March, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

18-10-24

(9)

SA 165/2023

18th Mar. 2024 01. Miss Roeeda Khan, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we are of the view that necessary procedure under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 had to be followed before awarding the major penalty. The case is, therefore, referred back to the respondent department to reinstate the appellant in service for the purpose of inquiry, conduct a formal inquiry by serving proper charge sheet and statement of allegations as per rules, and associate him in the inquiry. The entire process of inquiry shall be completed within sixty days of the receipt of copy of this judgment. Issue of back benefits is subject to the outcome of inquiry. Cost shall follow the event. Consign.

03. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of March, 2024.

(FAREEHA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

بخدمت جناب ڈی-ای-او صاحب بنوں۔

درخواست برائے Implementation اپیل نمبر 352/23

فیصلہ مورخہ 18-3-24

سائل حسب ذیل عرض رساں ہے۔

یہ کہ سائل کو عدالت سروس ٹریبونل نے مورخہ 18/3/24 کو ملازمت پر بحال کرنے کا حکم دیا۔

(فیصلہ عدالت لف ہے)

لہذا عرض ہے کہ عدالت فیصلہ Implement کر کے سائل کو ملازمت پر بحال کرنے کا حکم صادر فرمائیں۔

سائل اسلم پرویز

Date: -28-4-24

وکالت نامہ

بعدالت جناب سروس ٹریبونل پشاور

مقدمہ بعنوان

اسلم خان بنام الطاف

منجانب

دعویٰ

علت

مورخہ

جرم

تھانہ

باعث تحریر آنکہ

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

آن مقام پشاور کیلئے روشنہ خان ایڈووکیٹس ایڈووکیٹس

کو وکیل مقرر کرکے 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 برحلف 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 دیہ 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 تاکہ سند رہے

مقام پشاور کے لئے منظور ہے

دستخط ایڈووکیٹس

Accepted