

16.05.2022

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

2. In pursuance of the judgement of Service Tribunal dated 02.09.2021, two withheld increments, have been restored to the petitioner vide office order dated 22.02.2022 and as such Service Tribunal judgement to that extent stands implemented. Consign.

3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 16th day of May, 2022.




(MIAN MUHAMMAD)
MEMBER (E)



OFFICE OF THE DEPUTY COMMISSIONER BANNU

No. 463 /DC/AE/F-26

Dated: 23 /02/2022

OFFICE ORDER:

In pursuance of the Khyber Pakhtunkhwa Service Tribunal Peshawar judgment dated 02.09.2021 in Service Appeal No. 1566/2018 in case titled "Musharaf Khan vs Commissioner, Bannu Division and others", two withheld increments of Mr. Musharaf Khan Girdawar vide this office order No. 7371/AE/BC, dated: 13.11.2017, is hereby restored subject to the decision in CPLA No. 639-P/2021 pending before August Supreme Court of Pakistan. In case of decision in CPLA against him, the paid amount shall be recovered from him accordingly.

DEPUTY COMMISSIONER

Even No & Date:

Copy forwarded for information to the:-

1. Commissioner Bannu Division Bannu.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Additional Advocate General, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
4. Additional Deputy Commissioner Bannu.
5. District Comptroller of Accounts Bannu.
6. PS to SMBR Khyber Pakhtunkhwa Peshawar.
7. Bill Clerk, DC office Bannu for necessary action.
8. Official concerned.

9. D. C. LAKKI Marwat.
10. DCA LAKKI Marwat.

DEPUTY COMMISSIONER

01.02.2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Gul Rehman, AC (P) and Mr. Zulfiqar Khan, Additional AC (Revenue) for respondents present.

Implementation report not submitted. Representative of the respondents seeks further time to submit proper implementation report. Respondents are directed to submit proper implementation report on the next date otherwise coercive measure in the shape of attachment of salary will be taken against them. To come up for further proceedings on 21.03.2022 before S.B.


(Mian Muhammad)
Member(E)

25.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.


Reader.

13.12.2021

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Wali Muhammad, Reader to DC Bannu for respondents present.

Learned AAG seeks time to submit implementation report on the next date of hearing. Adjourned. To come up for implementation report on 13.01.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER (E)

13.01.2022

Petitioner present through counsel.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Gul Rehman AC (P) for respondents present.

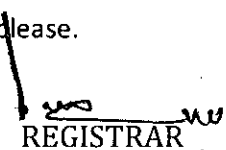


Learned AAG seeks time to submit implementation report on the next date. Last chance is given. To come up for proper implementation report/conditional order on or before the next date fixed as 01.02.2022 before S.B.


(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____
 Execution Petition No. 224 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.10.2021	<p>The execution petition of Mr. Musharraf Khan 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 style="text-align: right;"> REGISTRAR</p> <p>This execution petition be put up before S. Bench on <u>12/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-	12.11.2021	<p>Petitioner in person present.</p> <p>Notices be issued to the respondents for the date fixed. To come up for implementation report on 13.12.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 224 /2021

In

Service Appeal No: 4/2019

Musharaf Khan

Versus

Commissioner Bannu Division and others

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2.	Addresses of Parties		4
3.	Copy of Judgment	- A ⁿ	5-10
4.	Wakalat Nama		11

Dated: 15/10/2021


Petitioner

Through


Naila Jan

Advocate, High Court
Peshawar

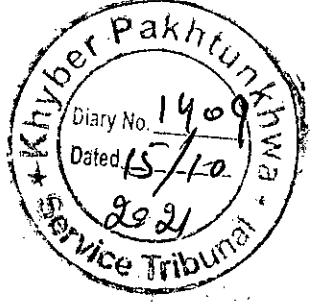
1

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 224 /2021

In

Service Appeal No: 4/2019



Musharaf Khan S/o Aziz Khan, presently working as
District Qanungo/ Naib Tehsildar, Tehsil & District
Bannu.

.....Petitioner

Versus

1. Commissioner Bannu Division.
2. Deputy Commissioner Bannu.
3. Additional Deputy Commissioner Bannu.
4. Assistant Commissioner Revenue Bannu.

.....Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
4/2019 DECIDED ON 02/09/2021

Respectfully Sheweth,

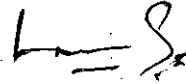
1. That the above mention appeal was decided by
this Hon'ble Tribunal vide Judgment dated
02/09/2021. (Copy of the judgment is annexed as
annexure "A")

2

2. 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.
3. That the respondent are legally and morally bound to obey order of this Hon'ble Tribunal and implement judgment of this Hon'ble Tribunal. But there are reluctant to implement the same.
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.

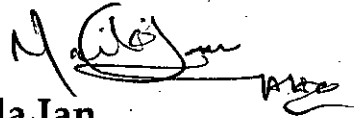
It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 15/10/2021



Petitioner

Through



Naila Jan

&

Huma Khan

Advocate, High Court

Peshawar

AFFIDAVIT:-

I, Musharaf Khan S/o Aziz Khan, presently working as District Qanungo/ Naib Tehsildar, Tehsil & District Bannu, 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.



Deponent



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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2021

In

Service Appeal No: 4/2019

Musharáf Khan

Versus

Commissioner Bannu Division and others

ADDRESSES OF PARTIES

PETITIONER

Musharaf Khan S/o Aziz Khan, presently working as
District Qanungo/ Naib Tehsildar, Tehsil & District
Bannu.

RESPONDENTS

1. Commissioner Bannu Division.
2. Deputy Commissioner Bannu.
3. Additional Deputy Commissioner Bannu.
4. Assistant Commissioner Revenue Bannu.

Dated: 15/10/2021

Through


Petitioner


Naita Jan

Advocate, High Court
Peshawar

(1) (5)

Amir Ali

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR



Service Appeal No. 4 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1824

Date: 28/12/18

Musharaf Khan son of Aziz Khan
presently working as
District Qanungo/ Naib Tehsildar, Tehsil and District Bannu

Appellant

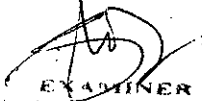
VERSUS

- 1) Commissioner Bannu Division
- 2) Deputy Commissioner Bannu.
- 3) Additional Deputy Commissioner Bannu
- 4) Assistant Commissioner Revenue Bannu..... Respondents

Appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned original order endorsement No. 6518/BC/AE dated 05.10.2017 whereby the penalty of "WITHHOLDING THREE ANNUAL INCREMENTS WITH ACCUMULATIVE EFFECT" was imposed upon the appellant against which departmental appeal dated 02.02.2018, was dismissed by respondent No.1, vide order dated 29.11.2018 and the same was communicated to the appellant on 30.11.2018 hence the instant appeal file before this Honourable Tribunal within 30 days which is well within time.

Filed to-day
Registrar
28/12/18

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.



Service Appeal No. 04/2019

Date of Institution ... 28.12.2018

Date of Decision ... 02.09.2021

Musharaf Khan S/o Aziz Khan, Presently working as District Qanungo/Naib Tehsildar, Tehsil and District Bannu.

... (Appellant)

VERSUS

Commissioner Bannu Division and three others.

... (Respondents)

Mr. INAYAT ULLAH KHAN,
Advocate

For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

For respondents.

MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

The brief facts giving rise to filing of the instant appeal are that one Muhammad Nawaz S/o Shams-ul-Kibad Shah had submitted complaint to the Deputy Commissioner Bannu, wherein it was alleged that the Patwari Gul Zarif Khan alongwith Kanungo had taken Rs. 24000/- as Government Tax for attestation of mutation regarding land measuring 06 Kanals purchased by the appellant at the Rs. 100000/- per Kanal, while further amount of Rs. 28000/- was also taken from the complainant as illegal gratification; that the mutation

TESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

was still pending attestation and further amount of Rs. 24000/- was being demanded from the complainant. In view of the complaint of Muhammad Nawaz, an inquiry was initiated and on the completion of the inquiry, minor penalty of withholding of three annual increments with accumulative effect was imposed upon the appellant vide order dated 05.10.2017, passed by competent Authority. The departmental appeal of the appellant was also declined, therefore, he has filed the instant Service Appeal for redressal of his grievance.

2. Notice was issued to the respondents, who submitted their comments, wherein they negated the contention of the appellant.

3. Learned counsel for the appellant has contended that the charge sheet as well as statement of allegations were issued to the then Patwari Halqa Mouza Shagi Machan Khel namely Gul Zarif, however on conclusion of the inquiry, penalty was also imposed upon the appellant; that the impugned penalty was imposed upon the appellant in utter violation of the relevant provisions of Efficiency & Disciplinary Rules, 2011; that initially the sale amount of Rs. 600000/- was entered in the concerned sale mutation and as a local commission too, the appellant has mentioned in his report that the sale amount was Rs. 600000/-, however the sale amount was later on changed and has been shown as Rs. 1200000/-, however the same was not done by the appellant as he has nothing to do with the said alteration; that no evidence whatsoever was collected during the inquiry, which could show that the appellant had demanded any illegal gratification from the complainant; that the impugned penalty of deduction of three increments is neither in correspondence to nor in consonance with the dictates of F.R-29 because a specific time has not been mentioned while awarding the impugned penalty; that the appellant is quite innocent and has been wrongly penalized, therefore, the impugned orders

ATTESTED

EXAMINER
Service Tribunal
Punjab


may be set-aside. Reliance was placed on 2002 PLC (C.S) 1388, 1990 PLC (C.S) 95 and 2006 PLC (C.S) 489.

4. Conversely, learned Additional Advocate General for the respondents has argued that as the departmental appeal of the appellant was time barred, therefore, the instant service appeal is also hit by limitation and is liable to be dismissed on this score alone; that proper inquiry was conducted against the appellant, who was found guilty of the allegations leveled against him, therefore, the impugned penalty has been rightly imposed upon him.

5. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.

6. A perusal of the record would show that the appellant has specifically alleged in his appeal that the charge sheet as well as statement of allegations were issued to Mr. Gul Zarif the then Patwari Halqa Mouza Shagi Machan Khel and not to the appellant. The respondents have denied the aforementioned assertion of the appellant by giving a vague reply in their comments, without producing any charge sheet or statement of allegations issued to the appellant. The assertion of the appellant is thus admitted as correct that any charge sheet and statement of allegations were not issued to him. The aforementioned fact has created a material dent in the disciplinary action against the appellant. The inquiry was initiated against Mr. Gul Zarif the then Patwari Halqa Mouza Shagi Machan Khel, however on conclusion of inquiry, final show-cause notice was issued to the appellant, which procedure is not in accordance with the provisions of Efficiency & Disciplinary Rules, 2011.

7. The charge sheet as well as statement of allegations issued to Mr. Gul Zarif, the then Patwari Halqa Mouza Shagi Machan Khel would show that he was proceeded against on the allegations that as per written complaint submitted by the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

complainant Muhammad Nawaz, the said Patwari had obtained an amount of Rs. 28000/- as illegal gratification alongwith Rs. 24000/- as mutation fee and was demanding further amount of Rs. 24000/- from the complainant for attestation of mutation. The inquiry report of the inquiry officer would, however show that instead of probing the allegations as mentioned in the charge sheet as well as in the statement of allegations, he has mainly probed regarding the alteration in the sale amount as entered in the concerned sale mutation. No cogent evidence is available on the record that the alteration so made in the sale amount as entered in the concerned sale mutation was made by the appellant. The inquiry was initiated against Mr. Gul Zarif the then Patwari Halqa Mouza Shagi Machan Khel, therefore, the appellant was not afforded any opportunity of proper defence. On appraisal of the material evidence available on the record, it can safely be concluded that the inquiry proceedings were conducted in a slipshod manner and the allegations against the appellant were not proved. The impugned order of awarding of penalty to the appellant is wrong and illegal, hence not sustainable in the eye of law. So far as the question of limitation is concerned, the issue being one of financial nature is a continuing cause of action, which could be agitated at any time.

8. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is held entitled to all consequential back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.09.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


sub-rule (4) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. The non-issuance of the final show-cause notice and non-affording of opportunity of personal hearing to the appellant has caused him prejudice as he was deprived of ample opportunity of defending himself.

9. So far as the question of limitation is concerned, the issue being one of financial nature is a continuing cause of action, which could be agitated at any time.

10. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is held entitled to all consequential back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.09.2021

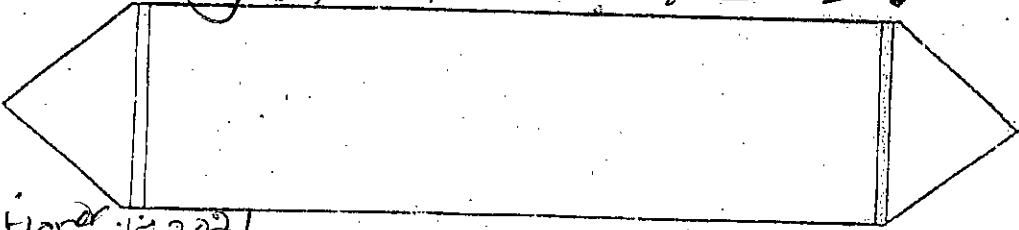

(SALAH-UD-DIN)
MEMBER (JUDICIAL)


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

Certified to be true copy

Date of Presentation of Application 02/09/21 EXAMINER
Number of Words 2400 Khyber Pakhtunkhwa
Copying Fee 26/- Service Tribunal
Urgent 5/- Peshawar
Total 26/-
Name of Copyist _____
Date of Completion of Copy 07/09/21
Date of Delivery of Copy 07/09/21

بعد الت صواب KP اس میں ڈی پی ٹی لکھنا



petitioner 2022 پنجاب

مشرق خان بنام

موزخہ
مقدمہ
دعویٰ
پریم

باعث تحریر آئنگے

مقدمہ نمبر جی 2022 ان میں اپنی طرف سے واسطے پیردی اور جواب دی اور کل کاروائی متعلقہ آئین مقام سید احمد علی کیلئے سید احمد علی 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 کے وقت تفرقات ہ فیصلہ برحلف دینے جواب دی اور اقبال دعویٰ اور باسوریت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرنے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نمائی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سہلہ و اخذ منقولہ قبول ہوگا۔ دوران مقدمہ میں جو چیز چاہے جاننا تو آئے مقدمہ کے صوب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیردی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرتوم 2022 کا ماہ اکتوبر 2022

Petitioner (مقدمہ نمبر) 2022

مقبول
Accepted by
Attes feel
Date