


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1258/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.10.2024	<p>The implementation petition of Mr. Janat Khan submitted today by Mr. Muhammad Imran Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 25.10.2024. 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  REGISTRAR</p>

The execution Petition of Mr. Janat Khan submitted to-day by Mr. Muhammad Imran Khan Advocate is incomplete on the following score which is returned to the counsel for the petitioner for completion and resubmission within 15 days.

- 1- Copy of service appeal mentioned in para-1 of the appeal is not attached with the appeal be placed on it.
- 2- Page no. 18 & 19 of the petition is illegible.

No. 930 /Inst./2024/KPST,

Dt. 22/10 /2024.

Amir Talleq
ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Muhammad Zia Ullah Adv.,
High Court Peshawar.

Resubmitted after compliance

M. D.
22/11/2024

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON
KHAWA PESHAWAR.

E.P.
Imp App 1258 /2024

Janat Khan

Petitioner

Versus

District Police Officer & Others

Respondents

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Dated: 21.10.2024

Petitioner

Through
Muhammad Imran Khan
Muhammad Zia Ullah
Advocate High Court,
Peshawar

(1)

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON KHAWA
PESHAWAR.

E.P.
Imp App 1258 /2024

Mr Janat Khan Head Constable No 317 S/O Zarin Khan R/O Village
Shalbandi Tehsil Garga District Bunir.

Petitioner

VERSUS

1. District Police Officer Swat.
2. Provisional Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.

Respondents

APPLICATION FOR IMLEMENTATION OF ORDER DATED
08/05/2024 IN ITS TRUE SPIRIT ON THE RESPONDENTS AS PER
JUDGMENT OF THE HONBLE COURT

Prayer:

ON ACCEPTANCE OF THIS PETITION THAT STRICT DIRECTION BE
GIVEN TO THE RESPONDENTS TO COMPLY THE ORDER DATED:
08/05/2024 OF THIS HON'BLE COURT. ANY OTHER REMEDY
WHICH THIS HON'BLE COURT MY DEEMS FIT ALSO BE
AWARDED.

Respectfully Sheweth:

The petitioner most humbly submits as under:

Brief Facts:

1. That petitioner filed Service Appeal No before the Hon'ble Court, against the Respondents,

(Copy of Service Appeal is annexure-A)

(2)

2. That after service of notices and after proper Arguments, the Honble Court decided the Appeal, in favour of petitioner on 08.05.2024 and against respondents

(Copy of judgement is annexure-B)

3. That thereafter petitioner time and again contacted the respondents for implementation of the Order of the Honble Court, and provided attested copies of the Honble Court, to follow the same, in its True spirit, but they delaying the matter on one pretext or the other.

(Copy of application is annexure-C)

4. That even after clear cut direction of Hon'ble Court the respondent failed to fulfill the order of Court.
5. That feeling aggrieved from such reluctant behavior of respondents, the petitioner filed the instant writ petition on the following grounds inter-alia;

Grounds:

- A. That after passing of the said order of this Hon'ble Court, the petitioner time and again approached the respondent and he also handed over a copy of the said order to the respondent, but he on one pretext or the other was lingering on the afore stated implementation and disposal of the order of the petitioner. The respondent was least interested to follow and to obey the order of of this August Court, hence the Respondent rendered themselves responsible for punishment on account of not obeying the order of this August Court.
- B. That the non implementation of the order of this August Court clearly shows the contemptuous attitude and conduct of the respondent. What to say in respect of their this mistake and contempt of a judicial forum even the afore quoted order of of this august court is intentionally shelved and put in the back burner but still the question of implementation/disposal of the order of the petitioner is not only awaited and from his conduct it can easily be predicted that they even would not bother in future to implement the said order of judicial forum, hence they are liable to implement the order in its true spirit..
- C. That the above noted contemptuous behavior of the respondent on one side made mockery of the order of this August Court and on the other side increased the agonies and miseries of the petitioner, so in such a situation how a contemnor could be spared as on one hand he is not taking care of the judicial order and on the other hand he is about to deprive the petitioner from the fruits of order of legal competent forum.
- D. That in prevailing circumstances and facts mentioned above the respondent did not deserve any leniency, their contemptuous attitude is crystal clear and need no inquiry or recording of evidence and they are liable for punishment.

IT IS, THEREFORE, MOST RESPECTFULLY PRAYED THAT STRICT DIRECTION BE GIVEN TO THE RESPONDENTS TO COMPLY THE ORDER DATED: 08/05/2024 OF THIS HON'BLE COURT. ANY OTHER REMEDY WHICH THIS HON'BLE COURT MY DEEMS FIT ALSO BE AWARDED.

(3)

Dated: 21.10.2024

Petitioner

Through



Muhammad Zia Ullah
&
Muhammad Imran Khan
Advocates High Court,
Peshawar.

CERTIFICATE:

It is certified that prior to this petition no such like petition is moved by the petitioner before this Hon'ble Court.

ADVOCATE



(4)

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON
KHAWA PESHAWAR.

Imp App _____/2024

Janat Khan

Petitioner

Versus

District Police Officer & Others

Respondents

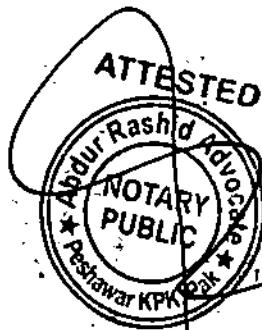
AFFIDAVIT

I, Mr Janat Khan Head Constable, No 317 S/O Zarin Khan R/O Village Shalbandi Tehsil Garga District Bunir, do hereby solemnly affirm and declare that the contents of the Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Janat Khan

DEPONENT

NIC 15101-1196630-3



21 OCT 2024

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**BEFORE THE KHYBER PAKHTOON KHWA SERVICES TRIBUNAL,
PESHAWAR**

Service Appeal No. _____/2018.

Janat Khan (Head Constable No.317)

R/O Village Shalbandi Tehsil Gagra District Bunir.....Appellant

V E R S U S

1. District Police Officer, Swat.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.....Respondents

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE
ORDER No.53 OB DATED:01.04.1997.**

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Order dated:01.04.1997 dismissal from service of the appellant may kindly be set aside and the same may kindly be converted in to retirement on completion of age of superannuation and further the appellant may kindly be awarded with all back benefits of service including pension and gratuity etc.

Respectfully Sheweth:

1. That initially the appellant as constable joined the respondent/department in the year 1976 and as such performed his duties with zeal and finally promoted to the rank of head constable.
2. That latter on in the year 1995 an FIR No.628 dated:17.08.1995 U/s 409/120-B PPC/5(2) P.C Act 1947 was lodged against appellant and others.(Copies of relevant record of the FIR is annexure-A)

3. That thereafter without waiting for trial proceedings and final decision in Anti-Corruption court, in the above mention case FIR a so-called inquiry was conducted by the Respondents and on the basis of findings of the one-sided inquiry report the appellant was awarded major penalty i-e dismissal from service vide impugned office order dated:01.04.997.(Copy of impugned office order dated:01.04.1997 are annexure-B)
4. That as the trial proceeding were in progress so the petitioner waited for its ultimate conclusion but latter on trial of the case was adjourned sin die and the appellant was discharged from the case because during trial the prosecution had failed to produce their witnesses.
5. That thereafter the appellant waited for the ultimate fate of the trial but till date no progress has been made in trial proceedings nor the appellant punishment was converted in to his retirement as the appellant touched the age of superannuation for retirement during the trail period.
6. That hopelessly later on against the order dated:01.04.1997, the appellant filed departmental appeal and as such the same was not decided within statutory period..(Copy of Departmental appeal is annexure-D)

That being aggrieved from the impugned orders, the appellant approached this Hon'ble Tribunal on the following grounds amongst other inter alia:

GROUND:

- A. That the impugned office orders i-e dismissal from service of the appellant is against facts, law and procedure, hence, untenable being unjust and unfair.

- B. That the appellant was not treated in accordance with law and rules, thus acted in violation of the relevant laws laid down for the purpose.
- C. That the whole departmental proceedings against the appellant was based on personal ill will and with ill intention a harsh and illegal penalty was imposed on the appellant.
- D. That no opportunity in shape of personal hearing was afforded to the appellant during enquiry proceedings and as such the statement and evidence was recorded in absence of the appellant which clearly showing the ill intention of the appellant.
- E. That the incompetent authority has awarded the penalty to the appellant so the punishment awarded to the appellant is illegal.
- F. That as now main grievance of the appellant is regarding his after retirement benefits i-e pension etc which is a kind of financial matter and being continues cause, of action legally there is no limitation run against the appellant in such like situation.

It is, therefore, most humbly prayed that on acceptance of this appeal the impugned Order dated:01.04.1997 dismissal from service of the appellant may kindly be set aside and the same may kindly be converted in to retirement on completion of age of superannuation and further the appellant may kindly be awarded with all back benefits of service including pension and gratuity etc.

Appellant
Janat Khan
Janat Khan (H/C)
Through
Shams ul Hadi
Shams ul Hadi
Advocate, Peshawar.

(10) 8

Annex (B)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT AT SWAT.

Service Appeal No.936/2018

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

Mr. Janat Khan (Head Constable No. 317) R/O Village Shalbandi Tehsil Gagra District Bunir.

(Appellant)

VERSUS

1. District Police Officer Swat.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.

(Respondents)

Mr. Shamsul Hadi
Advocate

For appellant

Mr. Muhammad Jan
District Attorney

For respondents

Date of Institution.....29.06.2018
Date of Hearing.....08.05.2024
Date of Decision.....08.05.2024

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:

“that on acceptance of this appeal, the impugned order dated 01.04.1997 dismissal from service of the appellant may kindly be set aside and the same may kindly be converted in to retirement on completion of age of superannuation and further the appellant may kindly be awarded with all back benefits of service including pension and gratuity.”

R

AS
24-7-2021

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was appointed as Constable in Police Department in the year 1976 and was later on promoted to the rank of Head Constable. In the year 1995 a case FIR No.628 dated 17.08.1995 U/S 409/120-B PPC/5(2) P.C Act 1947 was lodged and on the basis of which disciplinary proceedings were initiated against him which resulted into major punishment of dismissal from service vide order dated 01.04.1997. Appellant filed 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order is against the law, facts, norms of justice, hence liable to be set aside; that appellant has not been treated in accordance with law and rules; that no chance of personal hearing was afforded to him as statement and evidence was recorded in absence of the appellant which shows the ill will of the respondents; that the penalty awarded to the appellant by an incompetent authority which is also against the rules/law.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules; that besides departmental action, an FIR No. 628 dated 17.08.1995 U/S 409/120-B PPC/5(2) Prevention of Corruption Act, 1947, was also registered against him on the basis of involvement in corruption case and misappropriation of government property. He contended that during inquiry all the charges leveled against him were established for which no leniency was justified and the punishment of dismissal from service was awarded to him by the competent authority after fulfillment of all codal formalities.

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24.7.20

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6. Perusal of record reveals that appellant joined respondent department as constable in the year 1976 and was promoted as Head Constable. He was nominated in a criminal case bearing FIR No.628 registered under section 409/120B PPC 5/2 PC Act, 1947 at Police Station Mingora on the basis of which respondents vide order bearing No.53 dated 01.04.1997 dismissed him from service from date of his absence from duty due to his involvement in criminal case.

7. - Although in the office order bearing OB No.53 dated 01.04.1997 it is mentioned that *"after perusal of inquiry file, finding of the inquiry officer and other connected record"* but respondent had not annexed with their reply/comments any charge sheet, statement of allegation, show cause notice or even the inquiry report from which it can be ascertained that in fact any inquiry as is alleged by the respondent had already been conducted and proper procedure provided in the rules had been followed/adopted. When departmental representative was asked to produce the inquiry record/file, he showed his inability to produce the same on the ground of being an old case.

8. In our humble view, this excuse of old case is not acceptable as criminal case against the appellant upon report of the department itself was pending adjudication in the court of competent jurisdiction and respondents were well aware of its pendency being complainant, then in such a situation they were duty bound to keep record in safe custody till completion of criminal trial as they are also in knowledge that under the rules and as per direction of supreme court, before acquittal approach to service tribunal for redressal of grievance of civil servant who is involved in a criminal case is a futile exercise. Non availability of inquiry file and record is suggestive/indicative of the fact that in fact no inquiry in accordance with rule was conducted by the respondents and appellant was deprived from due process of law and is discriminated by the respondent upon allegation of involvement of criminal charges from which later on he was acquitted by the competent court of law.

07-7-24

9. Legally speaking respondents were required to suspend the appellant after his involvement in the criminal case and wait for final decision of the competent court of law but they without adopting such procedure as provided in the police rules 16, decided in haphazard manner the fate of departmental proceeding vide impugned order which is un-justice and against the rules. Police rules 1934 16(3) provided that:

16.3. Action following on a judicial acquittal.

16.3. Police Officer has been tried in a criminal case.

Court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless:-

- (a) The criminal charge has failed on technical grounds; or*
- (b) In the opinion of the Court or of the Superintendent of Police the prosecution witnesses have been won over; or*
- (c) The court has held in its judgment that an offence was actually committed and that suspicion rests upon the Police officer concerned; or*
- (d) The evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charge; or*
- (e) Additional evidence admissible under Rule 16.25 (1) in departmental proceedings is available.*

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against lower subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of the Deputy Inspector-General of Police; and a police officer against whom such action is admissible shall not be deemed to have been honourably acquitted for the purpose of Rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.

So, in the instant case the appellant was acquitted from the charges leveled against him in the criminal case and main reason to proceed against the appellant was his involvement in criminal case which is no more in field, hence respondents were required to re-instate the appellant.

10. Moreover in the impugned order the dismissal from service was ordered from the date of his absence but no date of absence is mentioned in it. As no charge sheet and statement of allegation is provided despite direction therefore it could not be determined what actually charge was and if absence was a charge then from which date. So far as question of limitation is concerned, in this respect it is held in PLD 2010 SC 695 citation;

"(h) S.4--Appeal--Limitation--Civil servant sought reinstatement in service, after he was acquitted from murder case--Service Tribunal allowed the appeal filed by civil servant and reinstated him in service--Plea raised by employer/bank was that appeal was barred by limitation--Validity--Civil servant was acquitted in criminal case on 22-9-1998 and he filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in criminal case--It would have been a futile attempt on the part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case--It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service--Appeal before Service Tribunal was not barred by limitation.

11. In our humble view, appeal of the appellant is not barred by limitation as case was adjourned sine-die after which he filed his departmental appeal on 20.03.2018, when he was discharged by the criminal court of law, his criminal case was again started and he was acquitted from the charges leveled against him vide judgment dated 02.11.2023, the concluding para of the same is reproduced as under;

"Moreso, the statements of prosecution witnesses are not in line with each other rather there are many contradictions in the cross examination of these witnesses, due to which it can be clearly withheld that the prosecution has miserably failed to prove its case beyond any shadow of doubt and there is no probability of

(18)

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conviction of accused, therefore accused Jannat Khan S/o Zareen Khan and Razi Khan S/o Rahim Dad Khan are acquitted from the case in hand, if not required in any other case. The accused are on bail. They and their sureties are discharged from the liabilities of the bail bonds."

So appellant is acquitted on merit and not on technical grounds.

12. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Conviction of the appellant in criminal case was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

13. It is established from the record that charges of his involvement in murder case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

14. It is pertinent to mention here that appellant joined the department in the year 1976 and served the department with unblemished record for about 21 years till his dismissal from service vide impugned order dated 01.04.1997 by respondent. Appellant through instant appeal seeks modification in impugned order of penalty from dismissal from service to compulsory retirement as appellant during pendency of criminal trial against him reached to the age of superannuation in the year 2017. This tribunal is vested with powers to vary and modify order of departmental authority. It is held in P.L.C 2011 C.S 808 citation;

*"---S. 3---Service Tribunals Act (LXX of 1973), S. 5---
Modifying of order---Compulsory retirement---Absence from duty---
Acquittal from criminal charge---Civil servant removed from service
on the allegation of his wilful absence from duty---Plea raised by*

civil servant was that his absence from duty was due to circumstances beyond his control as he had been involved in murder case---Validity--Service Tribunal while dealing with appeal, had power under S.5 of Service Tribunals Act, 1973, to vary and modify order of departmental authority---Supreme Court while sitting in appeal over judgment of Service Tribunal could also exercise such power to meet the ends of justice---Civil servant, who had long unblemished service record of about 17 years, and he, by force of circumstances (involvement in case in which he was later on acquitted), was prevented from performing his duty---Civil servant was absent from duty entailing some penalty under law and his removal from service was too harsh penalty for him---Supreme Court converted petition for leave to appeal into appeal and converted penalty of removal from service into compulsory retirement---Appeal was allowed."

Appellant by force of circumstance i.e. his involvement in criminal case, the department itself prevented him from performance of his duties, when he was acquitted from the criminal case. Therefore, in the circumstance, now after attaining the age of superannuation, the only relief which could be given to the appellant as modifying his penalty of dismissal from service into compulsory retirement from the date of his attaining the age of superannuation in the year 2017. Costs shall follow the event. Consign.

15. Pronounced in camp court at Swat and given under our hands and seal of the Tribunal on this 8th day May, 2024.

(FAREEHA PAUL)
Member (E)
Camp Court Swat

(RASHIDA BANO)
Member (J)
Camp Court Swat

M. KHAN
04-7-2024

Date of presentation of application 13-5-2024
Number of copies 7P
Copies to 35/-
Total 35/-
Date of signature 04-7-2024
Date of Delivery of copy 04-7-2024

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Annex (C)

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(16)

20 (17)

MUHAMMAD ZIAULLAH

Advocate Supreme Court Of Pakistan

Legal Consultant & Practitioner,
Cell # 0314-9806895

WAKALAT NAMA

(POWER OF ATTORNEY)

IN THE COURT OF Service Tribunal Peshawar

Jannat Khan

(Appellant)

VERSUS

DPO Swat and others (Respondents)

I/We, Jannat Khan (Petitioner) in
the above noted Implementation ^{Application} do hereby appoint and constitute
MUHAMMAD ZIAULLAH, ADVOCATE SUPREME COURT,
OF PAKISTAN to appear, plead, act, compromise, withdraw or refer to
arbitration for me/us as my/our counsel in the above noted matter, without any
liability for their default and with the authority to engage/appoint any other
Advocate/Counsel at my/our matter.

Dated:

Attested & Accepted.



MUHAMMAD ZIAULLAH

En No# 5840

Advocate Supreme Court, of Pakistan.
Chamber: J. Waqar Ahmad Seth Block,
2nd floor, District Courts, Peshawar.

Jannat Khan
Client (15101-1196630-3)