


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

16.06.2022

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.08/2022

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 14.10.2021, in service appeal No. 500/2019. The findings in the judgment were followed by the operative part as copied below:-

"In light of the above discussion, the appeal in hand is partially allowed and the impugned orders are modified by converting major penalty of compulsory retirement from service into minor penalty of forfeiture of two years approved service. The appellant stands reinstated into service from the date of his compulsory retirement, however, the intervening period shall be treated as leave without pay."

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



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.

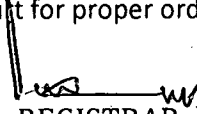


**District Police Officer
Mansehra**

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 08/2022

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. Mohammad Mazhar 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>

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 08/2022.....

Muhammad Mazhar S/O Jangraiz Khan (Head Constable No. 41, District Police Mansehra) R/O village Jiya Maira, P.O. College Doraha, Tehsil and District Mansehra.....**(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. 500/2019.

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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 14-10-2021	"B"	14-19
4.	Duty Report Dated 29-10-2021 and Copy of CPLA Notice.	"C&D"	20 21
5.	Wakalatnama		

THROUGH

PETITIONER

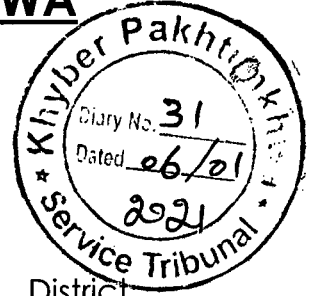
MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
HARIPUR

Dated 08-01-2022

1

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Execution petition No.....08/2022.....



Muhammad Mazhar S/O Jangraiz Khan (Head Constable No. 41, District Police Mansehra) R/O village Jiya Maira, P.O. College Doraha, Tehsil and District Mansehra.....(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. 500/2019 FOR
IMPLEMENTATION OF JUDGMENT/DECISION DATED 14-10-2021
OF THIS HONOURABLE SERVICE TRIBUNAL ON CONDITIONAL
AND PROVISIONAL BASIS TILL OUTCOME OF CPLA (IF ANY)
FILED BY RESPONDENTS/POLICE DEPARTMENT AGAINST
PETITIONER.**

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal before this Honorable Service Tribunal against the orders of Respondents whereby appellant was Compulsorily Retired from service and his departmental appeal was rejected in flagrant

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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. 500/19 issued the judgment/decision dated 14-10-2021 that "the appeal in hand is partially allowed and impugned orders are modified by converting major penalty of compulsory retirement from service into minor penalty of forfeiture of two years approved service. The appellant stands reinstated into service from the date of his compulsory retirement, however the intervening period shall be treated as leave without pay". **(Copy of judgment/order dated 14-10-2021 is attached as Annex-"B")**.
3. That on receipt of attested copy of the judgment/decision dated, the appellant reported for duty on 29-10-2021. **(Copy of duty report is attached as Annexure-"C")**.
4. That Respondents instead of taking appellant on duty has issued an un-dated and un-signed Notice stating therein that they are going to file CPLA with

③

stay application against the judgment of Honorable KPK Service Tribunal Peshawar dated 14-10-2021 before the Supreme Court of Pakistan in its Branch Registry at Peshawar. **(Copy of the Notice is attached as Annexure "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. 14-11-2016 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, they are reluctant to allow appellant to join his duties as decided by this Honorable Tribunal even on conditional and provisional basis subject to out come of CPLA (if any) filed by Respondent's/ Police Department against the petitioner. Hence this Execution Petition on the following:

GROUNDS:

- A) That as this Honorable Service Tribunal in its judgment dated 14-10-2021 had ordered that "that the appeal in hand is partially

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allowed and impugned orders are modified by converting major penalty of compulsory retirement from service into minor penalty of forfeiture of two years approved service. The appellant stands reinstated into service from the date of his compulsory retirement, however the intervening period shall be treated as leave without pay".

- B) That there is no stay order from the Apex Supreme Court of Pakistan against the judgment and order dated 14-10-2021 of this Honorable Service Tribunal and order is in the field. Respondents must comply with the said order.
- C) That departmental authorities/respondents are not paying any heed to the decision dated 14-10-2021 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

(5)

the light of decision dated 14-10-2021 of this Honorable Service Tribunal.

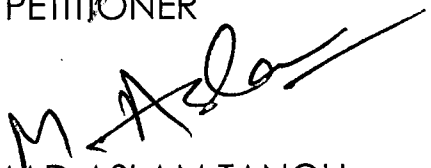
- E) That instant execution petition is well within time and this Honorable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

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 be respondents to allow the petitioner to join his duties in the light of judgment/decision dated 14-10-2021 of this Honorable Service Tribunal.


PETITIONER

THROUGH


MOHAMMAD ASLAM TANOLI
ADVOCATE HIGH COURT
AT HARIPUR

AFFIDAVIT

I, Muhammad Mazhar S/O Jangraiz 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 Tribunal.

Dated: 06-01-2022




DEPONENT

(6)

Annex-A

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 500/19.....

Mohammad Mazhar S/O Jangraiz Khan (Ex-Head Constable No. 41 District Mansehra) R/O Village Jiya Maira, P.O. College Doraha, Tehsil & District Mansehra.

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 ORDER DATED 14-11-2016 OF THE DISTRICT POLICE OFFICER MANSEHRA WHEREBY APPELLANT HAS BEEN COMPULSORILY RETIRED FROM SERVICE AND ORDER DATED 13-12-2018 OF REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD WHEREBY APPELLANT'S DEPARTMENTAL APPEAL HAS BEEN REJECTED.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL IMPUGNED ORDERS DATED 14-11-2016 AND 13-12-2018 OF THE RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF COMPULSORILY RETIREMENT WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully Sheweth:-

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

1. That the appellant was enrolled as Constable in the Police Department on 15-09-1999 and subsequently promoted to the rank of Head Constable.

Attested
by
[Signature]

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2. The appellant always performed his assigned duties with devotion, dedication and honesty. Appellant was awarded with commendation certificates and cash rewards on occasions for his tremendous service by his High-Ups. He has meritorious service record at his credit.
3. That to bad of his luck, while appellant posted as Head Constable (Quick Response Force) at Police Station Mansehra the illness of his son took a serious turn and he was in acute constrain thus applied for grant of 15 days leave vide application dated 18-08-2016. **(Copy of application dated 18-08-2016 is attached as Annex-"A")**.
4. That appellant waited for sanction of his applied leave till 07-09-2016 but finding no response to his genuine request he had to proceed on leave for medical treatment of his ailing son. He informed and took permission from his Incharge/SHO PS City Mansehra.
5. That when circumstanced did not allow the appellant to join his duty, then he in continuation of his previous request, submitted another application for grant of further 02 (two) months Earned Leave on 22-09-2016 **(Copy of application dated 22-09-2016 is attached as Annex-"B")**.
6. That the District Police Officer Mansehra instead of taking into consideration the genuine request of appellant on humanitarian grounds resorted to a very harsh and unjust

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action by awarding the appellant with major penalty of compulsorily retirement from service vide order dated 14-11-2016 and that too without conducting any proper departmental inquiry, issuing of charge sheet and show cause notice etc. Even opportunity of personal hearing was not afforded to the appellant. **(Copy of order dated 14-11-2016 of DPO Mansehra is attached as Annex-"C")**.

7. That appellant remained incessantly busy and had to spend colossal amount on the medical treatment of his ailing son. He had to suffer mentally, financially as well physically due to the very reason thus earlier could not file a departmental appeal to the Regional Police Officer Abbottabad. **(Copies of the Medical Treatment's documents are attached as Annex-"D/1 to D/43")**.
8. That when appellant found a sigh of relief he filed a department appeal dated 13-11-2018 before the Regional Police Officer, Hazara Region, Abbottabad against the impugned order dated 14-11-2016 passed by the DPO Mansehra. **(Copy of departmental appeal dated 13-11-2018 is attached as Annex-"E")**.
9. That even the appellate authority/Regional Police Officer, Hazara Region, Abbottabad without considering the appellant's genuine cause rejected the appeal vide his order dated 13-12-2018. **(Copy of order dated 13-12-2018 of the RPO Abbottabad is attached Annex-"F")**.

Attested
[Signature]

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10. That though the appellant's departmental appeal was rejected on 13-12-2018 but its copy was delivered to him on 03-04-2019 and that too on the specific request of appellant dated 18-03-2019 (**Copy of application dated 18-03-2019 is attached as Annex-"G"**), hence this service appeal on following amongst other grounds:-

GROUND:

- A) That impugned orders dated 14-11-2016 and 13-12-2018 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 respondents of which conduction was mandatory under law before awarding appellant with major penalty of compulsorily retirement from service. No Show Cause

Attested
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[Signature]

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Notice was issued to the appellant. 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 for which the appellant has been awarded with the major punishment of compulsorily retirement from service are incorrect. Appellant did not absent himself willfully or without reason, he applied for grant of long leave due to serious illness his son whose life was in danger and the appellant in a state of compulsion had to proceed on leave. His officers did not took appellant's circumstances seriously and he was penalized harshly and unjustly in a haste against the law, departmental rules & regulations, procedure, facts and principles of natural justice, 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 all the opportunities/chances of defense laid down by

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the law. That appellant is jobless since his compulsorily retirement and only source of his living is pension.

PRAYER:

It is therefore, humbly prayed that on acceptance of instant appeal the impugned orders dated 14-11-2016 and 13-12-2018 of the respondents may graciously be set aside and the appellant be reinstated in his service from the date of compulsorily retirement 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.

THROUGH


APPELLANT


(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
HARIPUR

Dated: 12-04-2019

VERIFICATION

I, Mohammad Mazhar S/O Jangraiz Khan 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: 12-04-2019


Deponent/Appellant

Attested


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BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Mohammad Mazhar S/O Jangraiz Khan (Ex-Head Constable
No. 41 District Mansehra) R/O Village Jiya Maira, P.O. College
Doraha, Tehsil & District Mansehra.

Appellant

VERSUS

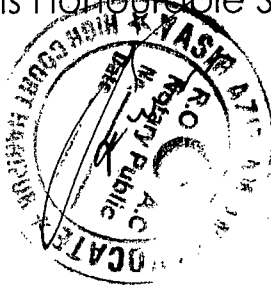
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

AFFIDAVIT:


I, Mohammad Mazhar S/O Jangraiz Khan 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.



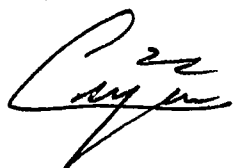

Deponent/Appellant

Dated: 12-04-2019

Identified By:


Mohammad Aslam Tanoli
Advocate High Court
At Haripur,


Appellant

Attested




(13)

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Mohammad Mazhar S/O Jangraiz Khan (Ex-Head Constable
No. 41 District Mansehra) R/O Village Jiya Maira, P.O. College
Doraha, Tehsil & District Mansehra.

Appellant

VERSUS

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

Respondents

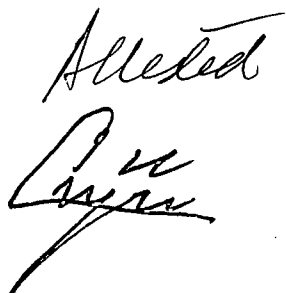
SERVICE APPEAL

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.

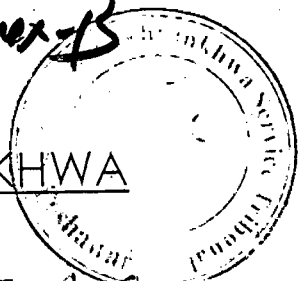

APPELLANT

Dated: 12-04-2019



(14)

Annex-B



BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 500/19

Mohammad Mazhar S/O Jangraiz Khan (Ex-Head Constable No. 41 District Mansehra) R/O Village Jiya Maira, P.O. College Doraha, Tehsil & District Mansehra.

Appellant
Khyber Pakhtunkhwa Service Tribunal
Diary No. 608

VERSUS

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

Dated 12/4/2019

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT-1974 AGAINST ORDER DATED 14-11-2016 OF THE DISTRICT POLICE OFFICER MANSEHRA WHEREBY APPELLANT HAS BEEN COMPULSORILY RETIRED FROM SERVICE AND ORDER DATED 13-12-2018 OF REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD WHEREBY APPELLANT'S DEPARTMENTAL APPEAL HAS BEEN REJECTED.

Filed to day
Registrar
12/4/19

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL IMPUGNED ORDERS DATED 14-11-2016 AND 13-12-2018 OF THE RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF COMPULSORILY RETIREMENT WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully Sheweth:-

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

1. That the appellant was enrolled as Constable in the Police Department on 15-09-1999 and subsequently promoted to the rank of Head Constable.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(15)

Amex-B

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD.

Service Appeal No. 500/2019

Date of Institution ... 12.04.2019

Date of Decision ... 14.10.2021



Mohammad Mazhar S/O Jangraiz Khan (Ex-Head Constable No. 41 District Mansehra) R/O Village Jiya Maira, P.O College Doraha, Tehsil & District Mansehra.

... (Appellant)

VERSUS

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

... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate

--- For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN


--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts giving rise to filing of the instant service appeal are that the appellant while serving as Head Constable was proceeded against departmentally on the allegations of his absence from duty with effect from 07.09.2016 till 14.11.2016. On conclusion of the inquiry, the appellant was awarded major penalty of compulsory retirement from service, which was

ATTESTED



Khyber Pakhtunkhwa
Services Tribunal
Peshawar

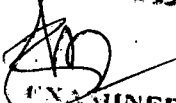
challenged by the appellant through filing of departmental appeal, however the same was filed by the appellate Authority, hence the instant service appeal.

2. Notice was issued to the respondents, who submitted their comments.

3. Learned counsel for the appellant has contended that as the son of the appellant was seriously ill and hospitalized, therefore, the appellant applied for leave, however the same was not responded, hence the appellant took verbal permission from the concerned SHO and went to hospital for attending his ailing son; that neither any show-cause notice nor any statement of allegations as well as charge sheet were issued to the appellant and thus the mandatory provisions of Khyber Pakhtunkhwa Police Rules, 1975 were not complied with in the so called inquiry conducted against the appellant; that whole of the proceedings were taken at the back of the appellant without providing him any opportunity of self defense or personal hearing; that the medical documents regarding the illness of son of the appellant were produced before the appellate Authority but the same were not considered and the appeal was dismissed without assigning any cogent reason; that the competent Authority has treated the period of absence of the appellant as leave without pay, therefore, the appellant could not have been awarded the punishment of compulsory retirement from service as the period of his absence was regularized by the competent Authority himself; that the impugned orders being wrong and illegal are liable to be set-aside. Reliance was placed on PLJ 2007 Tr.C (Services) 137, PLJ 2017 Tr.C (Services)

ATTESTED

100, PLJ 2013 Tr.C (Services) 68, 2008 SCMR 1369,


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

2013 SCMR 1053; 2016 PLC (C.S) 682, 2013 PLC (C.S) 1294 and 2015 Tr.C (Services) 241.

4. On the other hand, learned Additional Advocate General for the respondents has contended that the appellant remained absent from duty without any leave or permission of the competent Authority and has thus committed gross misconduct; that a regular inquiry was conducted in the matter against the appellant, however he did not opt to appear before the inquiry officer despite personal service; that the allegations against the appellant stood proved in a regular inquiry, therefore, he has rightly been awarded the penalty of compulsory retirement from service; that the departmental appeal of the appellant was time barred, therefore, the instant service appeal is not maintainable and liable to be dismissed on this score alone; that the competent Authority has treated the period of absence of the appellant from duty as leave without pay, however the same cannot be considered as regularization of his period of absence. Reliance was placed on 2020 PLC (C.S) 448.

5. Arguments heard and record perused.

6. A perusal of the record would show that the impugned penalty was awarded to the appellant on the ground that he remained absent from duty with effect from 07.09.2016 till 14.11.2016 without any leave or permission from the competent Authority. The appellant was issued charge sheet as well as statement of allegations and DSP Circle Shinkiari was nominated as inquiry officer in the matter. The copies of the notices issued to the appellant by the inquiry officer are available on record, which would show that the appellant did not bother to appear before the inquiry officer despite

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ATTESTED

EXAMINER
Khushal Paktukhwa
Service Tribunal
Peshawar

personal service on two occasions. The contention of learned counsel for the appellant that the appellant was not associated with inquiry proceedings is thus misconceived.

7. The contention of the appellant that the competent Authority has regularized the absence of the appellant by treating the same as leave without pay is also misconceived. August Supreme Court of Pakistan in its judgment reported as 2020 PLC (C.S) 448 has held as below:-

"9. Perusal of this office order would reflect that the competent authority in the first paragraph of office order has expressed its mind explicitly on the unauthorized absence of the respondent by imposing the major penalty of compulsory retirement from service with immediate effect. So far as the second portion of the office order is concerned, since the penalty imposed by the competent authority was of compulsory retirement which follows the payment of salaries and other dues till the date of imposing such penalty, therefore, in our opinion, it was necessary to give finding as to how such absence is to be treated, therefore, to say that since the un-authorized absence of the respondent was treated as extraordinarily leave in term of rule 9(3) of the Revised Leave Rules, 1980 does not appeal to our mind. If this would have been the case then the first paragraph of the office order would be redundant, on the contrary it categorically provides for the consequences of the un-authorized absence".

8. The appellant had applied for leave on the ground of severe illness of his son, however the same was not sanctioned. The appellant in his departmental appeal as well as in the instant appeal has taken the plea that it was on account of severe illness of the son of the appellant that he remained absent from duty. In this respect, he has also annexed copies of medical

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

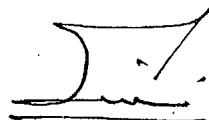
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treatment of his son. Although the charge of absence from duty is proved from the record as the appellant remained absent from duty without any sanctioned leave or prior permission of the competent Authority, however in the given circumstances, the penalty awarded to the appellant is too harsh and does not commensurate with the gravity of the misconduct committed by him.

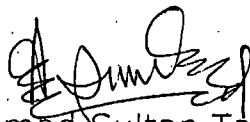
9. In light of the above discussion, the appeal in hand is partially allowed and the impugned orders are modified by converting major penalty of compulsory retirement from service into minor penalty of forfeiture of two years approved service. The appellant stands reinstated into service from the date of his compulsory retirement, however the intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

14.10.2021



(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad



(Ahmad Sultan Tareen)
Chairman
Camp Court Abbottabad

Date of Presentation of Application 21/10/2021
Number of Words 2400
Copying 26/-
Urgent 26/-
Total 26/-
Name of Clerk _____
Date of Completion of Copy 25/11/21
Date of Delivery of Copy 25/11/21

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Annex-C

To

The District Police Officer,
Mansehra.

Sub:- DEUTY REPORY.


R/Sir,

With most reverence and humble submission it is stated:-

1. That while appellant serving the department as Head Constable was compulsorily retired from service vide District Police Officer Mansehra order dated 14-11-2016 on the charge of absence which order was appealed against before the Regional Police Officer, Hazard Range, Mansehra but was filed on 13-12-2018.
2. That appellant aggrieved of both the orders filed a Service Appeal No. 500/2019 dated 12-04-2019 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was partially accepted vide judgment/order dated 14-10-2021 and the appellant was re-instated in service from the date of compulsory retirement. **(Copy of judgment/order dated 14-10-2021 is attached herewith).**
3. That in view of the above judgment/order I do hereby report for duty.

It is, therefore, requested that I may very kindly be allowed to join my duty in the light of judgment/order dated 14-10-2021 of the KPK Service Tribunal Peshawar and obliged.

Your obedient servant


(Muhammad Mazhar)
Head Constable No.4
District Mansehra

Address: Village Jiya Maira
PO College Doraha
Tehsil & District Mansehra

Cell No. 0313-2975375

Dated: 29-10-2021

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Annex-1

Better Copy
attached

(Better Copy)

**IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

CPLA NO...../2021

**Provincial Police Officer Khyber Pakhtunkhwa
Peshawar & Others.**

.....PETITIONERS

VERSUS

Muhammad Mazhar

.....RESPONDENT

NOTICE

**Muhammad Mazhar S/O Jangraiz Khan (Ex-Head Constable No.41
District Mansehra R/o Village Jiya Maira, P.O. College Doraha , Tehsil
& District Mansehra .**

**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'able Khyber Pakhtunkhwa Service Tribunal Camp Court
Abbottabad dated 14-10-2021 in Service Appeal No.500/20219 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**

وکالت نامہ

قیمتی

کورٹ فیس

بعدالت جناب جسٹسین سپریم کورٹ پاکستان اسلام آباد

مخالف: امداد / Petitioner / محمد مظہر شیخ
KPK PPO/19K & others

دعویٰ یا جرم Execution Petition باعث تحریر آنکہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام ایسٹ آباد / نیکسار

محمد اکرم کونوی ایڈووکیٹ و وکیٹ 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 ہوا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ یا کچہری کے مقرر اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری 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 ہونگے۔ مجھے کل ساختہ پر داختہ 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 اجرا 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 اقتناعی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا ہوگی 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 ہونگے 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 لیا کہ سدرے مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

Accepted
M. Ade

مورخہ: 6 جنوری 2022ء

العیاذ باللہ العلی و العزیز

محمد مظہر شیخ
(Mohammad Mazhar)
Petitioner