

20.07.2022

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Suleman, Senior Instructor for the respondents present.

02. Representative of the respondent department produced copy of office order bearing Endst. No. 3475-82/P.B dated 15.07.2022 whereby the Service Tribunal judgement delivered in Service Appeal No. 222/2019, on 02.02.2022 has been conditionally implemented subject to the outcome of CPLA. Copy of the office order is placed on file as well as provided to the learned counsel for petitioner. Moreover, departmental representative apprised the court that in pursuance to the said implementation order, the petitioner has assumed the charge in central Prison Mardan. The Service Tribunal judgement dated 02.02.2022 stands implemented. Consign.

03. Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 20th of July, 2022

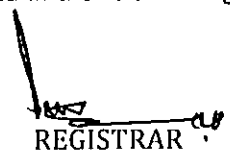




(Mian Muhammad)
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 276/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.05.2022	<p>The execution petition of Mr. Mueeb-ur-Rehman submitted today by Mr. Mir Zaman Safi 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-	25.5.22	<p>This execution petition be put up before to Single Bench at Peshawar on <u>10.6.22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	10.06.2022	<p>Junior to counsel for the petitioner present.</p> <p>Muhammad Adeel Butt, learned Additional Advocate General for respondents present.</p> <p>Implementation report was not submitted. Notice be issued to respondents No.1 & 2 with strict direction to submit implementation report on or before the next date. To come up for implementation report on 20.07.2022 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

Noted for
 10/6/2022
 M-
 01/6/2022



1.0	

OFFICE OF THE
SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN
E mail. mardanjail@gmail.com
Phone. 0937-843114
No. /PB Dated: 15/07/2022.

OFFICE ORDER.

Upon acceptance of service appeal by the Learned Services Tribunal, Khyber Pakhtunkhwa Peshawar vide Judgment dated 02.02.2022 in Services Appeal No. 222/2019, the punishment of Removal from Service awarded to Warder Muneeb Ur Rehman vide this office PB Order No.1204/PB dated. 29-06-2018 is hereby modified and converted into the minor penalty of two (02) annual increments for two (02) years without cumulative effect.

He may be conditionally reinstated into service with immediate effect subject to the final decision/ outcome of CPLA, already filed in the August Supreme Court of Pakistan.

Upon his conditional reinstatement, he is posted to Central Prison Mardan against the vacant post for further duty there.

SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

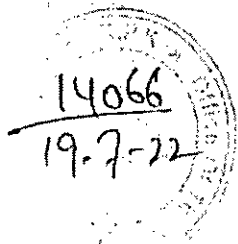
Endst. No. 3475-82 /P.B.

Copy of the above is forwarded to;

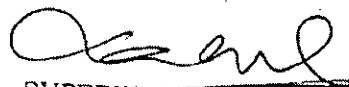
- ✓ The Inspector General of Prisons, Khyber Pakhtunkhwa Peshawar with reference his letter No. 22040/WE dated 07.07.2022 on above cited service appeal for information please.
2. The Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar for information please.
3. The Superintendent Central Prison Mardan/Haripur
4. The Superintendent District Jail Swat.
5. The District Accounts Officers Mardan/Swat.

For information and necessary action please.

6. The official/Warder Muneeb Ur Rehman S/O Nazir Khan R/o Village Saweer Bala P/O Darosh District Chitral for information and with the direction to report to the Superintendent Central Prison Mardan for duties immediately on the receipt of this order.



14066
19-7-22
19/7/22


SUPERINTENDENT
CIRCLE HQS. PRISON MARDAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 276 /2022
In

Appeal No. 222/2019

MUNEEB UR REHMAN

VS

PRISON DEPTT:

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3-	Judgment	A	4- 7.
4-	Vakalat nama	8.

PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564
0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 276 /2022
In

Appeal No. 222/2019



Mr. Muneeb Ur Rehman S/O Nazer Khan,
R/O Village Saweer Bala, P/O Darosh, District Chitral.

.....APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent, Central Prison, Haripur.
- 4- The Superintendent, Central Prison, Swat.
- 5- The Superintendent, Circle Hqrs; Prison, Mardan

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 02.02.2022 IN
LETTER AND SPIRIT

R/SHEWETH:

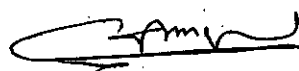
- 1- That the petitioner filed Service appeal bearing No. 222/2019 before this august Service Tribunal against the impugned removal order dated 29.06.2018.
- 2- That appeal of the petitioner was finally heard by this august Tribunal on 02.02.2022 and was decided in favor of the petitioner vide judgment dated 02.02.2022 with the view that *"We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. In view of the forgoing, the instant appeal is accepted and the impugned order of removal from service is converted into minor penalty of stoppage of two annual increments for two years without cumulative effect"*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 02.02.2022 the petitioner submitted the same before the respondents for implementation but till date the judgment of this Tribunal has not been implemented by the respondent in letter and spirit.

- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 02.02.2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 28.04.2022.

PETITIONER



MUNEEB UR REHMAN

THROUGH:



**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2022
In

Appeal No. 222/2019

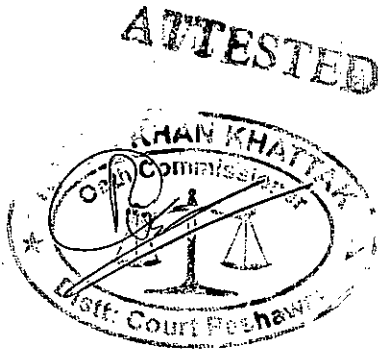
MUNEEB UR REHMAN

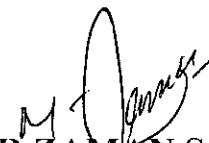
VS

PRISON DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.




MIR ZAMAN SAFI
ADVOCATE

A-4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 222/2019



Date of Institution ... 19.02.2019

Date of Decision ... 02.02.2022

Muneeb Ur Rahman S/O Nazir Khan, R/O Village Saweer Bala, P/O Darosh District Chitral. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat Peshawar and four others. ... (Respondents)

Noor Muhammad Khattak,
Advocate ... For Appellant

Muhammad Adeel Butt,
Additional Advocate General ... For respondents

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

JUDGMENT

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

Brief facts of the

case are that the appellant joined Prison Department on 02-02-2015. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately removed from service vide order dated 29-06-2018. The appellant filed departmental appeal dated 10-12-2018, which was rejected vide order dated 01-01-2019, hence the instant service appeal with prayers that the impugned orders dated 29-06-2018 and 01-01-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

02. Learned counsel for the appellant has contended that the appellant has

not been treated in accordance with law, hence his rights secured under the

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Constitution has badly been violated; that the appellant was proceeded against ex-parte and all the proceedings were conducted at the back of the appellant; that the appellant has not been treated in accordance with law and rule on the subject as such violated Article-4 and 25 of the Constitution; that no charge sheet/statement of allegations or show cause notice was issued to the appellant; that no proper enquiry was conducted nor the appellant was afforded any opportunity of personal hearing to defend himself, which were mandatory before passing the impugned order; that absence of the appellant was not willful but was due to compelling reason of his enmity; that the impugned order was not communicated to the appellant and when he attended the office in order to resume duty, it came to his knowledge that he has been dismissed from service.

03. Learned Additional Advocate General for the respondents has contended that the appellant was properly proceeded against under the relevant law for willful absence from lawful duty and was served with showcause notice at his home address; that the respondents issued his absence notice in leading newspaper as per relevant law, but the appellant did not turn up; that it was responsibility of the appellant to inform the respondents about his enmity or his traumatic episode, but neither the appellant informed the office of such episode nor submitted any application to this effect; that inspite of sending notices at his home address and publishing notices in newspaper, the appellant did not turn up before the respondents for personal hearing, hence the punishment of removal from service was awarded to the appellant in absentia.

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

05. Record reveals that the appellant remained absent from duty with effect from 31.03-2018 to 29.06.2018 without any prior permission of the competent authority.

The appellant was proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The impugned order would

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

⑥

suggest that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august Supreme Court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. We have observed that absence of the appellant was not willful, but he availed such leave without permission due to compelling reasons of his enmity and the appellant has already taken such stance in his departmental appeal, but which was not taken into consideration. Record would suggest that due to peculiar circumstances in case of the appellant, it appeals to prudent mind that the appellant belonging to remote village of Chitral would not be in position to read newspaper or it would also be not possible with accuracy that show cause notice served at his home address would have been received by him well in time. Moreover his sister was killed by his brother in law, which was a shocking news for the appellant and in a situation, it was but natural that he would not be in a position to respond to the notices well in time, but the respondents did not consider his case on compassionate ground and was removed in an arbitrary manner, which was not warranted. We are of the considered opinion that though the appellant was absent from duty, but his absence was due to enmity based on killing of his sister by his brother in law, hence he deserve to be treated on humanitarian grounds. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground on the basis of which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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06. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. In view of the foregoing, the instant appeal is accepted and the impugned order of removal from service is converted into minor penalty of stoppage of two annual increments for two years without cumulative effect. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

02.02.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be true copy

EXCISE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 10/5/22
Number of Words 2000
Copying Fee 22/-
Urgent 4/5
Total 26/-
Name of Copyist —
Date of Completion of Copy 10/5/22
Date of Delivery of Copy 10/5/22

WAKALAT NAMA

BEFORE THE *Hyber Pakhtunkhwa Service*
Tribunal, Peshawar

OF 2022

Muneeb ur Rehman

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

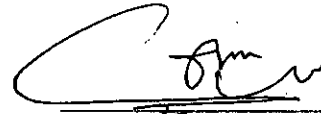
Prison Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Muneeb ur Rehman*

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, High Court, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. / /2022



CLIENT



ACCEPTED

MIR ZAMAN SAFI

&

ABDULLAH KHAN KHATTAK,
ADVOCATES

OFFICE:

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Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.

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