

23<sup>rd</sup> June, 2022 Petitioner in person present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG alongwith Mr. Muhammad Ibrhim, Finance Officer for respondents present.

Respondents are directed through Asst: AG to submit implementation report on the next date. Last chance is given to the respondents for implementation report. To come up for implementation report on 15.08.2022 before S.B.



(Kalim Arshad Khan)  
Chairman

15.08.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Shah Rawan, Superintendent and Mr. Bakht Wali Shah, Assistant for the respondents present.

Departmental representative produced a copy of the office order bearing No. 8116-21/LC dated 04.08.2022 whereby the petitioner has been reinstated into service conditionally subject to the outcome of CPLA. Copy of the office order is placed on file and the same also provided to the petitioner. Petitioner requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for objection(s) if any, and arguments on implementation report on 03.10.2022 before S.B.

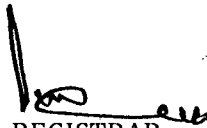




(Mian Muhammad)  
Member (E)

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. \_\_\_\_\_ 233/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.04.2022	<p>The execution petition of Mr. Sohrab Shah submitted today by Mr. Muhammad Anwar Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-	25-5-22	<p>This execution petition be put up before to Single Bench at Peshawar on <u>02-06-2022</u>. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p> CHAIRMAN</p>
	02.06.2022	<p>Petitioner in person present. Notice be issued to the respondents through registered post for production of implementation report on 23.06.2022 before the S.B.</p> <p> (Salah-Ud-Din) Member (J)</p>



OFFICE OF THE DC MALAKAND/  
COMMANDANT MALAKAND LEVIES

NO. 8115 /LC  
DATED MALAKAND THE 4/8 /2022  
Phone: 0932-452080 Fax: 0932-450557

OFFICE ORDER

In continuation of this office order No.7895/LC dated 28-07-2022, the competent authority is pleased to re-instate No.5179 Sepoy (BPS-07) Sohrab Shan of Malakand Levies (Provincial) into service with all back benefits subject to the final outcome of the pending CPLA in the august Supreme Court of Pakistan.

The conditional re-instatement of the appellant will be subject to production of bonds with 02 guarantors in respect of appellant through stamp paper that outcome of the CPLA in the apex Supreme Court if not upheld the Provincial Service Tribunal Judgment, all availed benefits thereof will have to re-fund in lump sum.

NO. 2116-21 /LC

Copy forwarded to the:-

1. Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Malakand Division at Saidu Sharif, Swat.
3. Registrar, Provincial Service Tribunal Khyber Pakhtunkhwa, Peshawar.
- For Information, please.
4. District Accounts Officer, Malakand.
5. Subedar Major Malakand Levies.
6. Official concerned for compliance.

For information & necessary action.

DC MALAKAND/COMMANDANT  
MALAKAND LEVIES MALAKAND

DC MALAKAND/COMMANDANT  
MALAKAND LEVIES MALAKAND

## بیان حلفی

منکہ مسیحی سہراب شاہ ولد شیر شاہ سکنہ پیران تحصیل بٹ حیلہ ضلع ملاکنڈ حلقاً بیان کرتا ہوں کہ من محلف ڈپٹی کمشنر / کمانڈنٹ ملاکنڈ لیویز ملاکنڈ کے جاری کردہ نوٹیفیکیشن نمبر..... محررہ..... کے تحت ٹرمنیٹ ہوا تھا۔ جس کے خلاف من محلف نے سروس ٹریبیونل خیبر پختونخواہ میں سروس اپیل دائر کیا تھا۔ سروس ٹریبیونل خیبر پختونخواہ نے مورخہ:..... کو مذکورہ اپیل پر فیصلہ جاری کرتے ہوئے سائل کو بحال کرنے کے احکامات جاری کر دیے۔

ڈپٹی کمشنر / کمانڈنٹ ملاکنڈ لیویز نے سروس ٹریبیونل کے اس فیصلے کے خلاف سپریم کورٹ آف پاکستان میں رٹ OPLA دائر کیا ہے۔ اگر محرز سپریم کورٹ آف پاکستان نے من محلف کے خلاف فیصلہ یا سٹے آرڈر جاری کیا تو من محلف نہ صرف کارمی سے دستبردار ہوں گا۔ بلکہ سپریم کورٹ آف پاکستان کے فیصلے کی تاریخ تک من محلف نے جتنے بھی مراعات سرکار سے لئے ہیں۔ وہ بھی سرکاری خزانے میں جمع کرانے کا پابند رہوں گا۔

مسیحی سہراب شاہ ولد شیر شاہ سکنہ پیران تحصیل بٹ حیلہ ضلع ملاکنڈ.....

گواہ نمبر 1 منکہ مسیحی اجمل شاہ ولد ویدن شاہ سکنہ غونڈئی پیران تحصیل بٹ حیلہ ضلع ملاکنڈ قومی شناختی کارڈ نمبر 1437946-15402 اقرار کر کے لکھ دیتا ہوں کہ مسیحی سہراب شاہ ولد شیر شاہ سکنہ پیران تحصیل بٹ حیلہ ضلع ملاکنڈ کے طرف سے ضمانت دیتا ہوں کہ نامبروہ نے حکومتی احکامات کی خلاف ورزی کی تو میں حکومت پاکستان کو تاوان دینے کا پابند ہوں گا

گواہ 1 گارنٹر نمبر 2 مسیحی نور علی شاہ ولد امیر محمد سکنہ غونڈئی پیران تحصیل بٹ حیلہ ضلع ملاکنڈ قومی شناختی کارڈ نمبر 1699620-15402 اقرار کر کے لکھ دیتا ہوں کہ مسیحی سہراب شاہ ولد شیر شاہ سکنہ پیران تحصیل بٹ حیلہ ضلع ملاکنڈ کے طرف سے ضمانت دیتا ہوں کہ نامبروہ نے حکومتی احکامات کی خلاف ورزی کی تو میں حکومت پاکستان کو تاوان دینے کا پابند ہوں گا

100  
Rupees

۱۰۰  
روپیہ

ضمانت نامہ دو نفری / Surety bond by two persons

مکانہ مسمی اجمل شاہ ولد ویدین شاہ مرحوم ساکن محلہ غوث ٹی پیران، تحصیل بٹ خیلہ، ضلع مالاکنڈ کا ہونا۔

مکانہ مسمی نور علی شاہ ولد امیر محمد ساکن محلہ غوث ٹی پیران، تحصیل بٹ خیلہ، ضلع مالاکنڈ کا ہونا۔

ہم مسمی سہراب شاہ ولد شیر شاہ ساکن محلہ غوث ٹی پیران، تحصیل بٹ خیلہ، ضلع مالاکنڈ حال سپاہی لیویز فورس مالاکنڈ جن کو ذاتی طور پر جانے

ہیں کی جانب سے ضمانت نامہ / Sureties بن کر اقرار کر کے لکھ دیتے ہیں کہ مسمی سہراب شاہ نے نوکری سے درخواست یعنی ڈسٹس ہونے

کے بعد حکومت خیبر پختونخوا کے خلاف سروں ٹریبیونل پشاور میں کیس دائر کی۔ اور سروں ٹریبیونل پشاور نے سپاہی سہراب شاہ کو with

all back benefits کے ساتھ بحال کیا۔ اور سروں ٹریبیونل پشاور کے فیصلہ مورخہ 31-01-2022 کے پورا فائدہ کو ذیل میں

Quote کیا جا رہا ہے۔

In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the order is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room. ANNOUNCED: 31-01-2022

چونکہ سپاہی سہراب شاہ نے سروں ٹریبیونل پشاور کے فیصلہ کے مطابق "With prejudice Subject to all rights exception and legal rights available to Sohrab Shah without prejudice to Sohrab Shah rights under law."

کے ساتھ دوبارہ بطور سپاہی سروں جان کی ہے، اسلئے ہم ضمانت نامہ اقرار کرتے ہیں کہ اگر حکومت خیبر پختونخوا نے سروں ٹریبیونل پشاور کے فیصلہ مورخہ 31-01-2022 کے خلاف عدالت عظمیٰ پاکستان میں اپیل دائر کی اور عدالت عدالت عظمیٰ پاکستان نے سپاہی سہراب شاہ کو

کے خلاف فیصلہ دیا تو جتنی رقم بشکل with all back benefits سپاہی سہراب شاہ نے وصول کی ہو وہ رقم سپاہی سہراب شاہ کو واپس حکومت خیبر پختونخوا کو ادا جمع کرے گا۔ بصورت دیگر مذکورہ رقم ہم ضمانت نامہ کے ذات و جائیداد سے وصول کی جائے گی۔ البتہ ضمانت

ہذا اسناد تحریر ہے۔ المرقوم: 10/08/2022

ضامن / Surety نور علی شاہ کور  
NIC No: 15-02-1699620-9

ضامن / Surety اجمل شاہ کور  
NIC No: 15402-1437946-3

(1-A)

A/S



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

Service Appeal No. 1087/2020

Khyber Pakhtunkhwa  
Service Tribunal

Case No. 1749

Date 20/2/2020

**Sohrab Shah** Ex Sepoy / Constable No. 5179  
Malakand Levies Malakand  
R/O Village Piran, Tehsil. Batkhela District Malakand

.....Appellant

**VERSUS**

1. DC / Commandant, Malakand Levies Malakand
2. Subedar Major, Malakand Levies Malakand
3. <sup>Chief</sup> Secretary, Home & Tribal Affairs Department,  
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,  
Peshawar.

Ex-part 4

Govt. of Pakistan through Secretary to Ministry of  
SAFRAN, Islamabad

.....Respondents

Filed to-day

Registrar

20/02/2020

APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974, AGAINST  
THE IMPUGNED ORDER OF  
TERMINATION DATED 22/08/2016  
(COPY ANNEXED HERETO  
MARKED E) AGAINST WHICH THE  
APPELLANT PREFERRED  
DEPARTMENTAL APPEAL DATED

ATTESTED

Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**

Service Appeal No. 1087/2020

Date of Institution ... 20.02.2020

Date of Decision ... 31.01.2022



Sohrab Shah, Ex-Sepoy/Constable No, 5179, Malakand Levies  
Malakand. R/O Village Piran, Tehsil Batkhela District Malakand.

... (Appellant)

VERSUS

DC/Commandant, Malakand Levies Malakand and two others.

.... (Respondents)

MR. MUHAMMAD ANWAR  
Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,  
District Attorney

For respondents.

MR. SALAH-UD-DIN  
MS. ROZINA REHMAN


MEMBER (JUDICIAL)  
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precisely stated the facts giving rise to filing of the instant service appeal are that the appellant, who was serving as Sepoy in Malakand Levy was proceeded against on the allegations that he, while on duty had made firing on a Car on 26.07.2016 between 9:30 and 10:00 PM; that in the past, he had criminally intimidated Gul Roz Khan, Subedar Major Malakand Levies and F.I.R No. 36 dated 23.09.2014 under sections 186/153/506 PPC read with section 13.AO was registered against the appellant. On conclusion of the inquiry, the appellant was terminated from service vide order dated 22.08.2016 passed by the competent Authority. The

ATTESTED

  
Khyber Pakhtunkhwa Services Tribunal  
Peshawar


departmental appeal of the appellant was also rejected, therefore, he filed service appeal before Federal Service Tribunal, however in the meanwhile, Levy Force was Provincialized in consequence of 25<sup>th</sup> Constitutional Amendment, therefore, the appeal was returned to the appellant for its representation before the proper forum. The appellant thus made recourse to this Tribunal for redressal of his grievance.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that no regular inquiry was conducted in the matter and the appellant was awarded major penalty on the basis of fact finding inquiry; that the appellant was not provided opportunity of cross-examination of the witnesses produced during the inquiry, therefore, the statements of the witnesses could not be taken into consideration against the appellant; that no complaint was filed by anyone against the appellant regarding the alleged incident of firing and the inquiry was initiated against him due to ulterior motive; that the alleged incident of causing threats to Subedar Major took place in the year 2014 and the appellant has already been acquitted in the said case, therefore, no disciplinary action can be taken against the appellant on the ground of the said alleged incident; that the penalty of termination from service is nowhere provided in the relevant rules, which fact by itself is sufficient for setting-aside of the impugned orders. In the last he requested that the impugned orders being bereft of any legal sanctity may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had made firing on a Car, resulting in causing of damage to the Car; however the passengers luckily escaped unhurt; that the appellant was having rash temperament and had also extended life threats to

ATTESTED


  
 MEMBER  
 Federal Service Tribunal  
 Peshawar



Subedar Major Gul Roz, who then lodged an FIR against the appellant; that the appellant was found guilty in the inquiry conducted against him, therefore, he has rightly been awarded major penalty.

5. We have heard the arguments and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the ground that he, while on duty at *Tarai* Check Post, had made firing on a Car on 26.07.2016 between 9:30 and 10:00 PM; that in the past, he had criminally intimidated Gul Roz Khan, Subedar Major Malakand Levies and F.I.R. No. 36 dated 23.09.2014 under sections 186/153/506 PPC read with section 13.AO was registered against the appellant. The inquiry officer recorded statements of the appellant and Hawaldar Bacha Rehman as well as statements of Ishtiaq Ahmed, Khalid Rehman and Gohar Ali, who were travelling in the Motorcar, which was being fired upon by the appellant. A perusal of the statements so recorded during the inquiry, it is an admitted fact that Hawaldar Bacha Rehman Regiment No. 4372 was also on duty at the concerned check post, however he has stated in his statement that he had gone towards the river side for easing himself. The aforementioned Bacha Rehman has not supported the allegations of firing being made by the appellant upon a car carrying passengers, rather he has stated that one of the passenger namely Khalid, who was serving in Police, had informed him through cell phone that as they were at fault, therefore, the matter may be kept secret. The aforementioned Hawaldar Bacha Rehman was not cross examined, therefore, his statement shall be deemed to have been admitted as correct. Furthermore, none amongst the passengers had lodged any complaint against the appellant. It is also not understandable that when the Deputy Commissioner alongwith Additional Deputy Commissioner as well as Assistant Commissioner had rushed to the spot on receiving the information of the alleged incident, why immediate action was not taken in the matter through photography of the damaged



ATTENDED

EXAMINED  
Khalid Rehman  
Service Station

motorcar. The allegations of making firing on the motorcar and causing it damaged have not been proved through any cogent material.

7. The next allegation against the appellant is that he had criminally intimidated Subedar Major Gul Roz and an FIR in this respect was also registered. The aforementioned incident allegedly took place in the year 2014 and the appellant has been admittedly acquitted in the said case. Furthermore, on receipt of the inquiry report, the competent Authority issued show-cause notice to the appellant and terminated him from service vide impugned order dated 22.08.2016. No charge sheet or statement of allegations was issued to the appellant and it is thus crystal clear that no regular inquiry was conducted in the matter. Moreover, the penalty of termination from service is nowhere provided in concerned rules.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
31.01.2022

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ROZINA REHMAN)  
MEMBER (JUDICIAL)

Date of Presentation of Application 28/02/2022

Number of Words 2000

Copying Fee 22/-

Urgent 4/-

Total 26/-

Name of Copier ---

Date of Completion of Copy 28/02/22

Date of Delivery of Copy 28/02/22

Certified to be true copy  
F. ALAM  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**BEFORE THE SERVICE TRIBUNAL, KHYBER**

**PAKHTUNKHWA, PESHAWAR**

Execution No. 233 /2022

In

Service Appeal No. 1087/2020

**Sohrab Shah**

.....Petitioner

Versus

DCO / Commandant, Malakand & others ..... Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Execution petition		1-2
2.	Affidavit		3
3.	Addresses of parties		4
4.	Copies of appeal and order/judgment	A	5-11
5.	Copy of application	B	12
6.	Wakalat Nama		13

Petitioner

Through

*Sohrab Shah*  
Sohrab Shah.

*Muhammad Anwar*  
Muhammad Anwar

*Jahanzeb Shinwari*  
Jahanzeb Shinwari

*Inamullah Alizai*  
Inamullah Alizai  
Advocates, Peshawar  
Cell: 0333-8866902

*Sohrab Shah*  
Sohrab Shah.

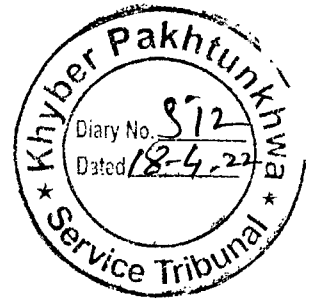
Date: 12/4/2022

1

**BEFORE THE SERVICE TRIBUNAL, KHYBER**

**PAKHTUNKHWA, PESHAWAR**

Execution No. 233 /2022  
In  
Service Appeal No. 1087/2020



**Sohrab Shah** Ex Sepoy / Constable No. 5179  
Malakand Levies Malakand  
R/O Village Piran, Tehsil Batkhela District Malakand

.....Petitioner

Versus

1. DCO / Commandant, Malakand Levies Malakand
2. Subedar Major, Malakand Levies Malakand
3. Chief Secretary, Home & Tribal Affairs Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Govt. of Pakistan through Secretary to Ministry of SAFRAN, Islamabad

.....Respondents

**EXECUTION PETITION UNDER  
RELEVANT PROVISION OF  
SERVICE TRIBUNAL ACT, RULES  
AND THE LAW OF THE  
ORDER/JUDGMENT DATED  
31/01/2022 IN ITS LETTER AND  
SPIRIT PASSED BY THIS HON'BLE  
TRIBUNAL IN SERVICE APPEAL  
NO. 1087/2020.**

**Respectfully Sheweth:**

1. That the petitioner filed service appeal No. 1087/2020 before this Hon;ble Tribunal which contested by the respondents by filling parawise comments.

2. That this Hon'ble Tribunal was please<sup>d</sup> to allow/accept the appeal of the petitioner after hearing both the parties. (Copies of appeal and judgment/order annexed as annexure A)
3. That the petitioner approached the respondents/department and submitted copy of the judgment/order but the respondents/department has not implemented the judgment/order and has not reinstated the petitioner in service with all back benefits. ( Copy of application is annexed as annexure B)
4. That the respondents are not obeying the order/direction of this Hon'ble court/Tribunal

It is, therefore, requested that on acceptance of this execution petition, the respondents may please be directed to implement the judgment/order of theis Hon'ble Tribunal in letter and spirit.

Applicants/Petitioners

Through

*Is*  
*toqatshah*  
*Sohrab Shah*

*MS*  
*MS*  
Muhammad Anwar  
Jahanzeb Shinwari  
Inamullah Alizai  
Advocate, Peshawar

*MS*  
*MS*  
*toqatshah*

Date: 18/4/2022

3

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

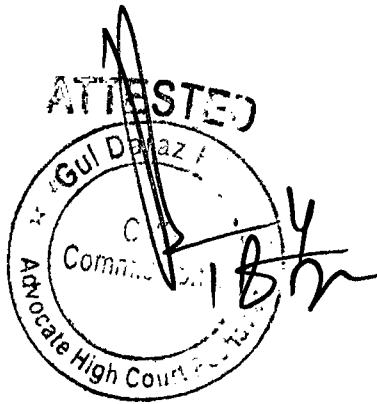
Execution No. \_\_\_\_\_/2022  
In  
Service Appeal No. 1087/2020

**Sohrab Shah** .....Petitioner  
Versus

DCO / Commandant, Malakand & others .....Respondents

**AFFIDAVIT**

I, **Sohrab Shah** Ex Sepoy / Constable No. 5179 Malakand Levies Malakand R/O Village Piran, Tehsil Batkhela District Malakand do hereby solemnly affirm and declare on oath that the contents of the **Execution Petitioner** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



*Sohrab Shah* DEPONENT  
CNIC# 15402-1392559-7

9

**BEFORE THE SERVICE TRIBUNAL, KHYBER**

**PAKHTUNKHWA, PESHAWAR**

Execution No. \_\_\_\_\_/2022  
In  
Service Appeal No. 1087/2020

**Sohrab Shah** .....Petitioner  
Versus  
DCO / Commandant, Malakand & others .....Respondents

**ADDRESSES OF PARTIES**

**PETITIONER**

**Sohrab Shah** Ex Sepoy / Constable No. 5179  
Malakand Levies Malakand  
R/O Village Piran, Tehsil Batkhela District Malakand

**RESPONDENTS**

1. DCO / Commandant, Malakand Levies Malakand
2. Subedar Major, Malakand Levies Malakand
3. Chief Secretary, Home & Tribal Affairs Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. Govt. of Pakistan through Secretary to Ministry of SAFRAN, Islamabad

Through

*Sohrab Shah*

*Muhammad Anwar*

*Jahanzeb Shinwari*

**Inamullah Alizai**  
Advocates, Peshawar

Date: 18/11/2022

(1-A)

A (5)



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

Service Appeal No. 1087/2020

Khyber Pakhtunkhwa  
Service Tribunal

Case No. 1249

Date 20/2/2020

**Sohrab Shah** Ex Sepoy / Constable No. 5179  
Malakand Levies Malakand  
R/O Village Piran, Tehsil. Batkhela District Malakand

.....Appellant

**VERSUS**

1. DC / Commandant, Malakand Levies Malakand
2. Subedar Major, Malakand Levies Malakand
3. <sup>Chief</sup> Secretary, Home & Tribal Affairs Department,  
Govt. of Khyber Pakhtunkhwa, Civil Secretariat,  
Peshawar.

*Ex parte* 4. Govt. of Pakistan through Secretary to Ministry of  
SAFRAN, Islamabad

.....Respondents

Filed to-day

*[Signature]*  
Registrar

20/02/2020

**APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974, AGAINST  
THE IMPUGNED ORDER OF  
TERMINATION DATED 22/08/2016  
(COPY ANNEXED HERETO  
MARKED E) AGAINST WHICH THE  
APPELLANT PREFERRED  
DEPARTMENTAL APPEAL DATED**

ATTESTED

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



6

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**

Service Appeal No. 1087/2020

Date of Institution ... 20.02.2020

Date of Decision ... 31.01.2022



Sohrab Shah, Ex-Sepoy/Constable No. 5179, Malakand Levies  
Malakand. R/O Village Piran, Tehsil Batkhela District Malakand.

... (Appellant)

VERSUS

DC/Commandant, Malakand Levies Malakand and two others.

... (Respondents)

-----  
MR. MUHAMMAD ANWAR  
Advocate

--- For appellant.

MR. NOOR ZAMAN KHATTAK,  
District Attorney

--- For respondents.

MR. SALAH-UD-DIN  
MS. ROZINA REHMAN

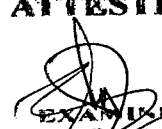
--- MEMBER (JUDICIAL)  
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

— Precisely stated the facts giving rise to filing of the instant service appeal are that the appellant, who was serving as Sepoy in Malakand Levy was proceeded against on the allegations that he, while on duty had made firing on a Car on 26.07.2016 between 9:30 and 10:00 PM; that in the past, he had criminally intimidated Gul Roz Khan, Subedar Major Malakand Levies and F.I.R No. 36 dated 23.09.2014 under sections 186/153/506 PPC read with section 13.AO was registered against the appellant. On conclusion of the inquiry, the appellant was terminated from service vide order dated 22.08.2016 passed by the competent Authority. The

  
**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar


departmental appeal of the appellant was also rejected, therefore, he filed service appeal before Federal Service Tribunal, however in the meanwhile, Levy Force was Provincialized in consequence of 25<sup>th</sup> Constitutional Amendment, therefore, the appeal was returned to the appellant for its representation before the proper forum. The appellant thus made recourse to this Tribunal for redressal of his grievance.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that no regular inquiry was conducted in the matter and the appellant was awarded major penalty on the basis of fact finding inquiry; that the appellant was not provided opportunity of cross-examination of the witnesses produced during the inquiry, therefore, the statements of the witnesses could not be taken into consideration against the appellant; that no complaint was filed by anyone against the appellant regarding the alleged incident of firing and the inquiry was initiated against him due to ulterior motive; that the alleged incident of causing threats to Subedar Major took place in the year 2014 and the appellant has already been acquitted in the said case, therefore, no disciplinary action can be taken against the appellant on the ground of the said alleged incident; that the penalty of termination from service is nowhere provided in the relevant rules, which fact by itself is sufficient for setting-aside of the impugned orders. In the last he requested that the impugned orders being bereft of any legal sanctity may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had made firing on a Car, resulting in causing of damage to the Car; however the passengers luckily escaped unhurt; that the appellant was having rash temperament and had also extended life threats to

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Subedar Major Gul Roz, who then lodged an FIR against the appellant; that the appellant was found guilty in the inquiry conducted against him, therefore, he has rightly been awarded major penalty.

5. We have heard the arguments and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the ground that he, while on duty at *Tarai* Check Post, had made firing on a Car on 26.07.2016 between 9:30 and 10:00 PM; that in the past, he had criminally intimidated Gul Roz Khan, Subedar Major Malakand Levies and F.I.R No. 36 dated 23.09.2014 under sections 186/153/506 PPC read with section 13.AO was registered against the appellant. The inquiry officer recorded statements of the appellant and Hawaldar Bacha Rehman as well as statements of Ishtiaq Ahmed, Khalid Rehman and Gohar Ali, who were travelling in the Motorcar, which was being fired upon by the appellant. A perusal of the statements so recorded during the inquiry, it is an admitted fact that Hawaldar Bacha Rehman Regiment No. 4372 was also on duty at the concerned check post, however he has stated in his statement that he had gone towards the river side for easing himself. The aforementioned Bacha Rehman has not supported the allegations of firing being made by the appellant upon a car carrying passengers, rather he has stated that one of the passenger namely Khalid, who was serving in Police, had informed him through cell phone that as they were at fault, therefore, the matter may be kept secret. The aforementioned Hawaldar Bacha Rehman was not cross examined, therefore, his statement shall be deemed to have been admitted as correct. Furthermore, none amongst the passengers had lodged any complaint against the appellant. It is also not understandable that when the Deputy Commissioner alongwith Additional Deputy Commissioner as well as Assistant Commissioner had rushed to the spot on receiving the information of the alleged incident, why immediate action was not taken in the matter through photography of the damaged



ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

motorcar. The allegations of making firing on the motorcar and causing it damaged have not been proved through any cogent material.

7. The next allegation against the appellant is that he had criminally intimidated Subedar Major Gul Roz and an FIR in this respect was also registered. The aforementioned incident allegedly took place in the year 2014 and the appellant has been admittedly acquitted in the said case. Furthermore, on receipt of the inquiry report, the competent Authority issued show-cause notice to the appellant and terminated him from service vide impugned order dated 22.08.2016. No charge sheet or statement of allegations was issued to the appellant and it is thus crystal clear that no regular inquiry was conducted in the matter. Moreover, the penalty of termination from service is nowhere provided in concerned rules.

8. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
31.01.2022

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

(ROZINA REHMAN)  
MEMBER (JUDICIAL)

Date of Presentation of Application 28/02/2022

Number of Words 2000

Copying Fee 22/-

Urgent 4/-

Total 26/-

Name of Copyist —

Date of Completion of Copy 28/02/22

Date of Delivery of Copy 28/02/22

Confirmed to be true copy

F. A. ANWAR  
Khairpur, Khairpur  
Service Tribunal,  
Peshawar

Cooperstown

Attached

... ..  
...

... ..  
...

... ..  
...

... ..  
...

11/12




... ..  
...

... ..  
...

... ..  
...

B  
121



50	9224			
ایڈویکٹ: محمد انور		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: be-10-7667				
رابطہ نمبر: 0334-9081124				

بعدالت جناب: Learned Service Tribunal Pesh.

منجانب: منجانب	دعویٰ:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

**بامث تحریر آگہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی و جواب دہی کارروائی متعلقہ

آن مقام کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیم وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے اختیار ہائے مختار تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخیت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:

مقام کے لیے منظور ہے۔

Attested and accepted

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

**"B"**

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

No. **E.P. No. 233** of 20 **22**  
 Appeal No. **Sohrab Shah** Appellant/Petitioner  
 Versus **D. CO/ Commandant Malakand Levies** Respondent  
 Respondent No. **1**  
 Notice to: **D. CO/ Commandant Malakand Levies**  
**Malakand.**

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.....**23/6/22**.....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 ~~appeal~~ **E.P.** 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.....**10.11**.....

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

for Implementation  
 Report

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.

for information of  
the body

June 55

10 ff

EB

53/9/55

1010  
D Col  
Wagon  
1010

1010  
D Col  
Wagon  
1010

1010  
D Col  
Wagon

E. B. NO. 533

55

EB



"B"

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

No. EP. No. 233 of 20 22  
Sohrab Shah Appellant/Petitioner  
 Versus  
DCO / Commandant Malakand Levies Respondent  
 Respondent No. 2

Notice to: Subedar Major, Malakand Levies  
Malakand.

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 23/6/22 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 10th

Day of June 20 22

For Implementation  
 Report

Registrar,  
 Khyber Pakhtunkhwa Service Tribunal,  
 Peshawar.

for information

June 25

10/11

E.B.

53/8/55

received from ...

10/11

NO. 17

E.B. NO. 533

55

25

"B"

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

No.

*E.P. No. 233*  
 Appeal No. *E.P. No. 233* of 2022

*Sohrab Shah* Appellant/Petitioner

*DCO/Commandant Malakand Levies* Respondent

Respondent No. *4*

Notice to: *Govt. of Pakistan through Secretary to Ministry of Saffron Islamabad.*

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 *23/6/2022* 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 ~~appeal~~ *E.P.* 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 *10<sup>th</sup>* .....

Day of *June* 20*22*

*for implementation Report*

Registrar,  
 Khyber Pakhtunkhwa Service Tribunal,  
 Peshawar.

22

DCO / Commandant Malabar Lines  
Kowar Pan  
E.P. No. 333

to Ministry of Prawn Fisheries  
Dept. of Fisheries  
Kowar Pan

23/8/2022

23/8

10/11

June 25

for investigation  
Kowar Pan



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

S.B

No.

Appeal No. .... of 20 ..

E.P. No. 233

Appellant/Petitioner 22

Sohrab Shah Versus

DCO/Commandant Malakand Levies  
Respondent No. 3

Notice to: —

~~Chief Secretary~~ The Secretary Home

WHEREAS an appeal/petition under the provisions 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 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. E.P. dated.....

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

Day of.....20 ..

June 22

10/15

for Implementation Report

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.

for 15 days  
restitution

June 25

19 1/2

E.B.

33 / P / 55

~~and~~ ~~prison~~

Debt in payment  
of 1000 dollars

DCO / Commercial Mortgage  
3 (10/10)

2010 2011

E.B. No. 533

55

53