

28.07.2022

Counsel for the appellant present. Mr. Kabir Ullah Khattak, Additional Advocate General, alongwith Hikmat Khan, H.C for respondents present.

Representative of the respondents department submitted compliance report subject to de-novo enquiry vide order No. 7740-41/WPC dated 26.07.2022. Order implemented.

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

Announced.
28.06.2022

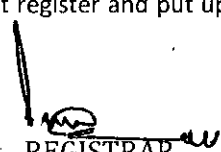



(Fargeha Paul)
Member (E)



Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 267/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28.04.2022	<p>The execution petition of Mr. Noor-ul-Amin submitted today by Uzma Syed Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-	<u>25-5-22</u>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>8-6-22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p> CHAIRMAN</p>
	08.06.2022	<p>Junior to counsel for the petitioner present.</p> <p>Notice be issued to respondents for submission of implementation report. To come up for implementation report on 28.07.2022 before S.B.</p> <p> (Rozina Rehman) Member (J)</p>



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.
Ph: 0946-9240388 & Fax No. 0946-240390
Email: ebmalakandregion@gmail.com

No. 7740-41 /WPC, dated Saidu Sharif the 26 107 /2022

To: The Additional Inspector General of Police,
Accountability Branch, CPO Peshawar.

Subject: JUDGMENT DATED 28/01/2022 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN
SERVICE APPEAL NOS. 05,06,07 & 08/2018 TITLED NOOR
UL AMIN, NIZAM KHAN, SAEED ULLAH & UBAID
ULLAH VS DPO SWAT AND OTHERS

Memorandum:

It is submitted in compliance of the judgment of Khyber Pakhtunkhwa Service Tribunal dated 28-01-2022 in the subject appeals, the following Constables of Swat District have been re-instated into service subject to de-novo departmental enquiry with immediate effect by the District Police Officer, Swat vide his office OB No.101 dated 22-07-2022 and Endst: No.noted against their each and requested for conducting de-novo enquiry:-

S.No.	Name of Constable	Endst: No.
1.	Noor-ul-Amin No.75/RR	10193/E, dated 22-07-2022
2.	Nizam Khan No.1793	10191/E, dated 22-07-2022
3.	Saeed Ullah No.1655	10190/E, dated 22-07-2022
4.	Ubaid Ullah No.1662	10192/E, dated 22-07-2022

Their re-instatement orders are enclosed herewith, please.

Encls: (As above).

Endst: No. & dated even

Copy to the District Police Officer, Swat for information with reference to his office Endst: Nos.quoted above.

Regional Police Officer,
Malakand Region Swat

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Execution Petition No. 267 /2022
In Service Appeal 05/2018

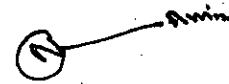
Mr. Noor-Ul-Amin

VS

Police Deptt


INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Execution Petition	-----	01-02
2.	Copy of Judgment	- A -	03-07
3.	Vakalat Nama	-----	08



PETITIONER
Noor-Ul-Amin

THROUGH:



UZMA SYED
ADVOCATE, HIGH COURT



SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

Date: 13/12/2021

Cell No: 0306-5109438

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

Execution Petition No. 267/2022
In Service Appeal 05/2018



Mr. Noor-Ul-Amin, Ex-Constable no. 75/RR District Swat.

(PETITIONER)

VERSUS

1. The Regional Police Officer, Malakand, Saidu Sharif Swat.
2. The District Police Officer Malakand.

(RESPONDENTS)

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 28.01.2022 OF THIS HONORABLE TRIBUNAL
IN LETTER AND SPIRIT.**

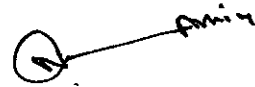
.....

RESPECTFULLY SHEWETH:

1. That the appellant filed an appeal bearing No.05/2018 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 28.01.2022 and the Honorable Tribunal was kind enough to accept the appeal and the appellant was reinstated into service and absence and intervening period treated as extra ordinary leave without pay. (Copy of judgment is attached as Annexure-A).
3. That the appellant also filed applications for implementation of judgment but in vain. So, in-action and not fulfilling formal requirements by the department after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

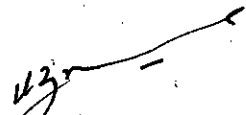
4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
5. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 28.01.2022 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.



PETITIONER
Noor-Ul-Amin

THROUGH:



UZMA SYED
ADVOCATE, HIGH COURT



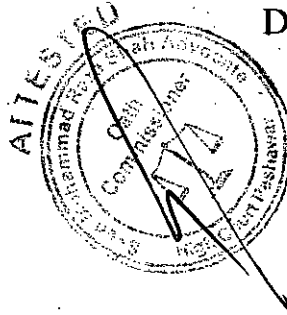
SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.



Deponent



1

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR



APPEAL NO. 5 /2018

Noor-Ul-Amin, EX- Constable; No.75/RR
Distt: Swat.

Khyber Pakhtunkhwa
Service Tribunal

Story No. 1466

Dated 28/12/17

.....(Appellant)

VERSUS

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 12.10.2009 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 12.10.2009 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day
[Signature]
Registrar
28/12/17

Re-submitted to -day
and filed.

[Signature]
Registrar
27/1/18

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017

Date of Decision ... 28.01.2022

Noor-Ul-Amin, Ex-Constable No. 75/RR Distt: Swat.

(Appellant)

VERSUS

The Regional Police Officer, Malakand, Saidu Sharif, Swat and one another

(Respondents)

Uzma Syed,
Advocate

For Appellant

Noor Zaman Khattak,
District Attorney

For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

CHAIRMAN
MEMBER (EXECUTIVE)


JUDGMENT

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

This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. Service Appeal bearing No. 6/2018 titled Nizam Khan
2. Service Appeal bearing No. 7/2018 titled Saeed Ullah
3. Service Appeal bearing No. 8/2018 titled Ubaid Ullah

02. 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 12-10-2009. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

order dated 29-11-2017, hence the instant service appeal with prayers that the impugned orders dated 12-10-2009 and 29-11-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law had badly been violated; that the impugned order has been passed in violation of mandatory provision of law, hence such order is void and illegal. Reliance was placed on 2007 SCMR 1129 and 2006 PLC CS 221; that departmental appeal of the appellant was rejected being barred by time, but since the impugned order is void, hence no limitation would run against void order. Reliance was placed on 2015 SCMR 795; that delay if any is condonable if delay already condoned in identical cases. Reliance was placed on PLD 2003 SC 724 and 2003 PLC CS 796; that this tribunal in similar cases has already granted condonation of delay and granted relief, hence the appellant is also entitled to the same under the principle of consistency; that the appellant has been discriminated, as other police officials, who were dismissed with the appellant, have been re-instated, whereas the appellant has been denied the same treatment.

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings rather remain dormant which clearly depicts his disinterest in his official duty; that after fulfillment of all the codal formalities, the appellant was awarded major punishment of dismissal from service in absentia; that the appellant preferred

ATTESTED


 MEMBER
 National Service Tribunal

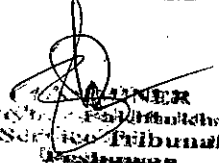
departmental appeal after lapse of 8 years, which was rejected being barred by time; that stance of the appellant being devoid of merit may be dismissed.

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

06. Placed before us is cases of police constables, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Placed on record is a notification dated 01-11-2010, where 16 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Other cases of similar nature have been noticed by this tribunal, where the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time and re-instated such deserted employees in service after years of their dismissal. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellants are also amongst those, who had deserted their jobs due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

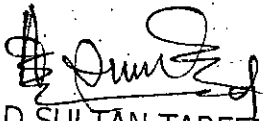
07. Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellants has not performed duty shall be treated as extra-ordinary leave


ATTESTED


 MEMBER
 Service Tribunal
 Peshawar

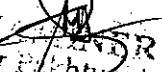
without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 19-4-22
Number of Words 2000
Copying Fee 22/-
Urgent 22/-
Total 22/-
Name of Copyist _____
Date of Completion of Copy 20/4/22
Date of Delivery of Copy 20/4/22

VAKALATNAMA

NO. _____ /2022

IN THE COURT OF 1st Service Tribunal, Peshawar

----- Noor ul amin -----

Appellant
Petitioner
Plaintiff

VERSUS

----- Police Dept -----

Respondent (s)
Defendants (s)

I/WE Noor ul amin

UZMA SYED Adv

do hereby appoint and constitute the SYED NOMAN ALI BUKHARI Advocate High Court for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 28-4 /2022

(Signature)

(CLIENT)

ACCEPTED

UZMA SYED

SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT