

28.06.2022

Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Mr. Ihsan Ullah S.I Legal for respondents present.

Representative of the respondent department submitted reinstatement order No. 5274/SI Legal dated 27.06.2022 which is placed on file and stated that the department has implemented the judgement of this Tribunal conditionally.

In view of the above, instant petition is disposed off. File be consigned to record room.

Announced.  
28.06.2022

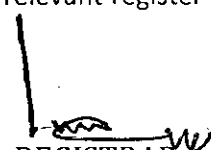
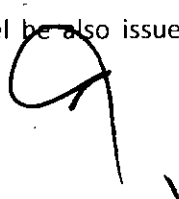


  
(Fareeha Paul)  
Member (E)

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Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 74/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	31.01.2022	<p>The execution petition of Mr. Faisal Murad submitted today by Naila Jan 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 to Single Bench at Peshawar on <u>13-05-2022</u>. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p> CHAIRMAN</p> <p><i>Noted by Counsel Haidar 15/05/2022</i></p> <p> 13-05-2022</p> <p>Counsel for the petitioner present. Notice be issued to the respondents for submission of implementation report on 28.06.2022 before S.B.</p> <p> Kaleem Arshad Khan (Chairman)</p>



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

No. 5274 /SI Legal, dated 27/6/2022.

**ORDER**

In pursuance with the Execution Petition No. 74/2022, the Judgment of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar dated 20.12.2021, in Service Appeal No. 1117/2019, is hereby implemented. The ex-constable Faisal Murad No. 3332 of FRP Peshawar, Range is hereby reinstated in service (on conditional basis) with immediate effect. The issue of back benefits shall be decided subject to outcome of CPLA.

  
**COMMANDANT**  
Frontier Reserve Police *etc*  
Khyber Pakhtunkhwa, Peshawar

Endst; No. & Date Even:-

Copy of the above is forwarded for information & further necessary action to the SP FRP Peshawar Range, Peshawar. His service record alongwith D file sent herewith.

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

Execution petition No. 74 /2022

In

Service Appeal No: 1117/2019

Faisal Murad

**V**ersus

I.G.P KPK Peshawar and others

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Dated: 31/01/2022

Through *Faisal*  
Petitioner  
*Naila Jan*  
Naila Jan  
Advocate, High Court  
Peshawar

①

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

Execution petition No. 74/2022

In

Service Appeal No: 1117/2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 220

Dated 31/01/2022

Faisal Murad, Ex-Constable No: 3332 FRP,  
Peshawar.

.....Petitioner

**V**ersus

1. Inspector General of Police, KPK, Peshawar.
2. Commandant FRP Khyber Pakhtunkhwa,  
Peshawar.
3. Superintendent of Police FRP, Peshawar.

.....Respondents

**EXECUTION PETITION FOR**  
**IMPLEMENTATION OF THE**  
**JUDGMENT OF THIS HON'BLE**  
**TRIBUNAL IN APPEAL No.**  
**1117/2019 DECIDED ON 20-12-**  
**2021**

**Respectfully sheweth,**

- 1 That the above mention appeal was decided by  
this Hon'ble Tribunal vide Judgment dated  
20/12/2021. (Copy of the judgment is annexed as  
annexure "A")

2. That the relevant portion of the judgment is reproduced *"In view of the foregoing discussion, the instant appeal is accepted. The impugned Order dated 27/01/2016, 28-6-2019 and 16/07/2019 are set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs"*.
3. That the Petitioner after getting of the attested copy of same approached the Respondents several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.
4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal.
5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

*It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this*

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*Hon'ble Tribunal by reinstating the Petitioner  
with all back benefits.*

Dated: 31/01/2022

*Faisal*  
Petitioner  
Through  
*Naila Jan*  
Naila Jan  
Advocate, High Court  
Peshawar

**AFFIDAVIT:-**

I, Faisal Murad, Ex-Constable No: 3332 FRP, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

*Faisal*  
Deponent



(4)

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

Execution petition No. \_\_\_\_/2022

In

Service Appeal No: 1117/2019

Faisal Murad

**V**ersus

I.G.P KPK Peshawar and others

**ADDRESSES OF PARTIES**

***PETITIONER***

Faisal Murad, Ex-Constable No: 3332 FRP,  
Peshawar

**RESPONDENTS**

1. Inspector General of Police, KPK, Peshawar.
2. Commandant FRP Khyber Pakhtunkhwa,  
Peshawar.
3. Superintendent of Police FRP, Peshawar

Dated: 31/01/2022

*Faisal*

Petitioner

Through

*Naila Jan*

Naila Jan  
Advocate, High Court  
Peshawar





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

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. 1117 /2019

Diary No. 1184

Faisal Murad Ex-Constable No. 3332 FRP Peshawar Dated 22/8/2019

.....Appellant

**VERSUS**

- 1. Inspector General of Police Khyber Pakhtunkhwa
- 2. Commandant FRP Khyber Pakhtunkhwa Peshawar
- 3. Superintendent of Police FRP Peshawar

.....Respondents

**APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974, AGAINST THE IMPUGNED ORDERS  
DATED 27/01/2016, WHEREBY  
RESPONDENT NO. 3 DISCHARGED THE  
APPELLANT FROM HIS SERVICES,  
APPEALABLE ORDER DATED 28/06/2019  
AND ORDER DATED 16/07/2019,  
COMMUNICATED ON 05/08/2019  
WHEREBY THE REVISION PETITION OF  
THE APPELLANT WAS REJECTED  
WITHOUT ANY LEGAL JUSTIFICATION.**

Filed to-day  
*[Signature]*

27/8/19

Prayer:-

Re-submitted to-day  
and filed.

*[Signature]*  
Registrar  
3/9/19

*On acceptance of this appeal, the  
impugned order dated 27/01/2016,  
28/06/2019 and 16/07/2019 may kindly  
be set aside and the appellant may kindly*

**ATTESTED**

*[Signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

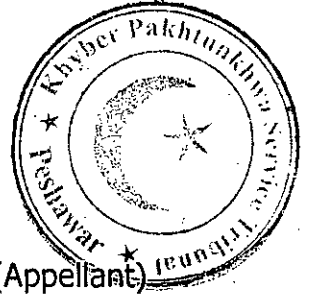
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1117/2019

Date of Institution ... 22.08.2019

Date of Decision ... 20.12.2021



Faisal Murad Ex-Constable No. 3332 FRP Peshawar.

(Appellant)

**VERSUS**

Inspector General of Police Khyber Pakhtunkhwa and two others.

(Respondents)

Naila Jan,  
Advocate

... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

**AHMAD SULTAN TAREEN** ...  
**ATIQU-UR-REHMAN WAZIR** ...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

*[Handwritten signature]*

**JUDGMENT**

**ATIQU-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 discharged from service vide order dated 27-01-2016, against which the appellant filed departmental appeal, which was rejected vide order dated 28-06-2019. The appellant filed revision petition before respondent No. 1, which was also rejected vide order dated 16-07-2019, hence the instant service appeal with prayers that the impugned orders dated 27-01-2016, 28-06-2019 and 16-07-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

**ATTESTED**

*[Handwritten signature]*  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

02. Learned counsel for the appellant has contended that the impugned orders are against law, rules and principle of natural justice, hence liable to be set

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aside; that the appellant was condemned unheard as no opportunity of personal hearing was afforded to the appellant; that charge sheet/statement of allegation had been issued but not served upon the appellant, which is a mandatory pre-requisite under the law; that the inquiry was entrusted to R.I Khurshid Khan of FRP Peshawar, but was conducted by Sajjad Ali DSP, which is illegal; that absence of the appellant was regularized by treating the absence period as without pay, but the appellant was also punished for the same; that absence of the appellant was not willful, but due to compelling reason of his illness, which is evident from the medical prescriptions, hence the same cannot be termed as an act of misconduct; that in the charge sheet the alleged absence is 11 days, whereas in the impugned order various other dates are mentioned malafiedly; that in the charge sheet the allegations so leveled are of willful absence, but in the impugned order dated 27-01-2016, another charge of involvement in a criminal case has also been mentioned, which however was not inquired by the authorities; that the appellant has not been provided opportunity of fair trial under Article-10 (A) of the Constitution; that the medical prescriptions submitted by the appellant is mentioned in the inquiry report, however neither the same were inquired nor sent for verification, therefore stance of the illness of the appellant is admitted by the inquiry officer; that the impugned orders are not speaking orders, which is violation of General Clauses Act; that the appellant has been proceeded against under Police Rules, but punishment of discharge from service is nowhere mentioned in Police Rules, 1975.

03. Learned Deputy District Attorney for respondents has contended that the appellant remained absent from lawful duty for a longer period of 51 days, without permission of the competent authority; that on the same very charges; charge sheet/statement of allegation was served upon the appellant and proper inquiry was conducted to this effect; that the appellant submitted two medical chits, which were not countersigned by medical superintendent; that show cause

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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notice is not mandatory under Police Rules, 1975 amended in 2014; that the appellant was afforded appropriate opportunity of personal hearing, but the appellant failed to avail such opportunity; that after fulfillment of all codal formalities, the appellant was awarded major punishment of discharge from service; that it is correct that the appellant was acquitted from the criminal case, but the appellant was not discharged from service on the ground of criminal case; that departmental appeal as well as revision petition of the appellant were rejected on the ground of limitation.

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

05. Record reveals that the appellant remained absent from duty for a total of 51 days in intervals, who subsequently submitted his medical reports and such reports were also discussed in the inquiry report and the inquiry officer already accepted his illness, as he did not bother to verify it from the concerned hospital nor any weightage was given to such reports. Record would suggest that absence of the appellant was not willful but due to compelling reasons. In a situation, the respondents were required to take sympathetic consideration in his case, which however was not done in case of the appellant. Even otherwise absence on medical grounds without permission of competent authority does not constitute gross misconduct entailing major penalty of removal from service. Reliance is placed on 2008 SCMR 214.

06. The appellant was proceeded against under Police Rules, 1975 for willful absence from duty, but in Police Rules, 1975, there is no provision to deal with cases of willful absence. It is a well settled legal proposition that where such provision is not available in special rules, provisions of general rules are invoked in circumstances. In case of the appellant, Rule-9 of Khyber Pakhtunkhwa Government, Servant (Efficiency & Discipline) Rules, 2011 was required to be invoked by sending a notice on registered mail at his home address and in case of

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Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



no response, the same notice was required to be published in two newspapers, thereafter, the appellant was required to be proceeded against ex-parte, but the respondents did not adhere to the procedure as laid down in law, hence the whole proceedings undertaken against the appellant are illegal and without lawful authority.

07. It would be useful to point out certain inherent flaws in disciplinary proceedings, particularly in Police Department, where the concept to the effect that provision of issuance of showcause notice is not mandatory in Police Rules, 1975 is misleading, as such provision exist in Rule-5(3)(c) of Police Rules, 1975. Non-service of show cause notice would amount to refusal of an appropriate opportunity of defense to the appellant, which is not merely a formality but a mandatory pre-requisite as prescribed by law. This tribunal has already delivered numerous judgments, wherein it has been held that issuance of final show cause notice along with the inquiry report is must under these rules. Reliance is also placed on the famous case of Syed Muhammad Shah delivered by august Supreme Court of Pakistan (PLD 1981 SC-176) in which it has been held that rules devoid of provision of final show cause notice along with inquiry report were not valid rules. The appellant was removed from service on a simple charge sheet without conducting a regular inquiry and adopting proper procedure. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

08. Disciplinary proceedings so conducted are also replete with deficiencies, as the charge sheet/statement of allegation was served upon the appellant, but it

**ATTESTED**

*(Signature)*  
 EXAMINER  
 Service Tribunal  
 Peshawar

could not be ascertained from record as to whether it was actually served upon the appellant, as nothing is available on record to show that the appellant responded to such charge sheet. An inquiry to this effect was also conducted, but without associating the appellant in the whole process. The allegations leveled against the appellant in the statement of allegation are absence from duty, whereas the impugned order of his discharge from service dated 27-01-2016 also contains allegation of his involvement in a criminal case. The respondents in their written comments have admitted that the appellant was proceeded against only on the charges of absence from duty, but the charges of his involvement in criminal case was inadvertently inserted in his order of discharge from service. It is worth to mention here that the appellant was charged in an FIR Dated 14-01-2016 U/S 365/B/ 496 PPC, but was acquitted of the charges vide judgment dated 23-04-2019. The appellant was proceeded against under Police Rules, 1975, but the penalty of discharge from service is nowhere mentioned in police Rules, 1975, hence the penalty so awarded is illegal and is not tenable in the eye of law.

09. We are also mindful of the question of limitation, as the appellant filed departmental appeal after earning acquittal from the criminal case registered against him but in case of the appellant, major penalty was awarded on a simple charge sheet avoiding the mandatory provisions as prescribed by law. It is a well-settled legal proposition that decision of cases on merit is always encouraged instead of non-suiting litigants on technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880. That the Apex Court vide judgment in PLD 2002 SC 84 have held that where on merit the respondent had no case, then limitation would not be a hurdle in the way of appellant for getting justice, further observed that the court should not be reluctant in condoning the delay depending upon facts of the case under consideration. Moreover the Apex Court vide judgment reported as 1999 SCMR 880 has held that condonation of delay being in the discretion of the Tribunal, the

**ATTESTED**


EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

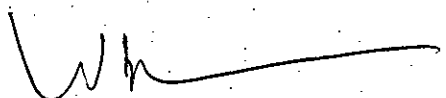
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findings cannot be set aside on technical grounds alone, where nothing contrary to the contention for condonation of delay was produced before the Tribunal, Supreme Court of Pakistan refrained from disturbing the findings of the Tribunal on the question of limitation as well. Since case of the appellant on merit is on strong footings with reasonable justifications for delay in submission of departmental appeal, so the delay so occurred is condoned. If the charges of his involvement in a criminal case, as contained in the impugned order dated 27-01-2016 is taken into consideration, then it would have been a futile attempt on part of a civil servant to challenge his removal from service before earning acquittal in relevant criminal case. Reliance is placed on PLD 2010 SC 695. To this effect departmental appeal of the appellant after earning acquittal from the criminal charges would be considered as well in time.

10. In view of the foregoing discussion, the instant appeal is accepted. The impugned order dated 27-01-016, 28-06-2019 and 16-07-2019 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
20.12.2021




  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

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

Certified to be true copy  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 25/1/22  
Number of Words 2400  
Copying Fee 26/-  
Urgent 4/1  
Total 30/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 25/1/22  
 Date of Delivery of Copy 25/1/22



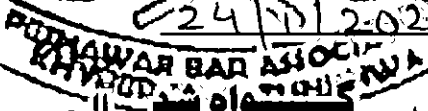
112665 ایڈوکیٹ: <u>ذائقہ جان</u> بار کونسل/ایسوسی ایشن نمبر: <u>BC 13-4172</u> رابطہ نمبر: <u>03129215471</u>	  
<b>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</b>	

بعدالت جناب: KP سروس ٹریبیونل

منجانب: <u>Petitioner</u> فیصل صرار 	دعویٰ: <u>Execution</u> علت نمبر: مورخہ: جرم: تھانہ:
<b>باعث تحریر آنکہ</b>	

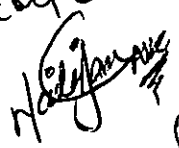

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے ذائقہ جان ایڈووکیٹ صاحبان کو وکیل 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 تقررات و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے 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 وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور ان کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 24/11/2022  


مقام پشاور کے لیے منظور ہے۔

Attested and accepted by

نوٹ: اس وکالت نامہ کی فونو کاپی قابل قبول ہوگی۔

فیصل صرار  
Petitioner