


14.06.2022

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General Alongwith Niaz Muhammad DSP Legal present.




Representative of the respondent department seeks time for submission of implementation report. Request accepted by way of last chance. To come up for implementation report on 18.08.2022 before S.B at Camp Court Abbottabad.

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

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. \_\_\_\_\_ 141/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.03.2022	<p>The execution petition of Mr. Momin Khan submitted today by Mr. Aslam Khan 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>
2-		<p>This execution petition be put up before to touring S. Bench at Abbottabad on <u>18-04-2022</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	18.04.2022	<p>Counsel for the petitioner present. Notice be issued to the respondents and to come up for implementation report on 14.06.2022 before the S.B at Camp Court Abbottabad.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J) Camp Court Abbottabad</p>

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No...141/2022.....

Momin Khan S/O Banaras (Ex-Constable No. 2535 Elite Police Force KPK)  
R/O Village New Qazian, KTS, Tehsil & District Haripur. ....(Petitioner)

**Versus**

1. Addl: Inspector General of Police Elite Force, KPK, Peshawar.
2. Deputy Commandant, FRP, Abbottabad. (Respondents)

**EXECUTION PETITION IN SERVICE APPEAL NO. 495/2020.**

**INDEX**

S/No.	Description of documents	Anne-Xure	Page No.
1.	Execution petition.		01-05
2.	Service Appeal	"A"	06-13
3.	KPK Service Tribunal Decision dated 29-06-2021	"B"	14-18
4.	Duty Report 10-09-2021	"C"	19
5.	Copy of Notice.	"D"	20
6.	Wakalatnama		

THROUGH

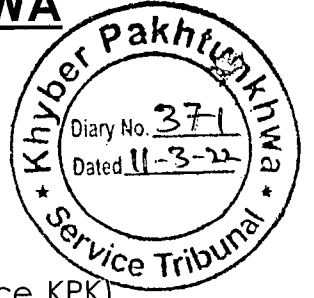
PETITIONER

*M. Aslam Tanoli*  
MOHAMMAD ASLAM TANOLI  
ADVOCATE HIGH COURT  
HARIPUR

Dated 11-03-2022

①

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**



Execution petition No...141/2022

Momin Khan S/O Banaras (Ex-Constable No. 2535 Elite Police Force KPK)  
R/O Village New Qazian, KTS, Tehsil & District Haripur. ....(Petitioner)

**Versus**

1. Addl: Inspector General of Police Elite Force, KPK, Peshawar.
2. Deputy Commandant, FRP, Abbottabad. **(Respondents)**

**Versus**

**EXECUTION PETITION IN SERVICE APPEAL NO. 495/2018 FOR**  
**IMPLEMENTATION OF JUDGMENT/DECISION DATED 29-06-2021**  
**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 filed titled service appeal No. 495/2018 before this Honorable Service Tribunal against the orders of Respondents whereby appellant was dismissed from service and his

2

departmental appeal rejected in flagrant violation and negation of law, departmental rules and regulations. **(Copy of the service appeal is attached as Annex-"A")**.

2. That this Honorable Service Tribunal while accepting subject service appeal No. 495/2018 issued the judgment/decision dated 29-06-2021 that "the appeal in hand is accepted by setting aside the impugned orders and the appellant is reinstated in service with all back benefits". **(Copy of judgment/order dated 29-06-2021 is attached as Annex-"B")**.
3. That after receipt of attested copy of the judgment/decision dated 29-06-2021 the petitioner submitted written duty report on 10-09-2021 and also made subsequent personal approaches but he is not permitted to join duty till this day. **(Copy of duty report is as Annexure-"C")**.
4. That the respondents instead of taking petitioner on duty has informed the appellant that they have filed CPLA against the judgment of Honorable KPK Service Tribunal Peshawar dated 29-06-2021 before

2

the Supreme Court of Pakistan. **(Copy of Notice is attached as "D")**.

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. 30-05-2016 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 Respondents/Police Department against the petitioner. Hence this Execution Petition on the following:

**GROUND:**

- A. That as this Honorable Service Tribunal in its judgment dated 29-06-2021 had ordered that ""the appeal in hand is accepted by setting aside the impugned orders and the appellant is reinstated in service with all back benefits".

4

- B) That there is no stay order from the Apex Supreme Court of Pakistan against the judgment and order dated 29-06-2021 of this Honorable Service Tribunal and its order is in the field. Respondents must comply with the said order.
- C) That respondents do not pay any heed to decision dated 29-06-2021 of this Honorable Tribunal, hence instant execution petition.
- D) That petitioner along with 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 29-06-2021 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:

5

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 be respondents to allow the petitioner to join his duties in the light of its decision dated 29-06-2021 conditionally and provisionally subject to outcome of CPLA (if any) filed by respondents.

*Momin Khan*

PETITIONER

*M. Aslam*

THROUGH

MOHAMMAD ASLAM TANOLI  
ADVOCATE HIGH COURT  
AT HARIPUR

AFFIDAVIT

I, Momin Khan petitioner do hereby 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 from this honorable court.

Dated: 11-03-2022

*Momin Khan*  
DEPONENT

ATTESTED





(6)

Annex - A

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.....

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force  
KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

**Appellant**

**VERSUS**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad

**Respondents.**

**SERVICE APPEAL UNDER SECTION-4 OF THE KPK SERVICE TRIBUNAL  
ACT 1974 AGAINST ORDER DATED 30-05-2016 OF THE DEPUTY  
COMMANDANT, RRF, KHYBER PAKHTUNKHWA PESHAWAR WHEREBY  
APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED  
08-02-2018 OF THE ADDITIONAL INSPECTOR GENERAL OF POLICE  
ELITE FORCE KPK PESHAWAR DELIVERED ON 02-04-2018 WHEREBY  
APPELLANT'S DEPARTMENTAL APPEAL WAS REJECTED.**

**PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL BOTH  
IMPUGNED ORDERS DATED 30-05-2016 AND 08-02-2018 MAY  
GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS  
SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL  
SERVICE BACK BENEFITS AND ANY OTHER RELIEF WHICH THIS  
HONOURABLE TRIBUNAL DEEMS PROPER BE ALSO GRANTED.**

Respectfully Sheweth:

1. That appellant was enrolled as a Constable in the Police  
Department in the year 2006 thus had rendered about  
10 years service till 30-05-2016. Ever since his recruitment  
the appellant always performed his assigned duties with

*Arrested  
Manikaran*

~~2~~

7

devotion, dedication and honesty and to the entire satisfaction of his superiors. Appellant always earned good/very good ACRs. On occasions appellant was awarded with the Commendation Certificates and Cash Rewards by Police High-Ups in recognition of his tremendous services in the Police Force. Appellant had meritorious service record at his credit.

2. That on 18-01-2016 one Badri Zaman S/O Juma Khan R/O Village Chakkal Pain, Tehsil Oghi, District Mansehra got registered an FIR No. 30 dated 18-01-2016 U/S-17(3) Haraba with the Police Station Oghi (District Mansehra) against 06 (Six) unknown persons. But subsequently in a supplementary statement dated 20-01-2016 recorded by the Investigation Officer of the case the complainant got falsely incorporated the name of appellant due to personal grudge and vendetta. **(Copy of FIR dated 18-01-2016 is attached as "A")**.
3. That the aforementioned case remained under trial for about 01 year and 09 months and ultimately the appellant being innocent was acquitted of the charge by the Honorable Court of Sessions Judge Torghar (at Oghi) through its judgment and decision dated 17-10-2017. **(Copy of the Judgment/Decision dated 17-10-2017 is attached as "B")**.

*Attested*  
*my own hand*

⑤ ⑧

4. That the Deputy Commandant, Rapid Response Force, Khyber Pakhtunkhawa Peshawar even during the trial of aforementioned case before the Honorable Court of Sessions Judge Torghar (at Oghi) and keeping aside all legal and procedural requirements and contrary to the norms of justice went on to dismiss the appellant through his order No. 633-37/RRF dated 30-05-2016 without any proof, reason and justification. **(Copy of impugned order dated 30-05-2016 is attached as "C")**.
  
5. That according to the law, departmental rules & regulations and principle of natural justice, the departmental authorities, before passing any order perverse to the service rights of appellant, were under legal obligations to have waited the decision of Honorable Court of Session Judge Torghar (at Oghi) where the criminal case against the appellant was under trial for adjudication as to whether appellant was innocence or otherwise. But contrary to the legal requirements the appellant has been dismissed from service in a hasty manner and that too mere due to registration of a false and fabricated case on the basis of complainant's personal grudge and vendetta.

*Atiqul  
monul Khan*

9

6. That no proper departmental enquiry as envisaged by KPK Police (Efficiency & Disciplinary) Rules 1975 was conducted against the appellant. No Charge Sheet was issued to him. Neither Enquiry Report, if any, was not delivered to the appellant nor was any Final Show Cause Notice issued to him. Even the appellant was not afforded with the opportunity of personal hearing thus departmental rules & regulations and principles of natural justice have been seriously violated in the case of appellant.
7. That in view of the facts and circumstance explained here above, by stretch of no imagination the appellant could have been held responsible and penalized for the charge on account of which he was tried by the Honorable Court of Sessions Judge Torghar (at Oghi) and had been ultimately honorably acquitted.
8. That appellant was acquitted in the criminal case by the Honorable Court of Session Judge Torghar (at Oghi) on 17-11-2017. That by adducing all facts and circumstances of the case, a departmental appeal dated 17-11-2017 against order of the Deputy Commandant, RRF KPK, Peshawar dated 30-05-2016 was filed before the Additional Inspector General Elite Force

*Plus*  
*my submission*



KPK Peshawar by the appellant. **(Copy of the Departmental appeal dated 17-11-2017 is attached as Annex-"D")**.

9. That the Additional Inspector General, Elite Force KPK Peshawar without giving any heed to the appellant's departmental appeal dismissed the same vide its impugned order 28-02-2018 but copy of the order was never communicated to the appellant. **(Copy of the order dated 28-02-2018 is attached as Annex-"D")**.
10. That appellant had to approach the office of the Additional Inspector General, Elite Force KPK Peshawar for obtaining copy of appeal rejection order but he was told that the same had been sent to him through the Reader of S.P. Elite Force Hazara Region Abbottabad.
11. That on 02-04-2018, the appellant approached the Superintendent of Police, Elite Forec Hazara Region Abbottabad for issuing of a copy order dated 28-02-2018 passed by the Additional Inspector General, Elite Force KPK Peshawar and submitted an application (Copy of the application dated 02-04-2018 is attached as Annex-"E") which was allowed and then on 02-04-2018 the appellant was given the copy of impugned

*Asad*  
*my mother*



order dated 28-02-2018 (Copy of the order dated 28-02-2018 is attached as Annex-"F" ) hence instant service appeal, inter alia, on the following:-

**GROUND:**

- a) That impugned order dated 30-05-2016 of the Deputy Commandant, Elite Police Force, Peshawar whereby the appellant has been awarded extreme punishment of dismissal from service and order dated 28-02-2018 of the Additional Inspector General of Police, Elite Force, KPK whereby appellant's departmental appeal has been rejected are void ab-initio, illegal, unlawful, without lawful authority, passed in a slipshod and cursory manner and contrary to facts, record and law thus are liable to be set aside.
- b) That departmental authorities without waiting the decision of criminal charge against the appellant from the Honourable Court of Session Juge Torghar (at Oghi) have passed the impugned order detrimental to the service rights of appellant and against the law, departmental rules & regulations and principle of natural justice thus liable to be set aside on this score along.
- c) That the appellant in the criminal case on account of which the Deputy Commandant, RRF Elite Force Khyber Pakhtunkhwa Peshawar awarded major penalty of dismissal has been acquitted by the Honorable Court of Sessions Judge Torghar (at Oghi). Award of punishment of dismissal from service to the appellant on the same

*Attended  
momin*

7

12

charge is, therefore, perverse and in flagrant violation of law, departmental rules and regulations and principle of natural of justice. Hence the impugned order needs to be set aside.

- d) That impugned orders have been passed by the authorities without adhering to the inquiry procedure set forth by law for the dispensation of justice at preliminary stages during the course of departmental inquiries.
- e) That no proper departmental inquiry was ever conducted against the appellant to prove the guilt or to declare him innocent which was mandatory under the law. Appellant is innocent and has been penalized without any proof or reason.
- f) That no place, date and time was ever fixed for conducting departmental inquiry, even the appellant was never issued with a single explanation, charge sheet, enquiry findings if any and final show cause notice before awarding the major punishment of dismissal from service.
- g) That even the appellant was not provided with the opportunity of personal hearing and has been awarded extreme major penalty without any proof and violating the principle of natural justice.
- h) That ever since his dismissal from service the appellant remained jobless and without any gainful business thus facing high financial problem due to dismissal from service by the departmental authorities.

*Atul*  
*monikhar*

8

13

**PRAYER:**

It is, therefore, humbly prayed that on acceptance of instant service appeal, the impugned order dated 30-05-2016 passed by the Deputy Commandant, Elite Force, Khyber Pakhtunkhwa Peshawar whereby the appellant has been dismissed from service as well as order dated 28-02-2018 of the Additional Inspector General, Elite Police Force, KPK, Peshawar whereby appellant's departmental appeal has been rejected may graciously be set aside and the appellant be re-instated in his service from the date of dismissal with all consequential service back benefits.

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

THROUGH

*m. Aslam*  
APPELLANT

*M. Aslam*  
(MOHAMMAD ASLAM TANOLI)  
ADVOCATE HIGH COURT  
AT HARIPUR

Dated: 09-04-2018

**Verification**

It is verified that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.

Dated: 09-04-2018

*m. Aslam*  
Appellant

*Atiqul  
Mansoor*



(1)

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**



Service Appeal No. 495/2018

Momin Khan S/O Banaras (Ex-Constable No.2535 Elite Police Force KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

**VERSUS**

**Appellant**  
Khyber Pakhtunkhwa  
Service Tribunal

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Addl. Inspector General Police/Commandant Elite Force, KPK, Peshawar.
3. Deputy Commandant/RRF, KPK, Peshawar.
4. Sr. Superintendent of Police Elite Force/RRF Hazara Region, Abbottabad

Date: 5/7  
09-4-2018

**Respondents.**

**SERVICE APPEAL UNDER SECTION-4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 30-05-2016 OF THE DEPUTY COMMANDANT, RRF, KHYBER PAKHTUNKHWA PESHAWAR WHEREBY APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED 08-02-2018 OF THE ADDITIONAL INSPECTOR GENERAL OF POLICE ELITE FORCE KPK PESHAWAR DELIVERED ON 02-04-2018 WHEREBY APPELLANT'S DEPARTMENTAL APPEAL V/AS REJECTED.**

**PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL BOTH IMPUGNED ORDERS DATED 30-05-2016 AND 08-02-2018 MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS AND ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS PROPER BE ALSO GRANTED.**

Respectfully Sheweth:

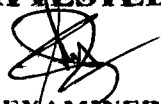
1. That appellant was enrolled as a Constable in the Police Department in the year 2006 thus had rendered about 10 years service till 30-05-2016. Ever since his recruitment the appellant always performed his assigned duties with:

Filed to-day

Registrar

9/4/18

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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

Service Appeal No. 495/2018

Date of Institution ... 09.04.2018

Date of Decision ... 29.06.2021



Momin Khan S/O Banaras (Ex-Constable No. 2535 Elite Police Force KPK) R/O Village New Qazian, K.T.S, Tehsil & District Haripur.

... (Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and three other.

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,  
Advocate

... For appellant.

MR. KABEERULLAH KHATTAK,  
Additional Advocate General

... For respondents.

MR. SALAH-UD-DIN,  
MS. ROZINA REHMAN,  
MR. ATIQ-UR-REHMAN WAZIR,

... MEMBER (JUDICIAL)  
... MEMBER (JUDICIAL)  
... MEMBER (EXECUTIVE)

JUDGMENT

**SALAH-UD-DIN, MEMBER:-** The appellant has filed the instant Service Appeal against the impugned order dated 08.02.2018, passed by Additional Inspector General of Police Elite Force Khyber Pakhtunkhwa Peshawar, whereby the departmental appeal filed by the appellant was rejected and the order dated 30.05.2016, passed by the Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar regarding the dismissal of the appellant from service was upheld.

2. Precise facts are that the appellant was serving as Constable in RRF Unit No. 14, when disciplinary action was initiated against him on

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

the ground that he was charged in case FIR No. 30 dated 18.01.2016 under section 17 (3) Harraba registered at Police Station Oghi District Mansehra. On conclusion of inquiry, the appellant was dismissed from service vide order dated 30.05.2016 passed by Deputy Commandant RRF Khyber Pakhtunkhwa Peshawar. The departmental appeal filed by the appellant was also rejected vide order dated 08.02.2018, hence the instant Service Appeal.

3. Respondents submitted their reply, wherein it was mainly alleged that as the appellant was charged in a criminal case and the charges against him stood proved in a proper inquiry, therefore, he has been rightly dismissed from service.

4. The instant Service Appeal was decided by a Division Bench of this Tribunal on 22.08.2019 by rendering dissenting judgments, therefore, the appeal was referred to Larger Bench for its decision.

5. Mr. Muhammad Aslam Tanoli, Advocate, representing the appellant has argued that the appellant was falsely implicated in the criminal case and has been acquitted by a competent court. He further contended that the appellant was proceeded against on the ground of his involvement in the criminal case, however the acquittal of the appellant has vanished the very ground, which provided base for disciplinary action against the appellant. He next argued that after arrest of the appellant in criminal case, the respondents were required to have suspended the appellant and should have waited for conclusion of trial of the appellant, however the respondents dismissed the appellant in a hasty manner, without complying the relevant provisions of inquiry as prescribed in Police Rules, 1975. He further contended that after acquittal of the appellant in the criminal case on 17.10.2017, he applied for obtaining attested copy of the judgment, which was delivered to him on 27.10.2017 and he filed departmental appeal on 17.11.2017, which is well within time. He next contended that departmental appeal of the appellant was dismissed vide impugned order dated 08.02.2018 but no copy of the same was communicated to the appellant, therefore, he submitted an application for obtaining copy of the said order, which was allowed and the appellant was handed over the copy of the order on 02.04.2018, while he filed the instant appeal on 09.04.2018, which is within time. In the last he contended that the

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

impugned order of dismissal of the appellant is wrong and illegal, hence liable to be set-aside. Reliance was placed on PLD 2010 Supreme Court 695, 2013 SCMR 752, 2019 PLC (C.S) 255, 1998 SCMR 1993, 2003 PLC (C.S) 514, 2001 PLC (C.S) 667, PLJ 2015 Tr.C (Services) 152, PLJ 2015 Tr.C (Services) 154, PLJ 2015 Tr.C (Services) 197, PLJ 2015 Tr.C (Services) 208, PLJ 2015 Tr.C (Services) 211, 2009 PLC (C.S) 471 and 2009 PLC (C.S) 477.


6. Conversely, learned Additional Advocate General has contended that the appellant was involved in a criminal case of Harraba, therefore, disciplinary action was taken against him in accordance with Police Rules, 1975 and after conducting of proper inquiry, he was rightly dismissed from service. He next contended that the acquittal of the appellant in criminal case cannot entitle him to be exonerated in disciplinary action taken against him by the competent Authority. He further argued that the departmental as well as service appeal of the appellant were badly time barred, therefore, on this score alone, the appeal in hand is liable to be dismissed. Reliance was placed on 2006 SCMR 554, 2010 SCMR 1982, 2012 SCMR 195, 2006 SCMR 453, 2013 SCMR 911 and 2013 PLC (C.S) 1071.

7. Arguments heard and record perused.

8. A perusal of record would show that the appellant was serving as Constable in Elite Police Force Khyber Pakhtunkhwa, when he was charged and arrested in criminal case bearing FIR No. 30 dated 18.01.2016 under section 17(3) Harraba registered at Police Station Oghi District Mansehra, therefore, disciplinary action was taken against the appellant and he was dismissed from service by the competent Authority vide order dated 30.05.2016. According to Article No. 194 of Civil Service Regulations, if a civil servant or employee has been charged for a criminal offence, he is to be considered under suspension from the date of his arrest and cannot be dismissed from service. CSR 194 is reproduced as below:-

*"A Government Servant who has been charged for a criminal offence or debt and is committed to prison shall be considered as under suspension from the date of his arrest. In case such a*

**ATTESTED**

  
**ATTORNEY GENERAL**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

*Government servant is not arrested or is released on bail, the competent Authority may suspend him, by specific order, if the charge against him is connected with his position as government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. During suspension period the Government servant shall be entitled to the subsistence grant as admissible under F.R-53".*


In the instant case, the respondents, without waiting for the outcome of the criminal case, have dismissed the appellant by ignoring Article 194 of CSR, therefore, the action taken by the department is not in consonance with Article 194 of Civil Service Regulations.

09. The disciplinary action was taken against the appellant on the ground that he was charged in Case FIR No. 30 dated 18.01.2016 under section 17(3) Harraba registered at Police Station Oghi, however the appellant has been admittedly acquitted in the said criminal case by learned Sessions Judge Torghar (at Oghi) vide judgment dated 17.10.2017. Nothing is available on the record, which could show that the acquittal of the appellant has been challenged by the department through filing of appeal before the higher forum. In this situation, the acquittal order of the appellant has attained finality. It is settled law that acquittal of an accused in a criminal case even if based on benefits of doubt would be considered as honourable. In case of dismissal of civil servant/employee on charges of registration of a criminal case, if the civil servant/employee is later on acquitted, then the dismissal cannot remain in field.

10. So far as the question of limitation is concerned, the appellant was acquitted in the criminal case vide order/judgment dated 17.10.2017 and after obtaining copy of the judgment on 27.10.2017, the appellant filed departmental appeal on 17.11.2017, which is within time. August Supreme Court of Pakistan in its judgment reported as PLD 2010 Supreme Court 695 has held as below:-

*"We may also observe in this context that the respondent had been acquitted in the criminal*


**ATTESTED**

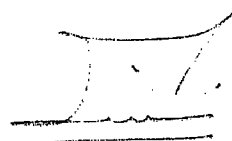
  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

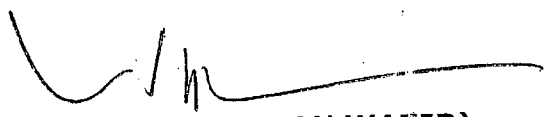
case on 22.09.1998 and he had filed his departmental appeal on 12.10.1998, i.e within three weeks of his acquittal in the relevant criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case we have found it to be unjust and oppressive to penalize the respondents for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service"

11. In light of the above discussion, the appeal in hand is accepted by setting-aside the impugned order of dismissal of the appellant and he is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

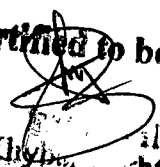
**ANNOUNCED**  
**29.06.2021**

  
(ROZINA REHMAN)  
MEMBER (JUDICIAL)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

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

**Certified to be true copy**

  
KHAIRODDIN  
Service Tribunal,  
Peshawar

Date of Presentation of Application 11/3/22  
Number of Words 2400  
Copying Fee 26/-  
Urgent 4/-  
Total 30/-  
Name of Copyholder -  
Date of Completion of Copy 11/3/22  
Date of Delivery of Copy 11/3/22

To  
The Dy Commandant  
Ehili Force, KPK,  
Peshawar

Subject:- Request of allowing to join duty.

Respected Sir, with due respect it is stated that the Honorable KPK Service Tribunal has rendered its judgment/decision announced in the open court in the presence of Representative of department on 29<sup>th</sup> 2021 Reinstated me in Service. But I have not been allowed to join my duties, rather CPL filing information status has been delivered through post on 6<sup>th</sup> 2021. In this regard it is requested that I may kindly be allowed to join duty conditionally and provisionally till the decision of CPL for the Honorable Supreme of Pakistan. Copy of decision & ch notice attached.

Thanking you Sir,

Yours obediently  
Momin Khan

Dated: 10/09/2021

Attested  
Momin Khan

Momin Khan  
90 Bonaras Khan  
Ex-Constable No. 2538  
Ehili force KPK  
90 village new Qazian  
KTS Teh & Distt Havelian

(29)

Amir-D

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. \_\_\_\_\_/2021

Provincial Police Officer, Khyber Pakhtunkhwa,  
Peshawar & Others

-----PETITIONERS

VERSUS

Momin Khan

-----RESPONDENT

NOTICE

To

*[Handwritten signature]*



Momin Khan S/o Banaras (Ex-Constable o.2536 Elite Police Force  
KPK) R/o Village new Qazian, K.T.S Tehsil & District Haripur

Please take notice Registered A/D post to the effect that I am filing  
CPLA with stay application in the above titled case against the judgment of  
the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated  
29/06/2021 in service appeal No.495/2018 before the Supreme Court of  
Pakistan in its Branch Registry at Peshawar.

(Moin-ud-Din Humayun)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

*[Handwritten signature]*



# وکالت نامہ

قیمتی

کورٹ فیس

بعدالت جناب *محمد منیر علی* پیر وکیل جو کہ *محمد منیر علی* کے وکیل کے طور پر

منجانب *Pedition* میں *محمد منیر علی* کے نام سے

*M. A. Khan*

محمد منیر علی



دعویٰ یا جرم *Execution* باعث تحریر آنکہ

*M. A. Khan*

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام

محمد منیر علی ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوں گا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے پر یا بروز پکھری کے اوقات کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپروٹاشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا نیگی علیحدہ پیروی مختار نامہ کرینکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا پیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سند ہے مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

Accepted  
M. A. Khan

مورخہ: 11 مارچ 2022ء

*M. A. Khan*

محمد منیر علی