6th July, 2022

Learned Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned AAG produced copy of order No. 5456/SI Legal dated 05.07.2022 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 06th day of July, 2022.

(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 111/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14.02.2022	The execution petition of Mr. Muhammad Ilyas submitted today by Mr. Rizwan Ullah 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 to Single Bench at Peshawar on 23.05.2022. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed. CHAIRMAN
	23.05.2022	Petitioner with counsel present. Notice of the present COC/execution petition be issued to the respondents for submission of implementation report. To come up for implementation report on 06.07.2022 before S.B. (MIAN MUHAMMAD) MEMBER (E)

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 111 /2022

1. Muhammad Ilyas S/O Shahi Rehman R/O Dheri Talash, Tehsil Timergara, Dir Lower.

APPELLANT

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa., Peshawar & others.

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Execution Petition	—	1-5
2	Affidavit	—	6
3	Copy of judgment of this Hon'ble Tribunal dated 13-12-2021.	"A"	7-16
4	Wakalatnama	—	—

Petitioner

Through

Dated: 14-02-2022

Rizwanullah
Advocate High Court, Peshawar.

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 111 /2022

1. Muhammad Ilyas S/O Shahi Rehman R/O Dheri Talash, Tehsil Timergara, Dir Lower.

APPELLANT

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa., Peshawar.
2. The Additional Inspector General of Police/Commandant Frontier Reserve Police, Khyber Pakhtunkhwa., Peshawar.
3. The District Police officer, Dir Lower at Timergara.
4. The Superintendent of Police, Malakand Region at Swat.

RESPONDENTS

APPLICATION UNDER SECTION 7 (2) (D) OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 READ WITH RULE 27 OF THE KHYBER PAKHTUNKHWA PROVINCE SERVICE TRIBUNAL RULES 1974 FOR INITIATING CONTEMPT OF COURT PROCEEDINGS AGAINST THE RESPONDENTS FOR DISOBEDIENCE OF THE ORDER/JUDGMENT DATED 13-12-2021 PASSED AND PLACED BY THIS HON'BLE TRIBUNAL IN SERVICE APPEAL NO.124/2019 *"FAZAL KHALIQ VS INSPECTOR GENERAL OF POLICE & OTHERS".*

Respectfully Sheweth,

Short facts giving rise to the present execution petition are as under:-

1. That the petitioner was awarded major penalty of dismissal from service vide order dated 20-08-2009 which was made enforceable with retrospective effect from the date of his absence from duty i.e. w.e.f. 09-06-2009 in utter violation of law. He after exhausting Departmental and Revisional remedies, invoked the jurisdiction of this Hon'ble Tribunal by way of filing service appeal No.125/2019 praying therein that the impugned order may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

2. That in the second round of litigation, this Hon'ble Tribunal vide judgment dated 13-12-2021 accepted the appeal filed by the petitioner and reinstated him in service. However, the intervening period during which the appellant remained out of service was treated as "leave without pay". It would be advantageous to reproduce herein the relevant portion of the judgment for facility of reference:-

> **"In the scenario, the respective appellate Authorities were required to have given speaking reasons for not treating the appellants at par with the aforementioned constables, however while going through the orders passed by respective appellate Authorities, it was observed that this issue has not at all been touched by the respective appellate Authorities. The respondents have thus failed to prove that the cases of the appellants were distinguished from the cases of**

those reinstated constables, whose names were mentioned in the judgment dated 05-07-2018, whereby the previous service appeals of the appellants were decided. Article 25 of the constitution of Islamic Republic of Pakistan unequivocally and expressly provides equality before law and equal protection of law to the equally placed persons. while going through record, we observed that the appellants were treated with discrimination. The impugned orders are thus not sustainable in the eye of law and are liable to set-aside.

in light of the above discussion, the instant as well as connected Service Appeal bearing 125/2019 titled "Muhammad Ilyas Versus The Inspector General of Police Khyber Pakhtunkhwa Peshawar and three other" and Service Appeal No. 665/2019 titled "Rahim-ud-Din Versus the Inspector General of Police Khyber Pakhtunkhwa Peshawar and two others" are accepted and the appellants are reinstated in service, however the intervening period during which the appellants remained out of service is treated as leave without pay. parties are left to bear this own cost. File be consigned to the record room.

(Copy of judgment is appended as Annex-A)

3. That the petitioner after obtaining the certified copy of judgment of this Hon'ble Tribunal, requested respondent No. 3 for its implementation in accordance with law and copy thereof was duly furnished on 28-01-2022.

4. That the respondents were under statutory obligation to have complied with the said judgment in letter and spirit but they remained indifferent and paid no heed to the same, and as such, they committed deliberate contempt of this Hon'ble Tribunal.

5. That the defiant and adamant conduct of the respondents clearly amounts to willful disobedience of the order passed by this Hon'ble Tribunal and therefore requires to be dealt with iron hands by awarding them exemplary punishment under the relevant law. Reliance in this respect can be placed on the judgment of august Supreme Court of Pakistan reported in **PLD-2012-SC-923 (citation-ff).** The relevant citation of the judgment is as under:-

> **P L D 2012 Supreme Court 923**
> **(ff) Contempt of court---**
>
> **----Court order, implementation of---Contempt through disobedience of court order ("disobedience contempt") by executive and its functionaries---Effect---Responsibility for implementation (of court's orders) had been made obligatory on other organs of the State, primarily the executive-When a functionary of the executive refused to discharge its constitutional duty, the court was empowered to punish it for contempt.**

In view of the above narrated facts, it is, therefore, humbly prayed that appropriate proceedings may graciously be initiated against the respondents for willful disobedience of the order of this Hon'ble Tribunal and they may also be

compelled to reinstate the appellant forthwith besides, awarding exemplary punishment to them under the relevant law.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Petitioner

Through

Dated: 14-02-2022

Rizwanullah
Advocate High Court, Peshawar.

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No._____/2022

1. Muhammad Ilyas S/O Shahi Rehman R/O Dheri Talash, Tehsil Timergara, Dir Lower.

APPELLANT

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa., Peshawar & others.

RESPONDENTS

AFFIDAVIT

I, Muhammad Ilyas S/O Shahi Rehman R/O Dheri Talash, Tehsil Timergara, Dir Lower, do hereby solemnly affirm and declare that the contents of the accompanied execution petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

ATTESTED
ZAHOOR KHAN ADVOCATE
NOTARY PUBLIC
Reg No
Date
DISTRICT COURT PESHAWAR
14/2/2022

Deponent

Annex-A

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 125 /2019

1. Muhammad Ilyas S/O Shahi Rehman R/O Dheri Talash, Tehsil Timergara, Dir Lower.

APPELLANT

Diary No. 115
Dated 28/1/2019

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa., Peshawar.
2. The Additional Inspector General of Police/Commandant Frontier Reserve Police, Khyber Pakhtunkhwa., Peshawar.
3. The District Police officer, Dir Lower at Timergara.
4. The Superintendent of Police, Malakand Region at Swat. (FRP)

RESPONDENTS

Registered-day
Registrar
28/1/19

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10/10/2008 PASSED BY THE SUPERINTENDENT OF POLICE, FRP MALAKAND RANGE, SWAT (RESPONDENT NO.4) WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF REMOVAL FROM SERVICE WITH RETROSPECTIVE EFFECT FROM THE DATE OF ABSENCE AGAINST WHICH A DEPARTMENTAL APPEAL AS WELL AS REVISION PETITION WERE FILED BUT THESE WERE DISMISSED ON

ATTESTED

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ORDER
13.12.2021

Appellant alongwith his counsel present. Mr. Muqaddar Khan, Inspector (Legal) alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 124/2019 titled "Fazal Khaliq Versus The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and three others", the instant appellant is accepted and the appellant is reinstated in service, however the intervening period during which the appellant remained out of service is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.12.2021

(Atiq-ur-Rehman Wazir)
Member (Executive)

(Salah-ud-Din)
Member (Judicial)

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 27-01-22
Number of Words 800
Copying Fee 32/-
Urgent
Total 32/-
Name
Date of Preparation of Copy 27-01-22
Date of Delivery of Copy 27-01-22

ATTESTED

(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 124/2019

Date of Institution ... 28.01.2019

Date of Decision ... 13.12.2021

Fazal Khaliq S/O Yar Dula Khan, R/O Sarayee Payan Talash, Tehsil Timergara, Dir Lower.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and three others.

... (Respondents)

MR. RIZWANULLAH, Advocate --- For appellant.

MR. NOOR ZAMAN KHATTAK, District Attorney --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. ATIQ-UR-REHMAN WAZIR --- MEMBER (EXECUTIVE)

ATTESTED

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

ATTESTED

Through this single judgment we intends to dispose of instant service appeal as well as connected Service Appeal bearing 125/2019 titled "Muhammad Ilyas Versus The Inspector General of Police Khyber Pakhtunkhwa Peshawar and three others" as well as Service Appeal No. 665/2019 titled "Rahim-ud-Din Versus The Inspector General of Police Khyber Pakhtunkhwa Peshawar and two others", as identical questions of law and facts are involved therein.

2. Briefly stated facts of the instant service appeal are that the appellant namely Fazal Khaliq, who while serving as Constable in FRP Dir Lower Malakand Range, Swat, was

(10)

proceeded against departmentally on the allegations of his lawful absence from duty with effect from 28.09.2008. On conclusion of the inquiry, the appellant was removed from service vide order dated 21.02.2009. After exhausting departmental remedies, the appellant filed Service Appeal No. 564/2016 before this Tribunal. Vide judgment dated 05.07.2018 passed by this tribunal, the order dated 04.01.2011 passed by the Appellate Authority as well as the order dated 08.12.2015 passed by the Review Board were set-aside and respondents were directed to decide the appeal of the appellant afresh through a speaking order within a period of 03 months. The Appellate Authority dismissed the appeal of the appellant vide order dated 09.01.2019, hence the instant service appeal.

3. Brief facts of Service Appeal bearing No. 125/2019 are that the appellant Muhammad Ilyas, who while serving as Constable in FRP Dir Lower Malakand Range, Swat, was proceeded against departmentally on the allegation of his willful absence from duty with effect from 10.06.2008. On conclusion of the inquiry, he was removed from service vide order dated 10.10.2008. After exhausting departmental remedies, the appellant filed Service Appeal No. 561/2016 before this Tribunal. Vide judgment dated 05.07.2018 passed by this tribunal, the order dated 29.01.2011 passed by the Appellate Authority as well as the order dated 13.04.2016 passed by the Review Board were set-aside and respondents were directed to decide the appeal of the appellant afresh through a speaking order within a period of 03 months. The Appellate Authority dismissed the appeal of the appellant vide order dated 09.01.2019. The appellant has now approached this Tribunal for redressal of his grievance.

ATTESTED

4. Brief facts of Service Appeal bearing No. 665/2019 are that the appellant Rahim-ud-Din, who while serving as Constable in Lower Dir District, was proceeded against departmentally on the allegations of his willful absence from duty with effect from 09.06.2009. On conclusion of the inquiry, he was dismissed from service vide order dated

ATTESTED

20.08.2009. After exhausting departmental remedies, the appellant filed Service Appeal No. 562/2016 before this Tribunal. Vide judgment dated 05.07.2018 passed by this tribunal, the order dated 31.10.2012 passed by the Appellate Authority as well as the order dated 13.04.2016 passed by the Review Board were set-aside and respondents were directed to decide the appeal of the appellant afresh through a speaking order within a period of 03 months. The Appellate Authority dismissed the appeal of the appellant vide order dated 22.01.2019. The appellant has now filed the instant service appeal for redressal of his grievance.

5. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellants in their appeals.

6. Learned counsel for the appellants has contended that in light of judgments of this Tribunal, rendered in previous service appeals of the appellants, the appellate Authority was required to have given specific finding on the issue of discrimination, however the same was not done and the appeals were dismissed in a cursory manner; that so many other employees were reinstated in service upon acceptance of their departmental appeals, however the appellants were treated with discrimination; that the respondents have violated Article 25 of the constitution of Islamic Republic of Pakistan 1973, which guarantees that citizen must be given equal treatment; that the absence of the appellants from duty was not willful, rather they were absent from duty for justified reason; that the appellants are having no source of earning and their illegal dismissal from service has forced them to live in miserable condition; that whole of the proceedings were conducted at the back of the appellants in sheer violation of mandatory provisions of Police Rules, 1975 and they were condemned unheard.

ATTESTED

ATTESTED

7. On the other hand, learned District Attorney for the respondents has contended that the appellants remained absent from duty without seeking leave or permission of the competent Authority; that proper departmental proceedings

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were taken against the appellants, however they were not interested in resuming of their duties, therefore, there was no other option but to dismiss them from service; that the departmental appeals of the appellants were badly time barred, therefore, their service appeals are not maintainable and are liable to be dismissed.

8. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

9. A perusal of the record would show that this Tribunal while disposing of previous service appeals of the appellants had observed as below:-

> *"5. Admittedly the impugned punishment of removal from service was imposed upon the appellants with retrospective effect, hence the original order of removal from service is void and no limitation would run against the same.*
>
> *06. Learned District Attorney remained unable to rebut the contention of the learned counsel for the appellants that many other colleagues of the appellant who were also dismissed/removed from service on the ground of absence from duty were reinstated either by the appellate authority or by the review board. In the stated circumstances of the case vis-à-vis alleged discriminatory treatment, the order dated 04.01.2011 of the appellate Authority and the order dated 08.12.2015 of the review board are hereby set-aside. Resultantly the departmental appeal of the appellant shall be deemed pending. The appellate authority is directed to decide the same afresh with speaking order within a period of three (03) months of the receipt of this judgment. The present service appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to record room."*

ATTESTED

10. The appellate Authorities were thus legally bound to dispose of the departmental appeals of the appellants by complying the observations of this Tribunal rendered in judgments dated 05.07.2018 passed in previous service appeals filed by the appellants. While going through the impugned appellate orders, we have came to the conclusion

ATTESTED

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that the appellate Authority did not comply the directions of this Tribunal issued in its judgments dated 05.07.2018 passed in previous service appeals of the appellants. It is to be kept in mind that the judgments rendered in previous service appeals of the appellants have not been challenged by the respondents through filing of CPLA before the august Supreme Court of Pakistan, therefore, the same have attained finality. While disposing of previous service appeals of the appellants, it was observed that as the orders of removal/dismissal of the appellants from service were issued with retrospective effect, therefore, the same were void and no limitation would run against the same. It is, however astonishing that despite such clear cut findings of this Tribunal in its judgments dated 05.07.2018, the appellate Authority in case of the appellants namely Fazal Khaliq and Muhammad Ilyas has mentioned in the impugned appellate orders dated 09.01.2019 that the departmental appeals of the appellants were badly barred by time. Furthermore, it is evident from the perusal of the judgments rendered in previous service appeals of the appellants that they had submitted copies of reinstatement of FC Muhammad Yar No. 2118, Constable Noor Khan No. 462, Constable Jawad Hassan 2111, Constable Atta Ullah No. 2240, Constable FRP Waheed Khan No. 4886 and Constable FRP Muhammad Shahid No. 4890 by alleging that the said constables were reinstated, however the appellants were treated with discrimination. In this scenario, the respective appellate Authorities were required to have given speaking reasons for not treating the appellants at par with the aforementioned constables, however while going through the orders passed by respective appellate Authorities, it was observed that this issue has not at all been touched by the respective appellate Authorities. The respondents have thus failed to prove that the cases of the appellants were distinguished from the cases of those reinstated constables, whose names were mentioned in the judgments dated 05.07.2018, whereby the previous service appeals of the appellants were decided. Article 25 of the constitution of Islamic Republic of Pakistan unequivocally and

ATTESTED

ATTESTED

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expressly provides equality before law and equal protection of law to the equally placed persons. While going through the record, we have observed that the appellants were treated with discrimination. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

11. In light of the above discussion, the instant as well as connected Service Appeal bearing 125/2019 titled "Muhammad Ilyas Versus The Inspector General of Police Khyber Pakhtunkhwa Peshawar and three others" and Service Appeal No. 665/2019 titled "Rahim-ud-Din Versus The Inspector General of Police Khyber Pakhtunkhwa Peshawar and two others", are accepted and the appellants are reinstated in service, however the intervening period during which the appellants remained out of service is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
13.12.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

Certified to be ture copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 27-01-22
Number of Words 2400
Copying Fee 24/-
Urgent 6/-
Total 30/-
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Date of Delivery of Copy 27-01-22

ATTESTED

قیمت 50 روپے

7487

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: Rizwanullah

بار کونسل/ایسوسی ایشن نمبر: bc-09-0050

رابطہ نمبر: 03005965843

بعدالت جناب: Hon'ble Chairman, KPK Service Tribunal

منجانب: Petitioner

Muhammad Ilyas

بنام

Inspector General of Police and others

دعویٰ: Execution Petition

علت نمبر: /

مورخہ

جرم:

تھانہ

باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے Rizwanullah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف 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 ونظر ثانی وپیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی 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 وقبول 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، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

Petitioner

المرقوم: 14-2-2022

PESHAWAR BAR ASSOCIATION

گواہ شد

العبد

مقام Peshawar only کے لیے منظور ہے۔

Attested

Advocate

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