

19.05.2022

Petitioner with counsel present. Mr. Kabirullah Khattak, Addl. AG alongwith Mr. Mukhtiar H.C for the respondents present.

02. Respondent department produced copy of the order No. 1166-70/EF dated 03.02.2022 whereby the absence period of petitioner (09.11.2014-03.01.2015) has been treated as leave without pay and granted all back benefits, for the period w.e.f. 03.01.2015-26.01.2022 subject to the outcome of CPLA. Copy of the order is placed on file as well as provided to learned counsel for the petitioner. Learned counsel for the petitioner expressed satisfaction on issuance of the said order. As such execution petition No. 228/2021 titled Nauman Khan Versus Provincial Police Officer of Khyber Pakhtunkhwa and others stands implemented and disposed of accordingly. Consign.

03. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 19th day of May, 2022.



(MIAN MUHAMMAD)
MEMBER (E)

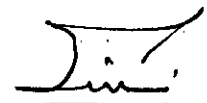
E.P. No. 228/2021
Nouman Khan vs Govt

10.01.2022

Petitioner in person present. Mr. Niaz Muhammad, DSP (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents.

Representative of respondents stated at the bar that the judgment under execution has been challenged through filing of CPLA before the august Supreme Court of Pakistan.

In this view of the matter, in case no order of suspension of the judgment under execution has been passed by august Supreme Court of Pakistan, the respondents are required to pass a conditional order of implementation of the judgment dated 01.09.2021 passed by this Tribunal, which of course will be subject to outcome of the CPLA. To come up for implementation report on 23.02.2022 before S.B.



(Salah-Ud-Din)
Member (J)

24.02.2022



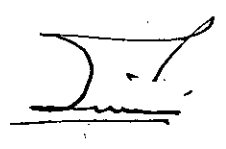
Due to retirement of the Hon'able Chairman, the case is adjourned to 19.05.2022 for the same before D.B.



Reader

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 228 /2021

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 18.10.2021 | <p>The execution petition of Mr. Nouman Khan submitted today by Roeda Khan 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 on <u>19/11/21</u></p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 19.11.2021 | <p>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.</p> <p style="text-align: right;"> (Salah-Ud-Din) Member (J)</p> |

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 228 /2021

In

Service Appeal No: 765/2016

Nouman Khan

VERSUS

The Provincial Police Officer KPK Peshawar and Others


INDEX

| <i>S#</i> | <i>Description of Documents</i> | <i>Annex</i> | <i>Pages</i> |
|-----------|---------------------------------|--------------|--------------|
| 1. | Execution Petition | | 1-3 |
| 2. | Affidavit. | | 4 |
| 3. | Addresses of Parties | | 5 |
| 4. | Copy of Judgment | "A" | |
| 5. | Wakalat Nama. | | |

Dated: 15/10/2021


Petitioner

Through

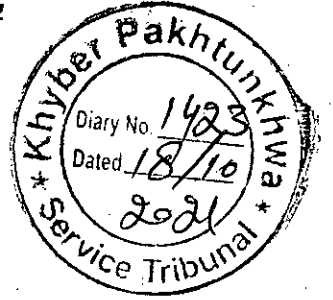

Roeda Khan
Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 228/2021

In

Service Appeal No: 765/2016



Nouman Khan Constable Elite Force Khyber
Pakhtunkhwa Peshawar.

-----Appellant

VERSUS

1. The Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Commandent Elite Force Khyber Pakhtunkhwa Peshawar.
3. Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar.

-----*(Respondents)*.

EXECUTION PETITION
FOR IMPLEMENTATION
OF THE JUDGMENT OF
THIS HONBLE TRIBUNAL
IN APPEAL No. 765/2016
DECIDED ON 01/09/2021

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 01/09/2021. (Copy of the judgment is annexed as annexure "A").

2. That the Petitioner after getting of the attested copy of same approached the Respondent 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 Petitioner has no other option but to file the instant petition for implementation of the judgment of this Hon'ble Tribunal.

4. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.


5. That the respondent department is bound to obey the order of this Hon'ble Tribunal by implementing the said judgment.

It is, therefore, requested that on acceptance of this petition, the Respondents may directed to implement the judgment of this Hon'ble Tribunal.

Dated: 15/10/2021


Petitioner

Through


Roeeda Khan
Advocate, High Court
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2021

In

Service Appeal No: 765/2016

Nouman Khan

VERSUS

The Provincial Police Officer KPK Peshawar and
Others

AFFIDAVIT:-

I, **Nouman Khan Constable Elite Force Khyber Pakhtunkhwa 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.


Deponent

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2021

In

Service Appeal No: 765/2016

Nouman Khan

VERSUS

The Provincial Police Officer KPK Peshawar and
Others

ADDRESSES OF PARTIES

PETITIONER

Nouman Khan Constable Elite Force Khyber
Pakhtunkhwa Peshawar..


RESPONDENTS

1. The Provincial Police Officer Khyber
Pakhtunkhwa Peshawar.
2. Commandant Elite Force Khyber Pakhtukhwa
Peshawar.
3. Deputy Commandant Elite Force Khyber
Pakhtunkhwa Peshawar..

Dated: 15/10/2021


Petitioner

Through


Roeda Khan
Advocate, High Court
Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 765 of 2016

Nauman Khan Constable 5030 Elite Force ^{untain} Khyber Pakhtunkhwa Peshawar.

..... Appellant

Khyber Pakhtunkhwa Service Tribunal

VERSUS

Diary No. 664

Dated 23-6-2016

1- Provincial Police, Officer Khyber Pakhtunkhwa Peshawar.

2- Commandant Elite Force Khyber Pakhtunkhwa Peshawar.

3- Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar

..... Respondents

APPEAL UNDER SECTION 4 OF THE NWFP (KHYBER PAKHTUNKHWA) SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER OF RESPONDENT NO.3 VIDE WHICH APPELLANT WAS DISMISSED FROM SERVICE AND RESPONDENT NO.3 VIDE WHICH THE REPRESENTATION OF APPELLANT FILED AGAINST THE ORDER OF RESPONDENT NO.3 WAS REJECTED. (COPY OF THE IMPUGNED ORDERS OF RESPONDENTS AS ANNEXURE "A&B" RESPECTIVELY.

Filed by Sheweth
Registrar

Prayer in Appeal;

On acceptance of the service appeal, the impugned orders may be set aside and appellant may be reinstated in service with all consequential benefits.

Re-submitted to -day and filed.

Registrar

26/7/16

Respectfully Sheweth:

ATTESTED

Registrar
Khyber Pakhtunkhwa Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 765/2016

Date of Institution ... 23.06.2016

Date of Decision ... 01.09.2021



Nauman Khan Constable 5030 Elite Force, Khyber Pakhtunkhwa Peshawar
(Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and two others.
(Respondents)

ROEEDA KHAN
Advocate

For Appellant

MUHAMMAD ADEEL BUTT,
Additional Advocate General

For Respondents

SALAH-UD-DIN
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was enlisted as constable in Elite Force on 02-04-2011 and during the course of his service; he was proceeded against on the charges of absence from duty. The appellant was ultimately removed from service vide order dated 04-08-2015, against which the appellant filed departmental appeal which was decided on 05-01-2016. The appellant filed revision petition on 25-11-2015, which was rejected on 23-05-2016, hence the instant service

ATTESTED

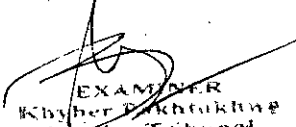
MEMBER (EXECUTIVE)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

appeal with prayers that the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders were passed without considering the defense plea of the appellant; that ex-parte proceedings were conducted and the appellant was penalized without affording proper opportunity of defense; that absence of the appellant was not willful, rather he was managing treatment of his sick mother, who ultimately died in hospital; that the impugned order is void to the effect that it was passed by an incompetent authority, as the appellant was an employee of central police office and was on deputation to Elite force and rule 9 of police rules, 1975 provides that action is required to be taken by the lending authority, but action against the appellant was taken by an incompetent authority; that no opportunity of personal hearing was afforded to the appellant and ex-parte proceedings were conducted at the back of the appellant.

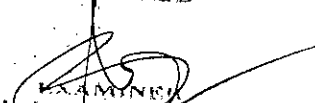
03. Learned Additional Advocate General appearing on behalf of the respondents has contended that the appellant remained absent from lawful duty with effect from 09-11-2014 to 22-12-2014. To this effect charge sheet and statement of allegations were served upon the appellant, to which he failed to advance any plausible explanations; that the appellant was again found absent from duty vide report recorded in the daily diary dated 03-01-2015; that the appellant himself avoided to join the proceedings, hence ex-parte action was initiated against him; that departmental appeal as well as revision petition of the appellant were barred by time and without any force, hence were rejected.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

04. We have heard learned counsel for the parties and have perused the record. Available on record is a long list of medical prescriptions in respect of mother of the appellant and her admission in various hospitals and who ultimately died in hospital on 11-12-2014 as per death certificate available on record. The dates of absence recorded in statement of allegations is 09-11-2014 to 22-12-2014(43 days), which is in congruity with the medical prescriptions and her ultimate death and which shows that absence of the appellant was based on some genuine reasons and was not willful. In response to charge sheet the appellant had taken the same stance of illness of his mother, but the respondents, who were required to take sympathetic consideration of his case, did not consider illness of his mother, rather in a slipshod manner conducted an inquiry at the back of the appellant without affording any opportunity of personal hearing to the appellant, and as per comments of the respondents, a final show cause notice, which is not available on record, was served upon the appellant without copy of the inquiry report and ultimately the impugned order dated 04-08-2015 of removal from service in respect of the appellant was issued by Deputy Commandant Elite Force, against which the appellant filed departmental appeal. The impugned order clearly mentions that keeping in view his absence, ex-parte action was taken against him. The impugned order also shows two duration of absence i.e. 09-11-2014 to 22-12-2014 and 03-01-2015 to 04-08-2015. Record reveals that the second period is the time, when the appellant was subjected to disciplinary proceedings and obviously, he was not allowed any posting, but the period was declared absent. Departmental appeal was rejected on 01-10-2015, which shows that his departmental appeal was well within time. The appellant filed

ATTESTED


 EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

revision petition on 25-11-2015, which was rejected on 23-05-2016 and the appellant filed service appeal on 23-06-2016, so the case otherwise is not barred by time.

05. We have observed that both the appellant as well as the respondents presented incomplete record of the case, as no copy of the inquiry report or final show cause notice is available on record. The information we have gathered are from a letter dated 05-01-2016 issued from the office of Addl. IG Elite Force addressed to IGP. Such letter was addressed in response to the revision petition dated 25-11-2015 presented before IGP and this letter contains valuable information, which shows that the appellant was on deputation to Elite Force and was proceeded against by the borrowing department. The inquiry so conducted by the borrowing department recommended that his absence period be treated as leave without pay and he may be repatriated to his parent department, but the appellant was removed from service by the borrowing department vide order dated 04-08-2015. The appellant preferred departmental appeal before Addl. IG Elite Force, which was rejected on 01-10-2015.

06. Rule-9 of Police Rules, 1975 provides for procedure of inquiry against officers lent to other government or authority, in case the borrowing authority is of the opinion that any punishment should be imposed on him, it shall transmit to the lending authority the record of the proceedings and thereupon the lending authority shall take action as prescribed in these rules.

Since the appellant was on deputation to Elite Force, which is evident from the impugned order as well as letter dated 05-01-2015 and his removal from service does not fall within their ambit, hence the impugned order is void, as it

ATTESTED



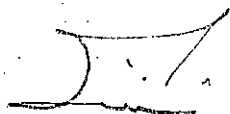
7

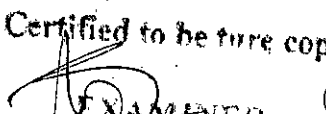
was passed by an authority not competent to pass the same. Reliance is placed on 2019 CLC 394. The Apex Court in another judgment reported in 2014 SCMR 1189 have held that termination order passed by an officer not competent in law to pass such order would be void and without lawful authority, consequently neither bar of limitation would be attracted nor period of limitation would run against such order.


07. Needless to mention that the appellant was condemned unheard and was not afforded proper opportunity of personal hearing and such order has been declared by the apex court as void order. Reliance is placed on 2003 PLC (CS) 365. The proceedings so conducted were not in accordance with law. The Apex Court in its judgment reported in 2008 SCMR 214 have held that absence on medical ground does not constitute gross misconduct entailing major penalty of dismissal from service. The apex court in another judgment have held that regular inquiry is must before imposition of major penalty, which however was not done in the instant case. Reliance is placed on 2021 PLC (CS) 235.

08. In view of the foregoing discussion, the instant appeal is accepted 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
01.09.2021

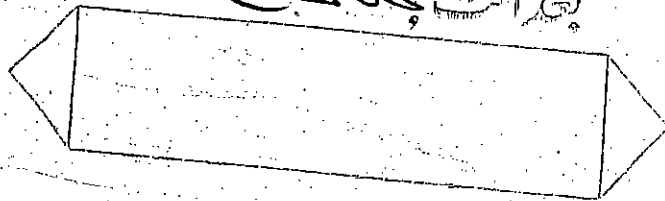

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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

پیر الٹ چناب گیس لائن

دہلی



2021ء پنجاب

لہور خاص پیام

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

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

کلیئر لہور خاص پیام

کلیئر لہور

آن مقام مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق برائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا بطرفہ یا اپیل کی بڑائی 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 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو فرچہ ہر جائزہ التوائے مقدمہ کے سب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دوزہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھنویا کہ سند ہے۔

لہور خاص پیام

2021ء

۱۸

۱۸

المقام

کے لئے منظور ہے۔

Acceptd By

مقام



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar




No. 1166-70 /EF

Dated: 03/02/2022

ORDER

In continuation of this office order No. 956-60/EF, dated 26.01.2022, the period of absence w.e.f. 09.11.2014 to 03.01.2015 is hereby treated as without pay as the Const. Nouman No. 5030 remained absent from duty and was dismissed from service w.e.f. from 03.01.2015. He is hereby granted all back benefits w.e.f. from 03.01.2015 till 26.01.2022 in light of Service Tribunal Judgment subject to outcome of CPLA.


(ASIF IQBAL MOHMAND) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

Copy to the:-

1. Superintendent of Police HQrs: Elite Force Peshawar.
2. RI/Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. OASI/SRC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. FMC elite force K.P.K Pes.

Recd/Incl