

18.04.2022

Petitioner alongwith counsel present. Notice be issued to the respondents for the date fixed. To come up for implementation report on 21.06.2022 before S.B. Original file be also requisitioned.

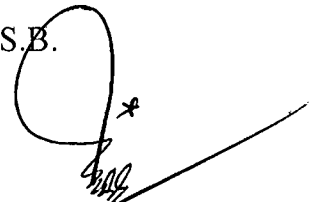


Chairman

21.06.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Implementation report not submitted. Learned Additional Advocate General is directed to consult the relevant quarter and ensure submission of implementation report on next date. Adjourned. To come up for implementation report on 01.08.2022 before S.B.



(Mian Muhammad)  
Member (E)

01.08.2022

Petitioner alongwith counsel present. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.

Learned Additional Advocate General seeks time for submission of implementation report. Adjourned. To come up for Implementation report on 09.09.2022 before S.B.






(Fareeha Paul)  
Member (E)

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 37/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.01.2022	<p>The execution petition of Mr. Shah Faisal submitted today by Naila Jan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench at Peshawar on <u>18/2/22</u>.</p> <p> CHAIRMAN</p>
	18.02.2022	<p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 18.04.2022 for the same as before.</p> <p> Reader</p>

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

Execution No. 38 /2022  
In  
Service Appeal No. 912/2015

Shah Faisal .....Applicant

**V E R S U S**

Regional Police Officer & others ..... Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Execution Petition with affidavit		1-2
2.	Address of parties		3
3.	Copy of judgment dated 13.10.2021	A	4-9
4.	Wakalatnama		10

Through

*Shah Faisal*  
Applicant

Naila Jan  
Advocate, High Court  
Peshawar

Date: 12.01.2022

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

Execution No. 38 /2022  
In  
Service Appeal No. 912/2015



Shah Faisal Ex-Constable No. 1760, District Police Bannu.

.....Applicant

**V E R S U S**

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer, Bannu.
3. Provincial Police Officer, KPK, Peshawar.

.....Respondents

**EXECUTION PETITION AGAINST THE ORDER  
AND JUDGMENT DATED 13.10.2021 IN THE  
ABOVE MENTIONED SERVICE APPEALS.**

**Respectfully Sheweth:**

1. That above titled service appeal was filed by the appellant / petitioner before this Hon'ble Tribunal on 13.08.2015 which was decided vide order dated 13.10.2021.
2. That on the said judgment, the appellant / petitioner was reinstated on service. The operative part of judgment is hereasunder:

“In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 19.06.2015 and 15.08.2015 are set aside and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to record room”

3. That the petitioner approached to the department several times but no response has been made till date.
4. That the action and inaction of the respondent department by not complying the judgment of this Hon'ble Court is illegal, unlawful, against the law and facts on the subject matter.
5. That the action of respondent department is intentional by using delaying tactics in the matter subject above.
6. That as per the judgment of this Hon'ble Tribunal dated 13.10.2021 respondents are bound to reinstate the petitioner with all back benefits, however they have not yet implemented the same in the letter and spirit.

**It is, therefore, most humbly prayed that on acceptance of this application, the judgment dated 13.10.2021 may please be implemented and respondents may please be directed to reinstate the petitioner as prayed for in the main case.**

*SHAN*  
Applicant

Through

*Naila Jan*  
Naila Jan  
Advocate, High Court  
Peshawar

*Naila Jan*

Date: 12.01.2022

**AFFIDAVIT**

It is solemnly affirm and declare that the contents of the **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

*SHAN*  
DEPONENT



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Execution No. \_\_\_\_\_/2022

In

Service Appeal No. 912/2015

Shah Faisal .....Applicant

**V E R S U S**

Regional Police Officer & others .....Respondents

**ADDRESSES OF PARTIES**

**APPLICANT / APPELLANT:**

Shah Faisal Ex-Constable No. 1760 son of Ghulam Ibrahim, District Police Bannu.

**RESPONDENTS:**

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer, Bannu.
3. Provincial Police Officer, KPK, Peshawar.

Through

Applicant

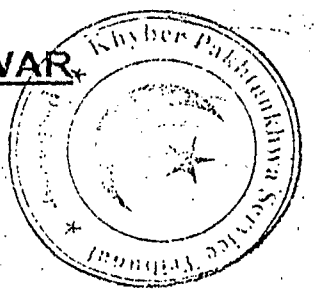
**Naila Jan**  
Advocate, High Court  
Peshawar

Date: 12.01.2022

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BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR



Service Appeal No 912 /2015

Shah Faisal Ex Constable No 1760, District Police Bannu  
.....Appellant

V E R S U S

M.W.P. Province  
Service Tribunal

Diary No 961  
dated 13/8/2015

- 1. Regional Police Officer, Bannu Region Bannu.
- 2. District Police Officer Bannu.
- 3. Provincial Police Officer KPK Peshawar .....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 05-08-2015 PASSED BY  
RESPONDENT NO 1 WHERE BY DEPARTMENTAL  
APPEAL OF THE APPELLANT FILED AGAINST THE ORDER  
DATED 19-06-2015 OF RESPONDENT NO/ 2 HAS BEEN  
REJECTED.

PRAYER:-

On acceptance of this appeal the impugned Order dated 05-08-2015 of respondent No 1 and Order dated 19-06-2015 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**ATTESTED**

Respectfully Submitted:-

- 1. That the appellant joined the respondent Department as Constable on 15-07-2009 remained posted to various Police Stations and since then he performed his duties with honesty and full devotion.
- 2. That on 09-04-2015, the appellant while posted at Sports Complex Bannu performed his duties and when came home, saw a Motorcycle near his home in the School ground and in Isha time when the appellant came out of his house, the Motorcycle was yet there and after asking from two persons namely Hidayatullah S/O Gul Piyao Khan and Syed Ali Rehman S/O Syed Zafar Ali Shah, present there, took the same to his house and told them to tell anyone who ask about the Motor cycle that the same is in the house of the appellant.

Filed to the  
Registrar  
13/8/15

ATTESTED

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*[Signature]*  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 912/2015

Date of Institution ... 13.08.2015

Date of Decision ... 13.10.2021

Shah Faisal Ex. Constable No. 1760, District Police Bannu.

... (Appellant)



**VERSUS**

Regional Police Officer, Bannu Region Bannu and two others.

... (Respondents)

MR. FAZAL SHAH MOHMAND,  
Advocate

... For Appellant

MR. JAVED ULLAH,  
Assistant Advocate General

... For Respondents

ROZINA REHMAN  
ATIQU-UR-REHMAN WAZIR

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**ATTESTED**

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-**

Brief facts of the case are

that the appellant joined police department as constable on 15-07-2009. During the course of his service, the appellant was proceeded against on the charges of alleged theft of motor cycle and FIR was registered against him U/S 381A/411 PPC Dated 09-04-215 and the appellant was arrested. The appellant was released on bail vide order dated 13-04-2015, thereafter departmental proceedings were initiated against him and the appellant was suspended from service vide order dated 15-04-2015 and after due process, the appellant was dismissed from service vide order dated 19-06-2015. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 05-08-2015, hence the instant service

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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appeal instituted on 11-08-2015 with prayers that impugned orders dated 19-06-2015 and 05-08-2015 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, as mandatory provisions of law have badly been violated; that the appellant did nothing which amounts to misconduct; that no charge sheet/statement of allegation, nor any show cause notice was served upon the appellant, hence the impugned order is not maintainable in the eye of law that there is no evidence whatsoever to establish that the appellant was involved in commission of such offense, even the mentioned motorcycle was handed over by the appellant to police, but the respondents malafiedly tangled the appellant in FIR, which was registered against one Mr. Wahab Khan, the appellant however have no connections with the said Mr. Wahab Khan as is evident from the statement of the complainant as well as from the inquiry report; that the complainant in his statement recorded in court has admitted that the appellant is innocent and hence was acquitted of the charges; that the appellant was acquitted of the charges by the court vide judgment dated 04-04-2016, which shows that the appellant was innocent in such case; that the appellant was penalized in an arbitrary manner without affording him proper opportunity of defense; that the inquiry officer has recommended that action against the appellant should be kept pending till disposal of the criminal case, but the respondents without waiting for such decision, dismissed the appellant from service, which is illegal, unlawful and contrary to the norms of natural justice.

03. Learned Assistant Advocate General for the respondents has contended that the appellant was directly involved in theft of motorcycle, as the stolen motorcycle was recovered from his possession, hence he was arrested and FIR lodged against him U/S 381A/411 PPC dated 09-04-2015; that proper inquiry through DSP Cantt was conducted, wherein all the opportunities of defense were

**ATTESTED**

**ATTESTED**

EXAMINER  
 SERVICE INSPECTION  
 DISTRICT

afforded to the appellant and charges were established against him; that the appellant was proceeded against in accordance with law and was rightly penalized for the offense he committed.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that one Muhammad Ayub registered an FIR U/Ss 381A/411 PPC, against one Mr. Wahab Khan, who allegedly had stolen his motorcycle and upon his arrest, Mr. Wahab Khan disclosed that the said motorcycle is parked in the house of the appellant. placed on record is a recovery memo dated 09-04-2015, which shows that police party came to hujra of the appellant and the appellant voluntarily handed over such motorcycle to police and which substantiate stance of the appellant, in which he has stated that he noticed that a motorcycle was parked outside his house for longer time, so he parked such motorcycle inside his hujra for safety and informed neighbors about it to locate its owner, but in the meanwhile, police party came to his house and asked about motorcycle, which he handed over to police, not knowing that such motorcycle was case property. On the said ground, the appellant was also charged U/S 411 PPC in the said FIR already registered against Mr. Wahab Khan and the appellant was placed under suspension vide order dated 15-04-2015, which was a correct course of action and in the meanwhile the appellant was granted bail by the court vide order dated 13-04-2015 and in a situation, principles of natural justice demand that respondents must have waited for decision of a criminal court, which is also supported by section 194-A of CSR but the respondents initiated disciplinary proceedings against him upon his involvement in a criminal case and dismissed him from service, which however was not warranted, as it is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty

ATTESTED

EXAMINER  
Kashmir Public Service Tribunal

could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

06. Placed on record is an inquiry report dated 08-06-2015 conducted against the appellant and the inquiry officer in its findings have stated that though motorcycle was recovered from hujra of the appellant, but it was not investigated by the investigation officer as to whether the said motorcycle was parked by Wahab Khan for malafide or parked by the appellant for safety purpose with bonafide and that too also needs evidence, hence he had recommended that such inquiry shall be kept pending till decision of the court, but the respondents ignored recommendations of the inquiry officer and the appellant was dismissed from service vide order dated 19-06-2015 without conducting a regular inquiry. The Supreme Court of Pakistan in its judgment reported in 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest justice. Obviously the appellant was not associated with the process of disciplinary proceedings and was condemned unheard, hence the impugned order is liable to be set at naught.

07. In the meanwhile the appellant was acquitted of the same charges by the competent court of law vide judgment dated 04-04-2016, upon which he was dismissed from service. In a situation, if a person is acquitted of the charges, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460.

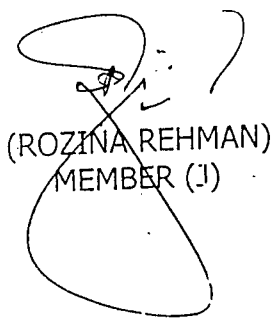
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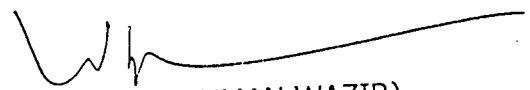
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08. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 19-06-2015 and 05-08-2015 are set aside and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.


ANNOUNCED  
13.10.2021

  
(ROZINA REHMAN)  
MEMBER (J)

  
(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

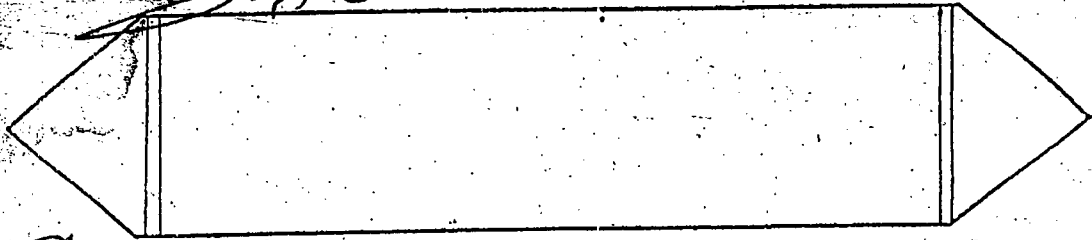
**ATTESTED**  


Certified to be true copy

  
EXCISE OFFICER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 26/10/21  
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Total 30/-  
Date of Delivery of Copy 26/10/21  
Date of Delivery of Copy 26/10/21

بعدالت من KP کسٹمز ٹریڈنگ کمپنی



Petitioner 2022 منجانب

شاہ فیصل بنام پولیس

فیصلہ اپنم 13/10/2022

مورخہ

9/12/2022

Exemption Petitioner

دعویٰ

جرم

### باعث تحریر آنکے

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

آن مقام فیصلہ کیلئے فیصلہ

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 ثالثہ فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا ایپل کی برآمدگی اور منسوخی

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ

پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سب سے وہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی

مذکورہ کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

شاہ فیصل  
اپنم

المرقوم 12 ماہ جنوری 2022

واہ العب

کے لئے منظور ہے۔

بمقام  
شاہ فیصل  
اپنم