

11.08.2022

Counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General for respondents present.


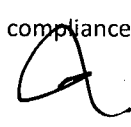
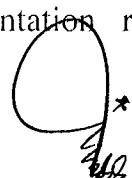
Implementation report not submitted. Learned Additional AG sought time for submission of implementation report. To come up for implementation report on 16.09.2022 before S.B.

  
(Fareeha Paul)  
Member (E)

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. \_\_\_\_\_ 325/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.06.2022	<p>The execution petition of Mr. Muhammad Ayub submitted today by Mr. Saadullah Khan Marwat 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-	<i>14-6-2022</i>	<p>This execution petition be put up before Single Bench at Peshawar on <u>21-06-2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	21.06.2022	<p>Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.</p> <p>Implementation report not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 11.08.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

*P/ha*  
*14/6/22*

# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

## CHECK LIST

Case Title: Muhammad Ayub v/s Police Department

S#	CONTENTS	YES	NO
1	This Appeal has been presented by: <u>Saeedullah Khan Munsif</u>	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	x	✓
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Saeedullah Khan Munsif

Signature: [Signature]

Dated: 03-06-22

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

*Execution Petition #*

Misc Pett: No. 325 /2022

Muhammad Ayub

versus

DPO & Others

**I N D E X**

<b>S.#</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Page</b>
1.	Memo of Misc Petition		1-2
2.	Copy of Appeal dated 11-04-2018	"A"	3-5
3.	Copy of Judgment dated 24-01-2022	"B"	6-8
4.	Compliance letter dated 21-04-2022	"C"	9

Applicant

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,

Shoba Bazar, Peshawar.

Ph: 0300-5872676

Dated: 03-06-2022

**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR***Execution*~~Case~~ Pett: No. 325 /2022

IN

S.A. No. 508/2018



Muhammad Ayub S/O Sher Ali Khan,

R/O Navay-Kaly, Mingora Swat,

Constable No. 1460, District

Police Swat . . . . . Appellant

**VERSUS**

1. District Police Officer,  
Swat.
2. Regional Police Officer,  
Malakand at Saidu Sharif  
Swat.
3. Provincial Police Officer,  
KP, Peshawar. . . . . Respondents

**APPLICATION FOR IMPLEMENTATION OF THE  
JUDGMENT DATED 24-01-2022 OF THE HON'BLE  
TRIBUNAL, PESHAWAR:**

**Respectfully Sheweth:**

1. That on 11-04-2018, applicant filed appeal before this hon'ble Tribunal for reinstatement in service. (Copy as annex "A")
2. That the said appeal came up for hearing on 24-01-2022 and then the hon'ble Tribunal was pleased to hold that:-

"We are inclined to partially accept the instant appeal as well as the connected service appeal by converting the major penalty of removal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay". (Copy as annex "B")

3. That on 21-04-2022 applicant remitted the same to respondents for compliance but so for no favorable action was taken there and then and the judgment of the hon'ble Tribunal was put in a waste box. (Copy as annex "C")
4. That the respondents are not complying with the judgment of the hon'ble Tribunal in letter and spirit and flouts the same with disregard, so are liable to be proceeded against the Contempt of Court Law for punishment.

It is, therefore, most humbly requested that the judgment dated 24-01-2022 of the hon'ble Tribunal be complied with hence forthwith.

**OR**

In the alternate, respondents be proceeded for contempt of court and they be punished in accordance with Law.

  
Applicant

Through

  
Saadullah Khan Marwat

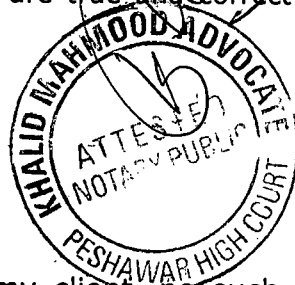
  
Arbab Saif-ul-Kamal

  
Arjad Nawaz  
Advocates

Dated: 03-06-2022

### **AFFIDAVIT**

I, Muhammad. Ayub S/O Sher Ali Khan R/O, Navay Kaly Mingora, Swat, (Applicant), do hereby solemnly affirm and declare that contents of **Implementation Petition** are true and correct to the best of my knowledge and belief.



  
DEPONENT

### **CERTIFICATE:**

As per instructions of my client, no such like Implementation Petition has earlier been filed by the appellants before this Hon'ble Tribunal.

  
ADVOCATE

A 3

1

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. \_\_\_\_\_/2018

Muhammad Ayub S/O Sher Ali Khan  
R/o Navay Kaly Mengawara, Swat,  
Ex-Constable No. 1460,  
PS, Imam Dhery, Swat . . . . . Appellant

VERSUS

1. District Police Officer, Swat.
2. Regional Police Officer,  
Malakand, at Saidu Sharif, Swat
3. Provincial Police Officer, KP,  
Peshawar. . . . . Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974  
AGAINST O.B. NO. 28, DATED 21-02-2009 OF R. NO.  
01, WHEREBY APPELLANT WAS DISMISSED FROM  
SERVICE, FROM 17-10-2008 OR OFFICE ORDER NO.  
8609-12/E DATED 18-09-2017 OF R. NO. 02,  
WHEREBY REPRESENTATION OF APPELLANT WAS  
FILED: OR OFFICE ORDER NO. 6383/17 DATED 03-  
10-2017 OF R. NO. 03, WHEREBY REVISION  
PETITION WAS FILED FOR NO LEGAL REASON:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth;**

**ATTESTED**

1. That appellant was enlisted in service in the year 2002 as Constable and served the department till the date of dismissal from service.
2. That appellant was deputed to PTC, Hangu for training in the year 2004 which was qualified by him. Similarly, in the year 2007 he

passed drill course from PTC Hangu and was posted as Drill Instructor at PRC Mardan.

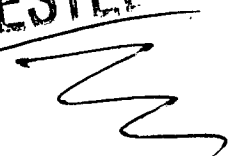
3. That in the impugned order Charge Sheet, Statement of Allegation and Enquiry is mentioned but due to the deteriorated situation the same could not be served upon him so no reply was submitted to the same.
4. That on the absence of allegation, appellant was dismissed from service by R. No. 01 vide order dated 21-02-2009 with effect from 29-10-2008 retrospectively. (Copy as Annex "A")
5. That on 20-03-2009, appellant submitted departmental appeal before R. No. 02 for reinstatement in service which was filed on 18-09-2017. (Copies as Annex "B" & "C")
6. That on 27-09-2017, appellant submitted subsequent representation before R. No. 02 which was filed on 03-10-2017. The same was received from the office of R. No. 02 on 20-03-2018. (Copies as Annex "D" & "E")
7. That not only appellant was dismissed from service on the score of absence but numerous others were also dismissed as such and they were reinstated into their services vide order dated 30-11-2010, 15-03-2017 and 09-08-2017 (Copies as Annex "F")
8. That apart from the aforesaid fact, the subject matter came up for consideration before the hon'ble Tribunal and after thorough probe, their appeal's were accepted vide judgments dated 02-05-2016 and 07-12-2017, etc. (Copies as Annex "G")

Hence this appeal, inter alia, on the following grounds:

GROUND S:

- a. That appellant was enlisted in service in the year 2002 and served the department till the date of dismissal from service.
- b. That at the time, the Swat Valley was in clutches of the miscreants and it is will in knowledge of every one that they were ruling the area

**ATTESTED**





and the government machinery was totally collapsed. Employees were kidnapping, beheading and killing either through guns or bomb blasts. In such a situation employees of almost all of every department let their services, especially of the police department.

- c. That appellant was dismissed from service on the score of absence but such absence was not willful but was due to the deteriorated situation of the area.
- d. That absence does not constitute any misconduct when the same is not willful and as stated earlier, hundreds and thousands similarly and equally placed employees have been reinstated into their services not only by the department but also by the hon'ble Tribunal / courts which judgments were upheld by the apex court.
- e. That codal formalities enumerated in the Rules were never observed, being mandatory. The impugned orders are not per the mandate of Law and based on malafide.
- f. That no administrative order could be given retrospective effect. On this score alone, the impugned orders are illegal and ab-initio void.

It is, therefore, most humbly prayed that on acceptance of appeal, order dated 21-02-2009 and 18-09-2017 or 03-10-2017 of the respondents be set aside and appellant be reinstated in service with all consequential / back benefits, with such other relief as may be deemed proper and just in circumstances of the case.



Appellant

Through



Saadullah Khan Marwat



Arbab Saiful Kamal  
Advocates

Dated: 09-04-2018

ATTESTED



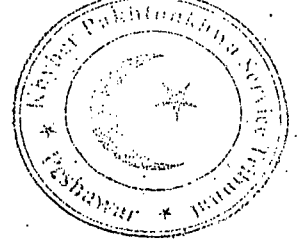
**B" 6**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 508/2018

Date of Institution ... 11.04.2018

Date of Decision ... 24.01.2022



Muhammad Ayub S/o Sher Ali Khan R/o Navay Kalay Mingora Swat, Ex-Constable  
No. 1460, PS, Imam Dhery, Swat ... (Appellant)

**VERSUS**

District Police Officer, Swat and others.

... (Respondents)

Arbab Saiful Kamal,  
Advocates

... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

AMJAD SULTAN TAREEN ...  
ATTORNEY-REHMAN WAZIR ...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATTORNEY-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are

that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was rejected vide order dated 18-09-2017. The appellant filed revision petition dated 27-09-2017, which was also rejected vide order dated 03-10-2017 communicated to appellant on 20-03-2018, hence the instant service appeal with prayers that the impugned orders dated 21-02-2009, 18-09-2017 and 03-10-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED  
  
CHAIRMAN  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

**ATTESTED**

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the impugned order is against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that absence of the appellant was not willful, but was due to compelling reason of terrorism in the area and which does not constitute gross misconduct entailing major penalty of dismissal; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the appellant has been discriminated as similarly placed employees were re-instated but case of the appellant was not considered.

03. Learned Deputy District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty and did not turn up despite repeated summons; that the appellant while posted at Imam Dheri check post Police Station Kanjo absented himself without permission of the competent authority vide daily diary No 11 dated 17-10-2008; that the appellant was issued charge sheet/statement of allegation and proper inquiry was conducted; that the appellant was summoned repeatedly but he did not turn up, hence he was proceeded ex-parte; that after fulfillment of all codal formalities, the appellant was awarded with major punishment of dismissal from service vide order dated 2-02-2009; that the appellant filed departmental appeal with delay of more than seven year, which was considered but was rejected vide order dated 11-09-2017 being barred by time.

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

05. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such

**ATTESTED**

8

personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and threats from Taliban. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

06. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal by converting the major penalty of removal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
24-01-2022

Certified to be true copy  
(AHMAD SULTAN TAREEN)  
CHAIRMAN  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

**ATTESTED**  


"C" 9

To

- ✓ 1) District Police Officer, Swat
- 2) Regional Police Officer, Malakand, at Saidu Sharif, Swat
- 3) Inspector General of Police, KP, Peshawar

APPLICATION FOR IMPLEMENTATION  
OF JUDGMENT OF THE HON'BLE  
SERVICE TRIBUNAL, PESHAWAR  
DATED 24.01.2022 PASSED IN  
S.A.No.508/2018.

Sir,

Please comply the order/ judgment dated 24.01.2022 passed by Hon'ble Service Tribunal, Peshawar passed in S.A.No.508/2018 in letter, spirit and obliged. (Certified copy attached).

That the instant application may kindly also be considered as my arrival report.

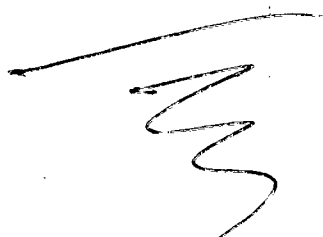
Applicant



Muhammad Ayub  
S/O Sher Ali Khan  
R/o Mingora Swat  
Constable No.1460  
Police Line, Swat  
Cell: 0343-0300989

Dated: 21.04.2022

ATTESTED





**"B"**

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.  
JUDICIAL COMPLEX (OLD), KHYBER ROAD  
PESHAWAR. **8B**

No. ....

Appeal No. **E.P. No. 325** of 20 **22**

**Muhammad Ayub** ..... Appellant/Petitioner

**Repd**

**D-P-O Swat** ..... Respondent

Respondent No. ....

Notice to: — **Distt Police Officer Swat.**

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on **21/6/2022** at **8.00 A.M.** If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of **EP**  appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. .... dated .....

Given under my hand and the seal of this Court, at Peshawar this **15<sup>th</sup>** .....

Day of **June** ..... 20 **22**

**for Implementation Report**

**Prof**  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.

Handwritten text at the top of the page, possibly a header or title, including the word "KONVENCIO" and other illegible characters.

Handwritten signature or name in the upper left quadrant.

Handwritten text on a dotted line, possibly a date or reference number.

Handwritten text on a dotted line, possibly a title or subject matter.

Main body of handwritten text, appearing to be a list or detailed notes.

Handwritten text on a dotted line, possibly a signature or name.

Handwritten text on a dotted line, possibly a date or reference number.

Printed text at the bottom of the page: "BESHAWAP JUDICIAL COMPLEX (OJD) KHAYE K KOVA KHAYE BAKILLIKH / SEB / ICE KHAYE K KOVA".





**"B"**

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

No.

Appeal No. EP No. 325 of 20 22

Muhammad Ayub Appellant/Petitioner

Versus

DPO Swat Respondent

Respondent No. 3

Notice to: —

Provincial Police Officers KPN  
Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 21/6/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of EP is attached. Copy of appeal has already been sent to you vide this office Notice No. .... dated .....

Given under my hand and the seal of this Court, at Peshawar this 15 th

Day of June 20 22

for Representation  
Report

[Signature]  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.  
2. Always quote Case No. While making any correspondence.

5. Always quote Case No. While making any correspondence.  
1. The hours of attendance in the court are the same that of the High Court except Sunday and gazetted holidays.

BESHAWAR  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
REGISTRAR

*for [unclear] [unclear]*

Day of ..... 7-5-20

Given under my hand and the seal of this Court, at Beshawar, this 7/5/20

Office Notice No. .... dated .....

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

this appeal/petition.  
notice posted to this address by registered post will be deemed sufficient for the purpose of address given in the appeal/petition will be deemed to be your correct address, and further address. If you fail to furnish such address your address contained in this notice which is given to you by registered post. You should inform the Registrar of any change in your

Notice of any alteration in the date fixed for hearing of this appeal/petition will be

appeal/petition will be heard and decided in your absence.

default of your appearance on the date fixed and in the manner aforementioned, the alongwith any other documents upon which you rely. Please also take notice that in this Court at least seven days before the date of hearing & copies of written statement Advocate, duly supported by your power of Attorney. You are, therefore, required to file in the case may be postponed either in person or by authorized representative or by any appeal/petitioner. You are at liberty to do so on the date fixed, or any other day to which you may be adjourned. If you wish to urge anything against the merely informed that the said appeal/petition is fixed for hearing before the Tribunal the above case by the petitioner in this Court and notice has been ordered to issue. You are Province Service Tribunal Act, 1974, has been presented/registered for consideration, in

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa

*Beshawar*

Notice to:

*Director of Public Office Beshawar*

Respondent No. 3

..... Respondent

*[Signature]*  
Appellant/Petitioner

Appeal No. *EL No 302* of 2020

No. -

BESHAWAR  
JUDICIAL COMPLEX (OGD), KHYBER ROAD  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, BESHAWAR

“B”