

27.07.2022

Petitioner present through counsel, ~~person~~ Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Atta Ur Rehman, Inspector Legal for respondents present.

Representative of the respondent department submitted Office Order No. 3782-88/EC, dated 04.07.2022 through which the major penalty of dismissal from service is converted into minor penalty of censure which is placed on file. Hence, the petitioner has been reinstated in service with immediate effect 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.
27.07.2022


(Fareeha Paul)
Member (E)

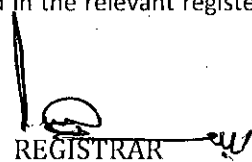


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Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 308/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.05.2022	<p>The execution petition of Mr. Iqrar Said submitted today by Mr. Noor Muhammad Khattak 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><i>Noted</i> <i>Noor Mohd Khattak</i> <i>1/6/22</i></p>	<p>This execution petition be put up before Single Bench at Peshawar on <u>02-06-2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	2 nd June, 2022	<p>None for the petitioner present. Kabirullah Khattak, Addl: AG for respondents present.</p> <p>Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 27.07.2022 before S.B. Original file be also requisitioned.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

1

2022

**OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN**

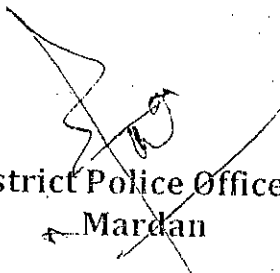
Tel No. 0937-9230109 & Fax No. 0937-9230111
Email dpo_mardan@yahoo.com

ORDER

Consequent upon the filing of execution petition No. 308/2022 by Ex Constable Iqrar Said No. 2950 for the implementation of the orders of Honorable Service Tribunal, KP announced on 17.01.2022 in service appeal No. 1208/2015, and duly Endorsed by SP Courts & Litigation, KP Peshawar vide his office letter No. 3125/Legal, dated 23.06.2022 "the major penalty of dismissal from service awarded to Ex-Constable Iqrar Said No.2950 vide this office OB No.2327 dated 19.11.2014 is set aside and converted in to minor penalty of Censure. He is conditionally/provisionally re-instated in service with immediate effect subject to the furnishing of bail bonds & outcome of CPLA as the instant case is already determined fit for filing by the Scrutiny Committee of Law department in its meeting held on 27.04.2022".

OR No. 1419

Dated. 30/6 /2022


District Police Officer
Mardan

(693/LB)
04-7-22

No. 3782-88 /EC, dated 04 / 07 /2022.

Copy for information to the:-

1. Superintendent of Police, Operations, Mardan.
2. District Accounts officer, Mardan.
- ✓ 3. DSP/Legal
4. DSP/HQr:
5. PO:-
6. PA:
7. OSI

WORTHY/DPO

Agreed


30/6


DSP Legal,
Mardan.

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 308/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.05.2022	<p>The execution petition of Mr. Iqrar Said submitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before Single Bench at Peshawar on _____ . Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p>CHAIRMAN</p>

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

EXECUTION PETITION NO. 308 /2021

IN

APPEAL NO:1208/2015

IQRAR SAID

V/S

POLICE DEPTT:

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Dated: 26.05-2022

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BC/10-0853

0345-9383141

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

9/11/25

Implementation Petition No. 308 /2022

Khyber Pakhtunkhwa
Service Tribunal

In

Appeal No.1208/2015

Diary No. 655

Mr. Iqrar Said, Ex Constable No.2950,
Police Lines Mardan.....

Dated 26/8/22

Petitioner

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa.
- 2- The Deputy Inspector General of Police, Mardan
Region -I Mardan
- 3- The District Police Officer, District Mardan.

.....**Respondents**

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENTS TO OBEY THE JUDGMENT DATED
27-01-2022 IN LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed service appeal bearing No. 1208/2015 before this august Service Tribunal for reinstatement the appellatant with all back benefits.
- 2- That the appeal of the petitioner partially accepted and the impugned dismissal order was converted to minor penalty, the operative part is follow:
In view of the foregoing discussion, the instant appeal is partially accepted. The impugned orders are set aside and the penalty of dismissal is converted into minor penalty of censure. Parties are left to bear their own costs. File be consigned to record room.
Copy of the judgment dated 27-01-2022 is attached as**annexure-A.**
- 3- That after obtaining copy of the judgment dated 27-01-2022 the petitioner submitted the judgment mention above for its implementation to the Department concerned but the respondent Department are not willing to obey the judgment dated 27-01-2022 in letter and spirit.
- 4- That the petitioner has no any other remedy but to file this implementation petition.

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It is therefore, most humbly prayed that the respondents may be directed to implement the order/ judgment dated 27-01-2022 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER:



IQRAR SAID

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE**



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

EXECUTION PETITION NO. _____/2022
IN

SERVICE APPEAL No. 1208/2015

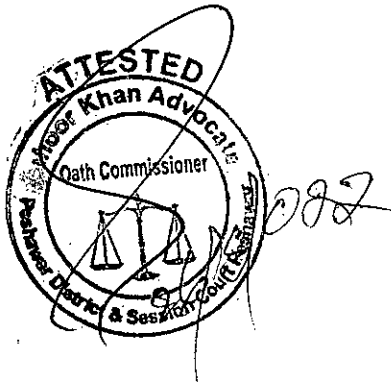
IQRAR SAID

VS

POLICE DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying **execution petition** are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



Seiw
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

[Signature]
CERTIFICATION

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 1208 /2015

K.P.S.T. Tribunal
Service Tribunal
Dary No. 1249
Dated 13-10-2015

Mr. Iqrar Said, Ex. Constable No. 2950,
Police lines Mardan Appellant

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 - 2- The Deputy Inspector General of Police, Mardan Region-I Mardan.
 - 3- The District Police Officer, District Mardan.
- Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 19-11-2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE ORDER DATED 18-09-2015 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 19-11-2014 and 18-09-2015 may very kindly be set aside and the respondents may please be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

13/10/15

**R/SHEWETH:
ON FACTS:**

Submitted to-
and filed:
29/10/15

1- That appellant was appointed as constable in the respondent Department vide order dated 07/07/1999. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

2- That appellant while serving as constable in the police Department became seriously ill and due to that reason the appellant visited the concern Doctor for Medical Treatment/check up. That in response the concerned Doctor advise the appellant for complete bed rest. Copies of the Medical prescriptions are attached as annexure

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

..... A.

~~ATTESTED~~

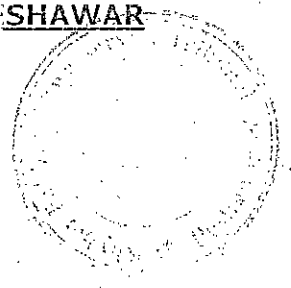
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1208/2015

Date of Institution ... 13.10.2015

Date of Decision ... 27.01.2022



Mr. Iqrar Said, Ex-Constable No. 2950, Police Lines Mardan.

... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa Peshawar and others.

... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant while serving as constable in Police Department, was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 19-11-2014. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 16-01-2015. The appellant filed revision petition, which was also rejected vide order dated 18-09-2015, against which the appellant filed Service Appeal No. 1208/2015, which was decided vide judgment Dated 01-08-2017 and was dismissed on the issue of limitation. The appellant filed Civil Petition No. 3328/2017 in the Supreme Court of Pakistan, which was decided vide judgment dated 02-10-2019 and judgment dated 01-08-2017 of this tribunal was set aside

ATTESTED

Atiq-ur-Rehman Wazir
Member (Executive)
Khyber Pakhtunkhwa Service Tribunal
Peshawar

ATTESTED

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and the matter was remanded to this tribunal for deciding the appeal on merit and in accordance with law. In the instant appeal, the appellant has prayed for setting aside the impugned orders dated 19-11-2014, 16-01-2015 and 18-09-2015 and his re-instatement in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore, not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that no show cause notice has been served upon the appellant before issuing the impugned order of dismissal; that no chance of personal hearing has been afforded to the appellant, which is mandatory under the law; that absence of the appellant was not willful but was due to compelling reason of his illness and to this effect, the appellant had already submitted advice of doctor concerned regarding complete bed rest, which however was not taken into consideration; that no regular inquiry has been conducted in the matter of the appellant; that the respondents acted in arbitrary manner, while issuing the impugned order of dismissal.

Wm

03. Learned Deputy District Attorney for the respondents has contended that the appellant was a habitual absentee, which is evident from his service record; that submitting medical prescription is an easy practice being used by the appellant, but in fact, the appellant was not sick but it was just a pretext, rather his absence was found deliberated and willful; that there is a proper procedure for availing leave on medical grounds but neither the appellant submitted his medical bed rest nor applied for leave on medical grounds; that proper departmental inquiry was conducted into the matter and upon recommendations of the inquiry officer, the appellant was awarded with major punishment of dismissal from service; that departmental appeal as well as revision petition of the appellant were rejected being devoid of merit.

ATTESTED

ATTESTED
[Signature]
ADMINISTRATOR
Karnataka Public Service Commission
Bengaluru

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

05. Since the case in hand was earlier decided by this Tribunal in Service Appeal No. 1208/2015 vide judgment dated 01-08-2017 and was dismissed on the issue of limitation. The august Supreme Court of Pakistan, set-aside judgment dated 01-08-2017 of this tribunal and remanded the case to this tribunal for decision on merit as the issue of limitation has already been settled by the apex court that the appellant had filed service appeal well within time. but in order to refresh the memory, it would be appropriate to have a look of the process of submission of his case before this Tribunal. Record reveals that the appellant was dismissed from service on the charges of absence from duty vide order dated 19-11-2014, against which the appellant filed departmental appeal, which is not available on record but as is evident from record that his departmental appeal was rejected vide order dated 16-01-2015, which shows that the appellant had submitted his departmental appeal well within time. The appellant filed revision petition under Rule-11A of Police Rules, 1975, which was rejected vide order dated 18-09-2015, thereafter, the appellant filed service appeal on 13-10-2015, which was also well within time, but this tribunal erred in calculating the time period and not referring to the proper rules and which was rightly pointed out by the supreme court of Pakistan in its judgment in civil petition No 3328/2017 announced on 02-10-2019, hence the issue of limitation stands resolved.

06. While referring to merit of the case, we have observed that vide the impugned order of dismissal, absence period of the appellant is treated as leave without pay, hence the authority had itself condoned the period of absence by allowing him leave without pay, hence there is no justification with the authority to penalize the appellant for such absence, which had been regularized and on this score alone, the impugned orders are liable to be set aside. Wisdom to this effect is derived from judgment of

ATTESTED

REDAK
 MEMBER
 Service Tribunal
 Islamabad

~~ATTESTED~~

Supreme Court of Pakistan reported as 2006 SCMR 434, 2012 TD (Services) 129 and 2012 TD.(Service) 348.

07. 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 based on 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.

08. Record would suggest that the appellant submitted his request for grant of leave on medical grounds, which was not considered. The appellant had taken the same stance in his departmental appeal as well as in revision petition, which was not taken into consideration. It however is a well-settled legal proposition that availing of medical leave without permission of the competent authority could not be considered as an act of gross misconduct entailing major punishment of dismissal from service. Reliance is placed on 2008 SCMR 214. 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, as the appellant was sick and he tendered medical certificates in that regard, which was not considered and evaluated before imposing the major penalty of dismissal. Holding a regular inquiry to remove factual controversies was yet another binding factor upon the department. We have noted that the appellant was dismissed from service on simple charge sheet and no inquiry was conducted. The august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular

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ATTESTED

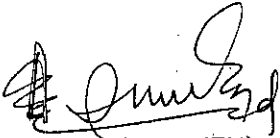
ATTESTED
Services Tribunal
Karachi


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inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.


09. In view of the foregoing discussion, the instant appeal is partially accepted. The impugned orders are set aside and the penalty of dismissal is converted into minor penalty of censure. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
27.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


J. B. JINNAH
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 01-04-22
No. of Pages 2000
Copy No. 224
Date of Delivery of Copy 04/04/22
Date of Delivery of Copy 04/04/22

FILED

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

Yaqub Said (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt. (RESPONDENT)
(DEFENDANT)

I/We Yaqub Said

Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, 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

Said
CLIENTS

Accepted
ACCEPTED

NOOR MUHAMMAD KHATTAK

Kamran Khan
KAMRAN KHAN

Umar Farooq Mohmand
UMAR FAROOQ MOHMAND

Haider Ali
HAIDER ALI

&
KHANZAD GUL
ADVOCATES