


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 801 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.07.2024	<p>The implementation petition of Mr. Momin Khan submitted today by Syed Noman Ali Bukhari Advocate. It is fixed for implementation report before Single Bench at Peshawar on 31.07.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION PETITION No. 801 /2024
IN
SERVICE APPEAL NO. 144 /2019

Momin Khan

VS

Police Deptt etc.

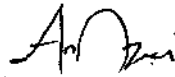
I N D E X

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment dated 13.5.2024	- A -	03-09
3.	Copy of application 19.3.2024	- B -	10
4.	Vakalat Nama	-----	11

APPLICANT


Momin Khan

THROUGH:-


(M. ASIF YOUSAFZAI)
Advocate Supreme Court
Of Pakistan.


(SYED NOMAN ALI BUKHARI)
Advocate, High Court Peshawar.


&
(HILAL ZUBAIR)
ADVOCATE PESHAWAR.

Room No.FR-08, 4th Floor,
Bilour Plaza Peshawar Cantt:
Cell # 0312-9103240.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

EXECUTION PETITION No. _____/2024

IN

SERVICE APPEAL NO.144/2019

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 14562

Dated 29-07-2024

Mr. Momin Khan Ex-ASI,
Khyber Pakhtunkhwa, Elite Force.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. District Police, Nowshera.
3. Regional Police Officer, Mardan.
4. The Additional Inspector General of Police/Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. The Additional Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
6. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 13.05.2024 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No. 1465/2023 in this august Tribunal against the orders dated 13.03.2018 & 11.01.2019 whereby the appellant was dismissed from Service.
2. That the said appeal was finally heard by the Honorable Tribunal on dated 13.05.2024 and the Honorable Tribunal was kind enough ("the appeal in hand is partially allowed by setting aside the impugned orders and reinstate the appellant into service, however period he remained out of service during custody will be treated as leave without pay") (Copy of judgment is attached as Annexure-A).

- 3. That the appellant filed application to the competent authority on dated 22.06,2024 for implementation of the judgment of Honorable Tribunal Khyber Pakhtunkhwa, in the above mentioned appeal but in vain. (Copy of the application dated 22.06,2024 is attached as annexure B.)
- 4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
- 6. That the petitioner has having, no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 13.05.2024 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

[Signature]
APPLICANT

Momin Khan

THROUGH:

[Signature]
(M. ASIF YOUSAFZAI)
 Advocate Supreme Court
 Of Pakistan.

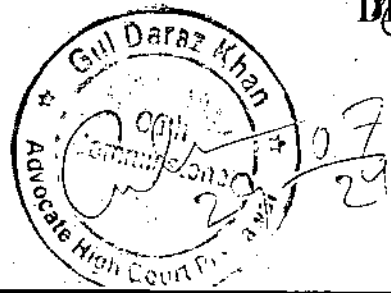
[Signature]
(SYED NOMAN ALI BUKHARI)
 Advocate, High Court
 Peshawar.

[Signature]
 &
(HILAL ZUBAIR)
ADVOCATE PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the content of the execution petition is true and correct to the best of my knowledge and belief and nothing has been concealed from the Honorable Tribunal.

[Signature]
DEPONENT



A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.144/2019

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



Mr. Momin Khan Ex-ASI, Khyber Pakhtunkhwa, Elite Force.
..... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. District Police Officer, Nowshera.
 3. Regional Police Officer, Mardan.
 4. The Additional Inspector General of Police/Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
 5. The Additional Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
 6. The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
- (Respondents)

Rozeda Khan
Advocate For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney For respondents

Date of Institution.....30.01.2019
Date of Hearing.....13.05.2024
Date of Decision.....13.05.2024

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:

“On acceptance of this appeal the impugned orders dated 13.03.2018 and 11.01.2019 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits. Any other

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KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

remedy which this August Tribunal deems fit that may also be granted in favour of appellant.

2. Brief facts of the case are that appellant was appointed as Constable in the crimes investigation department on 05.04.1995. He was promoted to the rank of Head Constable in the 2005/06 and was further promoted to the rank of ASI. Later on he was transferred on deputation to Elite Force, Khyber Pakhtunkhwa. During service, he was implicated in a criminal case under section 302/324/148/149 PPC read with 7 ATA, vide FIR No. 794 dated 08.09.2010 of PS Pabbi Nowshera and another case under section 17/3 offences against property ordinance 1979 R/W 324/148/149/411 PPC 13 AO vide FIR No. 81 dated 81 01.02.2013 of PS Lahor Swabi. Later on he was acquitted in both the criminal cases by the competent court of law. When he went to joined his duty, he came to know that he was dismissed from service vide order dated 19.11.2012. After the submission of departmental appeal and rejection order against the impugned order he filed service appeal No. 1299/2015 which was accepted on 19.10.2017 and respondents were directed to conduct denovo inquiry within three months. Thereafter, he filed execution petition on 16.10.2018 he came to know that regarding dismissal order dated 13.03.2018. He filed departmental appeal which was rejected on 11.01.2019, hence the present 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules; that no charge sheet, statement of

A. J. Jai
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A. J. Jai
ATTESTED
Deputy District Attorney
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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allegation and final show cause notice has been issued by the respondent department on the involvement in criminal case; that no regular inquiry has been conducted by the respondent and no chance of personal hearing has been provided to the appellant and he was condemned unheard; that appellant has been reinstated upon the direction of service tribunal on 19.10.2017 by the respondent department but without issuing codal formalities he was dismissed from service on 13.03.2018 which void and illegal. He requested that instant appeal might be accepted.

5. Conversely, learned Deputy District Attorney argued that appellant has been treated in accordance with law and rules; that appellant was dismissed from service on account of his involvement in criminal cases. He was proceeded against departmentally during the course of which he was called time and again but he did not bother to appear before the enquiry officer despite the fact that he did not bother to appear before the inquiry despite the fact that in order to ensure his appearance, he was informed through newspaper notice published in daily "Aaj" but in vain. Therefore, after fulfillment of all legal and codal formalities major penalty of dismissal was imposed upon him.

6. Perusal of record reveals that appellant was initially appointed as Constable in the Crimes Investigation Department, now Counter Terrorism Department (CTD), on 05.04.1995. Ever since his appointment, the appellant had performed his duties as assigned with zeal and devotion and there was no complaint. He was promoted as Head Constable in the year 2005/06 and then later on promoted as ASI. Appellant was later on transferred on deputation to the Elite Force, Khyber Pakhtunkhwa. The appellant, alongwith some other family members, was implicated in a criminal case under section 302/324/148/149 PPC read with 7 ATA, vide FIR No.794 dated 08.09.2010 of Police Station Pabbi, Nowshera and another case u/s 17/3 offences against property ordinance 1979 R/W 324/148/149/411 PPC/13 AO vide FIR No.81

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A. J. Zaib
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 19.7.2018

dated 01.02.2013 of PS Lahor, Swabi. The appellant duly informed his department about his implication in criminal case. Later on he has been acquitted in the above criminal cases. After acquittal, appellant duly reported for duty in the respondent department but he has been dismissed from service on 19.11.2012 by the respondent department. Appellant filed service appeal No. 1299/2015 against the impugned order which was accepted on 19.10.2017 and appellant has been reinstated into service and case was sent to respondent department to conduct de-novo inquiry within a period of three months. Due to non-implementation of the judgment the appellant filed execution petition No.30/2018 against the respondent department. During proceeding of execution petition on 16.10.2018, the appellant came to know regarding dismissal order dated 13.03.2018.

7. Perusal of de-novo inquiry report reveals that enquiry officer in his report mentioned that he summoned Inspector Alam Zeb Khan, Inspector Hidayat ur Rehman, SI Fazal Miraj and SI Wafadar Khan but none of them appeared before inquiry officer for recording their statements to support the involvement of the appellant in the criminal cases. Moreover complainant of the said criminal cases also not appeared before inquiry officer to support the factum of guilt or involvement of the appellant in criminal cases. The most important factor is appellant is acquitted in the criminal cases on the basis of which charge sheet was issued to him.

8. It has been held by the Apex Court that all acquittals are certainly honorable. There can be no acquittal, which may be said to be dishonorable. Implication of the appellant in the criminal cases 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 with his service.

9. It is established from the record that charges of involvement in the criminal case ultimately culminated in honorable acquittal of appellant by the competent Court . .


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[Signature]
EXAMINER
Cyber Pakhtunkhwa
Service Tribunal
Peshawar

Law in the above-mentioned criminal cases. In this respect, we have sought guidance from 1988 P.L.C (C.S) 179, 2003 S.C.M.R 215 and P.L.D 2010 Supreme Court 695.

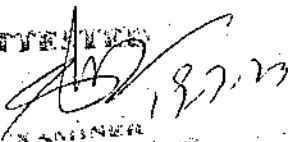
10. For what has been discussed above, the appeal in hand is partially allowed by setting aside the impugned orders and reinstate the appellant into service, however period he remained out of service during custody will be treated as leave without pay. Costs shall follow the event. Consign.

11. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day May, 2024.


(FANEEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (D)

*M.K.Khan

ATTESTED

EXAMINER
Service Tribunals
Peshawar

Date of Presentation of Application 19-7-24
Number of Words 58
Copying Fee 3/-
Urgent 5/-
Total 30/-
Name of Copyiesi _____
Date of Completion of Copy 19-7-24
Date of Delivery of Copy 19-7-24


ATTESTED

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08th May, 2024

1. Appellant alongwith his counsel present. Mr. Ijaz Khan, DSP (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.
2. Learned counsel for the appellant seeks some time for preparation of brief. Granted. To come up for arguments on 13.05.2024 before the D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (Executive)

(Kalim Arshad Khan)
Chairman

Naveen Ahmad

ORDER

13.05.2024

1. Learned counsel for the appellant present. Mr. Mohammad Jan learned District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is partially allowed by setting aside the impugned orders and reinstate the appellant into service, however period he remained out of service during custody will be treated as leave without pay. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day May, 2024.*

(FAREHIA PAUL)
Member (E)

(RASHIDA BANO)
Member (J)

*M.Khan

Attest
ATTESTED

2nd Nov, 2023

1. Learned counsel for the appellant present Mr. Muhammad Jan, learned District Attorney for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 10.01.2024 before D.B. P.P given to the parties.

SCANNED
IN P/S
Peshawar

(Muhammad Akbar Khan)
Member (E)

(Rashida Bano)
Member (J)

10.01.2024

1. Clerk of learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Clerk of for appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 08.05.2024 before D.B. P.P given to the parties.

SCANNED
IN P/S
Peshawar

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Kaleemullah

Arif Zai
ATTESTED

10 B مشورہ جیٹاب صلیبی پولیس سپر ویزا صلح لوشیہ

عنوان: درخواست بحران بحالی

جیٹاب!

گزارش پیر سائیل کو بحوالہ آرڈر نمبر 13-5-2024 مورخہ 13/5/2018

کو لوشیہ میں سابقہ پولیس سپر ویزا کے نوکری سے درخواست لیا گیا تھا جس کے خلاف سائیل نے سروس ٹرانسپول میں اپیل نمبر 144/2018 مورخہ 13-5-2024 کو عمارت حضرت سائل کے حق میں سنبھال لیا گیا

لہذا استدعا ہے سائل کو خزانہ فیصلہ کی روشنی میں نوکری ٹرانسپول کے احکامات صادر فرمائیں۔

آئیے کا کد

سومن خان EXAST

22-6-24

سورن

A. Zein
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VAKALAT NAMA

NO. _____/20

IN THE COURT OF 1st Service Tribunal Peshawar

Momin Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

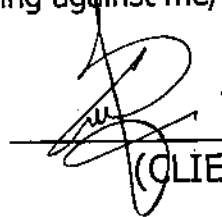
Police Dept: (Respondent)
(Defendant)

I/We, Momin Khan

Do hereby appoint and constitute **Mr. M. Asif Yousafzai, ASC & Syed Noman Ali Bukhari AHC** 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.

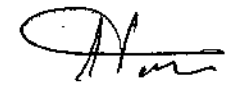
Dated 29/7/2024


(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI, ASC,


SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar


Hilal Zubair Yousafzai
Advocate Peshawar