

20th June, 2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl AG alongwith Mr. Gul Nawaz, Acting DSP for respondents present.

Implementation report not submitted. Respondents are directed to submit implementation report on or before the next date. To come up for implementation report on 09.08.2022 before S.B.

Q

(Kalim Arshad Khan)
Chairman

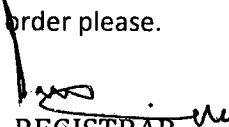
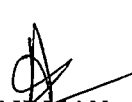

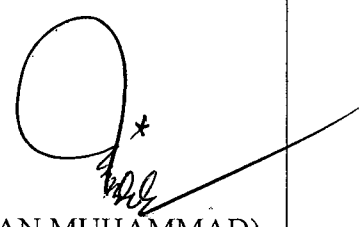
9.8.2022 Due to The Public Holiday The
Case is Adjourned to 29-9-2022

R
Reader.

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 31/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.01.2022	<p>The execution petition of Mr. Adnan Ali Shah submitted today by Mr. Adnan Ali Shah Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench at Peshawar on <u>11/2/2022</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	11.02.2022	<p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 05.04.2022 for the same as before.</p> <p style="text-align: right;"> Reader</p>
	05.04.2022	<p>Petitioner in person present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present. present.</p> <p>Implementation report not submitted. Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for implementation report on 20.06.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER(E)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 212/2019 & Execution Petition No. 31/2022

Adnan Ali Shah Ex-constable No. 2105 Frontier Reserve Police, HQrs;
Peshawar.....Appellant.

VERSUS

**Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar &
others.....**Respondents.

AUTHORITY LETTER

Respectfully Sheweth:-

We respondents No. 1 to 3 do hereby solemnly authorize Inspector Gul Nawaz Khan Acting DSP HQrs; Peshawar to attend the Honorable Services Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.



**Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(For Respondent No. 01 to 03)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

ED NO, 31/2022

IN Re:

S.Appeal No.212/2019

Adnan Ali Shah.....Appellant

Versus

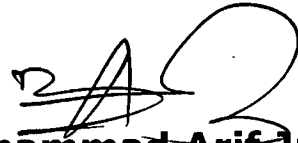
The Provincial Police Officer KP & others..Respondents

I N D E X

S#	Description of documents.	Annexure	Pages
1.	Application for implementation		1-2
2.	Copy of order dated 03.11.2021		3-7
3.	Wakalatnama		8

Appellant

Through



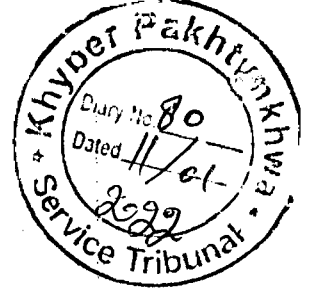
Muhammad Arif Jan
Advocate High Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

EP NO: 31/2022
IN Re:

S.Appeal No.212/2019



Adnan Ali Shah, Ex-Constable No.2015
Frontier Reserve Police, Headquarter, Peshawar

.....Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Frontier Reserve Police, Headquarter, Peshawar
3. The Deputy Commandants, Frontier Reserve Police, Headquarter, Peshawar

..Respondents

**APPLICATION FOR IMPLEMENTATION
OF JUDGMENT DATED 03.11.2021 OF
THIS HON'BLE TRIBUNAL**

Sir,

Applicant humbly submits as under:-

1. That this Hon'ble Tribunal passed judgment dated 03.11.2021 by accepting the appeal of the appellant reinstated him into his service.
2. That the appellant himself provided the attested copy of the judgment dated above to the respondents concerned well within time, but the respondents are badly failed to comply with the judgment dated 03.11.2021, rather a notice of filing CPLA was provided to appellant, wherein the respondents have challenged the judgment dated 03.11.2021 before the august Supreme Court of Pakistan, wherein neither any stay

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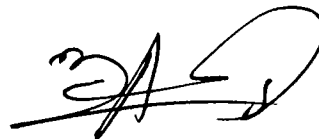
order has been granted nor any other directions have been made in respect of judgment dated 03.11.2021.

3. That as there is no stay order, therefore, the respondents are bound to implement the judgment dated 03.11.2021 passed by hon'ble KPK Service Tribunal.
4. That the respondents are duty bound to abide by law and to honor the judgment of this Hon'ble Court in its later and spirit, but even then and despite to clear direction, the respondents intentionally avoiding to hold any inquiry against the appellant for the reason that in fact, there is no prima-facie case of any inquiry is made out.
5. That appellant approaches this Hon'ble Tribunal for implementation of judgment of this Hon'ble Tribunal.

It is therefore, humbly requested to please direct respondents to implement the judgment dated 03.11.2021 of this Hon'ble Tribunal.

Appellant

Through



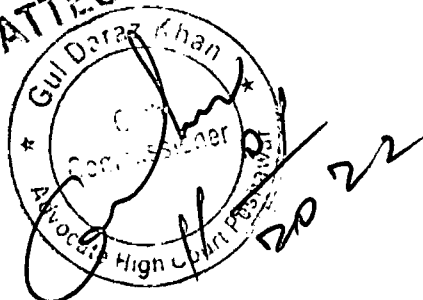
Muhammad Arif Jan
Advocate High Court

AFFIDAVIT

I, do hereby affirm and declare as per instructions of my clients that the contents of this **Application** are true and correct and nothing has been concealed from this honorable court.


DEPONENT

ATTESTED



Annex SA'

BEFORE THE HONBLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



Service Appeal No. 212 /2019

1. Adnan Ali Shah Ex- Constable No. 2015 Frontier Reserve Police, HQRS Peshawar..

APPELLANT Khyber Pakhtunkhwa Service Tribunal

Diary No. 197

Dated 18-2-2019

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
3. The ^{Commandant} Deputy Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

Filed to-day

Registrar
18/2/19

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 02/07/2018 PASSED BY THE DEPUTY COMMANDANT, FRONTIER RESERVE POLICE, KHYBER PAKHTUNKHWA, (RESPONDENT NO.3) WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF REMOVAL FROM SERVICE WITH RETROSPECTIVE EFFECT FROM THE DATE OF ABSENCE AGAINST WHICH A DEPARTMENTAL APPEAL AS WELL AS REVISION PETITION WERE FILED BUT THESE WERE DISMISSED ON 25/10/2018 AND 10/01/2019.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.212/2019

Date of Institution ... 18.02.2019
Date of Decision ... 03.11.2021



Adnan Ali Shah, Ex-Constable No.2015 Frontier Reserve Police,
HQRs Peshawar.

(Appellant)

VERSUS

The Provincial Police Officer, Government of Khyber
Pakhtunkhwa and two others.

(Respondents)

Muhammad Arif Jan,
Advocate

For appellant.

Javid Ullah,
Assistant Advocate General

For respondents.

Ahmad Sultan Tareer
Rozina Rehman

... Chairman
... Member (J)

JUDGMENT

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

"By accepting this appeal, the impugned orders dated 02.07.2013, 25.10.2018 and 10.01.2019 passed by the respondents may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits."

2. Facts gleaned out from the memorandum of appeal are that the appellant was appointed as Constable on 15.07.2009. His brother was seriously ill and was treated in the Institute of Kidney Diseases,

ATTN: [Handwritten signature and stamp area]

Hayatabad Peshawar and later on shifted to Sindh Institute of Urology and Transplantation, Pakistan on the Doctor's advice. The appellant agreed to donate one kidney in order to save the life of his brother, therefore, he submitted an application for six months leave which application was rejected and he was proceeded against departmentally and was awarded major punishment of removal from service. Feeling aggrieved, he filed departmental appeal which was rejected. He then filed revision petition which was also rejected, hence, the present service appeal.

3. We have heard Muhammad Arif Jan Advocate learned counsel for appellant and Javid Ullah learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Arif Jan Advocate learned counsel appearing on behalf of appellant, in support of appeal contended with vehemence that the appellant was not treated in accordance with law, rules and policy and the respondents acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973. He contended that the competent authority on one hand treated the absence of appellant as leave without pay while on the other hand awarded major penalty of removal from service which amounts to double jeopardy and that it is well settled law that no person can be prosecuted and punished twice for the same offence. Reliance was placed on 2006 SCMR 434 as well as judgment of this Tribunal passed in Appeal No.1200/2014. He submitted that the absence of appellant was neither willful nor intentional rather the same was beyond his control due to severe illness of his brother who later on died due to protracted illness. He submitted that the appellant had rendered nine years service and wa

ATTESTED

SECRETARY
Sindh Service Tribunal
Peshawar

CAC

entitled to avail extraordinary leave for two years on any ground by virtue of Khyber Pakhtunkhwa Civil Servants Revised Leave Rules and lastly, he submitted that neither charge sheet nor statement of allegations were ever served on the appellant and that no regular inquiry was conducted, therefore, appellant may kindly be reinstated in service with all back benefits.

5. Conversely, learned A.A.G submitted that appellant remained absent from lawful duty without any leave or prior permission of the authority for a long period and that proper departmental inquiry was initiated against him under the law. He was charge sheeted and proper inquiry Officer was nominated, where-after, major penalty was awarded after fulfillment of all codal formalities.

6. From the record it is evident that appellant Adnan Ali Shah joined Police service as Constable on 15.07.2009. He absented himself from duty w.e.f 13.11.2017 to 30.04.2018 for a total period of five months and seventeen days. His absence for the mentioned period is not disputed rather the reasons of his absence are disputed. The ailment of appellant's brother is not disputed as he was suffering from Kidney disease and was shifted to Karachi for treatment. His absence as per record is not deliberate. The medical record of his brother Kashif Ali Shah is available on file. The appellant himself wanted to donate his kidney to his brother which record is also available on file. The death of appellant's brother is also not disputed during the absence period of appellant. He had also submitted an application seeking leave for six months to the competent authority but his request was not taken into consideration and he was departmentally proceeded against on the allegations of absentia. He

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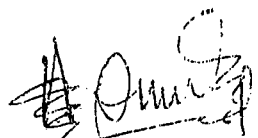
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

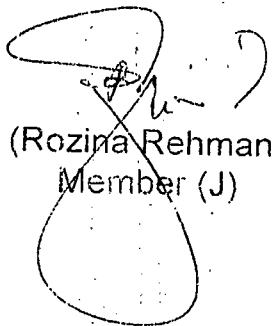
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also filed his reply to the final show cause notice wherein he properly mentioned the ailment of his brother but the same was not taken into consideration by the respondents and the appellant was removed from service and the authority treated the mentioned period as absence without pay, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect is derived from the judgment of the august Supreme Court of Pakistan, reported in 2006 S.C.M.R 434 and 2012 TD (Services) 348.

7. In view of the foregoing, instant appeal is accepted and the appellant is reinstated in service, however the intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
03.11.2021

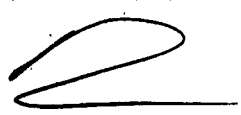

(Ahmad Sultan Tareen)
Chairman


(Rozina Rehman)
Member (J)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 3/11/21
 Number 26
 U.S. No. 26
 Date of Copy 30/11/21
 Date of Issuance of Order 30/11/21

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WAKALATNAMA

BEFORE THE HONBLE

KP Service Tribunal
Peshawar

Adnan Ali Shah

Plaintiff(s)
Petitioner(s)
Complainant(s)

VERSUS

The PPO of Office

Defendant(s)
Respondent(s)
Accused(s)

By this, power-of-attorney I/we the said Petitioner in the above case, do hereby constitute and appoint **MUHAMMAD ARIF JAN** Advocate as my attorney for me/us in my/our name and on my/our behalf to appear, plead, give statement, verify, administer oath and do all lawful act and things in connection with the said case on my/our behalf or with the execution of any decree or order passed in the case in my/our favour/ against which I/we shall be entitled or permitted to do myself/ourselves, and, in particular, shall be entitled to withdraw or compromise the case or refer it to arbitration or to agree to abide by the special oath of any person and to withdraw and receive documents and money from the Court or the opposite party and to sign proper receipts and discharges for the same and to engage and appoint any other pleader or pay him as his fee irrespective of my/our success or failure in case, provided that, if the case is heard at anyplace other than the usual place of sitting of the Court the pleader shall not bound to attend except on my agreeing to pay him a special fee to be settled between us.

Signature of Client

Adnan Ali Shah

Accepted.

Muhammad Arif Jan

Muhammad Arif Jan
Advocate High Court
Peshawar

Office No.210, Mumtaz Plaza
G.T Road, Hashtnagri Stop,
Peshawar City.
CNIC No.17201-2275748-7
Bc No.10-6663
Cell: 0333-2212213

“B”

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

SB

No.

~~Appeal No.~~ E.P 31 of 2022

Adnan Ali Shah

Appellant/Petitioner

Versus

The Provincial Police Officer, KPK, Peshawar

Respondent

Respondent No. (1)

Notice to: — The Provincial Police Officer, KPK, 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.....20.06/2022.....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 ^{E.P ✓} 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.....7th.....

Day of.....April.....2022.

(For Implementation Report)
12/04/22

[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.

SB

F.P No. 31
Appeal No. Adnan Ali Shah of 2022.

.....Appellant/Petitioner

Provincial Police Officer, KPK, Peshawar ^{Versus} Respondent

Respondent No. (2)

Notice to: The Commandant Frontier Reserve Police, Headquarter 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 ^{27/08/2022} on.....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 7th.....

Day of..... April 2022.

(For Implementation Report)

Office of the Addl: IGP/Commandant
F.R.P KPK Peshawar

Diary No _____ Encl _____
Date 1 / 12 / 20


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.

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

No.

E.P 31

22

Appeal No. Adnon Ati Shah of 20 ..

Appellant/Petitioner

Provincial Police Officer, KPK, Peshawar

Respondent

(3)

Respondent No.

Notice to: —

The Deputy Commandants, Frontier Reserve
Police, Headquarter, 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..... 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 along with 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..... 7/11

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

Day of..... 20 .. April 22

(For Implementation Report)

[Signature]
Office of the Addl: IGP/Commandant
F.R.P KPK Peshawar
Diary No. _____ Encl _____
Date 1/1/20

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

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