E.P. 233/2024
M. Salim

03.10.2022

Nemo for petitioner.

Riaz khan Paindakhel, learned Assistant Advocate General alongwith Zahir Shah S.I (Legal) for respondents present.

At the very outset Corrigendum dated 19.09.2022 was produced in respect of intervening period i.e. from 23.12.2013 to 03.08.2015 which period in light of judgment of this Tribunal is to be considered if the petitioner was on duty and accordingly he was entitled to all back benefits. In light of corrigendum and office order of the respondents, grievances of the petitioner have been redressed, therefore, the present execution proceedings stand filed being fully satisfied. No order as to costs.

Announced.
03.10.2022

(Rozina Rehman)
Member (J)
Camp Court Swat

07.09.2022

Petitioner alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Zewar Khan, Inspector for the respondents present.

In pursuance of the Service Tribunal judgement dated 07.07.2021, the respondent department has issued office order bearing No. 2752-54/EB dated 22.07.2022 whereby the said judgement of the Service Tribunal has been implemented. However, on perusal of the said office order, it transpired that the period to be treated as duty w.e.f. 23.12.2013 has erroneously been mentioned as 23.12.2022 which needs rectification. The respondent department is, therefore, directed to issue corrigendum to this effect. Adjourned. To come up for further proceedings on 03.10.2022 before S.B at Camp Court, Swat.

(Mian Muhammad)
Member (E)
Camp Court Swat

10.05.2022 Petitioner present through.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Anwar Khan H.C for respondents present.

Implementation report was not submitted, therefore, last chance is given for implementation report on or before 23.06.2022 before S.B.

(Rozina Rehman)
Member (J)

23rd June, 2022 Counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG alongwith Mr. Zewer Khan, Inspector for respondents present.

Representative of the respondents submitted that the last order was not communicated to the respondents. He assured that he would submit compliance report of the order of the Tribunal within a month. To come up for implementation report on 03.08.2022 before S.B at camp court Swat.

(Kalim Arshad Khan)
Chairman

3.8.22 Due to summer vacation the case is adjourned to 7-9-22 for the same as before

10.01.2022 Learned counsel for the petitioner present. None present on behalf of the respondents despite issuance of notice, therefore, again notices be issued to them for submission of implementation report on 23.02.2022 before the S.B.

(Salah-Ud-Din)
Member (J)

24.02.2022 Due to retirement of the Hon'able Chairman, the case is adjourned to 10.05.2022 for the same before D.B.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 233 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2021	The execution petition of Mr. Muhammad Salim submitted today by Mr. Noor Muhammah Khattak Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before S. Bench on 19/11/21. CHAIRMAN
19.11.2021		Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on 10.01.2022 before the S.B. (Salah-Ud-Din) Member (J)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 233 /2021

MUHAMMAD SALIM V/S POLICE DEPTT:

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3	Judgement dt: 7.7.2021	A	4-8
4	Wakalat Nama	.....	9

Dated: _____.10.2021

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK
ADVOCATE
FLATE NO. 04, 2ND FLOOR,
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,
WARSAK ROAD, PESHAWAR
0345-9383141

It is therefore, most humbly prayed that the respondents may be directed to implement the judgment/ order dated 07-07-2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER

MUHAMMAD SALIM

THROUGH:

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

EXECUTION PETITION NO._____/2021

MUHAMMAD SALIM VS POLICE DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying **execution petition** are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.

DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

ANNEXURE "A" (4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 318 /2016

Mr. Mohammad Salim, Head Constable No.12, Police Line, Dir Upper ..... **APPELLANT**

VERSUS

1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2- The Deputy Inspector General of Police, Malakand Region at Saidu Sharif Swat.
3- The District Police officer, District Dir Upper.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 7.9.2015 WHEREBY THE APPELLANT WAS RE-INSTATED INTO SERVICE BUT WITHOUT BACK BENEFITS AND AGAINST THE APPELLATTE ORDER DATED 3.3.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PARYER: **That on acceptance of this appeal the impugned order dated 7.9.2015 may kindly be modified to the extent of back benefits of the intervening period i.e. from the date of dismissal till re-instatement. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.**

R/SHEWETH:
ON FACTS:

1- That the appellant was initially inducted in the Police Department as Constable vide order dated 02-02-2002. That after appointment as constable the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

2- That during service the appellant was promoted to the post of Head constable. That appellant while serving as Head Constable in the police station Wari District Dir Upper the appellant served with Show Cause Notice vide dated 22-10-2013 on the allegation that the appellant is guilty of gross

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.318/2016

Date of Institution ... 30.03.2016
Date of Decision ... 07.07.2021

Mr. Mohammad Saleem, Head Constable No.12, Police Line, Dir Upper ... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Present:
Noor Muhammad Khattak,
Advocate ... For appellant.

Riaz Khan Paindakheil,
Assistant Advocate General ... For respondents

SALAH-UD-DIN, ... MEMBER (J)
ROZINA REHMAN ... MEMBER (J)
ATIQ-UR-REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): Briefly stating the facts necessary for the disposal of the lis in hand are that appellant was initially inducted in the Police Department as Constable. He was promoted to the post of Head Constable and he while serving as Head Constable in the Police Department, in Police Station Wari District Dir Upper, was served with show cause notice on the allegation of gross misconduct. Major punishment of compulsory retirement was imposed upon the appellant by the District Police Officer, Dir Upper. He filed departmental appeal which was rejected. He then filed service appeal and vide judgment dated 10.06.2015, appellant was reinstated in service and the Department was directed for fresh departmental inquiry against the appellant strictly in accordance with law. Back benefits were subject to

ATTESTED

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the outcome of fresh proceedings. Appellant was reinstated into service on 27.07.2015 for the purpose of de-novo inquiry. The inquiry committee recorded the statements of all concerned officers/officials, where-after, the inquiry committee submitted findings/report, whereby, the appellant was exonerated from the charges leveled against him. On the recommendation of the inquiry committee, impugned order dated 07.09.2015 was passed by the D.P.C Dir Upper whereby the appellant was reinstated into service and the period he spent out from 23.12.2013 to 03.08.2015 was treated as leave of the kind due. Feeling aggrieved, the appellant filed departmental appeal which was rejected, where-after, present service appeal was filed. Case was heard by a Division Bench of this Tribunal on 03.12.2019 and was disposed of, however, the learned members differed in their respective opinions, a Larger Bench was, therefore, constituted which heard the case on 07.07.2021.

2. Learned counsel for the appellant opened the case by reading both the judgments handed down by the Honourable Members, respectively.

3. In the judgment Honourable Member (Mr. Ahmad Hassan) held entitled the appellant to the back benefits and the impugned order dated 07.09.2015 was modified to the extent that the back benefits may be granted to the appellant from 23.12.2013 to 03.08.2015.

4. On the other hand, Honourable Member (Mr. Muhammad Hamid Mughal) was pleased to dismiss the appeal. It was held that despite the fact that the appellant was exonerated due to insufficiency of evidence

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(7)

and there is no finding that the action against the appellant was arbitrary or actuated with malice, the appellant was awarded back benefits in the shape of treating out of service period as leave of the kind due. It was further held by the Hon'ble Member that practice of bringing outside political pressure by civil servant over the authorities, in the matter of posting transfer has become common practice. Consequently, service appeal was dismissed.

5. We are of the considered view that allegation leveled against the appellant was that he while posted in P.S Wari was guilty of misconduct for attempting to bring political and outside influence directly to bear on District Police and unwarranted interference in financial matters of District Police. On acceptance of his service appeal, the matter was sent back to the Department for de-novo inquiry and accordingly, he was issued charge sheet alongwith statement of allegations. An inquiry committee was constituted and Mr. Khan Akbar Khan S.P Investigation and Mohy ud Din Reserve Inspector Police Lines, were appointed as inquiry officers. Inquiry committee conducted fresh departmental inquiry and recorded the statements of all concerned, where-after, submitted report wherein they recommended filing of the inquiry and accordingly vide order dated 07.09.2015 of the District Police Officer, Dir Upper, appellant was exonerated from the charges leveled against him and inquiry was accordingly filed. However, the period he spent out from 23.12.2013 to 03.08.2015 was treated as leave of the kind due. As per record, the present appellant was initially awarded punishment of compulsory retirement but on acceptance of his service appeal, he was reinstated into service for the purpose of de-novo inquiry and now

ATTESTED

EXAMINER
Khyber Pakhtukhwa
Service Tribunal
Peshawar

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he has been exonerated from the charges. An employee i.e. civil servant whose wrongful dismissal, removal or compulsory retirement has been set aside, goes back to his service as if he was never dismissed, removed or retired from service. The restitution of employee means that there has been no discontinuance in his service and for all purposes, he had never left his post. He is, therefore, entitled to arrears of pay for the period he was kept out of service for no fault of his own.

6. We, therefore, hold that civil servant on unconditional reinstatement/exoneration from all charges is to be given all back benefits and the only exception justifying part of withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period which is not the case here, therefore, this case is disposed of in terms that intervening period from 23.12.2013 to 03.08.2015 be considered as if the appellant was on duty and accordingly he is entitled to all back benefits. Reliance is placed on 1999 SCMR 1873; 2010 PLC (C.S) 151 AND 2006 SCMR 421.

7. With the observations herein-above, the appeal in hand is accepted and the appellant is held entitled to the benefits of period from 23.12.2013 to 03.08.2015. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
07.07.2021

(Salah-ud-Din)
Member (J)

(Atiq-ur-Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

Certified to be ture copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO: _____ OF 2021

Muhammad Salim (APPELLANT) (PLAINTIFF) (PETITIONER)

VERSUS

Police Department. (RESPONDENT) (DEFENDANT)

I/We Muhammad Salim

Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK 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

CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

KAMRAN KHAN

UMER FAROOQ MOHMAND

SAID KHAN

&

HAIDER ALI

ADVOCATES

OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR
Ph: 0944-880531 Fax: 0944-880192
Email: dpodir[illegible]

Corrigendum:

With reference to this office order bearing No. 2752-54/E, dated 22.07.2022, the intervening period which as treated as duty of ASI Muhammad Saleem No. 12 of this District Police may be read as ***23.12.2013 to 03.08.2015*** instead of ***23.12.2022 to 03.08.2015.*** The same was written erroneously.

O.B No. 557

Dated: 19-09-022

(TARIQ SOHAIL MARWAT), PSP
District Police Officer,
Upper Dir.

No. 3588-91 **/EB, Dated Upper Dir the:** 19 **/09/2022**

Copy of above is submitted to the:

03. Regional Police Officer, Malakand at Saidu Sharif, Swat for favour of information, please.
04. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa, Peshawar for information, please.

(TARIQ SOHAIL MARWAT), PSP
District Police Officer,
Upper Dir.

OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR
Ph: 0944-880531 Fax: 0944-880192
Email: dpodirupper@gmail.com

ORDER.

In compliance with the judgement dated 07.07.2021 of Khyber Pakhtunkhwa, Service Tribunal Peshawar and directions received from CPO Peshawar vide Memo: No. 3289/Legal, dated 14.07.2022 received through Region Office Swat vide Endst: No. 7567/wpc, dated 20.07.2022, the intervening period i.e. from **23.12.2013 to 03.08.2015** of ASI Muhammad Saleem No. 12 of this District Police which was treated as leave of kind due vide this office O.B No. 703, dated 09.09.2015, is hereby treated as **duty and hold entitled to the all back benefits of the period from 23.12.2022 to 03.08.2015** provisionally and conditionally subject to the outcome of CPLA.

O.B No. 436

Dated: 22/07/022

(TARIQ SOHAIL MARWAT), PSP
District Police Officer,
Upper Dir.

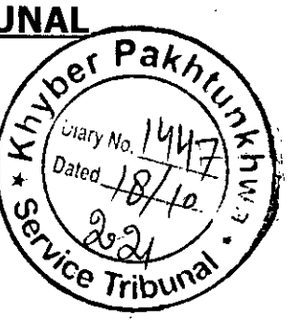
No. 2752-54/EB, **Dated Upper Dir the:** 22 /07/2022

Copy of above is submitted to the:

01. Regional Police Officer, Malakand at Saidu Sharif, Swat for favour of information, please.
02. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa, Peshawar for information, please.

(TARIQ SOHAIL MARWAT), PSP
District Police Officer,
Upper Dir.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Implementation Petition No. 233 /2021
In
Appeal No.318/2016

Muhammad Salim, Head Constable No.12,
Police Line, Dir Upper.

.....PETITIONER

VERSUS

1- The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2- The Deputy Inspector General of Police, Malaknad region at Saidu Sharif, Swat.
3- The District Police Officer, District Dir Upper.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENTS TO OBEY THE JUDGMENT DATED 07.07.2021 IN LETTER AND SPIRIT.

R/SHEWETH:

1- That the petitioner filed service appeal bearing No. 318/2016 before this august Service Tribunal for his back benefits.

2- That the appeal of the petitioner was heard and accepted by the larger bench of this honorable tribunal with the direction to the respondents that " **with the observations hereinabove, the appeal in hand is accepted and the appellant is held entitled to the back benefits of period from 23-12-2013 to 03-08-2015.**". Copy of the judgment dated 07-07-2021 is attached as annexure **.....A.**

3- That after obtaining copy of the judgment dated 07-07-2021 the petitioner submitted the judgment mention above for its implantation to the Department concerned but the respondent Department are not willing to obey the judgment dated 07-07-2021 in letter and spirit.

4- That the petitioner has no any other remedy but to file this implementation petition.