

E.P. No. 09/2022
Abdul Zahid vs Govt

17.03.2022

Due to retirement of the Hon'able Chairman, the Tribunal is defunct, therefore, the case is adjourned for the same as before on 19.05.2022.


Reader

19.05.2022

Counsel for the petitioner present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Learned District Attorney seeks some time to implement the judgment. Last opportunity granted. To come up for implementation report before S.B on 16.06.2022 at camp court Abbottabad.




(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

06.2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Gul Shehzad, SI for respondents present.

Implementation report not submitted. Representative of the respondent department stated that they have filed application for early hearing in CPLA before august Supreme of Court of Pakistan. Granted with strict direction either to submit conditional implementation report or stay order. To come up for implementation report on 17.08.2022 before S.B at camp court Abbottabad.


(Fareeha Paul)
Member (E)
Camp Court A/Abad.

Execution Petition No.09/2022 , Abdul Zahir

06.01.2022

Learned counsel for the petitioner present.

The petitioner through this Execution Petition has brought the judgment of this Tribunal for execution which was passed in his favor on 15.11.2021, in service appeal No. 41/2019. The findings in the judgment were followed by the operative part as copied below:-

"In view of the above factual and legal position, we set aside the impugned orders and direct that appellant be reinstated in service, however, absence and intervening period shall be treated as leave of the kind due."

The petitioner has submitted that the judgment is still in field and has not been suspended or set aside by the august Supreme Court of Pakistan. Therefore, the respondents are legally bound to pass formal reinstatement order and he prayed for implementation of the judgment at his credit in letter and spirit.

Needles to say that the respondents are at liberty to challenge the judgment at credit of the petitioner before the august Supreme Court of Pakistan, if so advised; however, filing of the petition against the judgment before august Supreme Court of Pakistan does not absolve the respondents from their obligation from implementation of the judgment of this Tribunal in letter and spirit unless the same is suspended by a specific order of the august Supreme Court of Pakistan. If the respondents are not in possession of any such order, they are supposed to implement the judgment at credit of the petitioner but with liberty to get an affidavit from him for return/restoration of the benefits, if the judgment of this Tribunal at his credit is set aside by the august Supreme Court of Pakistan. Copy of Execution Petition alongwith copy of this order be sent to Respondent No. 3 for implementation report on or before the date fixed. Notice of Execution Petition be given to other respondents.

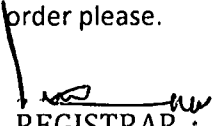

To come up for implementation report on 17.03.2022 before S.B at camp court, Abbottabad


CHAIRMAN

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 09/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06.01.2022	<p>The execution petition of Mr. Abdul Zahir submitted today by Mr. Mohammad Aslam Tanoli 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> <p>This execution petition be put up before S. Bench at Peshawar on <u>06/01/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



POLICE DEPARTMENT

DISTRICT MANSEHRA

Office of the DPO Mansehra No. 5690 /PI, dated 25/03/2022

From: The District Police Officer,
Mansehra.

To: The Assistant Inspector General of Police, Legal,
Khyber Pakhtunkhwa.

Subject: **(1) EXECUTION PETITION NO. 08/2022 TITLED MUHAMMAD MAZHAR EX. HC NO. 41 S/O JANGRAIZ KHAN VS IGP KPK & OTHERS (2) EXECUTION PETITION NO. 348 MUHAMMAD SALEEM NO. 688 VS IGP KPK & OTHERS (3) EXECUTION PETITION NO. 09 ABDUL ZAHIR S/O ABDUL WAHID VS IGP KPK & OTHERS (4) SERVICE APPEAL NO. 5682 OF 2020 EX CONSTABLE MUHAMMAD JAHANGIR NO. 1092 VS DIG HAZARA & OTHERS.**

Memo:

Kindly refer to the subject service appeals which were decided by the honorable Khyber Pakhtunkhwa service Tribunal Camp Court Abbottabad. The judgments were sent to your good office for filing of CPLA in the apex court. Consequently, the scrutiny committee of the law department held all the judgments fit for filing of CPLAs.

The appellant of the above cited judgments have filed execution petitions No. 08, 09 & 348/ 2022 before the honorable Khyber Pakhtunkhwa Service Tribunal Peshawar for the implementation of judgments.

The Honourable Khyber Pakhtunkhwa Service Tribunal vide its order dated 20.05.2022 directed for the implementation of judgment and submission of report on 16.06.2022.

It is therefore, requested that office of learned Advocate General Khyber Pakhtunkhwa Peshawar may kindly be approached for early hearing of CPLAs with stay orders for suspension of operation of judgments/execution proceedings or to implement decision, please.


District Police Officer
Mansehra

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 09/2022.....

Abdul Zahir S/O Abdul Wajid (LHC No. 960, District Police Mansehra)
presently R/O Model City near Dhinda Chowk, Haripur.....**(Petitioner)**

Versus

1. Provincial Police Officer, KPK Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer Mansehra

(Respondents)

EXECUTION PETITION IN SERVICE APPEAL NO. 41/2019.

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4.	Duty Report Dated 28-12-2021 and letter dated 23-12-2021.	"C&D"	20 21
5.	Wakalatnama		

THROUGH

PETITIONER

M. Aslam

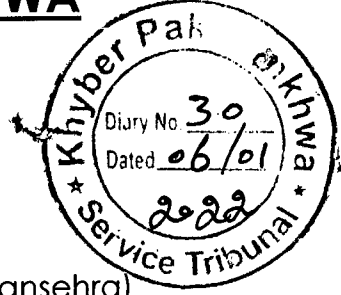
MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
HARIPUR

Dated 0-01-2022

1

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 09/2022



Abdul Zahir S/O Abdul Wajid (LHC No. 960, District Police Mansehra) presently R/O Model City near Dhinda Chowk, Haripur(Petitioner)

Versus

1. Provincial Police Officer, KPK Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer Mansehra..... (Respondents)

EXECUTION PETITION IN SERVICE APPEAL NO. 41/2019 FOR
IMPLEMENTATION OF JUDGMENT/DECISION DATED 15-11-2021
OF THIS HONOURABLE SERVICE TRIBUNAL ON CONDITIONAL
AND PROVISIONAL BASIS TILL OUTCOME OF CPLA (IF ANY)
FLED BY RESPONDENTS/POLICE DEPARTMENT AGAINST
PETITIONER.

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal No.41/2019 before this Honorable Service Tribunal against the orders of Respondents whereby appellant was dismissed from service and his departmental as well as Mercy Appeals appeal

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were rejected in flagrant violation and negation of law, departmental rules and regulations and denied the appellant's re-instatement in service. **(Copy of the service appeal is attached as Annex-"A")**.

2. That this Honorable Service Tribunal while accepting subject service appeal No. 41/2019 issued the judgment/decision dated 15-11-2021 that "we set aside the impugned orders and direct that appellant be reinstated in service, however absence and intervening period shall be treated as leave of the kind due". **(Copy of judgment/order dated 15-11-2021 is attached as Annex-"B")**.
3. That on receipt of attested copy of the judgment/decision, the appellant reported for duty on 28-12-2021. **(Copy of duty report is attached as Annexure-"C")**.
4. That Respondents instead of taking appellant on duty has issued a letter dated 23-12-2021 mentioning therein that Respondents are going to file CPLA against judgment dated 15-11-2021 before the Supreme Court of Pakistan. **(Copy of the letter 23-12-2021 is attached as Annexure "D")**.

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5. That there is no stay order from the Apex Supreme Court of Pakistan Islamabad in this respect. Petitioner is jobless since his dismissal from service i.e. 04-07-2017 and has no source of income to live on; therefore, appellant and his family members are badly suffering financially.

6. That despite petitioner's incessant approaches to respondents, he has not been allowed to join his duties as decided by this Honorable Tribunal even on conditional and provisional basis subject to outcome of CPLA (if any) filed by Police/Respondent's Department against the petitioner. Hence this Execution Petition on the following:

GROUND:

- A) That as this Honorable Service Tribunal in its judgment dated 15-11-2021 ordered that "we set aside the impugned orders and direct that appellant be reinstated in service, however absence and intervening period shall be treated as leave of the kind due".

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- B) That there is no stay order from the Apex Supreme Court of Pakistan against the judgment and order dated 15-11-2021 of this Honorable Service Tribunal and order is in the field. Respondents must comply with the said order.
- C) That departmental authorities/respondents are reluctant to pay any heed to the decision dated 15-11-2021 of this Honorable Tribunal, hence instant execution petition.
- D) That petitioner alongwith his family is facing financial distresses due to his unemployment and deserves to be allowed to join his duty in the light of decision dated 15-11-2021 of this Honorable Service Tribunal.
- E) That instant execution petition is well within time and this Honorable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYER:


It is, therefore, humbly prayed that this Honorable Service Tribunal may graciously be pleased to accept this Execution petition and issue necessary orders/directions to respondents to

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allow the petitioner to join his duties in the light of judgment/decision dated 15-11-2021 of this Honorable Service Tribunal.


PETITIONER

HROUGH


MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
AT HARIPUR

Dated: -01-2022

AFFIDAVIT

I, Abdul Zahir S/O Abdul Wajid petitioner do hereby undertake/solemnly affirm that the contents of fore-going petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this honorable court.

Dated: 6-01-2022




DEPONENT

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Annex - A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Appal No. 41/2019

Abdul Zahir S/O Abdul Wahid (LHC No. 960 of District Police Mansehra) presently R/O Model City near Dhinda Chowk, Tehsil & District Haripur.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT-1974 AGAINST THE ORDER DATED 04-07-2017 OF DISTRICT POLICE OFFICER MANSEHRA VIDE WHICH THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED 05-09-2018 OF REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD AND PROVINCIAL POLICE OFFICER KPK PESHAWAR ORDER DATED 12-12-2018 WHEREBY APPELLANT'S DEPARTMENTAL AND MERCY APPEALS HAVE BEEN REJECTED.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL IMPUGNED ORDERS DATED 04-07-2017, 05-09-2018 AND 12-12-2018 OF THE RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully Sheweth:-

The brief facts of the instant case are as under:-

1. That the appellant was appointed as Constable in the Police Department of District Mansehra on 28-07-2007.

Accepted
[Signature]

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2. The appellant always performed his assigned duties with devotion, dedication and honesty to the entire satisfaction of his officers. Appellant was awarded with commendation certificates and cash rewards for his tremendous services by his High-Ups during service and he has meritorious service record at his credit.
3. That to his bad luck an occurrence took place vide FIR No. 1270 dated 29-11-2015 U/S-302/34 PPC at Police Station Cant District Abbottabad, wherein the appellant was also roped in by complainant side. The appellant was arrested on 22-01-2016 and was allowed bail vide judgment and order dated 09-03-2018 of Honourable Peshawar High Court, Abbottabad Bench. **(Copy of bail order dated 09-03-2018 is attached as Annex-"A")**.
4. That appellant while in Jail was served with a Charge Sheet dated 28-01-2016 by the District Police Officer Mansehra and the same was replied by appellant in utter confusion from Jail and could not keep its copy with him. **(Copy of the Charge Sheet dated 28-01-2016 is attached as Annex-"B")**.
5. That though no proper inquiry was conducted yet Enquiry Officer Assistant Superintendent of Police Circle Saddar Mansehra while submitting his inquiry report dated 19-02-2016 opined that **"the case is under trail in the court of law and it is inappropriate to finalize the inquiry before the court decision. Hence the instant**

✓

Attested
[Signature]

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enquiry may be kept pending till the court decision".
(Copy of enquiry report dated 19-02-2016 is attached as Annex-"C").

6. That it is worth mentioning that no proper departmental enquiry was conducted. The entire proceedings were carried out at the back of appellant and no final show cause notice was issued to the appellant. Appellant was not provided opportunity of personal hearing.
7. That the District Police Officer Mansehra without considering reply to the Charge Sheet submitted by the appellant as well as enquiry report of the Inquiry Officer awarded the appellant punishment of dismissal from service vide order dated 04-07-2016. **(Copy of dismissal order dated 04-07-2016 is attached as Annex-"D")**.
8. That the appellant aggrieved of the order dated 04-07-2016 of the District Police Officer Mansehra and after earning his bail, preferred an appeal dated 03-05-2018 before the Regional Police Officer, Hazara Region, Abbottabad who dismissed his appeal vide order dated 05-09-2018. **(Copies of departmental appeal dated 03-05-2018 and order of RPO Abbottabad dated 05-09-2018 are attached Annex-"E & F")**.
9. That thereafter the appellant preferred a Mercy Appeal dated 04-10-2018 before the Provincial Police Officer, KPK, Peshawar which also met the same fate vide his

Attested
EJF

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order dated 12-12-2018. (Copies of Mercy Appeal dated 04-10-2018 and order of RPO Abbottabad dated 12-12-2018 are attached Annex-"G & H").

10. That the appellant seeks setting aside order of dismissal and his re-instatement in service on the following amongst other grounds"-

GROUND:

- A) That impugned orders dated 04-07-2016, 05-09-2018 and 12-12-2018 of Respondents are illegal, unlawful, void ab-initio, against the law, departmental rules & regulations, inquiry procedure have been passed slipshod in manner, against the facts and circumstances of the case, hence are liable to be set aside.
- B) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of the constitution of Islamic Republic of Pakistan 1973 and unlawfully passed the impugned orders, which are illegal, unlawful, unjust, unfair, contrary to the facts and circumstances; hence not sustainable in the eyes of law.
- C) That no proper departmental inquiry was conducted by the respondent No.1 of which conduction was mandatory under law before awarding appellant with

Attested
Signature
E.O.

major penalty of dismissal from service. No Show Cause Notice was issued to the appellant. The entire proceeding was conducted in the back of appellant while he was in Jail. Even the appellant was not afforded with the opportunity of personal hearing which was mandatory under the law.

- D) That appellate authority has also failed to abide by law and even did not take into consideration the grounds taken by appellant in the memo of appeal. Thus the impugned order of the appellate authority is contrary to the law as laid down in the KPK, Police Rules 1934, other departmental rules regulations read with section 24-A of the General Clause Act 1897 read with Article 10A of the Constitution of Islamic Republic of Pakistan 1973.
- E) That the allegations on the basis of which the appellant has been awarded with the major punishment of dismissal from service are still before the Honourable Trial Court for adjudication. The respondents were required to have waited the decision of trail court, but they in haste against the law, departmental rules & regulations, procedure, facts and principles of natural justice have awarded the appellant with major punishment of dismissal from service, hence impugned orders are not sustainable in the eyes of law.
- F) That before depriving the appellant from service it was mandatory upon the respondents to have provided him

Mustafa
10/11/14



all the opportunities/chances of defense laid down by the law, but in this particular case appellant has been deprived of his constitutional opportunities stipulated by law.

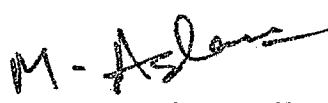
PRAYER:

It is therefore, humbly prayed that on acceptance of instant appeal the impugned orders dated 04-07-2016, 05-09-2018 and 12-12-2018 of the respondents may graciously be set aside and the appellant be reinstated in his service from the date of dismissal with all consequential service back benefits.

Any other relief which this Honorable Tribunal deems fit in the circumstance of the case may also graciously be awarded.


APPELLANT

THROUGH


(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
HARIPUR

Dated: 11-01-2019

VERIFICATION

I, Abdul Zahir S/O Abdul Wahid do hereby solemnly declare and affirm that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.

Dated: 11-01-2019


Deponent/Appellant


Abdul Zahir
S/O
Abdul Wahid

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BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Abdul Zahir S/O Abdul Wahid (LHC No. 960 of District Police Mansehra) presently R/O Model City near Dhinda Chowk, Tehsil & District Haripur.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

AFFIDAVIT:

I, Abdul Zahir S/O Abdul Wahid do hereby solemnly declare and affirm on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Service Tribunal.



Deponent/Appellant

Dated: 11-01-2019

Identified By:



Mohammad Aslam Tanoli
Advocate High Court
At Haripur,



Appellant





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BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Abdul Zahir S/O Abdul Wahid (LHC No. 960 of District Police Mansehra) presently R/O Model City near Dhinda Chowk, Tehsil & District Haripur.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever been filed in this or any other court prior to the instant one.


APPELLANT

Dated: 11-01-2019



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Annex-B

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No - 41/2019

Abdul Zahir S/O Abdul Wahid (LHC No. 960 of District Police Mansehra) presently R/O Model City near Dhinda Chowk, Tehsil & District Haripur.

VERSUS

Appellant Diary N. 4

Dated 2/1/19

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT-1974 AGAINST THE ORDER DATED 04-07-2017 OF DISTRICT POLICE OFFICER MANSEHRA VIDE WHICH THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED 05-09-2018 OF REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD AND PROVINCIAL POLICE OFFICER KPK PESHAWAR ORDER DATED 12-12-2018 WHEREBY APPELLANT'S DEPARTMENTAL AND MERCY APPEALS HAVE BEEN REJECTED.


PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL IMPUGNED ORDERS DATED 04-07-2017, 05-09-2018 AND 12-12-2018 OF THE RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Filed to -
Registrar
11/1/19

Respectfully Sheweth:-

The brief facts of the instant case are as under:-

1. That the appellant was appointed as Constable in the Police Department of District Mansehra on 28-07-2007.

ATTESTED

Registrar

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD**



Service Appeal No. 41/2019

Date of Institution ... 11.01.2019
Date of Decision ... 15.11.2021

Abdul Zahir S/O Abdul Wahid (LHC No.960 of District Police
Mansehra) presently R/O Model City near Dhinda Chowk, Tehsil
& District Haripur.

(Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and
two others.

(Respondents)

Muhammad Aslam Tanoli,
Advocate

... For appellant.

Muhammad Rasheed,
Deputy District Attorney

... For respondents.

Ahmad Sultan Tareen
Rozina Rehman

... Chairmann
... Member (J)

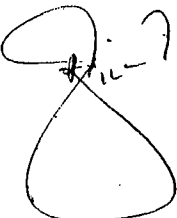
JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

"On acceptance of instant service appeal, impugned
orders dated 04.07.2017, 05.09.2018 and 12.12.2018
may graciously be set aside and appellant be reinstated
in his service."

2. Brief facts of the case are that appellant was appointed as
Constable. He was charged in case F.I.R No.1270 dated 29.11.2015.

ATTESTED


**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
PESHAWAR**

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Appellant was arrested. He was proceeded against departmentally and was awarded major punishment of dismissal from service. Feeling aggrieved, he filed departmental appeal which was also dismissed, where-after, he filed a mercy petition which also met the same fate, hence, the present service appeal.

3. We have heard Muhammad Aslam Tanoli Advocate learned counsel for appellant and Muhammad Raasheed learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Aslam Tanoli, Advocate, learned counsel for appellant in support of appeal contended with vehemence that the impugned dismissal order and the order of appellate authority are against law and facts. He argued that appellant was acquitted by competent court of Law and that every acquittal is honorable but instead of giving benefit of acquittal to the appellant, his appeal was dismissed. Lastly, he submitted that appellant was dismissed just on the basis of his involvement in a criminal case and that the only stigma on the person of appellant is no more, therefore, he may kindly be reinstated in service. Reliance was placed on judgments of this Tribunal passed in Service Appeals No: 616/2017, 1380/2014, 1025/2017 and 768/2018.

5. Conversely, learned D.D.A submitted that appellant involved himself in case Fi.IR No.1270 U/S 302/34 PPC. That he confessed his guilt by recording his confession U/S 164/364 Cr.PC and thus admitted the murder of one Junaid. He argued that he was properly proceeded against departmentally and he submitted his reply to the charge sheet according to law. Proper inquiry was initiated and the


ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appellant was given proper opportunity. He contended that he was awarded major penalty of dismissal from service after observance of all codal formalities and that the punishment does commensurate with the gravity of misconduct of appellant.

6. From the record it is evident that 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 respondents that appellant being member of disciplined force earned bad name to the Department and that the departmental and criminal proceedings are of distinct nature and can work side by side and decision of the criminal court, if any, is not binding in the departmental proceedings. It is on record that accused was acquitted vide order of the learned Sessions Judge, Abbottabad dated 09.07.2019. As per record, F.I.R. No.1270 was registered against unknown accused on 29.11.2015 in respect of murder of one Junaid. On 22.01.2016, one Muhammad Asif, brother of deceased Junaid nominated the present appellant Abdul Zahir and Usman for the murder of his brother. The occurrence took place on 29.11.2015 and the present appellant was arrested on 22.01.2016. Charge sheet and statement of allegations were issued on 28.01.2016 when the present appellant was behind the bars. Miss. Sonia Khan A.S.P Circle Mansehra conducted inquiry and she submitted report on 19.02.2016, wherein, she clearly mentioned the registration of F.I.R and that the case was under trial in court of Law, therefore, was inappropriate to finalize the inquiry before the court decision, hence, she recommended that the inquiry may be kept pending till court decision, however, the District Police Officer, Mansehra in view of statement/confession of the appellant passed the


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

impugned order of dismissal from service on 04.07.2016. From the record, it is evident that no proper inquiry was conducted and the appellant was not afforded proper opportunity of defense. He was admitted to bail by the august Peshawar High Court, Peshawar vide order dated 09.03.2018 and after getting bail, he filed departmental appeal on 03.05.2018 but his appeal was dismissed vide order dated 05.09.2018. The registration of F.I.R No. 1270 dated 29.11.2015 was taken as ground for disciplinary action against the appellant. According to the operative part of the judgment dated 09.07.2019 of learned Sessions Judge, Abbottabad prosecution failed to bring home charge leveled against the accused/appellant through coherent, cogent and corroborative evidence. Various important links were missing in chain of circumstances to bring home conviction against accused, therefore, while extending benefit of doubt to accused, he was acquitted of the charge leveled against him. When the criminal case taken as ground for disciplinary action against the 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 imposition of major penalty of dismissal from service upon appellant remained no more tenable. In this respect, we have sought guidance from 1998 PLC (C.S) 179, 2003 S.C.M.R 1515; P.L.D 2010 Supreme Court 695, judgments of Service Tribunal passed in Service Appeals No.1380/2014, 1025/2017, 616/2017, 768/2018.

7. In view of the above factual and legal position, we set aside the impugned orders and direct that appellant be reinstated in service, however, absence and intervening period shall be treated as leave of

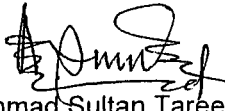
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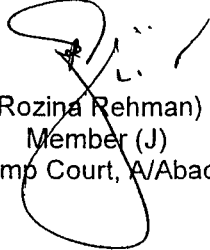

EX-AMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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the kind due. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED.
15.11.2021


(Ahmad Sultan Tareen)
Chairman
Camp Court, A/Abad


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

Date of Presentation of Application 06/12/2021
Amount of Court Fee 2400/-
Amount of Fee 476/-
Amount of Stamp 30/-
Date of Receipt of Copy 06/12/2021
Date of Delivery of Copy 06/12/2021

Certified to be true copy

NIR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Annex-C

To

The District Police Officer,
Mansehra.

**Sub: Application for re-joining of duty as LHC as per Decision
of Honourable KPK Service Tribunal , dated 15-11-2021.**

Respected Sir,

Most reverentially it is stated that consequent upon an FIR No. 1270, dated 29-11-2015, I was dismissed from service. I feeling my service aggrieved preferred a Service Appeal before the Honourable KPK Service Tribunal, Bench Abbottabad and this Honourable Tribunal has re-instated me in service on the basis of my innocence. (Copy of Judgment dated 15-11-2021 passed by the Honourable KPK Service Tribunal is annexed herewith).

Sir, I intend to resume my duties in accordance to the decision of Honourable KPK Service Tribunal and request you to kindly allow me to resume the duties as LHC for which I will be highly grateful to your for this act of kindness.

Thanking you,

Dated: 28-12-2021.

Yours Obediently,



(Abdul Zahir)
LHC, No. 960,
District Police Mansehra.

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Annex-1



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. 11914 /Legal, dated Peshawar, the 23 /12 /2021.

To: - The District Police Officer,
Mansehra.

Subject:- REQUEST FOR FILING CPLA AGAINST THE
JUDGMENT DATED 15.11.2021 PASSED IN
SERVICE APPEAL NO. 41/2019 TITLED ABDUL
ZAHIR VS DPO MANSEHRA ETC.

Memo:-

Please refer to your office letter No.21665/GB, dated
09.12.2021 on the subject cited above.

It is intimated that the subject case has been declared
fit for CPLA by scrutiny committee of Law Department on 22.12.2021.

It is therefore, directed depute an officer to execute
Power of Attorney and attend the office of Advocate on Record
Supreme Court of Pakistan within two days.

Minutes Enclosed.

[Signature]
AIG/Legal,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

22.12.2021

[Signature]

