


20<sup>th</sup> June, 2022

Learned Counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Gul Nawaz Khan, Acting DSP (Legal) for respondents present.

Representative of the respondents submitted copy of order No. 2531/SI Legal dated 14.03.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated in service for the purpose of de-novo enquiry. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

*Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 20<sup>th</sup> day of June, 2022.*




  
(Kalim Arshad Khan)  
Chairman

10/5/22

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 316 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	01.06.2022	<p>The execution petition of Mr. Taj Muhammad submitted today by Syed Noman Ali Bukhari 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-	14-6-2022   14/6/22	<p>This execution petition be put up before Single Bench at Peshawar on <u>20-6-2022</u>. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>



OFFICE OF THE COMMANDANT  
FRONTIER RESERVE POLICE  
KHYBER PAKHTUNKHWA, PESHAWAR  
Ph: No. 091-9214114 Fax No. 091-9212602

No. 2531 /SI Legal, dated 14/13/2022.

**ORDER**

In pursuance with directions of Inspector General of Police Khyber Pakhtunkhwa, Peshawar issued vide CPO letter No. 1419/Legal dated 08.03.2022, the Judgment of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar dated 02.02.2022, in Service Appeal No. 172/2019, is hereby implemented. The ex-constable Taj Muhammad No. 8385 of FRP Kohat Range is hereby reinstated in service for the purpose of denovo enquiry. The denovo enquiry shall be completed within 90 days positively in accordance with law & rules.

o/c **COMMANDANT**  
Frontier Reserve Police *etc*  
Khyber Pakhtunkhwa, Peshawar

No. & Date Even:-

Copy of the above is forwarded for information & further necessary action to the SP FRP Kohat Range, Kohat.

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

Execution Petition No. 316 /2022

In Service Appeal No. 172/2019

Taj Muhammad Ex-Constable, No. 8385  
FRP, Kohat ~~Bench~~ Range.

**Petitioner**

**VERSUS**

1. The Commandant Frontier Reserve, Police KPK, Peshawar.
2. The District Police officer Karak.

**Respondents**

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**Petitioner**

Through:

  
**Syed Noman Ali Bukhari**

  
**Uzma Syed**  
**Advocates High Court**

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

Execution Petition No. 316 /2022

Khyber Pakhtunkhwa  
Service Tribunal

In Service Appeal No. 172/2019

Diary No. 78

Dated 01-6-2022

Taj Muhammad Ex-Constable, No. 8385  
FRP, Kohat ~~Bench~~ Range

Petitioner

**VERSUS**

1. The Commandant Frontier Reserve, Police KPK, Peshawar.
2. The District Police officer Karak.

Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED: 02/02/2022 OF THIS  
HONOURABLE TRIBUNAL IN LETTER AND  
SPIRIT.**

.....

**RESPECTFULLY SHEWETH:**

1. That the applicant/Petitioner filed Service Appeal No. 172/2019 against the impugned order dated 05/01/2008 where by the appellant was removed from service.
2. That the said appeal was finally heard by the Honorable Tribunal on 02/02/2022. The Honorable Tribunal is kind enough to accept the appeal partially. The Appellant is reinstated in service for the purpose of denov inquiry with direction to the respondent to

conduct denov inquiry within ninety days strictly under law and rules.

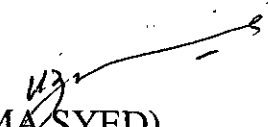
- 3. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
- 5. That the petitioner has having no other remedy to file this Execution Petition.


It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 02.02.2022 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.

Dated 01/06/2022

**PETITIONER**

**THROUGH:**

  
 (UZMA SYED)  
 ADVOCATE HIGH COURT.

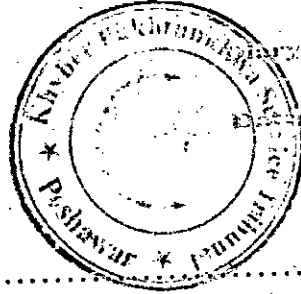
  
 (SYED NOMAN ALI BUKHARI)  
 ADVOCATE HIGH COURT.

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 172 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Taj Muhammad, EX- Constable, No.8385  
FRP Kohat Range.



Case No. 106  
24-1-2019

.....(Appellant)

**VERSUS**

1. The Commandant Frontier Reserve Police, KPK, Peshawar.
2. The District Police Officer Karak.

.....(Respondents)

Medto-day  
Registrar  
24/1/19

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.01.2008 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 27.12.2018 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

**PRAYER:**

**THAT ON ACCEPTANCE OF THIS APPEAL, THE Orders DATED 05.01.2008 AND 27.12.2018 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

ATTESTE

Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

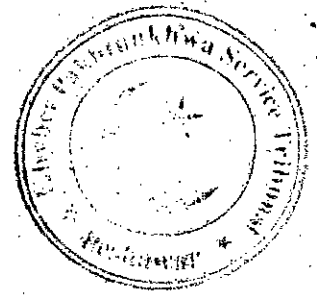
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 172/2019

Date of Institution ... 24.01.2019

Date of Decision ... 02.02.2022



Taj Muhammad, Ex-Constable, no: 8335 FRP Kohat Range. ... (Appellant)

**VERSUS**

The Commandant Frontier Reserve Police, Khyber Pakhtunkhwa Peshawar and one another. ... (Respondents)

Uzma Syed, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQ-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are that the appellant while serving as constable in police department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 05.01.2008. Feeling aggrieved, the appellant filed departmental appeal which was rejected vide order dated 27.12.2018, hence the instant service appeal with prayers that the impugned orders dated 05-01-2008 and 27-12-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

REGISTERED  
Khyber Pakhtunkhwa Service Tribunal  
Peshawar

02 Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice and void ab initio as has been passed with retrospective effect, therefore, not tenable and liable to be set aside. Reliance



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was placed on 2002 SCMR 1129 and 2006 PLC (CS) 221; that there is no order in black & white to dispense with regular inquiry, which is violation of law and rules and without charge sheet/statement of allegations, the appellant was dismissed from service vide order dated 05-01-2008 without personal hearing, hence the whole procedure is nullity in the eye of law; that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that absence of the appellant was not willful but was due to compelling reason of some domestic issues; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt.

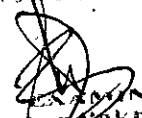
03. Learned Additional Advocate General for the respondents has contended that the appellant was deputed for basic recruited course to Police Training College at Hangu and remained absent w.e.f. 08.11.2007 without any leave/prior permission of the competent authority; that the appellant was proceeded against departmentally wherein the allegations leveled against the appellant stood proved; that the appellant was proceeded under Police Rules 12-21 as his service was less than 03 years and under Police Rules 12-21, there is no need of issuing of charge sheet and show cause notice, therefore, the impugned order was rightly passed; that the appellant was dismissed from service vide order dated 05.01.2008 and after a lapse of 10 years the appellant filed departmental appeal which is badly time barred, therefore, the instant appeal is not maintainable in the eye of law which is liable to be dismissed.

04. We have heard learned counsel for the parties and have perused the record.

05. We have observed that the petitioner remained absent for longer time without any valid reason. The time spoiled between his dismissal and departmental appeal shows his reckless approach towards his responsibilities.

The contention of the learned attorney appearing on behalf of respondents to the effect that regular inquiry was not necessary in the case of appellant as he was proceeded against while still in the probation period, also hold force, but

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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simultaneously the appellant was also a civil servant and the question as to whether the appellant was supposed to be proceeded against under RSO 2000 or Police Rules cannot be ignored, as RSO 2000 having overriding effect over other laws at that particular time and provision in ordinance existed for the appellant. Section 11 of the ordinance is reproduced as under:

"The provisions of this ordinance shall have effect notwithstanding anything to the contrary contained in the Civil Servants Act, 1973 (LXXI of 1973) and the rules made there under and any other law for the time being in force."

06. The learned Additional Advocate General for respondents when confronted with such proposition was still of the opinion that he was rightly proceeded against under police rules, as there was no other option with the respondent to proceed him as the appellant was still in probation period. Contention of the learned Additional Advocate General is correct to the extent of probation period, but section 11 of the ordinance bars the respondents to proceed him under any other law except the Ordinance and other option was also available in the Ordinance. The ordinance vide section 3 (a) provides:-

"that dismissal, removal and compulsory retirement of certain persons in Govt. or corporation service etc, where in the opinion of the competent authority, a person in Govt. or corporation service is inefficient or has ceased to be efficient for any reason; or is guilty of being habitually absent from duty without prior approval of leave, the competent authority, after inquiry by the committee constituted under section 5, may notwithstanding anything contained in any law or the terms and conditions of service of such person, by order in writing dismiss or remove such person from service, compulsory retire from service or reduce him to lower post or pay scale, or impose one or more minor penalties as prescribed in the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 1973 made under Section 25 of Civil Servant Act, 1973."

ATTESTED

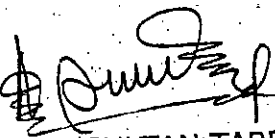
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

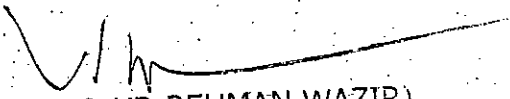
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So in presence of Removal from Service (Special Powers Ordinance) 2000, the proceeding under police rules is void ab initio in the eye of law and which also disposes of the question of limitation.

07. This Tribunal is of the view that in order to meet the ends of justice, the present service appeal is partially accepted and the appellant is reinstated in service for the purpose of De Novo Inquiry with directions to the respondents to conduct de novo inquiry within 90 days strictly under law & rules. No orders as to costs. File be consigned to record room.

**ANNOUNCED**  
02.02.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

**Certified to be true copy**

**Director**  
**Khyber Pakhtunkhwa**  
**Service Tribunal,**  
**Peshawar**

Date of Presentation of Application: 24-2-22

Number of Words: 1600

Copying Fee: 18/-

Page: 41/-

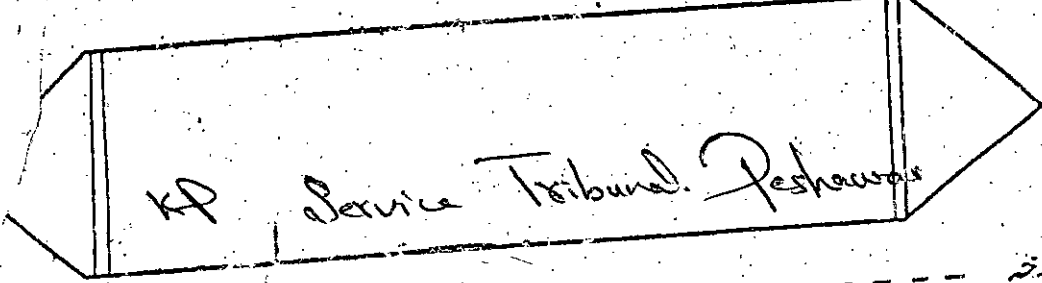
Total: 22/-

Name of Applicant: \_\_\_\_\_

Date of Completion of Copy: 24-2-22

Date of Delivery of Copy: 24-2-22

## بعدالت



مخائب  
مقام

مورخہ  
مقدمہ  
دعویٰ  
جرم

## باعث تحریر آئنگے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام ~~Peshawar~~ ~~کیا گیا~~ ~~Admission~~ ~~12.11.2022~~

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی مکمل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثتہ فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی ہر قسم کی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائنہ التوائے مقدمہ کے سب سے وہ ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم  
ماہ 6 2022

بمقام

کے لئے منظور ہے۔ Peshawar