

14th June, 2022

Clerk of counsel for the petitioner present. Mr. Naseerud Din Shah, Asstt. AG for the respondents present Counsel are on strike.

Learned AAG seeks further time to submit implementation report. Request is accepted. To come up for implementation report on 28.07.2022 before S.B. Original file be requisitioned.

(Kalim Arshad Khan)
Chairman

28.07.2022

No one present on behalf of petitioner. Mr. Kabir Ullah Khattak, Additional Advocate General present.

Notices be issued to petitioner/counsel as well as respondents for submission of implementation report. To come up for implementation report on 15.09.2022 before S.B.

Local respondent was put on notice while cot district respondent was not put on notice due to non-availability of postal tickets. Due to deficiency of postal tickets counsel & appellants was informed telephonically for 16/09/22

(Fareeha Paul)

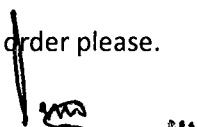


Member (E)

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Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 139/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.03.2022	<p>The execution petition of Mr. Adil Badshah submitted today by Mr. Aslam Khan Tanoli 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 to touring S. Bench at Abbottabad on <u>19-04-2022</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	19.04.2022	<p>Mohammad Aslam Tanoli, Advocate for the petitioner present and requested that as the petitioner was serving as Constable in District Police Kohat, therefore, the Execution Petition in hand may be fixed before the S.B at Principal Seat Peshawar. Request is genuine, therefore, notice be issued to the respondents for submission of implementation report on 14.06.2022 before the S.B at Principal Seat Peshawar.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J) Camp Court Abbottabad</p>

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No...139/2022

Adil Badshah (Constable No. 975, District Police Kohat)(Petitioner)

Versus

1. Provincial Police Officer, KPK Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer Kohat.....(Respondents)

EXECUTION PETITION IN SERVICE APPEAL NO. 4056/2020.

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4.	Wakalatnama		

A. badshah
PETITIONER

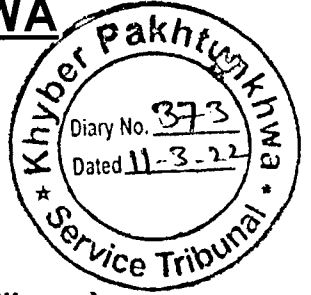
THROUGH

M. Aslam
MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
HARIPUR

Dated 11-03-2022

①

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR



Execution petition No.....

Adil Badshah (Constable No. 975, District Police Kohat)(Petitioner)

Versus

1. Provincial Police Officer, KPK Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer Kohat..... (Respondents)

EXECUTION PETITION IN SERVICE APPEAL NO. 4056/2020 FOR
IMPLEMENTATION OF JUDGMENT/DECISION DATED 04-08-2021
OF THIS HONOURABLE SERVICE TRIBUNAL ON CONDITIONAL
AND PROVISIONAL BASIS TILL OUTCOME OF CPLA (IF ANY)
FLED BY RESPONDENTS/POLICE DEPARTMENT AGAINST
PETITIONER.

Respectfully Sheweth:

1. That petitioner filed the titled service appeal No. 4056/2020 before this Honorable Service Tribunal against the orders of Respondents whereby appellant was compulsory retired from service and his departmental appeal rejected in flagrant violation and negation of law, departmental rules

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and regulations. **(Copy of the service appeal is attached as Annex-"A")**.

2. That this Honorable Service Tribunal while accepting subject service appeal No. 4056/2020 issued the judgment/decision dated 04-08-2021 that "the instant appeal is accepted and appellant is entitled to honorable retirement along with ancillary benefits. The appellant is also held entitled to the benefits accrued under rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with criteria for compensation of Death/Incapacitation of Civil Servants". **(Copy of judgment/order dated 04-08-2021 is attached as Annex-"B")**.
3. That after receipt of attested copy of the judgment/decision dated 04-08-2021, the appellant has been incessantly running for the implementation of the aforementioned judgment/decision but no heed has been paid till today by respondents to settle the grievance of appellant.
4. That the respondents instead of setting appellant's grievance has informed him that they have filed

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CPLA against the judgment of Honorable KPK Service Tribunal Peshawar dated 08-04-2021 before the Supreme Court of Pakistan.

5. That there is no stay order from the Apex Supreme Court of Pakistan Islamabad in this respect. Petitioner has been suffering for settlement of his grievance, therefore, petitioner and his family members are badly suffering financially as there is no source of income except meager pension.
6. That despite petitioner's incessant approaches to respondents, they have not settled his grievance as decided by this Honorable Tribunal even on conditional and provisional basis subject to outcome of CPLA (if any) filed by Respondents/Police Department against the petitioner. Hence this Execution Petition on the following:

GROUND:

- A. That as this Honorable Service Tribunal in its judgment dated 04-08-2021 had decided that "the instant appeal is accepted and appellant is entitled to honorable retirement along with ancillary benefits. The appellant is

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also held entitled to the benefits accrued under rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with criteria for compensation of Death/Incapacitation of Civil Servants".

- B) That there is no stay order from the Apex Supreme Court of Pakistan against the judgment and order dated 04-08-2021 of this Honorable Service Tribunal is in the field. Respondents must comply with the said order.
- C) That respondents do not pay any heed to decision dated 04-08-2021 of this Honorable Tribunal, hence instant execution petition.
- D) That petitioner along with his family is facing financial distresses due to having no source of income except pension and his grievance deserves to be settled in the light of judgment/decision dated 04-08-2021 of this Honorable Service Tribunal.
- E) That instant execution petition is well within time and this Honorable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYER:

(5)

It is, therefore, humbly prayed that this Honorable Service Tribunal may graciously be pleased to accept this Execution petition and issue necessary orders/directions to be respondents to settle his grievance in the light of its decision dated 04-08-2021 conditionally and provisionally subject to outcome of CPLA (if any) filed by respondents.

A. badshah

PETITIONER

M. Aslam

THROUGH

MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
AT HARIPUR

AFFIDAVIT

I, Adil Badshah petitioner do hereby solemnly affirm that the contents of fore-going petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

A. badshah

Dated: 11-03-2022

DEPONENT

ATTESTED



A

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Annex-A

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No.....

Adil Badshah, Ex-Constable No.975, District Police Kohat

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Kohat.

Respondents

**SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL
ACT 1974 AGAINST ORDER OB NO. 1553 DATED 27-11-2019
PASSED BY THE DISTRICT POLICE OFFICER KOHAT WHEREBY THE
APPELLANT HAS BEEN AWARDED WITH THE PENALTY OF
"COMPULSORY RETIREMENT FROM SERVICE".**

**PRAYER: ON ACCEPTANCE OF INSTANT DEPARTMENTAL APPEAL
IMPUGNED ORDER DATED 27-11-2019 OF RESPONDENT NO.3/
DISTRICT POLICE OFFICER KOHAT MAY GRACIOUSLY BE SET ASID
AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE
OF COMPULSORY RETIREMENT OR BE HONOURABLE RETIRED
FROM SERVICE ON COMPLETION OF 32 YEARS SERVICE WITH
GRANT OF L.P.R ETC., THE PERIOD REMAINED IN JAIL WITH GRANT
OF LEAVE ON FULL PAY INSTEAD OF WITHOUT PAY AND BY
APPONTING HIS ONE SON IN POLICE DEPARTMENT AGAINST THE
QUOTA RESERVED FOR DISABLED/GHAZIS POLICE OFFICIAL'S
SONS ALONGWITH ALL OTHER CONSEQUENTIAL SERVICE
BENEFITS.**

Respectfully sheweth,

1. That appellant was enrolled as Constable in Police Department in 1987 thus has rendered about 32 years service. Throughout his service the appellant always performed his assigned duties with devotion, dedication, efficiency, discipline, subordination and honesty, serving the nation & state at all Police Stations of District Kohat and outside the division in the best interest of public. He has meritorious service record at his credit.
2. That in June 2012, the appellant was severely wounded in an IED blast while on night mobile duty of Police Station Mohammad Riaz Shaheed wherein a number of police personnel were martyred and many went permanently incapacitated including

the appellant (**as Ghazi**). A Medical Board was constituted which declared the appellant as permanently incapacitated. All the documents are part of the police record and have also been provided to the authorities by appellant time and again. Due to his physical problems in December 2018, the appellant had applied to the worthy Provincial Police Officer KPK, Regional Police Officer and District Police Officer Kohat for his retirement from service and appointment of his son in his place against the quota reserved from disabled/ghazi police employees. But unfortunately his request was not accepted by his worthy officers. **(Copy of application is attached as Annexure-"A")**.

3. That it is in the knowledge of High-ups that due to enmity the appellant and all of his brothers alongwith their families have been residing in Wah Cantt, Tehsil Taxila, District Rawalpindi. Due to the reason the appellant was often allowed 3-4 days leave for delivering necessities of life to his family at Wah Cantt and on return to bring warrants of accused from Central Jail Haripur which fact is part of police record.
4. That as usual on 27-04-2019, Head Constable Mohammad Younas Moharrir Police Line Kohat allowed appellant for 4/5 days to proceed to Wah Cantt and on return must bring warrants of accused from Central Jail Haripur and his departure was properly recorded in Daily Dairy on 27-04-2019. Appellant proceeded to and after staying at Wah Cantt with his family for 4-5 days, he collected warrants from Central Jail Haripur on 03-05-2019. **(Copies of warrants are as Annexure-"B")**.
5. That on 02-05-2019 while appellant was at Wah Cantt, due to enmity he was falsely involved as an accused in FIR No. 618 dated 02-05-2019 U/S-302/34/109-PPC registered with Police Station Kohat. On receiving the news of his involvement in criminal case, the appellant immediately contacted Police Lines Moharrir Head Constable Mohammad Younas and apprised him of the situation from Wah Cantt. CDR dated 02-05-2019 is the record and proof of conversation between Moharrir and Appellant. But thereafter on the same day the said Moharrir with malafide intention, immorally, illegally and with the connivance of RI & Lines Officer tempered the Daily Diary register and marked the appellant as absent just to save their skins. It is pertinent to mention here that before involvement in above cited FIR for the last few months the appellant visitation to his family at Wah Cantt and on return bringing warrants of accused from Central Jail Haripur had been in practice which fact is verifiable from the record of Central Jail Haripur and by enquiring his immediate supervisors on oath.
6. That as the appellant was charged in FIR, he had to resort to legal remedy for proving his innocence as he was at Wah Cantt at the time of occurrence and was falsely involved. Appellant got BBA from Learned ADJ-III Kohat on 22-05-2019 and joined his duties. Appellant appeared before the District Police Officer Kohat and apprised him of the circumstances.

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7. That on 29-06-2019, BBA of the appellant was cancelled and he was sent to District Jail Kohat on judicial remand. During his confinement in Jail the appellant was served upon with a Show Cause Notice No. 8498/PA dated 15-07-2019 which had to be replied by the appellant in a state of utter confusion without concentration of mind being behind the bars and he explained the facts of the matter and denied the allegations against him. The said reply was submitted to the District Police Officer Kohat through Superintendent Jail Kohat vide his letter No. 2670 dated 22-07-2019. **(Copies of Show Cause Notice and its reply are attached as Annexure "C&D")**.
8. That appellant remained in Jail from 29-06-2019 to 12-10-2019 till his release on Bail. It was not a willful/deliberate absence rather a very compelling circumstances beyond appellant's control being behind the bars. On the basis of Show Cause Notice served upon the appellant while in Jail, the District Police Officer Kohat treated this period as **Leave Without Pay** by holding it willful absence & leave without prior permission vide order OB No.1147 dated 20-09-2019 and that appellant was called in O.R. but he could not attend it deliberately hence ex-parte action. It is very astonishing as to how appellant could attend the O.R. when he was in Jail and no arrangement for his attendance was made by departmental authorities. **(Copy of order dated 20-09-2019 is as Annexure-"E")**.
9. That on 11-10-2019, the appellant was granted bail by Honourable High Court Peshawar whereupon he immediately joined his duties and was also allowed 15 days medical leave by the District Police Officer Kohat. **(Copy of bail order dated 10-11-2019 is attached as Annexure-"F")**.
10. That the appellant has been awarded with the penalty of compulsorily retired from service by the District Police Officer Kohat vide order OB No.1553 dated 27-11-2019. **(Copy of order dated 27-11-2019 is as Annexure-"G")**.
11. That no proper departmental inquiry was conducted. No Charge Sheet was issued. Neither a witness was called for to record evidence against the appellant in his presence nor was he provided with the chance of cross examination. Copy of inquiry report, if any, was also not provided to him. Even opportunity of personal hearing was not provided to the appellant thus principle of natural justice was also violated in his case and he was condemned unheard.
12. That appellant aggrieved of the order dated 27-11-2019 passed by the District Police Officer Kohat preferred a departmental appeal dated 16-12-2019 before the Regional Police, Kohat Region, Kohat which despite passing of statutory period was not responded **(Copy of Departmental Appeal dated 16-12-2019 is attached as Annexure-"H")** hence instant service appeal, inter alia, on the following amongst other:-

GROUNDS:

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- A) That order dated 27-11-2019 of respondent No.3/ District Police Officer Kohat whereby the appellant has been awarded with the penalty of compulsory retirement from service is illegal, unlawful, against the departmental rules & regulation, issued in a cursory, whimsical and arbitrary manner, hence is liable to be set aside.
- B) That no proper departmental inquiry was conducted. No Charge Sheet was issued. Neither a witness was called to record evidence against the appellant in his presence nor was he provided with the chance of cross examination. Copy of inquiry report, if any, was also not provided to him. Even opportunity of personal hearing was not provided to the appellant and he was condemned unheard.
- C) That according to law/verdicts of apex courts and departmental rules, the District Police Officer Kohat was legally bound to have waited the decision of criminal case by the Trial Court with regard to innocence or guiltiness of the appellant before passing punishment order of the appellant dated 27-11-2019 impugned here in this service appeal. But the appellant has been penalized in a cursory and arbitrary manner without adhering to rules & procedure laid down by law for dispensation of justice at preliminary stages of departmental inquiries; hence impugned order is liable to be turned down straightaway.
- D) That as he was falsely roped in FIR due to enmity and during the course of investigation appellant was not found involved in the very criminal case by the Investigation Officer due to which he has been granted bail by the Honorable High Court Peshawar vide judgment/order dated 11-10-2019.
- E) That appellant had applied for his retirement from service in December 2018 to the District Police Officer Kohat and copies of application were forwarded to the RPO Kohat and PPO KPK Peshawar vide letter No.1708/legal dated 29-03-2019 and the RPO vide letter No. 455/EC dated 17-01-2019 did consider the case but the District Police Officer Kohat did not accept retirement in violation of service rules which resulted into colossal financial loss to the appellant.
- F) That the appellant remained confined in Central Jail Kohat from 29-06-2019 to 12-10-2019 due to which he was awarded major penalty of compulsory retirement from service by the DPO Kohat and this period was treated as leave without pay. The absence was not willful/deliberate rather circumstances beyond his control due to confinement in Jail. The punishment was, therefore, illegal and against the departmental rules.

- G) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of constitution of Islamic Republic of Pakistan 1973 and unlawfully issued the impugned orders, which are unjust, unfair hence not sustainable in the eyes of law.
- H) That the appellate authority has also failed to abide by the law and even did not take into consideration the grounds taken in the memo of appeal. Thus the impugned order of respondent-3 is contrary to the law as laid down in the KPK Police Rules 1934 read with section 24-A of General Clause Act 1897 and Article 10A of the Constitution of Islamic Republic of Pakistan 1973.
- I) That appellant had become incapacitated due to IED blast during the course of his official duty and is a "GHAZI", therefore, according to law his one son deserves to be appointed in police department against the quota reserved for the sons of disabled/ghazi police officials.
- J) That a leave balance of about 1488 days is available in his credit and the period during which appellant remained in jail deserve to be treated on duty instead of grant of leave out pay.
- K) That instant appeal is well within time and this honorable Service Tribunal has got every jurisdiction to entertain & adjudicate upon the lis.

PRAYER:

It is, therefore, humbly prayed that on acceptance of instant Service appeal order dated 27-11-2019 of respondent No.3/District Police Officer Kohat may graciously be set aside and the appellant be reinstated in his service from the date of compulsory retirement and the period remained out of service/in jail be treated as on duty instead of leave without pay or he be retired from service honorably with grant of LPR for 365 days or Encashment in lieu of 365 days out of his leave balance and his one son be appointed in police department against the quota reserved for the incapacitated/ disabled/Ghazi police officials along with all consequential service back benefits. Any other relief which this Honorable Tribunal deems fit and proper in circumstances of the case may also be granted.

A. badshah
Appellant
M. A. Tanoli

Through:

(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated - -2020

VERIFICATION

It is verified that the contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated - -2020

A. badshah
Appellant

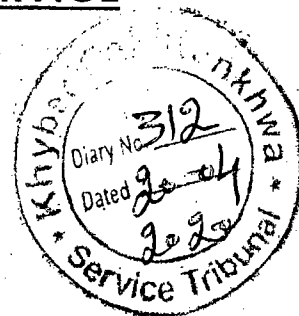
(11) (4)

Annex-B

BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

4054
Appeal No. / 2020

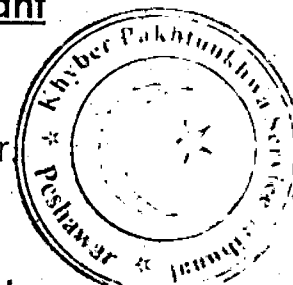
Adil Badshah, Ex-Constable No.975, District Police Kohat



Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Kohat.



Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER OB NO. 1553 DATED 27-11-2019 PASSED BY THE DISTRICT POLICE OFFICER KOHAT WHEREBY THE APPELLANT HAS BEEN AWARDED WITH THE PENALTY OF "COMPULSORY RETIREMENT FROM SERVICE".

PRAYER: ON ACCEPTANCE OF INSTANT DEPARTMENTAL APPEAL IMPUGNED ORDER DATED 27-11-2019 OF RESPONDENT NO.3/ DISTRICT POLICE OFFICER KOHAT MAY GRACIOUSLY BE SET ASID AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF COMPULSORY RETIREMENT OR BE HONOURABLE RETIRED FROM SERVICE ON COMPLETION OF 32 YEARS SERVICE WITH GRANT OF L.P.R ETC., THE PERIOD REMAINED IN JAIL WITH GRANT OF LEAVE ON FULL PAY INSTEAD OF WITHOUT PAY AND BY APPONTING HIS ONE SON IN POLICE DEPARTMENT AGAINST THE QUOTA RESERVED FOR DISABLED/GHAZIS POLICE OFFICIAL'S SONS ALONGWITH ALL OTHER CONSEQUENTIAL SERVICE BENEFITS.

Respectfully sheweth,

REGISTERED
Khyber Pakhtunkhwa
Service Tribunal

Filed to-day

Registrar
20/4/2020

That appellant was enrolled as Constable in Police Department in 1987 thus has rendered about 32 years service. Throughout his service the appellant always performed his assigned duties with devotion, dedication, efficiency, discipline, subordination and honesty, serving the nation & state at all Police Stations

RECEIVED TO -day
OFFICE FILED

Registrar
5/5/2020

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 4054/2020

Date of Institution ... 20.04.2020

Date of Decision ... 04.08.2021



Adil Badshah, Ex-Constable No.975, District Police Kohat.

... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

MUHAMMAD ASLAM KHAN TANOLI

Advocate

... For Appellant

MUHAMMAD RIAZ KHAN PAINDAKHEIL

Assistant Advocate General

... For Respondents

ROZINA REHMAN

ATIQ-UR-REHMAN WAZIR

...

...

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-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 his involvement in a criminal case registered against him vide FIR No. 618 dated 02-05-2019 U/Ss 302/34/109 PPC in Police Station Cantt, Kohat. After registration of FIR against him, the appellant was suspended from service vide order dated 08-05-2019 and in the meanwhile the appellant obtained BBA from learned ADJ III Kohat on 22-05-2019 and joined his duty. On 29-06-2019, BBA of the appellant was cancelled and he was sent to District Jail Kohat on judicial remand. During confinement, the appellant was served with a show cause notice dated 15-07-2019, which was responded by the appellant from Jail vide superintendent Jail Kohat

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

letter dated 22-07-2019. The appellant remained in Jail from 29-06-2019 to 12-10-2019 until his release on bail, granted by Peshawar High Court vide judgment dated 11-10-2019. While in jail, the appellant was proceeded against and as a result of inquiry conducted against him, the District Police Officer, Kohat vide order dated 20-09-2019 filed the inquiry proceedings and treated his absence period as leave without pay and ordered for release of his pay with immediate effect. Since the appellant was in Jail from 20-06-2019 to 12-10-2019, hence because of ex-parte proceedings conducted against the appellant, he was awarded major punishment of Compulsory retirement from service vide order dated 27-11-2019. Feeling aggrieved, the appellant filed departmental appeal dated 19-12-2019, which was not responded to, hence the instant service appeal with prayers that the impugned order dated 27-11-2019 may be set aside and the appellant may be re-instated in service and the period remained out of service/jail, be treated as on duty instead of leave without pay OR he may be retired from service honorably with grant of LPR for 365 days or Encashment in lieu of 365 days out of his leave balance and his son be appointed against the reserved quota for the incapacitate/disabled/Ghazi Police officials along with all consequential benefits.

W/h


02. Written reply/comments were submitted by respondents.

03. Learned counsel for the appellant has contended that the appellant was enrolled in police force as constable in 1987, had rendered more than 31 years service; that the appellant was implicated in a false FIR, upon which the appellant was proceeded against and was awarded major punishment of compulsory retirement from service; that disciplinary proceedings were conducted at the back of the appellant, as the appellant was in jail at that particular time; that no proper inquiry was conducted, nor the appellant was associated with the proceedings of the inquiry; that neither a witness was called to record evidence against the appellant in his presence nor was he provided with the chance of cross-examination; that no chance of personal hearing was afforded to the appellant and he was condemned

(14)

unheard; that the respondents were legally bound to have waited for the decision of the criminal case by the trial court before passing the impugned order; that the appellant has been penalized in a cursory and arbitrary manner without adhering to rules and procedure, hence the impugned order is liable to be struck down; that during the investigation stage, the appellant was not found involved in the very criminal case, due to which he had been granted bail by the Honorable High Court vide judgment dated 11-10-2019; that the appellant already applied for his retirement from service in December, 2018, as he was declared incapacitated by the medical board, as the appellant had sustained severe injuries in a bomb blast, when he was on routine duty along with a police party, where other police officials were also injured and martyred in the said incident; that the absence period was treated as leave without pay, the appellant however was confined in jail for the period from 29-06-2019 to 12-10-2019 and this fact was known to the respondents that such absence was not willful, but was beyond control of the appellant and the punishment awarded to this effect was illegal and against rules and law.

04. Learned Assistant Advocate General appearing on behalf of respondents has contended that the appellant was declared as incapacitated due to an IED blast during the course of his official duty, hence he was assigned lighter duty as per his request; that the appellant requested for appointment of his son against the reserve quota, for which he was not entitled, as appointment of PASI is carried out under section 32 of the Khyber Pakhtunkhwa Police Act, 2017, which is basically meant for the sons of Shuhada; that the case of appellant also does not fall under the ambit of rule 10(4) of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1989; that the appellant was declared Ghazi, hence he was facilitated in grant of leave as and when he moved application in this regard; that upon registration of FIR against him, he was proceeded against under the relevant rule and law and taking a lenient view, he was awarded major penalty of compulsory retirement from service, keeping in view the length of his service and being declared as incapacitated; that since the


SECRETARY
KHYBER PAKHTUNKHWA POLICE DEPARTMENT
ISLAMABAD

appellant committed a professional misconduct for which an inquiry was conducted against the appellant on the scores of charge of his involvement in a criminal/murder case and he was afforded opportunity of personal hearing but he deliberately avoided such opportunity; that the charges leveled against him were proved beyond any doubt, hence on completion of inquiry, he was awarded major punishment.

Wm

05. We have heard learned counsel for the parties and have perused the record. A perusal of record would reveal that the appellant was initially appointed as constable in 1987. During the course of his service, the appellant sustained severe injuries in an IED blast, while on night mobile duty, wherein a number of police officials embraced Shahadat and others went permanently incapacitated including the appellant, who were declared Ghazi. The available record suggests that the attitude of respondents was sympathetic with the appellant, so he was assigned lighter duty of a telephone operator. On 19-12-2018, the appellant filed an appeal before the Provincial Police Officer for retirement from service on account of permanent invalidation as well as requested for appointment of his son in police department against quota reserved for incapacitated employees son under rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with criteria for compensation of Death/incapacitation of civil servants. Rule 10(4) of the rules ibid provides as under:

"Where a civil servant dies or is rendered incapacitated/invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10: Provided that the child or the widow/wife as the case may be, possesses the minimum qualification prescribed for appointment to the post: Provided further that if there are two widows/wives of the deceased civil servant, preference shall be given to the elder widow/wife. Provided also that the appointment under this sub rule is subject to availability of a vacancy and if more than one vacancies in different pay scales are available at a time, and the child or the widow/wife, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he /she shall ordinarily be appointed to the post carrying higher pay scale. Provided further that this shall not apply to any post in BPS-1-10 falling in the purview of the [Khyber Pakhtunkhwa] Public Service Commission".


ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Record reveals that case of the appellant was under sympathy. The respondents for grant of such compensations and retirement, meanwhile an FIR was lodged against him on 02-05-2019 by his opponents. Appellant preferred to adopt the legal course and obtained BBA from learned ADJ-III Kohat on 22-05-2019 and joined his duty. His BBA however, was cancelled on 29-06-2019 and the appellant was sent to jail on judicial remand, where he remained till 12-10-2019. The appellant succeeded in convincing the Court that the appellant along with family is residing in Wah Cantt due to enmity and he was falsely implicated as an accused in the said FIR, he however was on leave and was present at that particular time in Wah Cantt, which fact was confirmed by the investigation officer from the CCTV footage installed in the ATM machine of MCB Bank Ltd Wah Cantt, where the appellant used the ATM machine at the time of occurrence and based on such evidence, the appellant was granted post-arrest bail by the honorable High Court Peshawar on 11-10-2019 and the appellant again joined his duty, but in the meanwhile, the respondents had almost completed disciplinary proceedings against him in his absence.

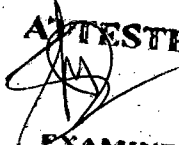
06. We have noted that the appellant remained in jail from 29-06-2019 to 12-10-2019 and during the period, disciplinary proceedings were conducted against the appellant in a haphazard manner in his absence. Record shows that only show cause notice dated 15-07-2019 was served upon the appellant without aid of inquiry officer, through Superintendent Jail Kohat, to which the appellant responded, but not with concentration of mind; that the proceedings drawn against the appellant were not only in negation of justice, but also suffered from a huge irregularity by failing to hold a regular inquiry. Reliance is placed on PLJ 2005 Tr.C. (Services) 202. Later on, an inquiry was also conducted to this effect and the inquiry officer submitted his report on 20-08-2019, but again the appellant was not associated with the proceedings. Record reveals that no charge sheet/statement of allegations had been served upon the appellant and admittedly the appellant was not afforded opportunity

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
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of personal hearing as the appellant was in jail during initiation and conclusion of the disciplinary proceedings, hence the appellant was condemned unheard, which however was not warranted. In a situation, principles of natural justice demands that respondents must have waited for decision of a criminal court, which is also supported by section 194-A of CSR. It is also settled law that imposing major penalty 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 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. As is evident from their comments, the respondents were well aware that FIR was lodged against the appellant on the basis of blood feud enmity and that his absence was not willful, but the respondents instead of taking lenient view, proceeded the appellant in haste and did not afford appropriate opportunity of defense as was required under the provisions of rule and law, rather conducted proceedings only to the extent of fulfillment of codal formalities. In PLJ 2016 Tr.C (Services) 326, it has been held that when a power is conferred on a public functionary and it is exercisable for benefit of any affected party then that party gets an implied right to move for exercise of such power. In case of imposing major penalty, principle of natural justice requires that a regular inquiry be conducted in matter and opportunity of defense may be provided to civil servant proceeded against.

07. We are also conscious of the fact that admittedly an FIR was lodged against the appellant, but the circumstances in the instant appeal are eccentric, which requires dealing in a distinguishable manner, as the appellant rendered 31 years of service as well as sustained severe injuries in a terrorist attack, which made him permanently incapacitated as well as he was declared Ghazi and his case was under process for a normal retirement as well as compensation, but his involvement in a criminal case hampered his whole case and the respondents ignored his


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EXAMINER
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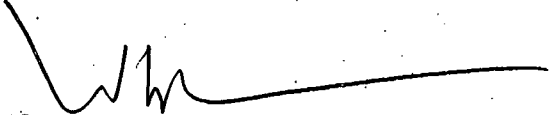
meritorious services and imposed major penalty of compulsory retirement in violation of rule and law. We are also mindful of the fact that case of the appellant is still pending adjudication, but it would now be futile to wait for decision of the trial court, as the respondents have already decided and made him guilty, which was illegal and contrary to the norms of natural justice.

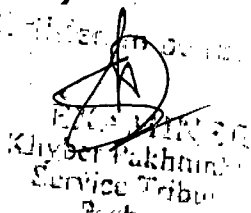
08. In the circumstances, we are of the considered opinion that the appellant was not treated in accordance with law and he was condemned unheard. Moreover, keeping in view his long service and his sacrifices, the appellant deserve to be compensated in terms of rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with criteria for compensation of Death/incapacitation of civil servants. Besides the appellant had already opted for retirement from service, but in an honorable manner, which however was stigmatized by the respondents and which will travel along the appellant in his entire life.

09. In view of the foregoing discussion, the instant appeal is accepted and appellant is entitled to honorable retirement along with ancillary benefits. The appellant is also held entitled to the benefits accrued under rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with criteria for compensation of Death/incapacitation of civil servants. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
04.08.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)


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


Khyber Pakhtunkhwa
Service Tribunal

وکالت نامہ

قیمتی

کورٹ فیس

بعدالت جناب شہرینواز سہیل سہیل
 Retention/ Executor

عادہ دادت 6
 W.P. No. 100/2022

دعویٰ یا جرم Execution Retention باعث تحریر آنکم
 مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام

ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ یا کچہری کے مقرر اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری کے اوقات کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کل ساختہ پر داختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپروٹاشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا ڈگری قبل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا نیگی علیحدہ پیروی مختار نامہ کرینکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا پریسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہونگے جیسے صاحب موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سندر ہے مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

Accepted
 M. Aslam

مورخہ: 11 مارچ 2022ء

العبد العبد العبد

"B"

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

SB

No.

Resd

Appeal No. E.P. No. 139 of 2022

Adil Badshah

Appellant/Petitioner

Provincial Police Officer Peshawar ^{versus} PPK Peshawar

Respondent

Respondent No.

Notice to: —

RPO Kohat Region

WHEREAS an appeal/petition under the provision of the North-West Frontier 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.....17/05/2022.....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 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.....

12/4

Day of.....May.....2022

For Impl-ment-ation Report

(At Principal Seat)
Peshawar

[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.

"B"

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

No. *Resd*

SB

~~Appeal~~ No. *F.P. No. 139* of 20*22*

Adil Badshah Appellant/Petitioner

Provincial Police Officer KPK Peshawar Respondent

Respondent No. *(3)*

Notice to: — *DPO Khat*

WHEREAS an appeal/petition under the provision of the North-West Frontier 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.....*14/05/2022*.....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.

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Copy of 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.....*12th*.....

Day of.....*May*.....20*22*

(For Insp-100-2100 Report)

(At Principal Seat Peshawar)

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.

"A"

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

No.

~~APPEAL No.~~ E-P. 139 of 20 22

Adil Bad Shah

Appellant/Petitioner

Versus

Provincial Police Officer KPN Peshawar

RESPONDENT(S)

Respondent No. 1

Notice to ~~Appellant/Petitioner~~

Provincial Police Officer
KPN Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15/9/2022 at 9: am

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.

for Implementation
Report

Registrar

, Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

15/9/2022