

31.05.2022

None present for the petitioner. Mr. Kabirullah Khattak, Addl. AG for respondents present.

Since no direction was given to the respondents in this Execution petition, therefore, the respondents are directed to implement the judgment and submit implementation report on 29.06.2022 before S.B. Original file be also requisitioned.



Chairman

29.06.2022

None ~~for~~ ~~the~~ present for the petitioner. Kabir Ullah Khattak, Additional Advocate General present.

Notices be issued to petitioner/counsel and respondents for the date fixed. To come up for implementation on 18.08.2022 before S.B.

Noted
1/3



(Fareeha Paul)
Member (E)

18.08.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Implementation report not submitted. Learned AAG seeks time to contact the respondents for submission of implementation report on the next date. Adjourned. To come up for implementation report on 23.09.2022 before S.B.







(Mian Muhammad)
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 01/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.01.2022	<p>The execution petition of Mr. Asif Khan submitted today by Uzma Syed Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench at Peshawar on <u>04/02/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	04.02.2022	<p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 04.03.2022 for the same as before.</p>
	4-3-2022	<p style="text-align: right;"> Reader</p> <p style="text-align: center;">Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 31-5-2022</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 01 /2022

In Service Appeal 1286/2020

Asif Khan, Ex Constable No. 192 District Police, Mardan

(APPELLANT)

VERSUS

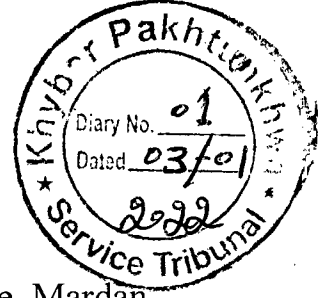
- (1) The Inspector General of Police, KPK, Peshawar.
- (2) The Regional Police Officer, Mardan.
- (3) The District Police Officer, Mardan.

(RESPONDENTS)

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 12.11.2021 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

Respectfully Sheweth:

1. That the appellant filed an appeal bearing No.1286/2020 against the order dated 04.11.2013.
2. That the said appeal was finally heard by the Honorable Tribunal on 12.11.2021 and the Honorable Tribunal was kind enough to accept the appeal and impugned order was set-aside. **(Copy of judgment is attached as Annexure-A).**
3. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.



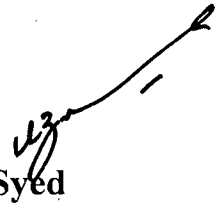
4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
5. That the appellant has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 12.11.2021 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 favour of petitioner.


Petitioner


Asif Khan

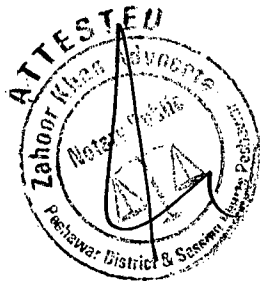
Through:


Uzma Syed
Advocate, High Court Peshawar

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 and nothing has been concealed from Hon'able Tribunal.


Deponent



①

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1286 /20



Mr. Asif Khan, Ex-Constable/No.192.
District police, Mardan.

Case No. 1328

Dated 25/2/2020
(Appellant)

VERSUS

1. The Inspector General of Police , KPK, Peshawar.
2. The Regional Police Officer, Mardan.
3. The District Police Officer Mardan.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 04.11.2013 WHEREIN THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE AND AGAINST THE ORDER DATED 06.11.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AND AGAINST NOT DECIDING THE REVIEW PETITION 11-A WHICH WAS NOT RESPONDED WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 04.11.2013 AND 06.11.2019 MAY PLEASE BE SET ASIDE AND THE APPELANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Filed to day
25/2/2020

Submitted to day
3/3/2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1286/2020

Date of Institution ... 25.02.2020
Date of Decision ... 12.11.2021

Mr. Asif Khan, Ex-Constable No.192. District Police, Mardan.
... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar and two others.
... (Respondents)

Uzma Syed,
Advocate ... For Appellant.

Kabir Ullah Khattak,
Additional Advocate General. ... For Respondents.

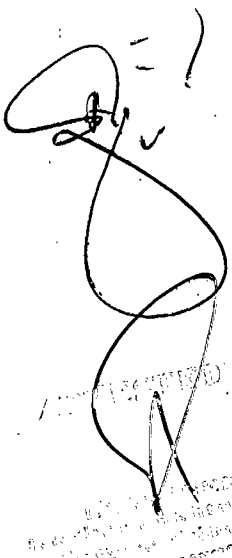
Rozina Rehman ... Member (J)
Mian Muhammad ... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction of this Tribunal through the above titled appeal with the prayer as copied below:

“On acceptance of this appeal, the order dated 04.11.2013 and 06.11.2019 may please be set aside and the appellant may be reinstated into service with all back benefits.”

2. Brief facts of the case are that appellant was appointed as Constable in the Police Department. During service, he was charged in a criminal case vide F.I.R No.789 U/S 302 P.P.C. He was, therefore, departmentally proceeded against and was dismissed from service. He was tried in a competent court of Law and was acquitted.



Handwritten signature and stamp of the Tribunal member.

After earning acquittal, he preferred departmental appeal but the same was regretted. Feeling aggrieved, he filed revision before respondent No.1 but the same was not responded to, hence, the present service appeal.

3. We have heard Miss. Uzma Syed Advocate learned counsel for appellant and Kabir Ullah Khattak learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Miss Uzma Syed Advocate learned counsel appearing on behalf of appellant, in support of appeal contended with vehemence that the impugned dismissal order and the order of appellate authority are against law and facts. She submitted that appellant was acquitted by competent court of Law and that every acquittal is honorable but instead of giving benefit of acquittal to the appellant, his appeal was dismissed. Lastly, she submitted that appellant was dismissed just on the basis of his involvement in a criminal case and that the only stigma on the person of appellant is no more, therefore, he may kindly be reinstated in service. Reliance was placed on judgments of this Tribunal passed in Service Appeals No: 616/2017, 1380/2014, 1025/2017 and 768/2018.

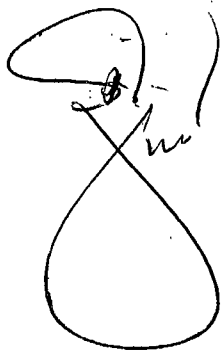
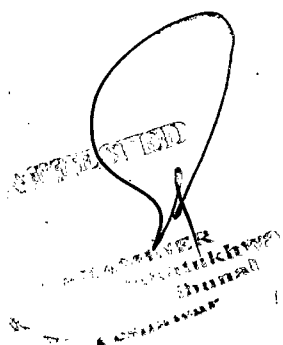
5. Conversely, learned A.A.G submitted that appellant was recruited as Constable in Police Department but his performance was not satisfactory. That he while posted at Police Guard WAPDA Grid Station near Sheikh Maltoon, was found directly involved in a criminal case, therefore, he was issued charge sheet with statement of allegations and inquiry was entrusted to D.S.P Headquarters. He contended that in the light of recommendation of Inquiry Officer, he

ATTESTED

SECRETARY
SIRAJUDDIN KHAN
Tribunal
Kashmir

was awarded major penalty of dismissal from service which does commensurate with the gravity of misconduct of the appellant.

6. From the record it is evident that plea which the respondents have tried to establish against the appellant through parawise comments and arguments at the bar, is mainly linked with his involvement in the criminal case. It has been asserted on behalf of respondents that appellant being member of disciplined force earned bad name to the Department and that the departmental and criminal proceedings are of distinct in nature and can work side by side and decision of the criminal court, if any, is not binding in the departmental proceedings. It is on record that accused was acquitted vide order of the learned Sessions Judge, Mardan dated 26.09.2019, where-after, he submitted his departmental appeal on 16.10.2019. Despite production of relevant record in respect of his acquittal by the competent court of Law, his appeal was rejected. His acquittal was not taken into consideration by the appellate authority. The registration of F.I.R No.789 on 24.07.2013 was taken as ground for disciplinary action against the appellant. According to the operative part of the judgment, appellant was acquitted on the basis of compromise as it was in the best interest of both the parties. When the criminal case taken as ground for disciplinary action against the appellant has failed at trial of the accused, the said ground having worked for disciplinary action against the appellant and imposition of major penalty upon him has vanished. We, therefore, hold that imposition of major penalty of dismissal from service upon appellant remained no more tenable. In this respect, we have sought guidance from 1998 PLC (C.S) 179, 2003 S.C.M.R 2015; P.L.D 2010 Supreme

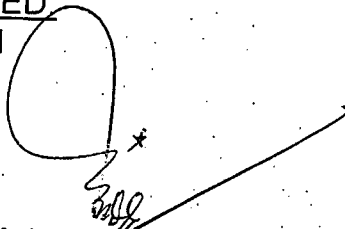



OFFICIAL
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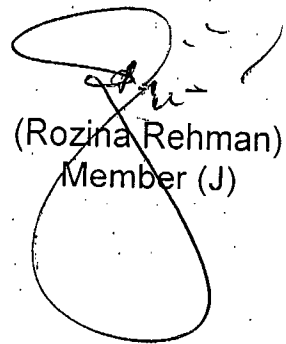
Court 695, judgments of Service Tribunal passed in Service Appeals No.1380/2014, 1025/2017, 616/2017, 768/2018.

7. In view of the above factual and legal position, we set aside the impugned orders and direct that appellant be reinstated in service, however, absence and intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
12.11.2021

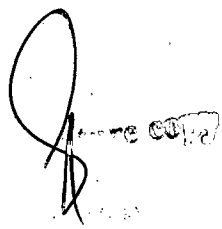


(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

Certified



Rajya
Service Tribunal
Bhopal

Date

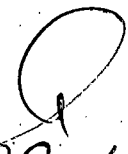
29/12-21

2400

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29-12-21

29-12-21

50 روپے	110269			
ایڈوکیٹ: <u>محمد</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: _____				
رابطہ نمبر: 0311-944036				

بعدالت جناب:

منجانب:	دعوی:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:
باعت تحریر آئکہ	

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

آن مقام Perhwar کیلئے عطا داد و کفالت کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعوی اقبال دعوی 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 و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام مذکورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

الرقوم: 388 - 01 - 2022

بعدالت جناب

Perhwar کے لیے منظور ہے۔

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. _____

EP No. 01

APPEAL No. _____ of 20 _____

1st / 1st

Appellant/Petitioner

Versus

IGP of Police Peshawar

RESPONDENT(S)

Inspector (1) / Inspector General of Police

Notice to Appellant/Petitioner

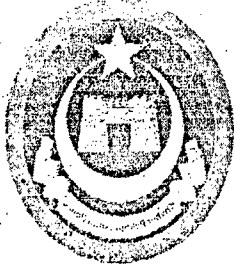
1st / Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on _____ at _____

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

4-8-22



1

2022

**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email dpo_mardan@yahoo.com

ORDER

In compliance with the orders of Honorable Service Tribunal, KP announced on 12.11.2021 in service appeal No. 1286/2020 "the major penalty of dismissal from service awarded to Ex-Constable Asif Khan No. 192 vide this office OB No. 2417 dated 04.11.2013 is set aside and he is conditionally re-instated in service on acquisition of bail bonds and treating his intervening period as leave without pay with immediate effect subject to the outcome of CPLA after the Scrutiny Committee of Law department has determined the instant case fit for filing CPLA in the meeting held on 15.12.2021".

OB No. 1738

Dated. 18/8/2022

~~Signature~~
District Police Officer
Mardan

No. 4586-92/EC, dated 18/08/2022.

Copy for information to the:-

1. Regional Police Officer, Mardan.
2. Superintendent of Police, Operations, Mardan.
3. District Accounts officer, Mardan.
4. DSP/Legal
5. DSP/HQr:
6. PO.
7. OSI.



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email dpo_mardan@yahoo.com

2022

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OB No. 1738

Dated. 18/8/2022


District Police Officer
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