

26.05.2022

None for the petitioner present. Mr. Kabirullah Khattak, AAG for the respondents present.

Respondents are directed to appear in person alongwith implementation report on 30.06.2022 before S.B. Original appeal also be requisitioned.

Kalim Arshad Khan
Chairman

30.06.2022

Counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Arif Saleem, Stenographer for respondents present.

Representative of the respondent department submitted officer order No. 1958-60/SRC dated 28.02.2022 which is placed on file through which petitioner has been reinstated in service with immediate effect and judgment of this Tribunal implemented conditionally subject to the outcome of CPLA.

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

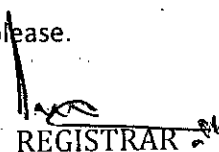


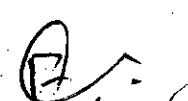
Announced.
30.06.2022

(Fareena Paul)
Member (E)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 354/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.11.2021	<p>The execution petition submitted by Mr. Muhammad Tahir through Naila Jan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>14/01/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	14.01.2022	<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on 02.03.2022 before the S.B.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J)</p>
	2-3-2022	<p>Due to retirement of the Hon,ble Chairman the case is adjourned to come up for the same as before on 26-5-2022</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 354 /2021

In

Service Appeal No: 768/2018

Muhammad Tahir

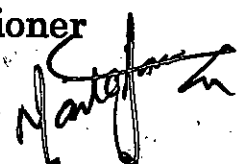
Versus

I.G.P KPK Peshawar and others

INDEX

S#	Description of Documents	Annex	Pages
1.	Execution Petition with Affidavit		1-3
2.	Addresses of Parties		4
3.	Copy of Judgment		5-80
4.	Wakalat Nama		91

Dated: 09/10/2018

Petitioner
Through 
Naila Jan
Advocate, High Court
Peshawar

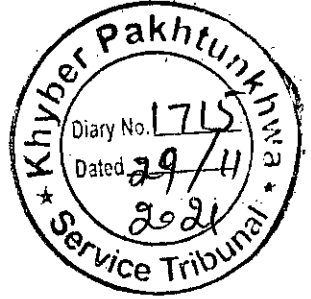
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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 354 /2021

In

Service Appeal No: 768/2018



Ex- Constable Muhammad Tahir No: 964, District
Police QRF-7 Kohat.

.....Petitioner

Versus

1. Inspector General of Police, KPK, Peshawar.
2. Deputy Inspector General of Police Kohat Region
Kohat.
3. District Police Officer, Kohat.

.....Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
768/2018 DECIDED ON 04-10-
2021

Respectfully Sheweth,

1. That the above mention appeal was decided by
this Hon'ble Tribunal vide Judgment dated
04/10/2021. (Copy of the judgment is annexed as
annexure "A")

2. That the relevant portion of the judgment is reproduced *"For what has been discussed above, the appeal at hands is accepted, the impugned order is set aside and the appellant is reinstated into service from the date of his absence. However, the period commencing from the date of absence of the appellant till passing of this judgment shall be treated as leave of the kind due in accordance with law. Parties are left to bear their respective costs"*.
3. That the Petitioner after getting of the attested copy of same approached the Respondents several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.
4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this

3)

*Hon'ble Tribunal by reinstating the Petitioner
with all back benefits.*

Dated: 29/11/2021

M. Tahir

Petitioner

Through

Naila Jan

Naila Jan

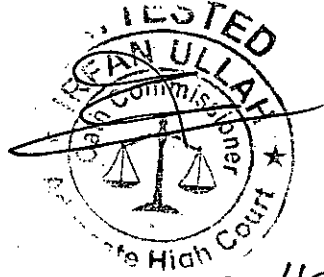
Advocate, High Court
Peshawar

AFFIDAVIT:-

I, Ex- Constable Muhammad Tahir No: 964, District Police QRF-7 Kohat, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

Naila Jan

Deponent



29-11-21

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2021

In

Service Appeal No: 768/2018

Muhammad Tahir

Versus

I.G.P KPK Peshawar and others

ADDRESSES OF PARTIES

PETITIONER

Ex- Constable Muhammad Tahir No: 964, District
Police QRF-7 Kohat

RESPONDENTS

1. Inspector General of Police, KPK, Peshawar.
2. Deputy Inspector General of Police Kohat Region
Kohat.
3. District Police Officer, Kohat.

Dated: 29/11/2021

Through


Petitioner


Naila Jan

Advocate, High Court
Peshawar

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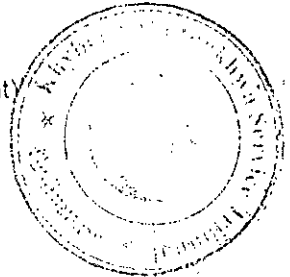
BEFORE THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal 768 2018

1024
01-6-2018

Ex- Constable Muhammad Tahir No- 964 District Police QRF-7 Kohat

(Appellant)



VERSUS

- 1:-INSPECTOR GENERAL OF KPK POLICE PESHAWAR.
- 2:-DEPUTY INSPECTOR GENERAL OF POLIEC KOHAT REGION KOHAT
- 3:-DISTRICT POLICE OFFICER KOHAT.

(Respondent)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 04-01-2017 VIDE OB-NO 13 IN WHICH THE RESPONDENT NO:-3 UPON THE FINAL SHOW CAUSE NOTICE DATED 25-10-2016 DISMISS THE APPELLANT FROM SERVICE ON THE BASIS OF FAKE CRIMINAL CASE DATED 06-09-2016 AND AFTER ACQUITTAL APPELLANT PREFERED DEPARTMENTAL REPRESENTATION DATED 16-02-2018 AND THE RESPONDENT GIVEN FALSE CONSOLATION THAT REPRESENTATION WILL BE ACCEPTED BUT THE SAME WAS REJECTED ON DATED 11-05-2018.

Pray:

In view of above submission it is requested, by accepting of instant appeal the impugned order of Respondents may be set aside and the present appellant may please be re instated in the service with all back benefits are blessed with any other remedy as the honorable tribunal deem proper .

Respectfully Sheweth,

With great veneration the instant appeal is preferred by the appellant on the following grounds:-

ATTESTED

EXAMINER
Khyber Pakhtoon Khwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 768/2018

Date of Institution ... 01.06.2018

Date of Decision ... 04.10.2021



Muhammad Tahir Ex-Constable No. 964 District Police QRF-7, Kohat.
... (Appellant)

VERSUS

Inspector General of Khyber Pakhtunkhwa Police, Peshawar and two others.
...(Respondents)

Present.

Syed Mudasir Pirzada, ... For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General ... For respondents.

MR AHMAD SULTAN TAREEN ... CHAIRMAN
MIAN MUHAMMAD, ... MEMBER(E)

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JUDGMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby the penalty imposed upon him in pursuance to the disciplinary proceedings under E&D Rules, purporting the same being against the facts and law on the subject.

Handwritten signature

2. Brief facts of the case are that the appellant while serving as Constable in District Police Kohat QRF, a criminal case was registered against him alongwith other accused vide FIR No. 677 dated 06.09.2016 u/s 9C-CNSA P.S

TESTED
Signature
CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Pirwadahai, Rawalpindi. The appellant was proceeded against departmentally and was dismissed from service on 04.01.2017. Feeling aggrieved, the appellant filed departmental appeal on 16.02.2018 which was rejected on 11.05.2018, hence the present appeal on 01.06.2018.

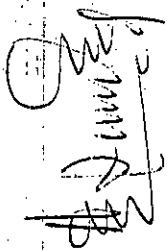
3. The appeal was admitted for regular hearing on 19.09.2018. Notices were issued to the respondents for submission of written reply/comments. On 20.12.2018, the respondents have submitted written reply/comments refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. We have heard arguments of learned counsel for the parties and have also gone through the available record with their assistance.

5. Obviously, the plea which the respondents have tried to establish against the appellant through parawise comments and arguments at the bar is mainly linked with his involvement in the criminal case. It has been asserted on behalf of the respondents that the appellant being member of disciplined force indulged himself in criminal activity/narcotics case and earned bad name to the department; and that departmental and criminal proceedings are of distinct in nature and can work side by side and decision of the criminal court if any is not binding in the departmental proceedings. It was also argued on behalf of respondents that Rule 5 (3) KP Police Rules, 1975 (amended 2014) empowers the competent authority to take disciplinary action without necessity of the formal inquiry through appointment of an inquiry officer. It is observed that the impugned order dated 04.01.2017 tells about the reasons which predominantly prevailed to satisfy the competent authority for deciding imposition of major

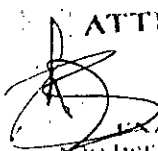
ATTESTED


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penalty of dismissal from service upon the appellant, originates from the fact that he was reported as absent from official duty vide DD No. 28 dated 06.09.2016 till date without any leave or permission from the competent authority; and secondly that when show cause notice was sent at home address of the appellant, his relatives informed about confinement of appellant in Adiala Jail Rawalpindi in a narcotics case which information was got confirmed and he was found involved in the occurrence reported vide FIR No.677 dated 06.09.2016 u/s 9-C CNSA P.S Pirwadahai Rawalpindi. It is noteworthy that the date of absence of the appellant as noted vide DD No. 28 was 06.09.2016 onwards and the date of registration of the criminal case against him is also the same. So, it can be safely presumed that absence of the appellant was the consequence of his arrest in case FIR No. 677 dated 06.09.2016 of P.S Pirwadahai Rawalpindi and not a willful absence. CSR 194 under the heading of Committals to Prison provides that a Government servant when is charged in a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. So, the arrest and committal of a government servant to prison on charge of a criminal offence will be considered automatic suspension from the date of his arrest. CSR 194 also provides that in case, such a Government servant is not arrested or is released on bail, the competent authority may suspend him by specific order, if the charge against him is connected with his position as Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In any case, the provision of CSR 194 does not necessitate any disciplinary action more than suspension. In the present case of the appellant, the competent authority exercised its power in excess of the said

06/09/2016
 06/09/2016
 06/09/2016

ATTESTED

 EXAMINER
 Higher Panchukhwa
 Service Tribunal
 Peshawar

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provision of CSR 194. No ground for disciplinary action in the manner as taken by the competent authority in case of the appellant was made out prior to decision of the criminal case against the appellant. We are mindful of the fact that the criminal proceedings and departmental proceedings can go parallel and even acquittal of the accused has no bearing upon the departmental disciplinary proceedings; but every criminal charge has its different circumstances. In our view, if a Government servant is charged for an offence connected with his position as such, he can be proceeded against simultaneously in departmental proceedings and in criminal proceedings on account of the charge of an offence. The case of the appellant is not one involving the charge against him connected with his position as Government servant. Therefore, it was not justifiable to proceed against him for imposition of punishment under Efficiency and Discipline Rules. Needless to say that certified copy of judgment dated 06.02.2018 passed by the Hafiz Hussain Azhar Shah, Additional Sessions Judge/Judge Special Court CNS Rawalpindi in Narcotics Case No. 164 of 2017 has been produced during the course of arguments and placed on file. The said judgment relates to case FIR No. 677 dated 06.09.2016 Offence u/s 9-C of the CNSA, 1997 of Police Station Pirwadahai, Rawalpindi which was taken as ground for disciplinary action against the appellant. According to operative part of the judgment, it is provided that the prosecution has miserably failed to prove its case against accused/present appellant beyond any shadow of doubt whereas slightest doubt goes in favour of accused, therefore, extending benefit of doubt, accused Muhammad Tahir son of Muhammad Munir is acquitted from the case. When the criminal case taken as ground for disciplinary action against the

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[Handwritten initials]

ATTESTED

[Handwritten signature]
 K. S. KHAN
 Notary Public
 Rawalpindi

10

appellant has failed at trial of the accused, the said ground having worked for disciplinary action against the appellant and imposition of major penalty upon him has vanished. We, therefore, hold that the imposition of the penalty of dismissal from service upon the appellant remained no more tenable.

6. For what has been discussed above, the appeal at hands is accepted, the impugned order is set aside and the appellant is reinstated into service from the date of his absence. However, the period commencing from the date of absence of the appellant till passing of this judgment shall be treated as leave of the kind due in accordance with law. Parties are left to bear their respective costs. File be consigned to the record room.

[Signature]

(MIAN MUHAMMAD)
Member(E)




ANNOUNCED
04.10.2021

[Signature]
(AHMAD SULTAN TAREEN)
Chairman


Date of Presentation of Application 07/10/21
Number of Words 2400
Copying Fee 26/-
Urgent _____
Total 26/-
Name of Copies _____
Date of Completion of Copy 13/10/21
Date of Delivery of Copy 13/10/21

Certified to be true copy

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

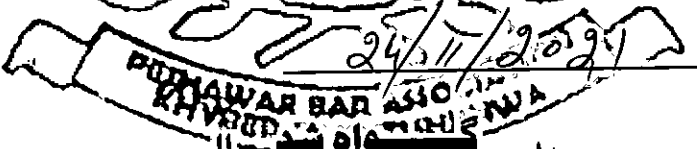
قیمت 50 روپے	107316			
ایڈویکٹ: <u>Najam</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل / ایسوسی ایشن نمبر: <u>BCB 4172</u>				
رابطہ نمبر: <u>031 9255671</u>				

بعدالت جناب: PKS دس ٹریبونل شمارہ

مخاطب: <u>petitioner</u>	دعویٰ: <u>Execution</u>
	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____
باعث تحریر آنکہ	

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

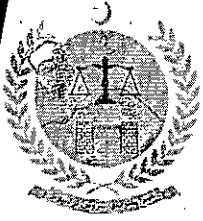
آن مقام پشاور کیلئے سائبر جاہل کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرہئے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل بگرانی 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 ہمراہ یا اپنے بجائے لے کر اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا نسخہ پر داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے 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 سندر ہے

الموقع: 24/11/2019


مقام پشاور کے لیے منظور ہے۔

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

Attested & accepted by [Signature]



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No: 1671-73/ST Dated: 10/6/2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To,

- 1 Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
- 2 Deputy Inspector General of Police Kohat Region, Kohat.
- 3 District Police Officer, Kohat.

Subject: ORDER IN EXECUTION PETITION NO. 354/2021 OF Mr. MUHAMMAD TAHIR VS POLICE.

I am directed to forward herewith a certified copy of Order dated 26.05.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As Above.


(WASEEM AKHTAR) -

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

Tahir Khan

30.06.2022

Counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Arif Saleem, Stenographer for respondents present.

Representative of the respondent department submitted officer order No. 1958-60/SRC dated 28.02.2022 which is placed on file through which petitioner has been reinstated in service with immediate effect and judgment of this Tribunal implemented conditionally subject to the outcome of CPLA.

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

Announced.

30.06.2022

(Farzeha Parul)

Member (E)

Service Appeal No. 859/2019

01.06.2022 Mr. Ashraf Ali Khattak, Advocate for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 03 pages, we allow the appeal in hand and set aside the impugned orders dated 20.02.2013 and 29.05.2019 and direct the respondents to reinstate appellant from the date of his dismissal. The period of his absence is treated as leave without pay. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1st day of June, 2022.*

(ROZINA REHMAN)
Member (J)

(FAREEHA PAUL)
Member (E)

965/141

POLICE DEPARTMENT

DISTRICT KOHAT

ORDER

In pursuance with the judgment dated 04.10.2021 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No. 768/2018 and approval of the competent authority vide letter No. 816/Legal dated 04.02.2022, Ex-Constable Muhammad Tahir No. 964 is hereby reinstated in service with immediate effect, conditionally & provisionally subject to the outcome of CPLA.

OB NO. 69 /SRC
Dated. 28/2/ /2022

(MUHAMMAD SULEMAN) PSP
District Police Officer,
Kohat

OFFICE OF THE DISTRICT POLICE OFFICER KOHAT

No. 1958-60 /SRC, dated Kohat the 28-02 /2022.

Copy of above to Reader / OHC / Line Officer for information and necessary action.

10

پروانہ 3/22
کلیک
پانچ اول
ویکینی

دیوبند لاٹری نقلہ الہٰذا علیٰ 01 03/022 صلح کوہاٹ

965
157

فدا - حاضرے سرور سے بحالی مال کی صورت 03/022 01 وقت
11:15 بجے اس وقت مائٹیل محمد طاہر 964 بحوالہ
آڈر نمبر 1958-60/SRC صورت 28 02/022 بحالیہ بنیاد DPo
صاحب کوہاٹ بعد از اپیل کے سرور پر
دوبارہ بحال ہو کر سامان سرکاری فرم سے
لاٹری بنا حاضر آیا جس کے حاضرے لڑچ روزنامہ
کریک نقلہ بصرے انفارمیشن و بک نمبر
الٹ کریک دفتر OHC صاحب ادیسال کھائی سے

جناب عالی

نقل بطریق اہل

M.M. Line

M.M. LINE
Kohat

01-03-022

attested

Official Supdt:
DPO Office Kohat