

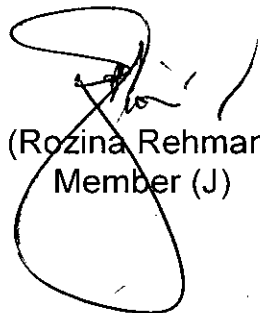
11.05.2022

Petitioner alongwith his counsel present.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Muhammad Ayaz S.I (Legal) for respondents present.

At the very outset implementation report in respect of reinstatement of petitioner as Driver Constable was produced before the Tribunal. The petitioner requests for withdrawal of the instant execution proceedings in view of order dated 21.02.2022; allowed. Hence, the instant execution petition stands filed being satisfied. No order as to costs. File be consigned to the record room.

Announced.
11.05.2022

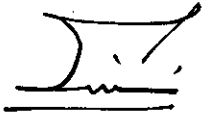

(Rozina Rehman)
Member (J)

11.01.2022

Learned counsel for the petitioner present. Mr. Sohail Aziz, Reader alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents.

Representative of respondents stated at the bar that the judgment under execution has been challenged through filing of CPLA before the august Supreme Court of Pakistan.

In this view of the matter, in case no order of suspension of the judgment under execution has been passed by august Supreme Court of Pakistan, the respondents are required to pass a conditional order of implementation of the judgment dated 01.08.2018 passed by this Tribunal, which of course will be subject to outcome of the CPLA. To come up for implementation report on 24.02.2022 before S.B.



(Salah-Ud-Din)
Member (J)

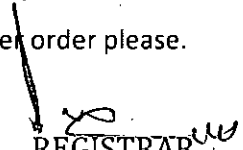

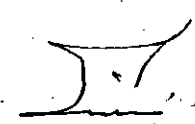
24.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 11.05.2022 for the same as before.

Reader.

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 238 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.10.2021	<p>The execution petition of Mr. Sayyed Abid Shah submitted today by Mr. Mir Zaman Safi Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>19/11/21</u>.</p> <p> CHAIRMAN</p>
	19.11.2021	<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on 11.01.2022 before the S.B.</p> <p> (Salah-Ud-Din) Member (J)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 238 /2021

In
Appeal No. 38/2015

SAYYED ABID SHAH

VS

POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	1- 2.
2-	Affidavit	3.
3-	Judgment	A	4- 6.
4-	Vakalat nama	7.

PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

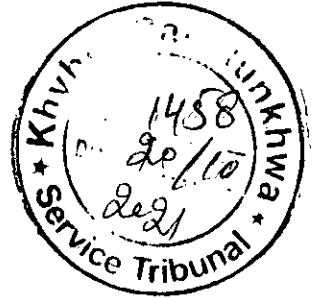
MOBILE NO.0323-9295295

0317-9743003

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 238 /2021

In
Appeal No. 38/2015



Mr. Sayyed Abid Shah, Ex-Driver Constable No. 667/SB,
Special Branch, District Peshawar.

..... PETITIONER

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Additional Inspector General of Police (Special Branch), Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent of Police (Administration) Special Branch, Peshawar.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 01.08.2018 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 38/2015 before this august Service Tribunal against the impugned order dated 05.11.2014.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 01.08.2018 and was decided in favor of the petitioner vide judgment dated 01.08.2018 with the view that *“As a sequel to the above, we are constrained to partially accept the present appeal and modify the impugned order of dismissal from service into stoppage of two increments for a period of three years. The absence period as well as intervening period is treated as leave without pay”*. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 01.08.2018 the petitioner submitted the same before the respondents for implementation but till date the judgment of this Tribunal has not been implemented by the respondent in letter and spirit.
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment dated 01.08.2018 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER

Abid
SAYYED ABID SHAH

THROUGH:

M. Zaman Safi
**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2021

In

Appeal No. 38/2015

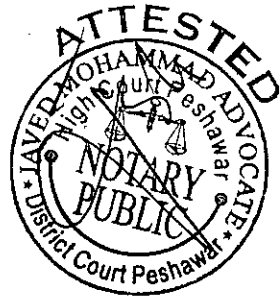
SAYYED ABID SHAH

VS

POLICE DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.




MIR ZAMAN SAFI
ADVOCATE

A-4



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 38 /2014

Mr. Sayyed Abid Shah, Ex-Driver Constable No.667/SB,
Special Branch, District Peshawar **Appellant**

VERSUS

- 1- The Govt of Khyber Pakhtunkhwa through Inspector General of Police Khyber Pakhtunkhwa Peshawar.
- 2- The Additional Inspector of Police (Special Branch) Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police (Administration) Special Branch Peshawar.

..... **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER
PAHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED 05.11.2014
WHEREBY THE APPELLANT WAS DISMISSED FROM
SERVICE BY THE RESPONDENT NO.3 WITH OUT
SPECIFYING THE LAW UNDER WHICH THE
APPELLANT WAS PROCEEDED AND AGAINST THE
APPELLATE ORDER DATED 28-11-2014 WHEREBY
THE DEPARTMENTAL APPEAL OF THE APPELLANT
HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 05.11.2014 and 28-11-2014 may very kindly be set aside and the respondents may be directed to reinstate the appellant with all back benefits. Any other remedy which this august court deems fit may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1- That the appellant was enrolled as Driver Constable in the respondent Department in the year 2007. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

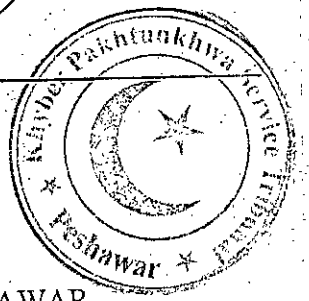
2- That appellant while working as Driver/ Constable in the respondent Department have become serious ill. That on account of his illness the appellant visited the Doctor and in

re-submitted to court and filed.

ATTESTED

INSPECTOR
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 38/2015

Date of Institution ... 26.12.2014

Date of Decision ... 01.08.2018

Sayed Abid Shah, Ex-Driver Constable No. 667/SB,
Special Branch, District Peshawar. ... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Inspector General of
Police Khyber Pakhtunkhwa Peshawar and two others. ... (Respondents)

MR. NOOR MOHAMMAD KHATTAK,
Advocate --- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney --- For respondents

MR. AHMAD HASSAN, --- MEMBER (Executive)
MR. MUHAMMAD HAMID MUGHAL --- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. The brief facts of the case are that the appellant joined the Police Department as
Constable in the year 2007. On the allegations of absence from duty he was dismissed
from service vide impugned order dated 05.11.2014. Feeling aggrieved, he filed
departmental appeal on 07.11.2014, which was rejected on 28.11.2014, hence, the instant
service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that he fell ill and was advised bed rest
by the doctor but leave on medical grounds was refused by the respondents. That
disciplinary proceedings were initiated against the appellant and upon culmination he was
dismissed from service vide impugned order dated 05.11.2014. Various formalities given
in the vogue rules for conducting inquiry were not followed by the respondents in its true

ATTESTED

[Handwritten signature and stamp]

spirit, hence, the impugned order was against the law, facts and norms of natural justice, hence, not sustainable in the eyes of law. Learned counsel for the appellant further argued that punishment awarded to the appellant did not commensurate with his guilt and was too harsh.

4. Learned Deputy District Attorney argued that on account of willful absence from duty and production of bogus medical certificate, the appellant was proceeded departmentally and major penalty of dismissal from service was imposed on him after observance of all codal formalities.

CONCLUSION:

5. The appellant is guilty of absence from duty and production of fake medical certificate to get leave on medical grounds. The inquiry officer in his report conceded that because of some mental disorder he remained under treatment. One thing is established beyond doubt that the appellant was suffering from mental disorder so the respondents should have considered his request for leave on medical grounds. Even under the Leave Rules 1981 leave on medical grounds could not be refused. We are inclined to agree with the plea of the learned counsel for the appellant that penalty awarded was too harsh and did not commensurate with his guilt.

6. As a sequel to the above, we are constrained to partially accept the present appeal and modify the impugned order of dismissal from service into stoppage of two increments for a period of three years. The absence period as well as intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

Certified to be true copy

Secretary
Tribunal
Peshawar

Pa

(MUHAMMAD HAMID MUGHAL)
MEMBER

(Signature)

(AHMAD HASSAN)
MEMBER

ANNOUNCED
01.08.2018

VAKALATNAMA

BEFORE THE Khyber Pakhtunkhwa Service Tribunal
Peshawar

OF 2021

Sayed Abid Shah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Sayed Abid Shah

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021

Abid
CLIENT

M. Zaman Safi
ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0323-9295295

ORDER

This order is passed in compliance with the Judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 01.08.2018 passed in Service Appeal No. 38/2015 filed by Syed Abid Shah Ex-Driver Constable (hereinafter referred as accused officer) against impugned Order of dismissal from Service under the Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014) vide Order dated 05.11.2014. Facts in brief leading to the instant departmental action of imposing Major Punishment of Dismissal from Service against the accused officer are as follows:-

Accused officer was serving as Driver Constable in this establishment and he absented himself from duty on different occasions/intervals from 11.02.2014 to 27.04.2014 & 27.05.2014 to 05.06.2014 (total 86 days) without any kind of leave and was still absent. He also submitted medical prescriptions from Medical Officer of District Headquarter Hospital Mardan to get medical leave however both the MCs have been verified through field staff of AGO Special Branch Mardan and found bogus. Proper departmental proceedings under Police Rules 1975 were initiated against him and after enquiry he was found guilty as unwilling worker and dismissed from service with immediate effect on 05.11.2014. He preferred representation on 07.11.2014 but was rejected by the competent authority i.e. DIG Special Branch. Resultantly he filed service appeal in the Khyber Pakhtunkhwa Service Tribunal Peshawar.

The Hon'ble Service Tribunal partially accepted his appeal on 01.08.2018 and reinstated the accused officer while modifying the impugned Order of Dismissal from Service into stoppage of two (02) Annual Increments for a period of three (03) years. The absence period as well as intervening period is treated as leave without pay.

Department approached law department for lodging appeal/CPLA wherein the Scrutiny Committee headed by Secretary to the Government of Khyber Pakhtunkhwa Law Department approved the case hence CPLA against the impugned Judgment/Order has been filed by this establishment in the august Supreme Court of Pakistan.

In the meanwhile, accused officer filed Execution Petition No. 238/2021 in Service Appeal No. 38 of 2015 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar for implementation of the judgement. Case was fixed for hearing on 11.01.2021 wherein the Hon'ble Tribunal directed for implementation of the Judgment with the following remarks passed:-

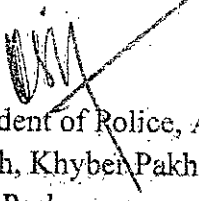
“Representative of respondents stated at the bar that the judgment under execution has been challenged through filing of CPLA before the august Supreme Court of Pakistan.

In this view of the matter, in case no order of suspension of the judgment under execution has been passed by august Supreme Court of Pakistan, the respondents are required to pass a conditional order of implementation of the judgment dated 01.08.2018 passed by this Tribunal, which of course will be subject to outcome of the CPLA. To come up for implementation report on 24.08.2022 before S.B.

Proper guidance was sought from CPO vide letter No. 55/Legal/SB dated 04.02.2022 and the competent authority directed to implement the judgment dated 01.08.2018 conditionally and provisionally subject to outcome of CPLA vide letter No. 887/Legal dated 09.02.2022.

As the Hon'ble Tribunal is pressing hard and directed for implementation of the Judgment and to come up for report in compliance on 24.02.2022 therefore, the judgment has become final and there is no other option but to implement the judgment hence is provisionally

implemented and Syed Abid Shah Ex-Driver Constable is re-instated in service with immediate effect with stoppage of two (02) Annual increments for a period of three (03) years. The absence period as well as intervening period is treated as leave without pay. Further the accused officer shall submit proper affidavit on stamp paper that he will return the payment made to him if CPLA was accepted.


Superintendent of Police, Admn,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

No. 1595 /EB dated, the Peshawar /21/02/2022
Copy of the above is forwarded to all concerned.