


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1251/2024

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. Sher Khan 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.</p> <p>By order of the Chairman  REGISTRAR</p>

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

Appeal No: _____ /2024

Mr. Sher Khan & others

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary E&SE others

**APPLICATION FOR FIXATION OF THE MENTION
EXECUTION PETITIONS PASSED IN SERVICE
APPEAL NO. 165/2023, 143/2023, 166/2023, 328/2023,
352/2023, 353/2023 BEFORE THE PRINCIPAL SEAT
PESHAWAR INSTEAD OF CAMP COURT BANNU.**


Respectfully Sheweth:

1. That the appellant is going to file the above mention execution petitions before this Hon' able Tribunal in which no date has yet been fixed.
2. That the respondent's No. 1 to 3 as well as the counsel of the applicant belongs to district Peshawar.
3. That there is no legal bar for acceptance of the instant application.

It is therefore, most humbly prayed that on acceptance of instant application, the above mentioned execution petitions may kindly be fixed before the principal seat Peshawar instead of camp court Bannu.


Appellant

Through


Roeda Khan
Advocate High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

E.P NO:-1251/2024

Mr Sher Khan Chowkider GHS Baka Khel Sub Division Wazir
District Bannu.

..... Appellant

VERSUS

1. The Governemnt 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

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Appellant/Petitioner

Through


Kabir Ullah Khattak

Advocate High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 1251 /2024
In
Service Appeal: 165/2023

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 17007
Date 22-10-24

Mr Sher Khan Chowkider GHS Baka Khel Sub Division Wazir
District Bannu.

..... Appellant

VERSUS

1. The Governemnt 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. 165/2023 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 mentioned 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


&
Rozeeda Khan

Advocates High Court Peshawar

AFFIDAVIT

I, Mr Sher Khan Chowkider 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



CA^v (3)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 165 of 2023.

Mr. Sher Khan Ex-Chowkider GHS Baka Khel Sub Division Wazir District Bannu.

..... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Elementary and 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

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORDER DATED 20/05/2022 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED TO THE APPELLANT AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 15.06.2022 WHICH HAS NOT BEEN DECIDED WITHIN THE STATUTORY PERIOD IN 90 DAYS.

Prayer:

By acceptance of this appeal the impugned order dated 20.05.2022 may please be set aside and the appellant may kindly be reinstated on his service along with all back benefits.

ATTACHED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

13-10-24



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. Roceda Khan, ... For appellant
Advocate

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

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

CONSOLIDATED JUDGEMENT

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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



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.

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.

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(b)

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.

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

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 Khyber Pakhtunkhwa
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 Peshawar

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 IIA 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.



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Khyber Pakhtunkhwa
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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.

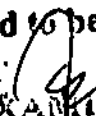
10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of March, 2024.*


(FARIEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

18-10-24


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SA 165/2023

18th Mar. 2024 01. Miss Roecda 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.*


(FARZEHA PAUL)
Member (E)


(RASIDA BANO)
Member (J)

Fazle Subhan, P.S

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وکالت نامہ

بعدالت جناب سید محمد سعید صاحب

مقدمہ بعنوان

سید محمد سعید بنام انجمن

منجانب

علت

دعویٰ

مورخہ

جرم

تھانہ

باعث تحریر آنکہ

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

آن مقام سید محمد سعید اور انجمن کے

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 و تقرر ثالث و فیصلہ 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 و پیروی کرنے کا اختیار 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 ذیہ جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

مقام _____ کے لئے منظور ہے

دستخط ایڈووکیٹس

Accepted
RM
P