


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 807/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	30.07.2024	<p>The implementation petition of Mr. Nihar Ullah submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on 01.08.2024. 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. 807 /2024
In Service Appeal No.1643/2022

Nihar Ullah

V/S


Police Department

INDEX

S.No.	Documents	Annexure	P. No.
1	Memo of execution petition with affidavit	-----	01-02
2	Copy of memo of appeal	A	03-06
3	Copy of judgment dated 18.04.2024	B	07-10
4	Copy of application	C	11-12
5	Vakalat Nama	-----	13

PETITIONER

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
Cell# 0333-9390916

& 
(SHAKIR ULLAH TORANI)
ADVOCATE

①

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

Execution Petition No. 807 /2024
In Service Appeal No.1643/2022

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 14597

Dated 30/7/24

Nihar Ullah, Ex-Class-IV,
R/O Bahader Kaley Achar Garhi, Qamar Din, Peshawar.

PETITIONER

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police Telecommunication & Transport, Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Inspector General of Police Telecommunication & Transport, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 18.04.2024 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:


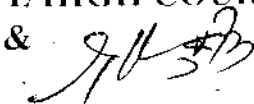
1. That the petitioner has filed Service Appeal No.1643/2022 in this Tribunal against the order dated 25.04.2022, whereby the petitioner has been removed from the service, against not taking action on the departmental appeal of the petitioner, the order dated 13.10.2022, whereby the revision of the petitioner was also rejected with the prayer that on acceptance of appeal the order dated 25.04.2022 and 13.10.2022 may kindly be set aside and the petitioner may be reinstated in service with all back and consequential benefits. **(Copy of memo of appeal is attached as Annexure-A)**
2. That the appeal of the petitioner was heard and decided by this Honorable Tribunal on 18.04.2024 and the Honorable Tribunal allowed the appeal of the petitioner as prayed for. **(Copy of judgment 18.04.2024 is attached as Annexure-B)**

3. That the petitioner also filed application on 13.06.2024 to implement the judgment dated 18.04.2024, but no action has taken on his application by implementing the judgment dated 18.04.2024. **(Copy of application is attached as Annexure-C)**
4. That the Honorable Service Tribunal reinstated the petitioner by accepting his appeal in its judgment dated 18.04.2024, but after the lapse of about more than three months the petitioner was not reinstated by the respondents by implementing the judgment dated 18.04.2024 of this Honorable Tribunal.
5. That in-action and not fulfilling formal requirements by the department after passing the judgment of this Honorable Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 18.04.2024 of this Honorable Tribunal in letter and spirit.
7. That the petitioner has having no other remedy except to file this execution petition in this Honorable Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 18.04.2024 of this Honorable Tribunal in letter and spirit. Any other remedy, which this Honorable Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

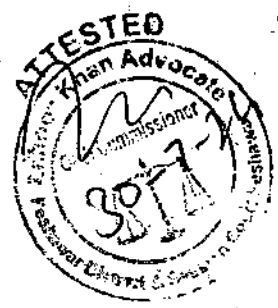
NIHAR ULLAH
 PETITIONER
 Nihar Ullah

THROUGH:


 (TAIMUR ALI KHAN)
 ADVOCATE HIGH COURT
 & 
 (SHAKIR ULLAH TORANI)
 ADVOCATE

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



NIHAR ULLAH
 DEPONENT

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A



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1643/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1904

Dated 10-11-2022

Nihar Ullah Ex-Class-IV,
R/O Bahader Kelay Achar Garhi Qamar Din, Peshawar.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police Telecommunication & Transport-Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Inspector General of Police Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.

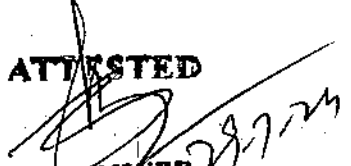
(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 25.04.2022, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE, AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT AND AGAINST THE ORDER DATED 13.10.2022, WHEREBY THE REVISION OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUNDS.

PRAYER:

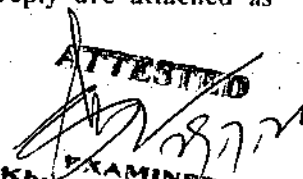
THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 25.04.2022 AND 13.10.2022 MAY KINDLY BE SET ASIDE AND APPELLANT MAY BE REINSTATED INTO HIS SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS HONORABLE TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**RESPECTFULLY SHEWTH:
FACTS:**

1. That the appellant was appointed as class-IV in the year 2019 constable in the respondent department. The appellant since his appointed has performed his duty with devotion and honesty, whatsoever assigned to him and no complaint has been filed against him regarding his performing.
2. That the appellant has suffered from skin disease and concerned skin specialist recommended him 02-weeks bed rest w.e.f 21.12.2021 to 27.12.2021 and 29.12.2021 to 04.01.2022. **(Copy of medical report are attached as Annexure-A)**
3. That when the appellant recovered, he went to join his duty and on the basis of absence explanation was called from him on 04.01.2022, the appellant submitted reply to the explanation in which he mentioned that that he was ill and the doctor recommended him for 02-weeks bed rest and on the same day the appellant was also transferred from Peshawar to D.I. Khan vide order dated 04.01.2022. **(Copies of explanation, reply and memo dated 04.01.2022 are attached as Annexure-B,C&D)**
4. That show cause notice dated 24.01.2022 was issued to the appellant which was replied by him in which mentioned that he was ill and has no knowledge that it is necessary to do treatment from Government Hospital and submit medical prescription from Government Hospital. **(Copies of show cause notice and reply to show cause notice are attached as Annexure-E&F)**
5. That after performing duty for more than 02 months, charge sheet dated 08.03.2022 along with statement of allegations were issued to the appellant which was replied by the appellant in which he again mentioned that he was ill and due to illness he could not perform his duty. **(Copies of charge sheet along with statement of allegations and reply to charge sheet are attached as Annexure-G&H)**
6. That no regular inquiry was conducted against the appellant to dig out the reality about the absence of the appellant and even the inquiry report was not provided to the appellant.
7. That final show cause notice was to the appellant on 29.03.2022, which was replied by the appellant in which he again gave the same stance that he was ill and due to which he could not perform his duty. **(Copies of final show cause notice and reply are attached as Annexure-I&J)**

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

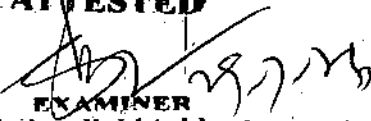
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8. That on the basis of 02-weeks absence, the appellant was removed from service vide order dated 25.04.2022, the appellant filed departmental appeal on 10.05.2022 and after about one month he went to the concerned office to know about the fate of his departmental appeal, but the staff of the concerned office told to the appellant that concerned authority did not want to take action on his departmental appeal and directed him to file revision on which the appellant filed revision on 13.06.2022, which was rejected on 13.10.2022 for good grounds. (Copies of order dated 25.04.2022, departmental appeal, revision and order dated 13.10.2022 are attached as Annexure-K,L,M&N)
9. That the appellant has no other remedy except to file the instant appeal in this Honorable Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:

- A) That the impugned orders dated 25.04.2022, not taking action on the departmental appeal of the appellant and order 13.10.2022 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That no regular inquiry was conducted against the appellant to dig out the reality about the absence of the appellant and even the inquiry report was not provided to the appellant, which is violation of law and rules and as such the impugned order are liable to be set aside.
- C) That the appellant did not intentionally remain absent from his duty but he was ill and the doctor recommended him for 02-weeks rest and due to illness he was unable to perform his duty and was compelled to remain absent from his duty, therefore, needs to be treated with lenient view, the penalty imposed upon the appellant is not tenable under the law and is liable to set aside.
- D) That the appellant was only 02 weeks absent due to illness and the penalty of removal imposed upon the appellant is from service is very harsh, which is passed in violation of law and rule, therefore, the same is not sustainable in eyes of law and hence liable to be set aside.
- E) That in show cause notices, it was mentioned that being a government servant he is supposed to be submit prescription from government hospital instead of private doctor, but the appellant in his reply clearly mentioned that he has no knowledge that it is necessary to do treatment from Government Hospital and submit medical prescription

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

from Government Hospital, therefore the appellant should not be punished for such a scarce mistake.

F) That the appellant has also transferred from Peshawar to D.I Khan on such absence and was also removed from service on that absence which means that the appellant has been punished twice for same offence which is not permissible the law and rule.

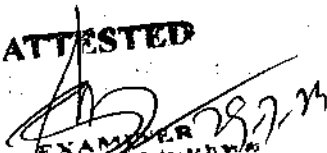
G) That the appellant seeks permission of this Honorable Tribunal to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

NIHAR ULLAH
APPELLANT
Nihar Ullah

THROUGH:


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)
PESHAWAR

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

B

7

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1643/2022

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



Nihar Ullah, Ex Class-IV, R/O Bahader Kaley Achar Garhi, Qamar Dain, Peshawar.

.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Inspector General of Police Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Taimur Ali Khan
Advocate For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney For respondents

Date of Institution.....10.11.2022
Date of Hearing.....18.04.2024
Date of Decision.....18.04.2024

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, order dated 25.04.2022 and 13.10.2022 may kindly be set aside and the appellant may be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.”

TESTED
28/4/24

2. Brief facts of the case as given in the memorandum of appeal are that the appellant was appointed as Class IV in the respondent department and was

RH

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performing his duty up to the entire satisfaction of his superiors. During service he fell ill and doctor recommended him two week bed rest. On recovery when he went to join his duty an explanation was called from him on 04.01.2022 which was replied. After performing duty for more than two months, charge sheet alongwith statement of allegations was issued on 08.03.2022 which was also replied by him. Thereafter, on the basis of absence he was removed from service vide order dated 25.04.2022. Feeling aggrieved, he filed departmental appeal on 10.05.2022 and on 13.06.2022 he filed revision petition which was rejected on 13.10.2022, 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the impugned orders are against the law, fact and norms of justice and material on record, therefore, not tenable and liable to be set aside; that appellant was not intentionally absent from duty rather it was due to illness and the penalty imposed upon him is not tenable under the law and is liable to be set aside; that no regular inquiry was conducted against him to DIG out the reality about the absence of the appellant and even the inquiry report was not provided to the appellant which is violation of law and rules and as such the impugned order are liable to be set aside.

5. Conversely, learned Deputy District Attorney contended that appellant was not treated in accordance with law and rules; he further contended that he while posted at Police Telecommunication D.I.Khan absented himself from lawful duty w.e.f 21.12.2021 to 27.12.2021 and 29.12.2021 to 04.01.2022. To probe his willful absence he was served with an explanation dated 04.01.2022

upon which he has produced two medical prescriptions for complete bed rest for

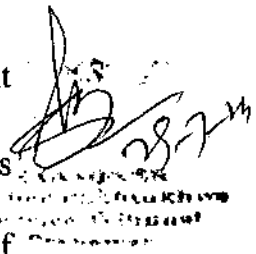
ATTESTED

EXAMINER
Rajesh Kishore
Service Tribunal
Gurgaon

two weeks by a private doctor. Appellant being a government employee was supposed to submit prescriptions from the government hospital however he did not do so which was not acceptable as per rules. Departmental proceedings were initiated against him by issuing charge sheet alongwith statement of allegation reply of which was received which was found unsatisfactory and after fulfillment of all codal formalities major penalty of removal from service was imposed upon him.

6. Perusal of record reveals that the appellant was appointed as Class-IV in the respondent department and was performing his duty when during service he fell ill and doctor recommended him two week bed rest. On recovery, when he went to his office to join his duty, authority called explanation from the appellant on 04.01.2024 and also transferred him to D.I.Khan on that very day without waiting for his reply of explanation, which speaks volume the something was wrong behind the curtains, otherwise absence of 14 days, that too on medical grounds, duly supported by Doctor's prescription, is not such a grave and serious crime/misconduct which resulted into very harsh step by the authority by posting him who is resident of Peshawar to D.I.Khan. If authority is not convinced with the medical prescription of the doctor, then he must have ordered for medical examination of his physical health/condition of appellant. Inquiry officer was also in haste and conducted the inquiry in a manner in which too no such measures or recording statement of all concerned were taken by him which means that no opportunity of cross examination and defense was given to the appellant. It is also very strange that appellant was awarded major penalty of removal from service on absence of only 14 days only that too on medical grounds which show the ill will and arbitrariness of the authority.

7. In our view, inquiry was just a formality, otherwise respondent department on 04.01.2022 removed the appellant from service when he was posted to D.I Khan where he served till his removal. Moreover, awarding of





major punishment is not warranted by law having regard to the facts and circumstances of the case. Therefore, it is held that appellant was not treated fairly in accordance with settled norms of justice and law.

8. For what has been discussed above, we are unison to accept the appeal as prayed for. Costs shall follow the event. Consign.


9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th of April, 2024.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 29-7-24
Number of Words 82
Copying Fee 40/-
Urgent 5/5
Total 45/-
Name of Clerk _____
Date of Completion of Copy 29-7-24
Date of Receipt of Copy 29-7-24

To,

~~C~~

2440
13.6.24

(11)

The worthy Deputy
Inspector General of
Police Telecommunication
& Transport KP, Peshawar

^{Implementation}
Subject: Application For Reinstatement
of the Under Sign, with all
Back Benefits, in Light
of Judgment Dated 18-4-2024

Respected Sir;

- ① That the Under Sign was the employee of your Department, and on 25-4-2022, the Service of Under Sign stop, means the removal order was issued against the Under Sign.
- ② That feeling aggrieved from such order i.e., 25-4-2022, the Under Sign filed Departmental Appeal, and the same was also rejected vide order dated 13-10-2022

(P.T.O)

③ That feeling aggrieved from (12)
Both orders, the Undersign filed
Service appeal no: 1693/2022, which
was allowed vide order Dated:
18-4-2024, with all back benefits
(Copy of Judgment is attached).

④ That now the Undersign is
requesting for the implementation
of the Judgment Dated: 18-4-2024
in its letter and spirit,
therefore instant implementation
application.

It is, therefore, most humbly requested
that Judgment Dated: 18-4-2024, may
kindly be implemented in its true
letter and spirit

MIHRULLAH

Mihrullah,
EX-CLASS-IV,
R/O Bahadur Kalay,
Achar Gashij, Amas
Din Peshawar
cell: 0315-9630568

Dated: 13/06/2024.

VAKALAT NAMA

NO. _____/2024

IN THE COURT OF Khyber Pakhtun Khwa Service Tribunal
Peshawar

Nihar Ullah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS
Police department (Respondent)
(Defendant)


I/We, Nihar Ullah

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT AND SHAKIR ULLAH TORANI ADVOCATE**, 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 _____/2024

NIHAR ULLAH
(CLIENT)

ACCEPTED

TAIMUR ALI KHAN
Advocate High Court

BC-10-4240
CNIC: 17101-7395544-5
Cell No. 03339390916

& 
SHAKIR ULLAH TORANI
Advocate Peshawar
BC-22-4994
03409146056