

27.07.2022

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

Learned Additional Advocate General sought time for submission of implementation report. To come up for implementation report on 22.09.2022 before S.B.

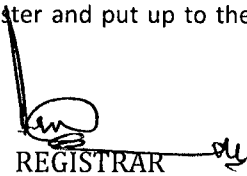



(Fareeha Paul)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 309/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.05.2022	<p>The execution petition of Mr. Mursaleen 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 Single Bench at Peshawar on <u>02, 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>
	2 nd June, 2022	<p>None for the petitioner present. Kabirullah Khattak, Addl: AG for respondents present.</p> <p>Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 27.07.2022 before S.B. Original file be also requisitioned.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 309 /2022

In

Appal No. 1021 /2018

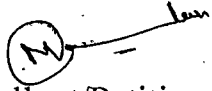
Ex Constable Mursaleen

VERSUS

Police Department

1.	Memo of Execution	1 - 2
2.	Copy of Service Tribunal Judgment	3 - 8
3.	Copy of Application Application	9 - 12
4.	Wakalat Nama	13

Dated: 26/05/2022


Appellant/Petitioner

Through


Uzma Syed Advocate
High Court Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

amt-26

Execution Petition No. 309 /2022

In Service Appeal No. 1021/2018

Ex-Constable Mursaleen No. 4302 Capital City Police Peshawar

Petitioner

VERSUS

1. The Superintendent of Police, Khyber Pakhtunkhwa Peshawar.
2. The Capital City Police Officer, KPK, Peshawar.

Respondents

.....

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED: 27/01/2022 OF THIS HONOURABLE TRIBUNAL
IN LETTER AND SPIRIT.

.....

RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No. 1021/2018 against the impugned order dated 28/02/2014 where by the appellant was dismissed from service.
2. That the said appeal was finally heard by the Honorable Tribunal on 27/01/2022. The Honorable Tribunal is kind enough to accept

the appeal and reinstate the appellant into service with all back benefits. (Copy of Judgment is attached as Annexure-A).

- 3. That in-action and not fulfilling formal requirements by the respondent 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 submitted application to IGP and CCPO Khyber Pakhtunkhwa Peshawar for implementation of Judgment dated 27/01/2022 but the respondent reluctant to implement the Judgment. *(copy of Applications is Attached as Annex B & C)*
- 6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 27.01.2022 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 favor of applicant/appellant.

Dated 26/05/2022

(Signature)

PETITIONER

THROUGH:

(Signature)

Uzma Syed
Advocates High Court

3

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1021 /2018

Mr. Mursaleen, Ex-Constable/No.4302
Capital City Police, Peshawar.

(Appellant)

VERSUS

1. The Superintendent of, Police Headquarters, KPK, Peshawar.
2. The Capital City Police Officer, KPK, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 28.02.2014 WHEREIN THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE AND AGAINST THE ORDER DATED 17.07.2018 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 28.02.2014 AND 17.07.2018 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUETIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

(A) (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1021/2018

Date of Institution ... 16.08.2018

Date of Decision ... 27.01.2022



Mr. Mursaleen, Ex-Constable/No. 4302 Capital City Police Peshawar.
... (Appellant)

VERSUS

The Superintendent of Police Headquarters, Khyber Pakhtunkhwa Peshawar and
others. ... (Respondents)

Uzma Syed,
Advocate ... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Constable in Police Department was charged in two FIRs i.e. FIR No 698 U/S 364A PPC dated 13-09-2013 District Nowshera and FIR No. 499 U/Ss 324/353/427/471 dated 13-09-2013 District Peshawar. The appellant was suspended from service vide order dated 19-09-2013 and was proceeded departmentally on the charges of registration of FIRs against h.r.. The proceedings ultimately culminated into his dismissal from service vide order dated 28-02-2014. The appellant was granted bail in both cases by the competent court of law vide judgment dated 29-03-2017 and 31-03-2017 and later on acquitted of the criminal charges in FIR No. 698 vide judgment dated 21-11-2017 and in FIR No. 499 vide judgment dated 29-08-2019. The appellant after acquittal from the

ATTESTED

MEMBER (E)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

criminal charges in FIR No. 698, filed departmental appeal, which was rejected vide order dated 17-07-2018, hence the instant service appeal with prayers that the impugned orders dated 28-02-2014 and 17-07-2018 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 impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant was acquitted of the same charges, upon which he was dismissed from service, hence there remains no ground to maintain such penalty; that respondents were required to suspend the appellant as per police rules, 1934 and to wait for conclusion of the criminal case, but the respondents without waiting for conclusion of the criminal case, dismissed the appellant in an arbitrary manner; that the impugned order and attitude of the respondents department is in sheer violation of Article 4, 25 and 38 of the Constitution; that the impugned order was passed without fulfilling the requisite formalities, that the appellant was condemned unheard and has not been treated in accordance with law.

03. Learned Deputy District Attorney for the respondents has contended that upon registration of FIRs against the appellant, the appellant went in hiding and remain fugitive from law for some time, who later on was arrested by police. The appellant was proceeded departmentally and was awarded with major punishment of dismissal from service; that proper procedure was adopted by issuing charge sheet/statement of allegation to the appellant; that proper inquiry was conducted against the appellant and the appellant was afforded appropriate opportunity of defense, but the appellant did not opt to be associated with departmental proceedings, hence he was proceeded ex-parte; that the appellant filed departmental appeal with delay of almost four years, which is badly time barred; that the appellant though acquitted of the criminal charges but it is a well settled legal proposition that criminal and departmental proceedings can run side

ATTESTED

EXAMINER
 SHYAM PATEL
 Service Tribunal
 Dist. ...

by side without affecting each other; that the appellant has been treated in accordance with law and was awarded with appropriate punishment after fulfillment of all the codal formalities.

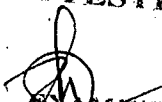
04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant being involved in case FIR No. 698 U/S 364A PPC dated 13-09-2013 District Nowshera and FIR No. 499 U/Ss 324/353/427/471 dated 13-09-2013 District Peshawar, was proceeded departmentally in absentia as the appellant was in jail and was released on Bail from both cases vide judgment dated 29-03-2017 and 31-03-2017 and was later on acquitted from the criminal charges in FIR No 698 vide judgment dated 21-11-2017 and in FIR No. 499 vide judgment dated 29-08-2019 but before his acquittal from criminal charges, the appellant was dismissed on 28-02-2014, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry, as he was proceeded against in absentia. To this effect, the Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has 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; 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 injustice.

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were

ATTESTED

required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed


 ATTESTING OFFICER
 KYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 Peshawar

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him from service before conclusion of the criminal case. 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 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.

07. The criminal cases were decided in favor of the appellant and the appellant was acquitted of the criminal charges in both the cases. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. Supreme Court of Pakistan in its judgment reported as PLD 2003 SC 187 has held that where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved by the competent court of law and resulted in acquittal, would be entitled to be re-instated in service. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

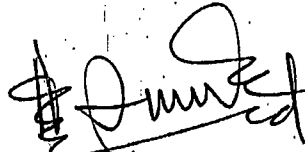
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charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed. Accused civil servant in case of his acquittal was to be considered to have committed no offense because the criminal court had freed/cleared him from the accusation or charge of crime – such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period. Reliance is placed on 1998 SCMR 1993 and 2007 SCMR 537.


08. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the charges leveled against him, The Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service. Moreover, it is a well settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.


09. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN

Certified to be true copy


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


Khayal Razahtunkowa
Service Tribunal
Peshawar

0333-9191814
Golden

Date of Presentation of Application: 07-04-22
Number of Words: 2000
Copyright Fee: 4/-
Pages: 26/-
Name of Applicant: _____
Date of Completion of Copy: 07-04-22
Date of Delivery of Copy: 07-04-22

مختصر جواب

De no 5938
11/4/22

(B)

(9)

درخواست برادر بجال فرمائے سائل نے ملازمت
حسب الحکم سروس ٹریبونل کیسٹاڈ
نمبر 27.01.2022

جواب مالی ا
سائل حسب ذیل عرض رساں

(1) ریگسٹری کو مقدمہ نمبر 698 مورخ 2013-09-13
پر 364-A PPC کے تحت پین ضلع نوشہرہ اور مقدمہ نمبر
نمبر 499 مورخ 2013-09-13 پر 324-353-427-471 PPC
کے تحت بند ضلع کیسٹاڈ کورج سے مورخ 2013-09-19
کو ملازمت سے (Suspend) کر دیا گیا تھا اور
بعد ازاں مورخ 2014-02-28 کو ملازمت سے (Dismiss)
کر دیا گیا تھا۔ (تفصیلات منسلک ہے)

(2) ریگسٹری عدالت سروس ٹریبونل کیسٹاڈ کے فیصلہ
نمبر 27.01.2022 کی رو سے سائل کی ملازمت
پر مالی کا قلم صادر ہو چکا ہے۔
(تفصیلات منسلک ہے)

(3) ریگسٹری آئینڈہ کیلئے اپنے فریضے پوری اندھی
والی اندازی سے سرانجام دے گا اور حکام

مجاز کو نکالتے کا موقع نہ رہے گا۔

اللہ آپ صاحب سے عاجز و ناتواں
ہے۔ کہ اس کو حسب فیصلہ ملازمت پر بحال
کر نیا فکرم صادر فرما کر اس کو رہنمائی فرمائیں

۱۱ ۰۴ / ۲۰۲۲
المقام
د
ب

ورسین (ب) ایف کیٹیل نمبر ۲۰۲۴۳۰

M. A. Khan

0333-9191814

حضور محترم جج جی بی ایو صاحب کینسہ

GP, KPK.

C
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9542/SB

11-04-22

درخواست برادر بجا مال فرمائے سائل جج جی ملازمت
حسب الحکم سروسز ٹریبونل کینسہ
نمبر مورخہ 27.01.2022

جواب نمبر 1

سائل حسب ذیل عرض رساں

(1) رقم سائل کو مقدم عدالت نمبر 698 مورخہ 2013-09-13
مقام A.P.C - 364 کھانہ پین قلع نوشہہ اور مقدم عدالت
نمبر 499 مورخہ 2013-09-13 بمقام A.P.C - 471-427-353-324
کھانہ سروسز ٹریبونل کینسہ سے مورخہ 2013-09-19
کو ملازمت سے (Suspend) کر نیکاطم صادر ہوا۔ اور
بعد ازاں مورخہ 2014-02-28 کو ملازمت سے (Dismiss)
کر نیکاطم صادر ہوا۔ (تغیلات فیصلہ لے)

(2) رقم اب عدالت سروسز ٹریبونل کینسہ کے فیصلہ
نمبر مورخہ 27.01.2022 کی رو سے سائل کی ملازمت
پیر مالی کا قلم صادر ہو چکا ہے۔
(تغیلات فیصلہ لے)

(3) رقم سائل آئندہ کیلئے اپنے فریض پوری بندھی
والہانداری سے سروسز ٹریبونل کینسہ اور حکام

مجاز و نکات کا موقع ندرت سے ملے گا۔

اللہ آپ صاحبان سے عاجز و ناتواں ہے
جو کہ سب کو حسبِ فیصلہ ملازمت پر بحال
کرے گا، تم کو صاف دیکھ کر خوش ہو رہا ہوں

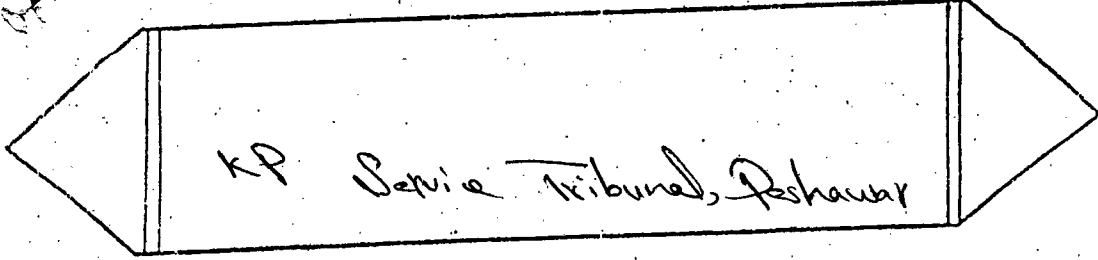
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الرحمۃ
سید

پریسنگ (ب) ایچ ایچ ڈی (۴۳۰۲)

Handwritten signature

0333-9191814

بعدالت



2 مخمب
بنام

سورخه
مقدمه
دعوی
جرم

باعث تحریر آئنگہ

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

آن مقام Peshawar کیلئے محمد سعید

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقررثالت ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی 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 با اختیارات حاصل ہوں گے اور اس کا اختیار

پر داخست منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سب سے وہ ہوگا

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 لکھ دیا کہ مندر ہے۔

المرقوم 26 ماہ 2022

العاب واد العاب

بمقام Peshawar کے لئے منظور ہے۔

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

No.

E.P
APPEAL No. **309** of 20**22** .

SB

Mursaleen

Appellant/Petitioner

Versus

superintendent of Police JkPkc Peshawar

RESPONDENT(S)

Resporndent (U)
Notice to Appellant/Petitioner **The** **superintendent of**
Police JkPkc Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing,
replication, affidavit/counter affidavit/record/arguments/order before this Tribunal
on **27/07/2022** **at** **9:00 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 Impl-men-tion
Report

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Received
3
25/7/22
2:14:10

"A"

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

No.

^{E.P}
APPEAL No.....309..... of 2022. 25

Munsaaleen

Appellant/Petitioner

Versus

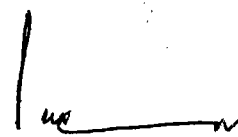
.....superintendent of Police, K.P.K. Peshawar.....
RESPONDENT(S)

Notice to ^{Respondent (2)} Appellant/Petitioner The capital city Police
officer, K.P.K. Peshawar

Take notice that your appeal has been fixed for Preliminary hearing,
replication, affidavit/counter affidavit/record/arguments/order before this Tribunal
on 27/07/2022 at 9:00 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 Impl-ment-ation
Report



Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.