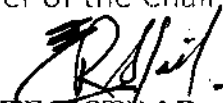


Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Implementation Petition No 1202 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	16.10.2024	<p>The implementation petition submitted today by Mr. Khaled Rehman 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.</p> <p>By order of the Chairman  REGISTRAR</p>

# KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

## CHECK LIST-

Muhammad Raza

**Versus**

Govt


..... Appellant

..... Respondents

S NO	CONTENTS	YES	NO
1.	This petition has been presented by: _____ Advocate _____ Court	√	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	√	
3.	Whether appeal is within time?	√	
4.	Whether the enactment under which the appeal is filed mentioned?	√	
5.	Whether the enactment under which the appeal is filed is correct?	√	
6.	Whether affidavit is appended?	√	
7.	Whether affidavit is duly attested by competent Oath Commissioner?	√	
8.	Whether appeal/annexures are properly paged?	√	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	√	
10.	Whether annexures are legible?	√	
11.	Whether annexures are attested?		
12.	Whether copies of annexures are readable/clear?	√	
13.	Whether copy of appeal is delivered to AG/DAG?	√	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	√	
15.	Whether numbers of referred cases given are correct?	√	
16.	Whether appeal contains cutting/overwriting?	√	
17.	Whether list of books has been provided at the end of the appeal?	√	
18.	Whether case relate to this court?	√	
19.	Whether requisite number of spare copies attached?	√	
20.	Whether complete spare copy is filed in separate file cover?	√	
21.	Whether addresses of parties given are complete?	√	
22.	Whether index filed?	√	
23.	Whether index is correct?	√	
24.	Whether Security and Process Fee deposited? On _____		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	√	
26.	Whether copies of comments/reply/rejoinder submitted? On _____		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:- Muhammad Raza

Signature:- 

Dated:- 16-10-24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. \_\_\_\_\_/2024

IN

Service Appeal No. 828 /2020

(Decided on 18.07.2023)

Imranullah .. Petitioner

Versus

The Govt. of KPK and others ..... Respondents

**INDEX**

S.No.	Description of Documents	Date	Annexure	Pages
1.	Execution Petition with Affidavit			1-2
2.	Judgment of this Hon'ble in Appeal No. 828/2020	18.07.2023	A	3-9
3.	Order in Execution Petition No. 220/2024	16.05.2024	B	10-12
4.	Application of Petitioner	26.09.2024	C	13
5.	Wakalat Nama			14

Through

Petitioner

  
Khaled Rahman

Advocate, Supreme Court

(BC# 10-5542)

[Khaledrahman.advocate@gmail.com](mailto:Khaledrahman.advocate@gmail.com)

&

  
Muhammad Ghazanfar Ali

Advocates, High Court

4-B, Haroon Mansion

Khyber Bazar, Peshawar

Off: Tel: 091-2592458

Cell # 0345-9337312

Dated: \_\_\_/10/2024

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. \_\_\_\_\_/2024

IN

Service Appeal No. 828/2020

(Decided on 18.07.2023)

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 16873

Dated 16-10-24

Imranullah

Sepoy (BPS-07),

Bajaur Levis, Bajaur Agency Khar ..... Petitioner

Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Secretary,  
Govt. of Khyber Pakhtunkhwa  
Home & Tribal Affairs,  
Civil Secretariat, Peshawar.
3. The Deputy Commissioner  
District Khar.
4. District Police Officer,  
District Khar..... Respondents

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Execution Petition for directing the Respondents to implement the Judgment of this Hon'ble Tribunal dated 18.07.2023 passed in Service Appeal No.828/2020.

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Respectfully Sheweth,

1. That Petitioner had filed Service Appeal No.828/2020 which was allowed by the Hon'ble Tribunal vide Judgment dated 18.07.2023 (*Annex:-A*).
2. That after obtaining attested copy of the judgment, Petitioner submitted the same to the Department through application for implementation in accordance with law. Similarly, the Registrar of the Tribunal had also transmitted the copy of the Judgment to the Respondents for compliance and even at the time of announcement of the Judgment the representative of the Respondents was also available, however, the Respondents failed to

implemented the judgment of the Hon'ble Tribunal in letter and spirit.

3. That the Petitioner then filed Execution Petition No.220/2024 before the Hon'ble Tribunal for implementation of the Judgment *ibid*, which was disposed vide order dated 16.05.2024 (*Annex:-B*) pursuant to the commitment of the learned AAG regarding implementation of the judgment of the Hon'ble Tribunal within fortnight, however, inspite of the commitment made at the bar the Respondents, even after lapse of about five months, failed to implement the judgment of the Hon'ble Tribunal within the stipulated time. Petitioner alongwith other colleagues, also filed an application (*Annex:-C*) for implementation of the judgment *ibid*, but invain, which constrained the Petitioner to file the instant Execution Petition.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for non-implementation of the judgment of the Hon'ble Tribunal.

عمران اللہ

Petitioner

Through

Khaled Rahman  
Advocate, Supreme Court

&

Muhammad Ghazanfar Ali  
Advocates, High Court

Dated: \_\_\_/10/2024

**Affidavit**

I, Imranullah, Sepoy (BPS-07), Bajaur Levis, Bajaur Agency Khar, do hereby affirm and declare on oath that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

عمران اللہ

Deponent



3  
Amir A

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 821/2020

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

Imran, Sepoy (BPS-07) Bajaur Levis, Bajaur Agency, Khar.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Civil Secretariat, Peshawar.
3. Deputy Commissioner District Khar.
4. District Police Officer, Khar.

..... (Respondents)

Mr. Khalid Rehman  
Advocate

For appellant

Mr. Fazal Shah Mohmand  
Additional Advocate General

For respondents

Date of Institution.....02.12.2020

Date of Hearing.....18.07.2023

Date of Decision..... 18.07.2023

JUDGEMENT

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:

“On acceptance of the instant service appeal, by modifying the impugned original order dated 14.06.2016 and setting aside the impugned order the impugned final appellate order dated 03.11.2020 the appellants may be reinstate into service with effect from 20.03.2008 with all back benefits.”

2. Through this single judgment we intend to dispose of instant service.

appeal as well as connected (i) Service Appeal No. 822/2020 titled “Asghar

ATTORNEY  
A

2 - 4

Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (ii) Service Appeal No. 823/2020 titled "Umar Ayub Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (iii) Service Appeal No. 824/2020 titled "Ghulam Younas Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (iv) Service Appeal No. 825/2020 titled "Noshad Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (v) Service Appeal No. 826/2020 titled "Abdullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (vi) Service Appeal No. 827/2020 titled "Shams Ur Rehman Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (vii) Service Appeal No. 828/2020 titled "Imran Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (viii) Service Appeal No. 829/2020 titled "Faiz Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (ix) Service Appeal No. 830/2020 titled "Imran Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (x) Service Appeal No. 831/2020 titled "Saheed Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xi) Service Appeal No. 832/2020 titled "Najeeb Ullah Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xii) Service Appeal No. 833/2020 titled "Mozamin Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xiii) Service Appeal No. 834/2020 titled "Rooh Ul Amin Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" (xiv) Service Appeal No. 1417/2020 titled "Syed Habib Jan Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others" as in all these appeals common question of law and facts are involved.

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ATTESTED

3. Brief facts of the case, as given in the memorandum of appeal are, that the appellants were appointed in the respondent Department. During service they performed duties upto the entire satisfaction of their superiors. Vide order dated 20.03.2008, they were awarded major penalty of dismissal from service against which they filed departmental appeal followed by service appeal, which were disposed of jointly through consolidated judgment dated 11.05.2015. The respondents, being dissatisfied from the judgment, assailed the same before the Hon'ble Apex Court by way filing of CPLAs which came up for final adjudication on 20.05.2015 and Apex Court upheld the judgment of Tribunal dated 11.05.2015 by directing the respondents to hold an inquiry as per law. The respondents reinstated the appellants into service vide order dated 08.12.2015. Another order was issued on 11.12.2015 whereby it was held that the reinstatement order of the appellants is only for the purpose of conducting of inquiry and till the finalization of the inquiry none of them will be entitled for any financial benefits. Then inquiry committee was constituted who conducted the inquiry and submitted its findings, after which appellant alongwith others were reinstated into service vide order dated 14.06.2016 with immediate effect and were kept at the bottom of seniority list. Feeling aggrieved the appellant filed departmental representation on 29.07.2016 which was not responded. Then he filed service appeal before Federal Service Tribunal which was disposed of with direction to respondents to pass order on his departmental representation. Respondents failed to comply with the direction of the Federal Service Tribunal, hence appellants again filed service appeal before Federal Service Tribunal, Islamabad. During pendency of the appeal, respondents dismissed the departmental representation of the appellants, resultantly service appeals of the appellants were disposed of vide order dated 20.04.2017, which was again challenged through fresh appeal by the appellant and others but due to 25<sup>th</sup> Constitutional

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ATTESTED



Amendment of May 2018; FATA was merged with Khyber Pakhtunkhwa and Levy & Khasadar Forces stood provincialized vide notification dated 12.03.2019. Vide judgment dated 04.12.2019 revision petition was remanded back to the respondents to consider it as departmental appeal and deemed it afresh after providing proper opportunity of personal hearing. Respondent after affording opportunity to appellant again turned down the request of giving back benefits vide impugned order dated 03.11.2020, 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 Additional Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellants were not treated in accordance with law, rules and policy and respondents are violated Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973. He contended that impugned order passed by the respondents is unjust, unfair and hence not sustainable in the eyes of law. He further contended that the appellant's absence from duty till the date of reinstatement was neither willful nor deliberate rather appellant was unlawfully shown absent from duty, he therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Additional Advocate General argued that the appellants have been treated in accordance with rules and policy. He contended that the appellant alongwith others being members of disciplined force deliberately absented himself from lawful duty and to that effect the then Political Agent issued notices to them for joining duty but in vain. In the year 2007-10 the insurgency spread in the district and the appellant left the law and

ATTENDED

CHIEF JUSTICE  
SUDIP K. GHOSH  
JUDGE

ATTENDED

order at the mercy of miscreants therefore, they were rightly dismissed from service.

6. Perusal of record reveals that appellants were appointed as Sepoy in respondent department and were dismissed from service vide order dated 20.03.2008. Appellants filed departmental appeal and then service appeal before Federal Service Tribunal which was decided through consolidated judgment dated 11.05.2015 by holding that:

*"Consequently upon what has been discussed above, we are of the considered view that the impugned orders whether verbal or written, are not sustainable in the eyes of law as they are in violation of the dictum laid down by the Hon'ble Supreme Court of Pakistan. The impugned orders are, therefore, accordingly set aside and resultantly the instant appeals are accepted and appellants are ordered to be reinstated into service from the date of impugned orders. However, the question of back benefits shall be decided by the competent authority in accordance with the instruction contained at Serial No. 155, Vol.II of Civil Establishment Code (Estacode, 2007 Edition), and the dictum of law as laid down in judgment of the Hon'ble Supreme Court of Pakistan, reported as 2010 SCMR 11."*

Respondents challenged said order in CPLA before august Supreme Court of Pakistan which was decided on 20.10.2015 by upholding judgment of Federal Service Tribunal. Respondents as a result of it conducted inquiry and reinstated appellants in service vide order dated 14.06.2016 but with immediate effect and denied back benefits to them and kept all of them at the bottom of seniority list. Appellants challenged said order dated 14.06.2016 in departmental appeal on 29.07.2016 which was not responded. So they filed service appeal to Federal Service Tribunal and during pendency of that appeal, departmental appeal was dismissed vide order dated 25.04.2017, which was again challenged through fresh appeal by the appellants but due to 25<sup>th</sup> Constitutional Amendment of May

ATTENDED

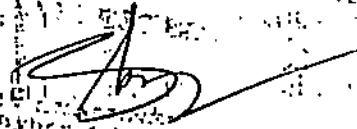
ATTENDED

2018, FATA was merged with Khyber Pakhtunkhwa. Levy and Khasadar Forces stood provincialised vide notification dated 12.03.2019, therefore, through judgment dated 04.12.2019 revision petition was remanded back to the respondents to consider it departmental appeal and decided it afresh after providing proper opportunity of personal hearing. Respondent after affording opportunity of hearing to appellants again turned down, their request for giving back benefits etc vide impugned order dated 03.11.2020.

7. Federal Service Tribunal vide judgment and order dated 11.05.2015 has held about the back benefits that it shall be decided by the competent authority in accordance with the instruction contained at serial No. 155 vol.11 of Civil Establishment Code (Estacode 2007 Edition) and dictum of law as laid down in judgment of the Hon'ble Supreme Court of Pakistan reported as 2010 SCMR 11. This order about back benefits was upheld by Supreme Court of Pakistan vide order dated 20.10.2015. The representation of the appellants for grant of back benefits filed against order dated 29.04.2016 was decided by the Political Agent Bajaur on 24.02.2017 wherein factum of secret inquiry about the fact of appellant being on gainful business of earning was mentioned. If during secret inquiry it came into the knowledge of Political Agent Bajaur that appellant was earning money and was on job during intervening period, then he must put it to the appellant and provide opportunity to accept or to rebut it. So on the basis of secret inquiry holding that appellant was on gainful business during his dismissal period is not logical and is injustice, against the fair trial and inquiry. Moreover in accordance with verdicts of Superior Court and FR54, reinstatement of an employee, consequent to setting aside his dismissal/removal from service, the entitlement of employee to have the period of his absence from his service treated as on duty is a statutory consequence of his being reinstated on merits.

The term reinstatement means to place a person in his previous position that has

ATTESTED



-9

already been done in year 2016 in the present case when all the appellants were reinstated into service.

8. It is also pertinent to mention here that some colleagues of the appellant were reinstated with retrospective effect by the respondent vide order dated 03.07.2013 as a result of judgment of Federal Service Tribunal Islamabad passed on 01.03.2013. Federal Service Tribunal Islamabad also passed such like nature order in case of appellants vide judgment and order dated 11.05.2015 upheld by Supreme Court of Pakistan on 20.10.2015 and subsequent order of Federal Service Tribunal Islamabad dated 04.10.2019. It will not be out of place to mention here that 92 officials/sepoy's were given back benefits by the respondent who were dismissed on the same charges, but present appellant's request for back benefits was turned down which is injustice with the appellant and against the principle of justice. Concept of fair trial and equality demands that when employees having identical and similar case were given back benefits by the respondent, then present appellants also deserve the same treatment, but respondent did not treat them like other officials, which is discrimination. Respondents are directed to reinstate the appellants with retrospective effect from the date of dismissal and not with immediate effect.

9. As a sequel to the above discussion, we allow this appeal in accordance with relevant rules and law. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 18<sup>th</sup> day of July, 2023.*

(FAREHA PAUL)  
Member (E)

(RASHIDA BANO)  
Member (J) \*Kaleentullah

SEAL  
Federal Service Tribunal  
Peshawar

ATTESTED

**ATTESTED**

*27/5/24*  
 Notary Public  
 Notary Public  
 Notary Public

**ATTESTED**

Learned counsel for the appellants present. Head Clerk for the respondents present.

Learned counsel for the petitioners present. Mr. Umar Azam, Additional Advocate General alongwith Mr. Habib Ullah,

Learned counsel for the respondents present. Mr. Habib Ullah, Additional Advocate General alongwith Mr. Habib Ullah, Head Clerk for the respondents present.

Learned counsel for the appellants present. Mr. Umar Azam, Additional Advocate General alongwith Mr. Habib Ullah, Head Clerk for the respondents present.

S.No.	Execution Petition	Nos.
1.	Rooh Ul Amin	209/2024
2.	Mozamin	210/2024
3.	Imran	211/2024
4.	Najeeb-Ullah	212/2024
5.	Abdullah	213/2024
6.	Nowshad	214/2024
7.	Imran Ullah	215/2024
8.	Syed Habib Jan	216/2024
9.	Faiz Ullah	217/2024
10.	Asghar	218/2024
11.	Shama Ur Rehman	219/2024
12.	Umar Ayub	221/2024
13.	Ghulam Younas	222/2024
14.	Saeedullah	223/2024



connected petitions, is as under:

petition and all the following connected 19 petitions are being decided together as all are of similar nature. Detail of the

16<sup>th</sup> May 2024  
 ORDER  
 Justice Khalid Arshad Khan, Chairman through the single order the

Execution Petition No. 220/2024 filed, Imran Vs. The Government of Punjab, Pakistan through Chief Secretary, Civil Secretariat, Rawalpindi and

*Amir B*

*10*

*Handwritten signature*

Date of Presentation of Petition: 27-5-24  
 Number of Petitions: 1  
 Copying Fee: 15/-  
 Court Fee: 15/-  
 Total: 30/-  
 Name of Court: 27-5-24  
 Date of Delivery of Copy: 27-5-24

(Kajun Arshad Khan)  
Chairman

*Handwritten signature*

ATTESTED  
*Handwritten signature*  
 National Tribunal  
 National Service Tribunal  
 Islamabad

Section Petition No. 220/2024 filed "Janin V. The Government of Sindh" and  
 "Khanjwa through Chief Secretary, Civil Secretariat, Islamabad & others" and  
 disposed of accordingly. Copy of this order be placed on files of  
 all connected petitions. Consequ-  
 4. Pronounced in open Court in presence and given under  
 my hand and seal of the Tribunal on this 16<sup>th</sup> day of May, 2024.

08.04.2024 1. Clerk to counsel for the petitioner present. - 12

2. Notices have not been issued to the respondents due to non-depositing of TCS expenses, therefore, petitioner is directed to deposit TCS expenses within three days. Thereafter notice be issued to the respondents for submission of implementation report. To come up for implementation report on 14.05.2024 before S.B.P.P given to clerk of learned counsel for the petitioner.

(Muhammad Akbar Khan)  
Member (E)

14.05.2024 1. Junior to counsel for the petitioner present. Mr. Muhammad Jun. District Attorney for the respondents present.

2. Implementation report not submitted. Learned District Attorney sought time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 16.05.2024 before S.B. Parcha Peshi given to the parties.

ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(Rashida Bano)  
Member (J)

ATTESTED

بھضور جناب ڈسٹرکٹ پولیس آفیسر صاحب باجوڑ

عنوان: ڈیپارٹمنٹل ایبل میراد بحالی سروس سناریٹی بشمول تمام بیک بینیشن۔

جناب عالی!

مؤیدانہ گزارش کیجاتی ہے کہ سائیلن آپ صاحبان کے زیر سایہ مشترکہ پولیس میں خدمات ایمانداری اور فرض شناسی سے انجام دے رہے ہیں۔ بندگان کا عنوان بالا کیے صوبائی سروس ٹریبیونل میں زیر سماعت تھا جس کے شنوائی عدالت منکوره میں ہو کر بندہ گان کے حق میں تحریری فیصلہ 18-07-2023 کو جاری ہوا جس پر تا حال محکمہ پولیس باجوڑ نے کسی قے کا کوئی عمل نہیں کیا اور نہ ہی بالا عدالت سے منکوره کیس میں حکم امتناعی وغیرہ حوالے سے کوئی احکامات جاری ہوئی۔

جناب والا!

چونکہ بندگان نے دوبارہ عدالت منکوره کا راستہ اختیار کر کے کیس فائل کیا جس کا تحریرہ فیصلہ مورخہ 2024-05-16 کو جاری کر کے آپ صاحبان کو پندرہ دن کے اندر تعمیل کے احکامات صادر ہوئے لیکن تا حال معزز دفتر سے ہمارے حق میں کوئی عمل درآمد نہ ہو سکیں۔

لہذا آپ صاحبان سے استدعا کی جاتی ہیں کہ براہ کرم ہمارے حال پر رحم فرما کر ہمیں منکوره عدالت کے فیصلے کے مطابق سناریٹی سروس اور تمام دیگر مراعات سے مشکور و ممنون فرمائیں۔

العارض

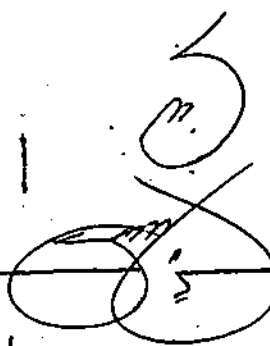
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مورخہ 26-09-2024



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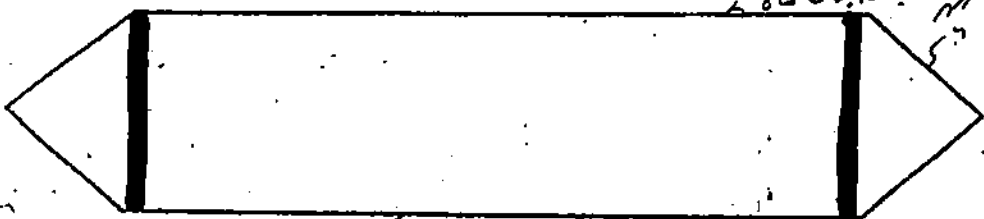
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