8th June, 2022

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Raza Ullah, Superintendant and Mr. Khushi Muhammad, SO for respondents present.

Mr. Raza Ullah, Superintendant in office of the Deputy Commissioner, Dir (Upper) present and submitted an application undertaking that implementation report in this matter alongwith other connected execution petition will be submitted on the next date and requested for a short adjournment. To come up for implementation report on 05.07.2022 before the S.B at camp court Swat.

(Kalim Arshad Khan)
Chairman
Camp Court Swat

+

05.07.2022

Petitioner present in person. Mr. Noor Zaman, District Attorney alongwith Mr. Wilayat Khan, S.O and Raza Ullah, Superintendent for respondents present.

Representative of the respondent department submitted Officer Order No.12300-7/DC/Re-Instatinment dated 28.06.2022 which is placed on file, through which the petitioner has been reinstated in service and judgement of Service Tribunal is implemented conditionally subject to the outcome of CPLA in august Supreme Court of Pakistan.

In view of the above, instant petition is disposed off. File be consigned to record room.

Announced.
05.07.2022

(Fareeha Paul)
Member (E)
Camp Court, Swat

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 97/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.02.2022	The execution petition of Mr. Zafar Khan submitted today by Mr. Muhammad Yar Malazai may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before touring S. Bench at Swat on 11.5.2022. Notices to the parties to also issued.
	11.05.2022	None for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present. CHAIRMAN Implementation report not submitted. Learned AAG requested for a adjournment. Notices be issued to the respondents for submission of implementation report. Notice for prosecution of execution petitioner be also issued to the petitioner as well as his counsel. Adjourned. To come up for implementation report on 08.06.2022 before S.B at camp court Swat. (Mian Muhammad) Member(E) Camp Court Swat

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

Execution (Implementation) petition No. 97 ***/2022***

In

Service Appeal No. 1029/2018

(Titled as Zafar Khan Versus Khyber Pakhtunkhwa etc)

Zafar Khan..... Petitioner

V E R S U S

Government of Khyber Pakhtunkhwa, etc ..... Respondents

INDEX

S.No	Description of Documents	Annex	Pages
1.	Execution / Implementation Petition with Certificate		1-3
2.	Affidavit		4
3.	Memo of addresses of parties		5
4.	Copy of order dated 20-10-2021	"A"	6-10
5.	Wakalat Nama		11

Petitioner

Zafar Khan

Through counsel

Muhammad Yar (Malezai)
Advocate High Court
Office B-3, Azeem Khan Plaza
Makan Bagh, Swat
Cell No: 0346-939018

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

Execution (Implementation) petition No. 97 ***/2022***

In

Service Appeal No. 1029/2018

(Titled as Zafar Khan VS Khyber Pakhtunkhwa, etc decided on 20-10-2021)

Zafar Khan son of Missal Khan resident of Danail (Osherai Dara) tehsil Dir, district Dir Upper (Subidar having Regimental No. 04 Dir Levies district Dir Upper)..... ***Petitioner***

V E R S U S

1. *Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa at Peshawar;*
2. *Secretary to Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department at Peshawar;*
3. *Commandant Dir Levies Force, district Dir Upper (Deputy Commissioner district Dir Upper at Dir proper);*
4. *District Account Officer district Dir Upper at Dir proper..* ***Respondents***

APPLICATION FOR EXECUTION / IMPLEMENTATION OF THE ORDER/JUDGMENT DATED 20-10-2021 PASSED IN SERVICE APPEAL No. 1029/2018

Respectfully Sheweth,

The application is stated as under.

1. *That petitioner had filed Service Appeal No. 1029/2018 titled as, "**Zafar Khan VS Govt of Khyber Pakhtunkhwa, etc**", before this Honorable Tribunal that was allowed alongwith other connect appeals vide common order/judgment dated 20-10-2021 and thereby inter alia restored the services of the petitioner. (**Copy of the judgment is Annexure "A"**)*

2. *That on obtaining certified copies of the order / judgment thereafter immediately without losing any movement of time, for its compliance, it were delivered in the offices of the respondents and sought resuming the charge of his duties.*

3. *That instead to comply the directions/order of this Honorable Tribunal the respondents lingered the matter on by different lame excuses, and so kept the petitioner in wait for indefinite period of time. The respondents as yet are bent not to allow the petitioner to resume the charge of his duties. They are also not paying the petitioner his salaries and other back benefits. Therefore compellingly the petitioner approaches this Honorable Tribunal for the implementation of its aforementioned order/judgment through the present petition.*

4. *That owing to non implementation of the afore stated order/judgment the petitioner is suffering for irreparable loss and injury as he is facing acute problems in providing sustenance to his family because the petitioner is having no other source of livelihood.*

5. *That the respondents having no regard of the order/judgment of this Honorable Tribunal are willfully, knowingly and intentionally disobeying the same, though they are legally bound to obey it. Such disobedience of the respondent is meant to ridicule the order of this Honorable Tribunal, which has undermined the public respect of the authority of this Hon'ble Tribunal.*

In view of the above, *it is therefore , very humbly prayed that this Honorable Tribunal may be pleased to take appropriate and necessary action for the enforcement and implementation of its order/judgment dated 10-02-2021 passed in Service Appeal No. 1029/2018, and if necessary punish the respondents accordingly.*

Any other relief *though not specifically prayed for, which is deemed fit and appropriate in the circumstances, may also be very graciously granted for the end of justice.*

Petitioner

Zafar Khan

Through Counsel

Muhammad Yar (Malezai)
Advocate High Court

CERTIFICATE

It is certified that as per information furnished to me by my client/petitioner, it is the first ever petition on the present subject matter, and no such like other petition has earlier been filed nor pending before this Honorable Tribunal or any other Competent Court of law.

Counsel

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

Execution (Implementation) petition No. _____/2022

In

Service Appeal No. 1029/2018

(Titled as Zafar Khan Versus Khyber Pakhtunkhwa etc)

Zafar Khan..... Petitioner

V E R S U S

Government of Khyber Pakhtunkhwa, etc ..... Respondents

Affidavit

I, Zafar Khan son of Missal Khan resident of Danail (Osherai Dara) tehsil Dir, district Dir Upper (Subidar having Regimental No. 04 Dir Levies district Dir Upper), do hereby solemnly affirm and declare on oath that all the contents of the above titled Execution / Implementation petition are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honorable Tribunal.

ATTESTED

10 FEB 2022

Deponent

Zafar Khan

CNIC NO. 15701-2524980-3

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

Execution (Implementation) petition No. _____/2022

In

Service Appeal No. 1029/2018

(Titled as Zafar Khan Versus Khyber Pakhtunkhwa etc)

Zafar Khan..... Petitioner

V E R S U S

Government of Khyber Pakhtunkhwa, etc ..... Respondents

MEMO OF PARTIES AND THEIR ADDRESSES

PETITIONER

Zafar Khan son of Missal Khan resident of Danail (Osherai Dara) tehsil Dir, district Dir Upper (Subidar having Regimental No. 04 Dir Levies district Dir Upper)
Cell No.
CNIC No. 15701-2524980-3

RESPONDENTS

1. *Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa at Peshawar;*
2. *Secretary of Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department at Peshawar;*
3. *Commandant Dir Levies Force, district Dir Upper (Deputy Commissioner (District Dir Upper) at Dir proper;*
4. *District Account Officer district Dir Upper at Dir proper*

Petitioners
Through Counsel ZAFAR KHAN

Muhammad Yar (Malezai)
Advocate High Court

Annex. "A" (6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1026/2018

Date of Institution ... 17.08.2018

Date of Decision ... 20.10.2021

Shah Rafi-ud-Din s/o Muhammad Din r/o Galkor (Osherai Dara) Tehsil Dir, District Dir Upper, presently Subedar (Regimental No.1) Dir Levies District Dir Upper.

... (Appellant)

VERSUS

Khyber Pakhtunkhwa through Chief Secretary to Government of Khyber Pakhtunkhwa, at Peshawar and three others.

... (Respondents)

MUHAMMAD YAR MALEZAI
Advocate ... For Appellant

RIAZ KHAN PAINDAKHEIL,
Assistant Advocate General ... For Respondents

ROZINA REHMAN ... **MEMBER (JUDICIAL)**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This judgment is intended to dispose of 04 connected service appeals which are:

1. Service Appeal No. 1027/2018
2. Service Appeal No. 1028/2018
3. Service Appeal No. 1029/2018
4. Service Appeal No. 1030/2018

In view of common questions of law and facts, the above captioned appeals are being disposed of by this order.

ATTESTED

CTC

محمد یار (ملیزئی)

(7)

02. Brief facts of the case are that the appellant joined Dir Levies Force (Provincially Administered) as Sepoy on 23-11-1999 and in due course earned promotions and finally was promoted to the rank of Subedar on 19-11-2013. The appellant fell victim to the amendments made in service rules vide notification dated 26-12-2016, which were detrimental to his interests and by virtue of which the appellant was retired from service on 19-11-2019 at the age of 41 and holding only 19 years of service at his credit, but well before his retirement, the appellant filed a departmental appeal dated 10-04-2018, with the apprehensions of his retirement under the amended rules, which however was not considered by the respondents, hence the instant service appeal with prayers to declare notification dated 26-12-2016 as illegal, unreasonable and ultra vires of the law with further prayers to restrain the respondents from retiring the appellant on completion of five years service as Subedar.

03. Learned counsel for the appellants has contended that the impugned notification dated 26-12-2016 is illegal, arbitrary, unreasonable and ultra vires of law; that the impugned notification is discriminatory in favor of the appellants, as it put no bar on other ranks like Subedar major or Sepoy and allows them to be retired from service on completing 25 years of service or attaining the age of 60 years, whereas the appellant being a Subedar is subjected to retirement from his service at the age of 41, which even is not in the interest of the respondents retiring quite an energetic and young officer at such earlier stage; that terms and conditions of service could not be unilaterally altered by the employer to the disadvantage of the employee. Reliance was placed on 2018 SCMR 598; that the appellant has got legitimate expectancy and vested rights to continue his service till the age of superannuation and forcing the appellant to retire under the impugned notification renders him to live in lurch and despair; that the appellant was promoted as Subedar prior to the impugned notification and he is supposed to be dealt with in accordance with that service rules, under which

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محمد یار (ملیزئی)

(8)

he was promoted; that the impugned notification is having no retrospective effect, therefore the same is ineffective upon the rights of the appellant of continuing his service till the age of 60 already accrued to him; that the impugned notification by altering the terms and conditions of the service of the appellant adverse to his rights already accrued to him, is unwarranted and nullity in the eye of law.

04. Learned Assistant Advocate General appearing on behalf of respondents has contended that the impugned notification was issued on 26-12-2016, whereas the appellant filed departmental appeal on 10-04-2018, which is badly time barred and if the departmental appeal is not filed within the statutory period, the appeal before the Tribunal would not be incompetent. Reliance was placed on PLJ 2009 SC 1099 and 2007 SCMR 346. The learned Assistant Advocate General referred to Rule-3 of Appeal Rules-1986, which provides for filing of departmental appeal within 30 days of issuance of the impugned order, whereas the appellant has filed such appeal with delay of more than one year; that the departmental appeal was filed jointly by the appellant and others, while it should have been individual and independent under the Khyber Pakhtunkhwa Civil Servant (Appeal) Rules. 1986; that it is prerogative of the government to frame rules, which in the absence of demonstrable mala fide could not be assailed. Reliance was placed on 2015 SCMR 269.

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

06. Record reveals that Federal Levies Force and Provincial Levies Force were operative in defunct Provincially Administered Tribal Areas (PATA) and in order to regulate their service matters, the provincial government with prior approval of the President of Pakistan promulgated PATA Levies Force Regulation, 2012, under which two sets of rules were framed for Federal as well as Provincial Levies Force, i.e. PATA Federal Levies Force Service Rules (Amended), 2013 and PATA Levies Force Service Rules,2012. The appellants are personnel of Provincial

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Levies Force and Rule-16 of the provincial levies force service rules provides for retirement of the members of the force on attaining the age of superannuation i.e. 60 years or he may opt for retirement after completing 25 years of regular service. In 2014, separate Regulations i.e. PATA Provincial Levies Force, Regulation, 2014 was promulgated for PATA Provincial Levies Force, under which PATA Provincial Levies Force Rules, 2015 were framed. Rule-16 whereof provides for the uniformed members of the Force to be retired as per schedule-iv, according to which Subedar will get retirement on completion of 35 years service or 60 years of age, whichever is earlier. It was in the year 2016 when amendments were made in schedule-iv of Rules, 2015 and altered the criteria for retirement of Subedar and Naib Subedar only and rest of the members of the force were not touched. Subedar was to be retired on 35 years of service or 5 years service as Subedar or 60 years, whichever is earlier. The appellants are mainly aggrieved of this amendment, which has rendered them retired on completing 5 years service as Subedar and only 19 years service at his credit with age of 41 years. It is quite astonishing that such amendments even are not in the interest of the respondents retiring quite an energetic and young officer at such earlier stage. In response to the departmental appeals submitted by the appellant, the Commandant Levies Force/Deputy Commissioner, Upper Dir, recommended for maintenance of Rules, 2015, relevant portion of the letter is reproduced as under:

"It is brought into your kind notice, that Provincial Levies Force Dir Upper has been established in 1999, therefore on the basis of the tenure post very young non-commissioned officer, having 19 or 20 years service will retire and as such force will be deprived of JCOs whom age will be at the stage where is due for retirement in November, 2018. On his retirement on one hand they can bitterly command and control. For example, one Lal Bahadur Subedar having 19 years service with age of 38 years. On the basis of tenure of post is due for retirement in November 2018. On his retirement on one hand, the Force will lose one energetic and young officer and on the other hand, he will go home with less pension benefits. His pension at that age will be too much less of a class-iv employee. Keeping in view the above

ATTESTED

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facts, it is therefore, requested to maintain Rules, 2015 withdrawing amended Rules, 2017."

07. The provincial Government was in the process to examine and remove the anomaly but in the meanwhile the appellants were retired from service on completion of five years service as Subedar and the provincial government during the course of litigation at a belated stage, have taken cognizance of the situation and have noted that the impugned notification dated 26-12-2016 is unreasonable, ultra vires of law as well as contrary to the settled principles of age of retirement and contrary to the fundamental rights of the appellants guaranteed by the Constitution, hence amendments were brought vide notification dated 14-07-2020, whereupon schedule-iv was deleted and provided that all uniformed force shall retire from service on attaining the age of superannuation i.e. Sixty years or they may opt for retirement after completion of 25 years regular service. Such amendments corrected the course for future, but the impugned notification altering the terms and conditions of the service of the appellants adversely affecting their rights already vested in them and have caused damage to the appellants, which was unwarranted and nullity in the eye of law.

08. In view of the foregoing discussion, the instant appeals are accepted. The appellants as well as other similarly placed employees stand re-instated in service, who will retire on attaining age of 60 years or they may opt for retirement after completion of 25 years regular service. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
20.10.2021

(ROZINA REHMAN)
MEMBER (JUDICIAL)

Certified to be ture copy
Service Tribunal
Peshawar

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

CTC

محمد یار (ملیزئی)
یڈویٹ

بعدالت خیبر پختونخواہ سروس ٹربیونل

کورٹ فیس | بمقام پشاور | قیمت ایک روپیہ

مورخہ 9 فروری 2022 منجانب مشہور

مقدمہ محمد خان بنام خیبر پختونخواہ حکومت

دعویٰ Exeection Implementation No

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے محمد یار ملازئی ایڈووکیٹ مقرر کرکے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ وتقرر ثالث وفیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برامدگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور وقبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ وہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا وخرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 9 ماہ فروری 2022

العبد گواہ شدہ العبد

بمقام پشاور / منظور کے لئے منظورہ ہے