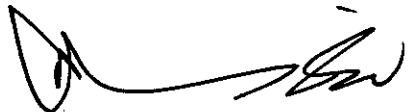


4th July, 2022

Learned Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Atta Ur Rehman, Inspector for respondents present.

Representative of the respondents submitted copy of order No. 3772-87/EC dated 30.06.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated in service. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 04th day of July, 2022.


(Kalim Arshad Khan)
Chairman

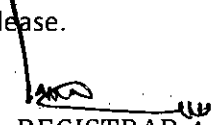


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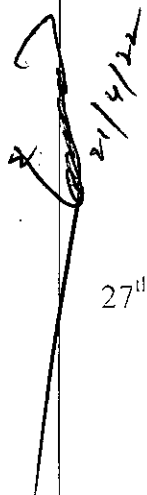
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Form- A
FORM OF ORDER SHEET

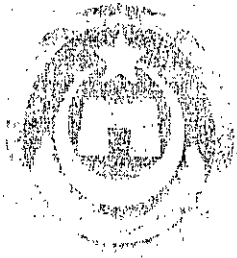
Court of _____

Execution Petition No. _____ 176/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.04.2022	<p>The execution petition of Mr. Jawad submitted today by Mr. Javed Iqbal Gulbella 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 <u>27-05-2022</u>. Notices to the appellant and his counsel be also issued for the date fixed. <i>notices be also issued to the Respondents for 1/R</i></p> <p> CHAIRMAN</p>
	27 th May, 2022	<p>Clerk of counsel for the appellant present. Mr. Kabir Ullah Khattak, AAG for respondents present.</p> <p>Due to general strike of the bar. Case is adjourned. To come up for the same on 04.07.2022 before S.B.</p> <p> (Kalim Arshad Khan) Chairman</p>


21/4/22

Noted



1

2022

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

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

ORDER

In compliance with the orders of Honorable Service Tribunal, KP announced on 28.01.2022 in service appeal No. 15911/2020 & non approval of lodging CPLA in the instant case by the Scrutiny Committee of Law department in its meeting held on 11.05.2022 dully Endorsed by SP Courts & Litigation, KP, Peshawar vide his office letter No. 3168/Legal, dated 27.06.2022, "the major penalty of dismissal from service awarded to Ex Constable Jawad Khan No. 2976 vide this office OB No. 1700 dated 05.10.2020 is set aside and he is re-instated in service with all back benefits and immediate effect".

OB No. 1418

Dated. 30/6/2022

~~District Police Officer
Mardan~~

No. 3772-78 /EC, dated 30/06/2022.

Copy for information to the:-

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

~~30/6/22~~

29/06/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Execution petition No. 176/2022

In

Service Appeal No: 15911/2020

Jawad

VERSUS

Inspector General of Police KPK & others

INDEX

<i>S#</i>	<i>Description of Documents</i>	<i>Annex</i>	<i>Pages</i>
1.	Execution Petition with Affidavit.		1-2
2.	Addresses of Parties		3
3.	Copy of Judgment		4-9
4.	Wakalat Nama.		10

Dated: 06/04/2022

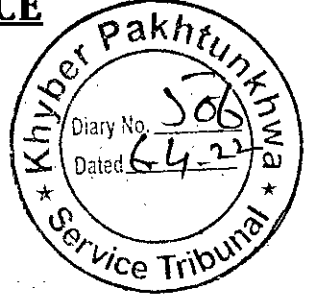
Through

Petitioner

Javed Iqbal Gulbela
Advocate,
Supreme Court of Pakistan

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**



Execution petition No. 176 /2022

In

Service Appeal No: 15911/2020

Jawad (Ex. Constable, Belt No. 2976) S/o Habib Ur Rehman R/o Mohallah Katan Khel, Gujran, Naher Kenara, Takkar Tehsil Takhtbhai District Mardan.

.....Petitioner

Versus

1. Inspector General of Police Khyber Pakhtunkhwa.
2. Regional Police Officer Mardan.
3. District Police Officer Mardan.

.....Respondents

**EXECUTION PETITION FOR
IMPLEMENTATION OF THE JUDGMENT
OF THIS HON'BLE TRIBUNAL
RENDERED IN SERVICE APPEAL NO.
15911/2020 DECIDED ON 28.01.2022**

Respectfully Sheweth.

1. That the above mentioned appeal was decided by this Hon'ble Tribunal vide Judgment dated 28/01/2022. **(Copy of the judgment is annexed as annexure "A")**
2. That while allowing the service appeal of the petitioner, this Hon'ble Tribunal held that:

"In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellants are re-instated in service with all back benefits".

3. That the Petitioner after getting of the attested copy of same approached the Respondent 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 for 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, most humbly prayed that on acceptance of this petition the Respondents may kindly be directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 06/04/2022

Through Petitioner

Javed Iqbal Gulbela
Advocate,
Supreme Court of Pakistan

Saghir Iqbal Gulbela
&
Ahsan Sardar
Advocates High Court
Peshawar

AFFIDAVIT:-

I, Jawad (Ex. Constable, Belt No. 2976) S/o Habib Ur Rehman R/o Mohallah Katan Khel, Gujran, Naher Kenara, Takkar Tehsil Takhtbhai District Mardan, do hereby solemnly affirm and declare on oath that all the contents of the instant petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Tribunal.



Jawad
Deponent

06-04-2022.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Execution petition No. ____/2022

In

Service Appeal No: 15911/2020

Jawad

VERSUS

Inspector General of Police KPK & others

ADDRESSES OF PARTIES

PETITIONER

Jawad (Ex. Constable, Belt No. 2976) S/o Habib Ur Rehman R/o
Möhallah Katan Khel, Gujran, Naher Kenara, Takkar Tehsil
Takhtbhai District Mardan.

RESPONDENTS

1. Inspector General of Police Khyber Pakhtunkhwa.
2. Regional Police Officer Mardan.
3. District Police Officer Mardan.

Dated: 06/04/2022

Through

Petitioner

Javed Iqbal Gulbela
Advocate,
Supreme Court of Pakistan

(4)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

In Re S.A No. 15911 /2020

Diary No. 16455
Dated 14/12/2020

Jawad (Ex-Constable Belt No: 2976) S/o Habib Ur
Rehman R/o Moh: Katan Khel, Gojraan, Neher
Kinara, Takar, Tehsil Takht Bhai, District Mardan.

...Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa
2. Regional Police Officer Mardan.
3. District Police Officer, Mardan.

...Respondents


APPEAL U/S-4 OF THE KHYBER
PAKHTUNKHWA SERVICES
TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED OFFICE ORDER
NO:3495-98/PA DATED:05/10/2020
OF THE OFFICE OF DISTRICT
POLICE OFFICER MARDAN,
WHEREBY THE APPELLANT
WAS DISMISSED FROM SERVICE
AND HIS DEPARTMENTAL
APPEAL WAS ALSO TURNED
DOWN VIDE OFFICE ORDER NO:
7206/ES, DATED 20-11-2020 OF
THE OFFICE OF REGIONAL
POLICE OFFICER MARDAN, IN A

Filed to-day

Registrar

14/12/2020

ATTESTED


REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15911/2020

Date of Institution ... 14.12.2020

Date of Decision ... 28.01.2022



Jawad (Ex-Constable Belt No: 2976) S/o Habib Ur Rehman R/o Moh: Katan Khel,
Gojraan, Neher Kinara, Takar, Tehsil Takht Bhai, District Mardan.

(Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa, Peshawar and others.

(Respondents)

Javed Iqbal Gulbela & Taimur Ali Khan,
Advocates

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... 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 his involvement in FIR U/Ss 324/353/337-A(i)/148/149 PPC Dated 31-08-2020 and was arrested. The appellant was suspended from service vide order dated 02-09-2020. The appellant was proceeded departmentally and was ultimately dismissed from service vide order dated 05-10-2020. In the meanwhile, the appellant was granted bail vide judgment dated 26-09-2020 and later on acquitted of the criminal charges by the competent court of law vide judgment dated 21-06-2021. After release from jail, the appellant filed departmental appeal, which was rejected vide order dated 20-11-2020. The appellant filed revision petition, which was rejected vide order

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


dated 16-03-2021, hence the instant service appeal with prayers that the impugned orders dated 05-10-2020, 20-11-2020 and 16-03-2021 may be set aside and the appellant may be re-instated 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 inquiry so conducted against the appellant would reveal that the appellant was not associated with proceedings of the inquiry, which is against the norms of justice and fair play, as the appellant at that particular time was in jail, hence no charge sheet/statement of allegation was served upon the appellant, nor any showcause notice was served upon the appellant, thus deprived the appellant to defend his cause in a proper way; that the appellant was falsely implicated in a criminal case and as per rule, the appellant was required to be suspended from service and to wait for conclusion of the criminal case but the respondents hastily proceeded the appellant and dismissed him from service illegally; that the appellant has been acquitted of the criminal charges, hence there remains no ground to maintain such penalty anymore.

03. Learned Additional Advocate General for the respondents has contended that upon his involvement in a criminal case, FIR U/Ss 324/353/337-A(i)/148/149 PPC Dated 31-08-2020 and the appellant was proceeded departmentally on the same charges; that regular inquiry was conducted against the appellant and as per recommendation of the inquiry officer, the appellant was removed from service vide order dated 05-10-2020; that though the appellant was acquitted of the criminal charges, but it is a well settled legal proposition that departmental and criminal proceedings can run side by side and the appellant was held guilty in the departmental proceedings, hence was awarded with appropriate punishment.

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

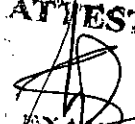
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

05. Record reveals that the appellant being involved in case FIR U/Ss, 324/353/337-A(i)/148/149 PPC Dated 31-08-2020 was proceeded departmentally in absentia as the appellant was in jail and was released on bail vide judgment dated 26-09-2020 and was later on acquitted from the criminal charges vide judgment dated 21-06-2021, but before his acquittal from criminal charges, the appellant was dismissed on 05-10-2020, hence the appellant in the first place was not afforded opportunity of defense, as the appellant was not associated with proceedings of the departmental inquiry, as he was proceeded against in absentia. To this effect, the 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 inquiry was to be conducted in the matter, 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.

WM

06. Being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations; and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

07. The criminal case was decided vide judgment dated 21-06-2021 and the appellant was discharged under section 4C (ii) of Prosecution Act, 2005 on the request of prosecution, hence the appellant was exonerated of the charges. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim reinstatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. Supreme Court of Pakistan in its judgment reported as PLD 2003 SC 187 has held that where the departmental proceedings were initiated only on the basis of criminal charge, which was not subsequently proved by the competent court of law and resulted in acquittal, would be entitled to be re-instated in service. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste. Moreover, the appellant was acquitted of the same charges by the criminal court; hence, there remains no ground to further retain the penalty so imposed. Accused civil servant in case of his acquittal was to be considered to have committed no offense because the criminal court had freed/cleared him from the accusation or charge of crime – such civil servant, therefore, was entitled to grant of arrears of his pay and allowances in respect of the period. Reliance is placed on 1998 SCMR 1993 and 2007 SCMR 537.

Wm

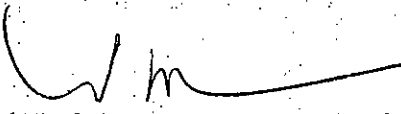
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


08. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 06/04/22
Number of Words 2403
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Total 30/-
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Date of Completion of Copy 06/04/22
Date of Delivery of Copy 06/04/22

Bc-10-7924
17301-1496065-7
045-9405501

وکالت نامہ

بعدالت: صنیر پختو خواہ سروسز ٹریڈنگ کمپنی، پشاور
کانشیل جوار بنام آئی۔ جی۔ پی کے پی کے
منجانب ریشیشن دعویٰ Execution
تاریخ 06-04-2022

باعث حریز آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی
بمقام کلیہ جاوید اقبال گل بیلہ/ایڈووکیٹ سپریم کورٹ آف پاکستان

کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا کوڈ یا بزرگیہ مختار خاص رو بروعدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے
جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر دالت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر
حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب
موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ
ہونگے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش
ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی
صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو
عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و گرانہ ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی
اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے
بیان دینے اور سپروٹاشی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی
مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار
نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے
واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا پیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے
ہر امر دہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ
التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو
صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف
کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سندر ہے۔

مورخہ 06-04-2022 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted by
Ahsan
Safar

کانشیل جوار
16/02-5526/65-9