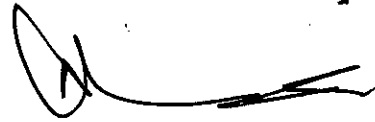


17<sup>th</sup> Oct 2022. 1. Counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

2. Respondents had filed C.P No. 318-P 2021 before august Supreme Court of Pakistan and vide order dated 15.09.2022 by the august Supreme Court of Pakistan issued notice to the respondents and directed maintenance of status quo. Therefore, this petition is filed. The appellant may file fresh application after decision of the august Supreme Court of Pakistan in his favour. Consign

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 17<sup>th</sup> day of October, 2022.*



(Kalim Arshad Khan)  
Chairman

15.07.2022

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.


Implementation report not submitted. Learned Additional Advocate General seeks time to contact the respondents for submission of implementation report. Adjourned. To come up for implementation report on 02.09.2022 before S.B.



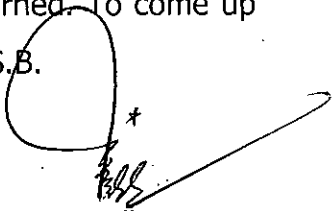
(MIAN MUHAMMAD)  
MEMBER(E)

02.09.2022

Petitioner in person present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General alongwith Mr. Atta Muhammad, Law Officer for the respondents present.



Implementation report not submitted. Representative of the respondents requested for time to submit implementation report on the next date. Last opportunity is granted. Adjourned. To come up for implementation report on 17.10.2022 before S.B.



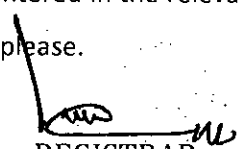
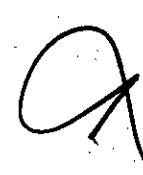

(Mian Muhammad)  
Member (E)

Form- A

FORM OF ORDER SHEET

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

Execution Petition No. 157/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	22.03.2022	<p>The execution petition of Mr. Sahib Nawaz submitted today by Syed Noman Ali Shah 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><i>Noted</i> <i>7-4-2022</i></p> <p>11.05.2022</p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>11-05-2022</u>. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Petitioner present through counsel.</p> <p>Notice be issued to respondents for implementation report for 15.07.2022 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ  
Mrs. Justice Ayesha A. Malik

**CIVIL PETITION NO. 318 OF 2021**

Inspector General of Prisons KP, Peshawar  
and others ...Petitioner(s)

Versus

Sahib Nawaz

...Respondent(s)

For the Petitioner(s) : Mr. Atif Ali Khan, Additional AG, KP

Respondent(s) : N.R.

Date of Hearing : 15.09.2022

**ORDER**

The learned Additional Advocate General, Khyber Pakhtunkhwa submits that the effect of the impugned judgment dated 22.03.2021 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar that the respondent has been allowed the payment of dues during which the disciplinary proceedings and litigation was imposed. That consequential relief is based on the finding that the de-novo proceedings were not conducted in accordance with law. He further submits that there is error in the said order because of the defect, if any, in the initial round of proceedings.

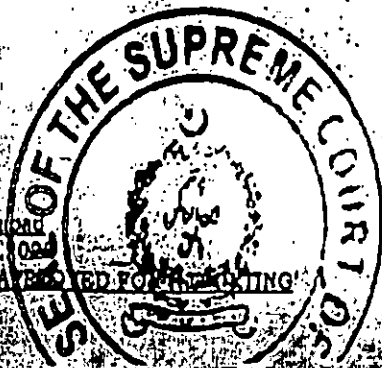
2. Issue notice to the respondent and status quo shall be maintained.

Sd/-HCJ

Sd/-J

**Certified to be True Copy**

*[Signature]*  
**Senior Court Associate**  
Supreme Court of Pakistan



Islamabad  
15:09:02  
NOT A VALID DOCUMENT FOR SIGNING

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ  
Mrs. Justice Ayesha A. Malik

**CIVIL PETITION NO. 318-P OF 2021**

Inspector General of Prisons KP, Peshawar  
and others ...Petitioner(s)

Versus

Sahib Nawaz

...Respondent(s)

For the Petitioner(s) : Mr. Atif Ali Khan, Additional AG, KP

Respondent(s) : N.R.

Date of Hearing : 15.09.2022

**ORDER**

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2. Issue notice to the respondent and status quo shall be maintained.

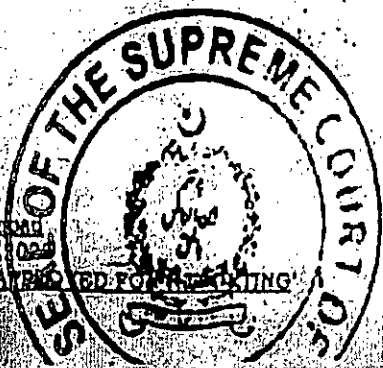
Sd/-HCJ

Sd/-J

**Certified to be True Copy**

*By*  
**Senior Court Associate**  
Supreme Court of Pakistan

Islamabad  
15/09/2022  
NOT ADOPTED FOR RECORDING

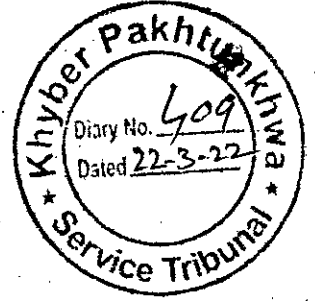


1

**BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,**  
**PESHAWAR.**

Execution Petition No. 157 /2022

In Service Appeal: 5681/2020



Sahib Nawaz, Warder Central Jail, Peshawar

..... appellant/Petitioner

VERSUS

1. Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.
2. Assistant Director General of Prisons, Khyber Pakhtunkhwa , Peshawar.
3. Superintendent Headquarters Prisons Peshawar

..... Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE JUDGMENT**  
**DATED: 22/03/202 OF THIS HONOURABLE TRIBUNAL**  
**IN LETTER AND SPIRIT.**

.....

**Respectfully Sheweth:**

1. That the appellant/Petitioner filed Service Appeal No.5681/2020 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 22/03/2021. (Copy of Judgment is annexed as Annexure-A).

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment and properly moved an application to respondent Department. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal. (Copy of application is attached as annexure-B).
3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal.

Appellant/Petitioner

Through

Syed Noman Ali Bukhari

&

Uzma Syed Advocates  
High Court Peshawar

3  
-1-

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

Appeal No: 5687/2020

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 2511

Dated 15/4/20

Sahib Nawaz, Warder, Central Jail, Peshawar.

.....Appellant

Versus

1. Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.
2. Assistant Director General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Headquarters Prison Peshawar.

.....Respondents

**APPEAL UNDER SECTION 4 OF KPK**  
**SERVICE TRIBUNAL ACT 1974**  
**AGAINST THE IMPUGNED ORDER**  
**DATED 1-11-2019 VIDE ANNEXURE**  
**"A" WHEREBY THE INTERVENING**  
**PERIOD W.E.F 14-7-2016 TO 13-9-2019**  
**WHICH HAS BEEN TREATED AS**  
**LEAVE WITHOUT PAY AND ALSO**  
**AGAINST THE FINAL IMPUGNED**  
**ORDER DATED 12-3-2020 VIDE**  
**ANNEXURE "B" WHEREBY THE**  
**REDUCTION TO LOWEST STAGE**  
**FOR A PERIOD OF THREE YEARS**  
**HAS BEEN CONVERTED INTO**  
**MINOR PENALTY OF**  
**WITHHOLDING OF INCREMENTS**  
**FOR TWO YEARS.**

**PRAYER:**

**ON ACCEPTANCE OF APPEAL, THE**  
**IMPUGNED ORDERS DATED 1-11-**  
**2019 AT ANNEXURE "A" THROUGH**

*Handwritten signature and date: 15/4/2020*

*De - sub - fitted  
to - day  
9/6/2020*



4

- 2 -

**WHICH THE INTERVENING PERIOD  
W.E.F 14-7-2016 TO 13-9-2019 WHICH  
HAS BEEN TREATED AS LEAVE  
WITHOUT PAY AND ALSO THE  
MINOR PENALTY OF  
WITHHOLDING OF INCREMENTS  
FOR TWO YEARS WHICH HAS ALSO  
BEEN IMPOSED THROUGH FINAL  
IMPUGNED ORDER DATED 12-3-2020  
AT ANNEXURE "B" MAY BE SET  
ASIDE AND THE APPELLANT SHALL  
BE ALLOWED ALL BACK BENEFITS..**

***Respectfully Sheweth:-***

*The appellant respectfully submits as under:-*

1. That the appellant having been appointed in service as Warder (BPS-5) on 22-1-2015 and was posted at Central Prison Peshawar vide annexure "C".
2. That the appellant during the service has become ill and he was directed to report to service and police hospital at Peshawar for medical treatment. He was granted two days medical leave.
3. That the appellant went to his home at Bannu but did not recover within two days and thereafter ex-parte action was taken against him and was removed from service vide order dated 14-7-2016 at Annexure "D".
4. That the appellant thereafter has filed an appeal before this Hon'ble KPK Service Tribunal Peshawar which has been accepted. (Copy is attached at Annexure "E").



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 5681/2020

Date of Institution: 09.06.2020

Date of Decision: 22.03.2021



Mr. Sahib Nawaz Warder, Central Jail Peshawar.

... (Appellant)

VERSUS

Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar and two other.

... (Respondents)

Mr. Aslam Khan Khattak

Advocate

... For Appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney

... For Respondents

MR. HAMID FAROOQ DURRANI

MR. ATIQ UR REHMAN WAZIR

... CHAIRMAN

... MEMBER (E)

JUDGMENT: -

Mr. ATIQ UR REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant, while serving as Warder in Prison department, was proceeded against on the charges of absence from duty and was awarded major penalty of removal from service vide order dated 14-07-2016, against which the appellant filed departmental appeal, which was also rejected on 18-11-2016. The appellant filed service appeal No. 228/2017, which was accepted vide judgment dated 06-08-2019 and the appellant was re-instated in service and de-novo inquiry was conducted. As a result of de-novo inquiry, major penalty of reduction to lower stage in his present time scale for three years was imposed upon the appellant along with treatment of the intervening period (14-07-2016 to 13-09-2019) as leave without pay vide order dated 01-11-2019, against which the appellant filed departmental appeal dated 01-11-2019. The respondents

ATTESTED

*(Signature)*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

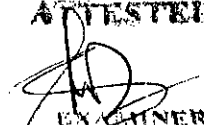
considered his appeal and major penalty was converted into minor penalty of withholding of increments for two years vide order dated 12-03-2020, against which the appellant filed the instant service appeal with prayers that impugned orders dated 01-11-2019 and 12-03-2019 may be set aside and the appellant may be allowed all back benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant contended that absence of the appellant from duty was never intentional but he was sick, which is evident from his bed rest granted by Police & Services hospital Peshawar. Learned counsel for the appellant referred to section 20(2) of Revised Leave Rules, 1980, which provides that leave on medical grounds shall not be refused. The learned counsel added that as per verdict of this Tribunal, the appellant was re-instated in service and as per law, re-instatement would mean to restore a person to its former state of condition with all back benefits and now punishing him again is not permissible under the law. Reliance was placed on 2000 PLC (CS) 1101. That the inquiry officer in the de-novo inquiry have admitted, that nor any regular inquiry nor opportunity of defense was afforded to the appellant and he was condemned unheard in earlier proceedings. Learned counsel for the appellant contended that the appellant was illegally kept away from his lawful duty and now refusal of back benefits is against law and rule. Reliance was placed on 2007 PLC (CS) 560 and 2007 SCMR 296. That this Tribunal vides its judgment dated 11-07-2017 in Service Appeal No 292/2015 have granted back benefits in similar case. Learned counsel for the appellant added that in similar cases, the respondents have re-instated the warders in service vide order dated 23-09-2016 without imposing any penalty upon them, who were also absent from duty, hence the appellant also deserve the same treatment, otherwise it shall be discriminatory, which is not permissible under the law.

ATTESTED

  
EXAMINER  
Khalid Farhan Khan  
Service Tribunal  
Peshawar

②

Learned counsel for the appellant further added that both stoppages of increments as well as declaring the intervening period without pay is illegal, malafide, without jurisdiction and without legal authority, which are liable to be set aside.

05. Learned Deputy District Attorney appeared on behalf of official respondents contended that the appellant was proceeded against as per law in the de-novo proceedings and every opportunity of defense was afforded to him. That the appellant joined the proceedings and opportunity of personal hearing was also afforded to the appellant, but the appellant did not prove his innocence. That taking a lenient view, major penalty was converted into minor penalty of stoppage of increments upon decision on his departmental appeal. The learned Deputy District Attorney prayed that the instant appeal being devoid of merit may be dismissed.

06. We have heard learned counsels for the parties and perused the record. Record reveals that the appellant was removed from service vide order dated 14-07-2016 on the charges of 39 days absence from duty without conducting a regular inquiry and without taking notice of the cause of absence. Only Show Cause Notice was sent on his home address, which also was not delivered to the appellant. The appellant however was re-instated by orders of this Tribunal vide judgment dated 06-08-2019. The Tribunal however in its judgment has observed that while passing order on his departmental appeal, the respondents did not cater for the aspect of illness of the appellant. During the course of de-novo proceedings, the inquiry officer admitted that neither any inquiry was conducted nor the appellant was afforded any opportunity of personal hearing. The inquiry officer have further admitted that since the appellant was not imparted any training to acquaint him with law and rule, hence inadvertently admitted that not taking prior leave on medical grounds by appellant was a pardonable act, so was recommended for minor penalty of withholding of annual increment. We have also observed that there is no history of absenteeism nor the stated absence was wilful, but the competent authority again awarded him major penalty of reduction to

ATTESTED  
[Signature]  
[Name]  
[Title]

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lower stage in his present time scale for a period of three years as well as declaring the intervening period as leave without pay, which however was converted into minor penalty of withholding of increments for two years upon taking decision on his departmental appeal. We have noted that there was no justification for award of even minor penalty, once it was admitted in the de-novo proceedings that his removal from service was not in accordance with law. We are in agreement with learned counsel for the appellant that the appellant was kept away illegally from his lawful duty, which is also evident from the judgment dated 06-08-2019 of this Tribunal as well as from the inquiry report of the de-novo proceedings. The respondents also did not provide any plausible reason for an order dated 23-09-216, where fourteen warders have been re-instated in service without imposing any penalty, which obviously is discriminatory.

07. In view of the situation, the impugned orders dated 01-11-2019 and 12-03-2019 are set aside and the instant appeal is accepted as prayed for. No orders as to costs. File be consigned to record room.

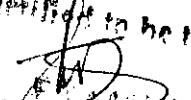
ANNOUNCED  
22.03.2021



(HAMID FAROOQ DURRANI)  
CHAIRMAN



(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

*Certificate to be true copy*  
  
Atiq Ur Rehman Wazir  
Member (E)  
Service Tribunal  
Peshawar

Date of Presentation of Application 05/04/21  
 Number of Words 1600  
 Copying Fee 18/-  
 Urgent 4/5  
 Total 22/-  
 Name of Copyholder \_\_\_\_\_  
 Date of Completion of Copy 05/4/21  
 Date of Delivery of Copy 05/4/21

9

VAKALATNAMA

NO. \_\_\_\_\_ /20

IN THE COURT OF Service Tribunal, Perhamur

M. Sahib

Appellant  
Petitioner  
Plaintiff

VERSUS

Prisons Deptt

Respondent (s)  
Defendants (s)

I/WE Mr. Sahib Mansab

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE 22/3 /2022

[Signature]  
(CLIENT)

ACCEPTED

[Signature]  
**SYED NOMAN ALI BUKHARI  
ADVOCATE HIGH COURT**

[Signature]  
**UZMA SYED  
Advocate High Court**

CELL NO: 0306-5109438