

07.02.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 28.03.2022 before S.B for the same.


Reader

28.03.2022

Clerk of learned counsel for the petitioner present. Mr. Kabirullah Khattak Addl: AG alongwith Mr. Fayaz, HC for respondent present.

Clerk of learned counsel for the petitioner seeks adjournment on the ground that learned counsel is not available today. Adjourned. To come up for further proceedings on 01.06.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER(E)

Ist June,

Counsel for the petitioner present. Mr. Fayaz H.C for the respondents present.

Compliance report submitted. This Execution Petition is filed. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this Ist day of June, 2022.*




(Kalim Arshad Khan)
Chairman

01.11.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Fayaz H.C and Rafaqat Asstt. for the respondents present.

Representatives of the respondents state that against the judgment under execution CPLA has been filed before the august Supreme Court of Pakistan. If the respondents fail to get the judgment suspended as a matter of interim relief till next date, they will be under obligation to implement the judgment under execution subject to decision of CPLA and submit compliance report on next date, positively. Case to come up on 16.12.2021 before the S.B.


Chairman

16.12.2021

Petitioner alongwith his ccounsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Fayaz, HC for respondents present.

Respondent-department produced copy of the office order dated 14.12.2021 whereby judgement of the Service Tribunal dated 29.03.2021 has been provisionally implemented subject to the outcome of CPLA by the august Supreme Court of Pakistan. Copy of the order is placed on file as well as handed over to the learned counsel for the petitioner. To come up for further proceedings on 07.02.2022 before S.B.

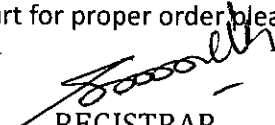



(MIAN MUHAMMAD)
MEMBER (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 150 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.08.2021	<p>The execution petition of Mr. Suleman Ahmad submitted today by Mr. Fazal Shah Mohmand 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 S. Bench at Peshawar on <u>24/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	24.09.2021	<p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents. To come up for implementation report on 01.11.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

ORDER

In compliance with the order of Honorable Service Tribunal, Peshawar dated 29.03.2021, wherein the order passed by the then DPO Nowshera on 25.01.2010 is set aside and the punishment of stoppage of 02 increments with cumulative effect is hereby restored to Constable Salman Ahmad No. 32. However, this order will be subject to the outcome of CPLA.

OB No. 1267
Dated 14/12 /2021


**District Police Officer,
Nowshera**

No. 3543-45/PA, dated Nowshera the 14/12/2021.

Copy for information and necessary action to the:-

1. Pay Officer.
2. Establishment Clerk.
3. FMC.

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Implementation Petition No _____/2021

In

Service Appeal No 1493/2018

Suleman Ahmad.....**Applicant/Appellant.**

V E R S U S

R.P.O and Others.....**Respondents**


I N D E X

S.No	Description of documents	Annexure	Pages
1.	Implementation Petition with Affidavit		1-2
2.	Copy of the Order and Judgment dated 29.03.2021	A	3-7
3.	Wakalat Nama		8

Dated:-23.08.2021


Applicant/Petitioner

Through


FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

OFFICE:-
Cantonment Plaza Flat# 3/B
Khyber Bazar Peshawar.
Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

-1-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR.

Implementation Petition No 150 /2021

In

Service Appeal No 1493/2018



Suleman Ahmad, Constable No 32, District Police Nowshera.

.....Applicant/Appellant.

VERSUS

1. Regional Police Officer, Mardan.
2. District Police Officer, Nowshera.
3. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.

.....Respondents

**PETITION FOR THE IMPLEMENTATION OF
ORDER/JUDGMENT DATED 29.03.2021 PASSED
BY THIS HONORABLE TRIBUNAL IN THE ABOVE
TITLED SERVICE APPEAL.**

Respectfully Submitted:-

1. That the applicant/appellant earlier filed Service Appeal No 1493/2018 for restoration of two increments and also against fine of Rs.1000 which was accepted as prayed for. **(Copy of the Order and Judgment is enclosed as Annexure A).**
2. That the applicant/appellant time and again approached respondents for the implementation of the Order and Judgment of this honorable Tribunal but of no use and the appellant has not been treated as per the Judgment of this honorable tribunal.

3. That the respondents are not ready to implement the Order and Judgment of this honorable Tribunal dated: ^{29-3-21, E.} in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Orders and Judgment dated 29.03.2021 of this honorable Tribunal.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order and Judgment of this honorable Tribunal dated 29.03.2021 passed in Service Appeal No 1493/2018.

Dated:-23.08.2021

MS
Applicant/Petitioner

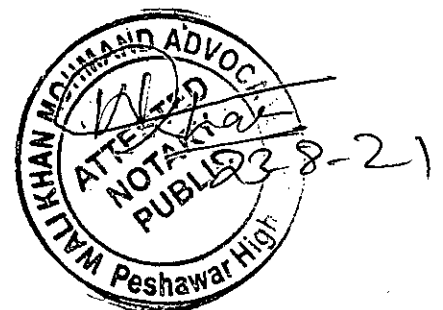
Through

MS
FAZAL SHAH MOHMAND
ADVOCATE,
SUPREME COURT OF PAKISTAN.

AFFIDAVIT

I, Suleman Ahmad, Constable No 32, District Police Nowshera, do hereby solemnly affirm and declare on oath that the contents of the accompanying Implementation Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

MS
DEPONENT



ORDER

In compliance with the order of Honorable Service Tribunal, Peshawar dated 29.03.2021, wherein the order passed by the then DPO Nowshera on 25.01.2010 is set aside and the punishment of stoppage of 02 increments with cumulative effect is hereby restored to Constable Salman Ahmad No. 32. However, this order will be subject to the outcome of CPLA.

OB No. 1267

Dated 14/12 /2021


District Police Officer,
Nowshera

No. 3543-45/PA, dated Nowshera the 14/12/2021.

Copy for information and necessary action to the:-

1. Pay Officer.
2. Establishment Clerk.
3. FMC.

ORDER

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OB No. 1267

Dated 14/12 /2021


District Police Officer,
Nowshera

No. 3543-45/PA, dated Nowshera the 14/12/2021.

Copy for information and necessary action to the:-

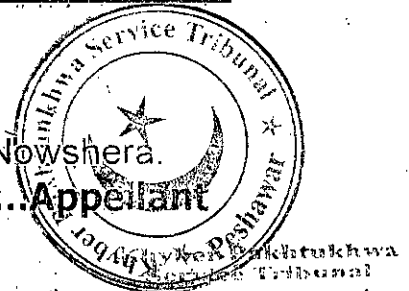
1. Pay Officer.
2. Establishment Clerk.
3. FMC.

"A" - 3 -

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1493/2018

Suleman Ahmad, Constable No 32, District Police Nowshera.



Appellant

V E R S U S

1. Regional Police Officer, Mardan
2. District Police Officer Nowshera.
3. Provincial Police Officer KPK Peshawar.....**Respondents**

Diary No. 1724

Dated 05/12/18

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 07-09-2018 PASSED BY RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 20-01-2010 OF RESPONDENT NO 2 HAS BEEN REJECTED/FILED.

PRAYER:-

On acceptance of this appeal the impugned orders dated 07-09-2018 of respondent No 1 and Order dated 20-01-2010 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be restored his 2 increments and the fine of Rs 1000/- imposed upon the appellant may not be recovered from him.

Respectfully Submitted:-

1. That the appellant was enlisted as Constable on 01-08-2008 in District Police Nowshera, remained posted to various Stations and since then he performed his duties with honesty and full devotion.
2. That in the year 2009, the appellant while posted as Gun man with SSP was awarded minor punishment of stoppage of 2 increments with accumulative effect and fine of Rs. 1000/- on the allegations that he absented himself from Muharram duty on 19-12-2009, by respondent No 2 vide order date 20-01-2010, however the appellant was never informed about the same. (Copy of Order dated 20-10-2010 is enclosed as Annexure A).
3. That the appellant after coming to know of the punishment on when deductions started from his salary in April 2018, preferred departmental appeal before respondent No.1 dated Nil which was rejected vide order dated 07-09-2018, copy of which has not been communicated to the appellant however, the appellant obtained copy of the same on 15-11-2018. (Copy of

Signature
5/12/18

ATTESTED
Signature
EXAMINER
Peshawar Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1493/2018

Date of Institution ... 05.12.2018
Date of Decision ... 29.03.2021



Suleman Ahmad, Constable No.32, District Police Nowshera.
... (Appellant)

VERSUS

Regional Police Officer, Mardan and two others.
... (Respondents)

Fazal Shah Mohmand,
Advocate ... For appellant.

Kabir Ullah Khattak,
Additional Advocate General ... For respondents.

ROZINA REHMAN ... MEMBER (J)
ATIQU UR REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER: Appellant was a constable. He was awarded punishment of stoppage of two increments with fine of Rs.1000-/. It is the legality and validity of this order which has been challenged by him in the instant service appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. The relevant facts leading to the instant appeal are that appellant was enlisted as Constable who was posted as Gunman with S.S.P in the year 2009. He was awarded minor punishment of

ATTESTED

MEMBER (E)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


stoppage of two increments with accumulative effect with Fine of Rs. 1000/- on the allegations that he remained absent from Moharram duty on 19.12.2009. He came to know about the said punishment in April, 2018 when deductions were made from his salary. He, therefore, preferred departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Mr. Fazal Shah Mohmand Advocate and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Mr. Fazal Shah Mohmand Advocate learned counsel appearing on behalf of appellant, inter-alia, argued that the impugned orders are illegal and against law as mandatory provisions of law were badly violated by the respondents and appellant was not treated according to law. Learned counsel argued that neither charge sheet nor show cause notice was served upon appellant who was condemned unheard. It was further argued that no inquiry was conducted in order to find out the real facts of the case and the impugned order was passed which is not maintainable in the eyes of law.

5. Conversely, learned A.A.G argued that the order passed by the competent authority is in accordance with law. He argued that strict directions had been issued by the competent authority in respect of performance of duties during Muharram, therefore, the appellant was informed for compliance of the said orders but he did not bother to


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ensure his arrival at Police Lines Nowshera and that after fulfillment of all legal and codal formalities, he was awarded appropriate punishment which does commensurate with the gravity of misconduct of the appellant.

6. Perusal of record would reveal that vide order dated 25.01.2010 appellant was awarded minor punishment of stoppage of two increments with accumulative effect and fine of Rs. 1000/- as he did not bother to obey the lawful orders of the senior and absented himself from his duties. Nothing was brought on record that any show cause notice, charge sheet or statement of allegations were ever served upon appellant. Similarly, not an iota of evidence was produced before this Bench in order to show that before awarding punishment, any inquiry was conducted according to law. As per record, the deductions from the salary of the appellant was made in April, 2018, therefore, the stance of appellant is very much clear that the impugned order dated 25.01.2010 was never communicated to the appellant for the reasons best known to the respondents and after getting knowledge regarding deduction from his salary, he preferred departmental appeal which was rejected on 07.09.2018. Learned A.A.G produced different documents in shape of different Naqalmads at this belated stage when case was fixed for arguments and order. It is even otherwise a matter of recurring pecuniary benefits, the appellant has a continual cause of action.


ATTESTED

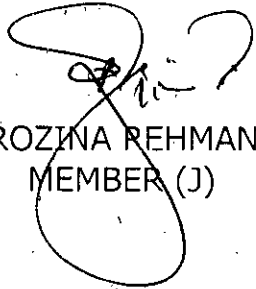

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


-7-

7: In view of the foregoing reasons, we allow this appeal as prayed for. No order as to costs. File be consigned to the record room.

ANNOUNCED.
29.03.2021

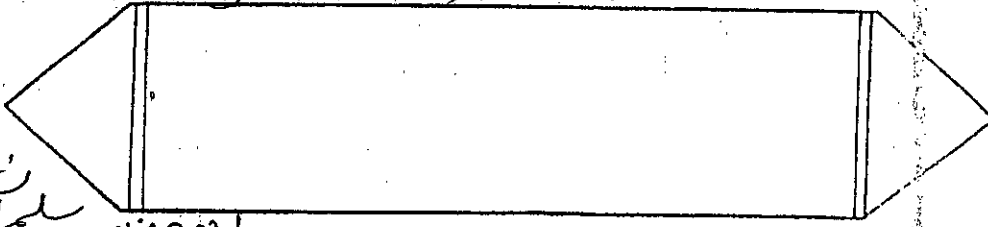

(ATIQU UR REHMAN WAZIR)
MEMBER (E)


(ROZINA REHMAN)
MEMBER (J)

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30/3/21
Number of Words 2000
Copying Fee 22/-
Urgent _____
Total 22/-
Name of Copyist _____
Date of Completion of Copy 13/4/21
Date of Delivery of Copy 13/4/21

بعدالت جناب مسرور سن ٹریبونل کے دور



سید سلیمان احمد

2021ء پنجاب

سید سلیمان احمد بنام R.P.O وٹیرو

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مخبرہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ محمد ضلفر الدین کے آج مقام سوات کیلئے مفضل شاہ سمندر ASC + محمد ضلفر الدین

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالتہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بددعا و تہمت لگاری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق و تائید پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور منسوخی یا دائر کرنے یا اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور سے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ و اخذ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کسی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی و تکرار کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

سید سلیمان احمد

الرقوم 23 ماہ اگست 2021

Accepted

سوات کے لئے منظور ہے۔

Attested & Accepted
Adv