18.07.2022 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Syed Wasiq Shah, A.D for the respondents present.

02. Representative of the department produced office order bearing No. 275-E/498/CEC/C&WD dated 06.06.2022 whereby the Service Tribunal judgement dated 23.09.2021 has been implemented by reinstating the petitioner w.e.f. the date of his termination subject to the outcome of CPLA. Copy of the office order is placed on file as well as provided to learned counsel for the petitioner. As such the instant execution petition stands implemented. Consign.

03. Pronounced in open court at Peshawar and given under my hands and seal of the Tribunal this 18th of July, 2022

(Mian Muhammad)
Member (E)

07.06.2022 Petitioner in person present.

Muhammad Adeel Butt, learned Additional Advocate General is absent. Syed Wasil Shah AD (Litigation) representative of respondents present.

File to come up alongwith connected Execution Petition No.342/2021 titled Sarfaraz Khan Vs. Government of Khyber Pakhtunkhwa on 18.07.2022 before S.B.

(Rozina Rehman)
Member (J).

22.02.2022 Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 27.04.2022 for the same as before.

Reader

27th April, 2022 Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG seeks time to implement the judgment. Last opportunity is granted. To come up for implementation report on 24.05.2022 before S.B.

Chairman

24.05.2022 Counsel for the petitioner present. Mr. Kabirullah Khattak, AAG for the respondents present. Mr. Muhammad Zahid, Project Director (respondent No. 3) in person present.

Respondent No. 3 submitted that execution of the judgment was in progress which was likely to be completed within 07 days and sought short adjournment. Let in the interest of justice another 10 days time is given to the respondents. To come up for implementation report on 07.06.2022 before the D.B.

Chairman

Form- A

FORM OF ORDER SHEET

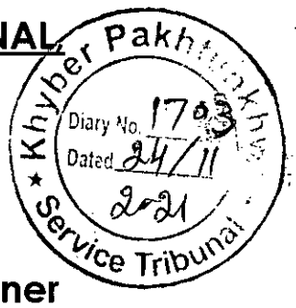
Court of _____

Execution Petition No. 344 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.11.2021	The execution petition submitted by Mr. Fayyaz Muhammad through Mr. Umar Ali Shah Advocate 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 S. Bench on 07/01/22. CHAIRMAN
	07.01.2022	Counsel for the petitioner present. Notices be issued to the respondents. Case to come up for implementation report on 22.02.2022 before S.B. (Rozina Rehman) Member (J)

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



EP No: 343/2021

Mashal Khan.....**Petitioner**

Versus

Govt. of KPK through Secretary Communication & Woks Department & others.....**Respondents**

APPLICATION FOR IMPLEMENTATION OF ORDER OF THIS HON'BLE TRIBUNAL DATED 23.09.2021 WHEREBY THE APPEAL OF THE PETITIONER WAS ACCEPTED AND HE WAS REINSTATED WITH ALL BACK BENEFITS

Respectfully Sheweth:

1. That this Hon'ble Tribunal passed an order whereby the Appeal filed by the petitioner was accepted and he was reinstated with all back benefits. (Copy of the Order dated 23.09.2021 is attached).

2. That the respondents do not act upon the order of this Hon'ble Tribunal, even the petitioner submitted several Applications to them with a request to comply the order of this Hon'ble Tribunal but of no avail.

(2)

3. That non-compliance of order of this Hon'ble Tribunal, the respondents have not only infringed the rights of the petitioner but they have also c committed contempt of this Hon'ble Tribunal, if the respondents are not dealt in accordance to law they will make it a routine to ignore the orders of the Court.

4. That the petitioner belongs to poor family who do not have any other source of income except his job and if the respondents do not reinstate the petitioner as a result of court order his children would be the ultimate losers.

It is respectfully submitted that on acceptance of this Application the respondents may be directed to comply with the order of this Hon'ble Tribunal dated 23.09.2021 and reinstate the petitioner with all back benefits.

Mashal
Petitioner

Through

Umar Ali Shah
Advocate High Court

Dated 24.11.2021

(3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Mashal Khan.....**Petitioner**

Versus

Govt. of KPK through Secretary Communication & Woks Department & others.....**Respondents**

AFFIDAVIT

I, Mashal Khan Son of Sarwar Khan R/o Mohallah Wanda Lughman P.O Sari Gambela Tehsil & District Lakki Marwat, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT

ATTESTED

MUHAMMAD FAHIM NOTARY PUBLIC HIGH COURT

29/11/2021

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

S.A No 5373 of 2020

Mashal Khan S/O Sarwar Khan R/O Muhallah Wanda Lughman P.O Sari Gambela Tehsil and District Lakki Marwat.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Communication and Works Department Civil Secretariat Peshawar.

2. Deputy Director (Coordination) PMU C&W Department Civil Secretariat Peshawar.

3. Project Director PMU C&W Department Civil Secretariat Peshawar.....Respondents

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE OFFICE ORDER NO SOE/C&WD/3-442/2019 DATED 10-3-2020, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED BY THE RESPONDENTS AND HE WAS NOT REINSTATED IN HIS SERVICE.

Prayer of Appeal

On acceptance of this appeal, the office order NO SOE/C&WD/3-442/2019 dated 10-3-2020, whereby the departmental appeal of the appellant has been rejected by the respondents may kindly be adjudicated null and void and without any lawful authority and may be set aside and the appellant may very kindly be reinstated in his and be considered as regular employee since his appointment on his respective position with all back benefits.

Respectfully Sheweth

Brief facts of the case are as under:

1. That the appellant was appointed as Naib qasid on 10-7-1995 vide appointment order NO FMR 1-1/E/18 in the communication and works department, Peshawar.(Copies of the appointment order, service Book statement of salary/allowances are attached as Annexure A, A/1 and A/2 respectively).

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.5374/2020

Date of Institution ... 12.05.2020
Date of Decision ... 23.09.2021

Mashal Khan S/O Sarwar Khan R/O Muhallah Wanda Lughman P.O Sari Gambela Tehsil & District Lakki Marwat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department Civil Secretariat, Peshawar and two others.

... (Respondents)

Umar Ali Shah Utmankhel, Advocate ... For Appellant.

Fayyaz Khan Chamkani, Legal Advisor ... For All Respondents.

AHMAD SULTAN TAREEN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The concise facts of the case are that appellant was appointed as Naib Qasid. His services were terminated on 31.08.2018. He preferred his departmental appeal which was not responded to, therefore, he filed writ petition which was disposed of with the observation that by virtue of Section-4 of Khyber Pakhtunkhwa Regularization Act No.10 of 2018, services of all project employees have been regularized and the termination from service in the month of August, 2018 after the commencement of the

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

said Act is to be challenged before the Service Tribunal and the appellant was directed to impugn his termination before the competent forum. He, therefore, filed service appeal No.1489 of 2018 before this Tribunal which was decided with direction to respondents to decide the departmental appeal through speaking order but to no avail. He, therefore, filed contempt petition before this Tribunal but to the utter surprise of the appellant, impugned order dated 10.03.2020 was passed, whereby, his appeal was rejected, hence, the present service appeal.

2. We have heard Umar Ali Shah Utmankhel Advocate appearing on behalf of appellant and Fayyaz Khan Chamkani Legal Advisor for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Learned counsel for appellant contended that the impugned order dated 10.03.2020 is against law and facts because as per Section-4 of the Khyber Pakhtunkhwa Regularization Act, 2018, the appellant was supposed to have been regularized by the respondents but the aforementioned law was not taken into consideration and instead of regularization, impugned order was passed. He contended that the appellant served the Department for almost 23 years and being overage, he is no longer fit for any other employment but this aspect of the case was not taken into consideration. He argued that other employees of the same status were regularized but unfortunately, appellant was treated at par with those employees which discrimination is not permissible in the eye of law. Lastly, he submitted that he was a regular employee of C&W Department and

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

the respondents were not warranted to have terminated the appellant in the mode and manner adopted by them.

4. Conversely Legal Advisor for respondents submitted that the respondents adopted and fulfilled all the requisite codal formalities while terminating the services of the appellant. He submitted that no doubt, the appellant served the Department for last 23 years but his service was no more required and the authority terminated his service by adopting all the codal formalities.

5. From the record, it is evident that appellant was appointed as Naib Qasid in B.P.S-01 vide order dated 10.07.1995. In response to his appointment order and medical fitness certificate, he submitted his arrival report in the office of Director-II (Project Cell) Farm to Market Roads, C&W Department Peshawar. It is also not denied that annual increments and up-gradation from time to time was also recorded in his Service Book and lastly, he was drawing salary in B.P.S-04. He was also a regular subscriber of G.P Fund. Similarly, Benevolent Fund and Group Insurance was being deducted regularly from his pay. It was on 01.08.2018 when order of termination of his service was issued and his services were terminated w.e.f 31.08.2018. Feeling aggrieved, he filed writ petition under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973 and it was held by the august Court that by virtue of Section-4 of Khyber Pakhtunkhwa Act No.10 of 2018, services of all the Project employees have been regularized w.e.f the date of commencement of the said Act i.e. 07.03.2018 and thereafter, termination from service in the month of August, 2018 of a regular employee of the Government, is to be challenged before the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(8)

Service Tribunal. The appellant is no more a project employee, rather his services have been regularized which fact is very much evident from the order of Hon'ble Peshawar High Court, Peshawar. After filing service appeal in this Tribunal, the respondents were directed to decide the departmental appeal within 30 days and vide order dated 10th March, 2020, his appeal was rejected. He has now filed the instant service appeal. Once the august High Court declared the status of appellant to be one of the regular employee, the respondents instead of treating the appellant to be civil servant, passed the impugned order in the light of Project Policy. From the record, it is evident that the present appellant alongwith 8 others were terminated from service w.e.f 31.08.2018. One Gul Nawaz Driver was also terminated on the same date and in this regard, the Project Director vide his letter No._7139/JICA-5 dated 30.08.2018, addressed to the Project Director, requested for the adjustment of all the nine office staff on humanitarian ground being low paid employees. One Gul Nawaz Driver was accordingly adjusted and his adjustment was not denied. In this regard, relevant documents were produced before this Bench which show that Gul Nawaz Driver is still drawing his salary and has been properly adjusted. The appellant was discriminated for the reasons best known to the respondents. He was not treated in accordance with law as neither show cause notice nor charge sheet and statement of allegations were every issued. He was not given the opportunity of personal hearing and despite request by the Project Director, he was not adjusted like Gul Nawaz, his co-employee. Thus,

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

(9)

he succeeded in making out a good case for indulgence of this Tribunal

6. For what has been discussed above, this appeal is allowed, impugned order is set aside with direction to respondents to reinstate the appellant from the date of termination from service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
23.09.2021

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ROZINA REHMAN)
MEMBER (J)

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 08/10/2021
Number of Words 2400
Copying Fee 26/-
Urgent 4/-
Total 30/-
Name of Copyiest —
Date of Completion of Copy 08/10/2021
Date of Delivery of Copy 08/16/2021

(10)

قیمت 50 پ

90546

ایڈوکیٹ: محمد علی شاہ اسماعیل جواد خان

بار کونسل / ایسوسی ایشن نمبر: BC-12-3553

رابطہ نمبر: 0332-9808066

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: خیبر پختونخواہ سروس ٹریبونل پشاور

منجانب: مسائل (مثال خان)

مثال خان

بنام

وغیرہ

دعویٰ: ________

علت نمبر: درخواست

مورخہ ________

جرم: ________

تھانہ ________

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کارروائی متعلقہ آن مقام ________ کیلئے محمد علی شاہ اسماعیل جواد خان 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 کرنے 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 نگرانی و نظرثانی 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 تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ 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 تا کہ سند رہے

الرقوم: ________

العبد ________ العبد ________

مقام ________ کے لیے منظور ہے۔

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

OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 275-E / 498 / CEC / C&WD

Dated Peshawar the 06 / 06/ 2022

OFFICE ORDER

Consequent upon the decision dated 23-09-2021 passed by the Khyber Pakhtunkhwa Service Tribunal in the Service Appeal No.5373 of 2020 (Execution Petition No.343/2021) and in compliance with the C&W Secretariat letter No. SO(Lit.)C&W/3-442/2019, dated 02-06-2022, Mr. Mashal Khan S/O Sarwar Khan R/O Mohallah Wanda Laghman P.O Serai Gambela Tehsil & District, Lakki Marwat who was working as Naib Qasid in BPS-01 with JICA, is hereby re-instated w.e.f the date of his termination subject to final order in the CPLA No.741-P/2021 filed in the Apex Supreme Court of Pakistan.

CHIEF ENGINEER (CENTRE)

Copy to the:

1. Secretary C&W Department, Peshawar w/r to his office letter No.SO(Lit.)/C&W/3-442/2019, dated 02-06-2022.
2. Section Officer (Litigation) C&W Department, Peshawar.
3. Chief Engineer (Foreign Aid) C&W Department, Peshawar for information and further adjustment accordingly.
4. Project Director, PMU, C&W Department, Peshawar.
5. Mr. Mashal Khan S/O Sarwar Khan R/O Mohallah Wanda, Laghman P.O Serai Gambela Tehsil & District, Lakki Marwat. He is directed to attend the office of Chief Engineer (Foreign Aid) C&W Department, Peshawar for his further adjustment.

CHIEF ENGINEER (CENTRE)

Attested

Sr Infrastructure Engineer
Project Management Unit (PMU)
KITF Project C&W Deptt Peshawar