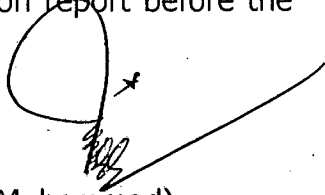


28.09.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, learned Additional Advocate General for the respondents present.

Learned Additional Advocate General requested for adjournment on the ground to further contact the respondent department in connection with implementation of the Service Tribunal judgement dated 02.02.2022. Request is acceded to. To come up for implementation report before the S.B on 24.11.2022.



(Mian Muhammad)
Member (E)

02.06.2022

Nemo for the petitioner. Notice be issued to the respondents through registered post for production of implementation report on 26.07.2022 before the S.B.

Notice for prosecution of the petition also be issued to the petitioner as well as his counsel for the date fixed.



(Salah-Ud-Din)
Member (J)

Noted by
18/07/22

26th July, 2022

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

Learned AAG has assured that he will coordinate with the respondents to get the judgment implemented and submit implementation report on the next date. To come up for implementation report on 28.09.2022 before S.B.





(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 231/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.04.2022	<p>The execution petition of Mr. Khalid Naiz 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>
2-	<p><u>25-5-22</u></p> <p><i>Natal</i> <i>by Naila Jan</i> <i>26/04/2022</i></p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>02-06-2022</u>. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 231 /2022

In

Service Appeal No: 1429 /2019

Khalid Niaz Ex-Constable

Versus

Government of Khyber Pakhtunkhwa and others

INDEX

S#	Description of Documents	Annex	Pages
1.	Execution Petition with Affidavit		1-3
2.	Addresses of Parties		4
3.	Copy of Judgment		5-10
4.	Wakalat Nama		11

Dated: 15/04/2022

Khalid

Petitioner

Through

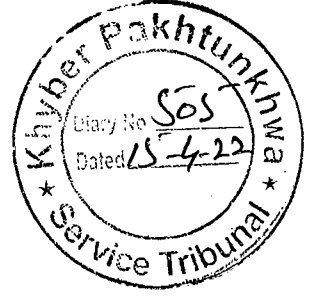
Naila Jan

Advocate, High Court
Peshawar

Naila Jan
H. J. Jan

(1)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR



Execution petition No. 231 /2022

In

Service Appeal No: 1429 /2019

Khalid Niaz Ex-Constable No: 1201-District Bannu.

.....Petitioner

Versus

1. District Police Officer Bannu.
2. Regional Police Officer, Bannu Region Bannu.
3. Inspector General of Police KPK.

.....Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
1429/ 2019 DECIDED ON
02/02/2022

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 02/02/2022. (Copy of the judgment is annexed as annexure "A")

(2)

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 19-06-2015 , 30-05-2017 and 17-05-2019 are set aside and two annual increments of the appellant are restored with al back benefits . Parties are left to bear their own costs . File be consigned to record room*".

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.

(3)

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

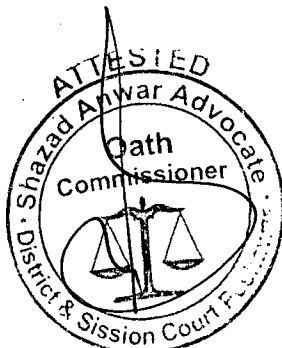
It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 15/04/2022

Petitioner
Through
Naila Jan
&
Huma Khan
Advocate, High Court
Peshawar

AFFIDAVIT:-

I, Ex Khalid Niaz Ex-Constable No: 1201-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.



Khalid
Deponent

15.04.2022

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2022

In

Service Appeal No: 1429 /2019

Khalid Niaz Ex-Constable

Versus

Government of Khyber Pakhtunkhwa and others

ADDRESSES OF PARTIES

PETITIONER

Khalid Niaz Ex-Constable No: 1201-District Bannu.

RESPONDENTS

1. District Police Officer Bannu.
2. Regional Police Officer, Bannu Region Bannu.
3. Inspector General of Police KPK.

Dated: 15/04/2022

Khalid
Petitioner

Through

Naila Jan
Naila Jan
Advocate, High Court
Peshawar

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 1429/2019

Diary No. 1458

Date 16-10-2019

Khalid Niaz Ex-Constable No: 1201-District
Bannu. Kotka Azmat Kala Azmat Khel Bannu.

-----**(Appellant)**-----

VERSUS

1. District Police Officer Bannu.
2. Regional Police Officer, Bannu Region Bannu.
3. Inspector General of Police KPK.

-----**(Respondents)**-----

**APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL
ACT -1974 AGAINST THE IMPUGNED
ORDER DATED 19/06/2015 WHEREBY
PUNISHMENT OF THE FOREFETURE
OF TWO ANNUAL INCREMENTS WITH
ACCOMULATIVE EFFECT WAS
AWARDED TO APPELLANT WHICH
WAS REJECTED VIDE ORDER DATED
30/5/2017, AND ORDER DATED
17/05/2019 WHEREBY THE MERCY
PETITION OF THE APPELLANT WAS
REJECTED WHICH WAS
COMMUNICATED ON 16/09/2019.**

Filed to-day

[Signature]
Registrar
16/10/19

PRAYER IN APPEAL:-

[Signature]

Re-submitted to-day
and filed.

[Signature]
Registrar
28/10/19

**ON ACCEPTANCE OF THE INSTANT
SERVICE APPEAL, THE IMPUGNED ORDER
DATED 09/08/2015, 30/05/2017 AND ORDER
DATED 17/05/2019 MAY KINDLY BE SET**

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1429/2019



Date of Institution ... 16.10.2019
Date of Decision ... 02.02.2022

Khalid Niaz Ex-Constable No. 1201-District Bannu Kotka Azmat Kala Azmat Khel Bannu. ... (Appellant)

VERSUS

District Police Officer Bannu and others. ... (Respondents)

Naila Jan, Advocate ... For Appellant

Muhammad Adeel Butt, Additional Advocate General ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Constable in Police Department. During the course of his service, the appellant was proceeded against on the charges of misconduct and was awarded with minor punishment of forfeiture of 02 annual increments with accumulative effect vide order dated 19-06-2015, against which the appellant filed departmental appeal, which was considered and the penalty so awarded was set aside and de-novo inquiry was ordered vide order dated 04-09-2015. As a result of de-novo proceedings, the penalty already awarded was upheld vide order dated 30-05-2017. Feeling aggrieved, the appellant filed revision petition, which was also rejected vide order dated 17-05-2019, hence the instant service appeal with prayers that the impugned orders dated 19-06-2015,

APPELLED

[Handwritten signature]
Secretary, Peshawar

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30-05-2017 and 17-05-2019 may be set aside and two annual increments of the appellant may be restored with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, rules and norms of natural justice; that neither statement of director IBMS FIA HQRs Islamabad was recorded nor did statement of any other witness was recorded which is evident from the impugned order dated 19-06-2015; that no statement of any witness has been recorded in the de-novo proceedings and the inquiry officer badly failed to bring an iota of evidence against the appellant; that the impugned orders are void ab initio, as the same has been passed in violation of Article-10-A of the Constitution; that the impugned order is against FR 29 as the punishment has been given accumulative effect; that performance and honesty of the appellant is evident from the commendation certificate; that the impugned final order is non-speaking order as the revision petition has been rejected without assigning any reason.

03. Learned Additional Advocate General for the respondents has contended that the appellant was enlisted as Constable in Bannu Police and was on deputation to FIA; that upon complaint of FIA authorities, the appellant was proceeded against on the charges of incomplete/wrong/fictitious passport numbers in IBMS data at Peshawar air port; that the appellant was awarded with minor punishment of stoppage of 2 increments with accumulative effect; that departmental appeal of the appellant was considered and de-novo proceedings were ordered; that as a result of de-novo proceedings, the penalty already awarded was upheld; that DSP Cantt conducted inquiry and submitted its findings and after perusal of the report, the DPO entrusted the de-novo inquiry to SP Investigation, who reported that in light of the previous inquiry conducted by DSP Cantt, the order of the then DPO Bannu i.e. forfeiture of two annual increments with accumulative effect may be upheld; that as per recommendation of the inquiry officer, the penalty so awarded was upheld.

EXAMINER
N. K. Khan
Service Tribunal
Peshawar

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

05. Record reveals that the appellant while serving as Constable in Bannu Police, was transferred on deputation to Federal Investigation Agency (FIA). While analyzing IBMS Data in respect of international travelers for the year 2012 of Peshawar Airport, it was noticed that immigration counter officers working on IBMS had fed incomplete/wrong/fictitious passport numbers. For such casual behavior, 35 officials including the appellant were nominated for disciplinary proceedings and case of the appellant was sent by FIA to Bannu police for disciplinary proceedings vide order dated 26-08-2014. Disciplinary proceedings were initiated against the appellant and he was awarded with minor penalty of stoppage of two annual increments with cumulative effect. The appellant filed departmental appeal to the appellate authority, which was considered and the appellate authority noticed that the penalty awarded to the appellant is not in consonance with law, as the departmental proceedings in the subject case was found incomplete, hence the order dated 19-06-2015 was set aside and de-novo inquiry was ordered.

06. The available record is incomplete from either side; hence, we are constrained to rely upon the available record. Neither the first inquiry report is available on file nor the de-novo inquiry report, hence it cannot be ascertained as to whether the appellant was associated with proceedings of the inquiry or the proceedings were conducted as per law or otherwise. What we have gathered from the available record is that the appellant was proceeded against without recording statement of the complainants i.e. FIA, nor the appellant was afforded opportunity to cross-examine such witnesses, thus the respondents violated Section 11 (1) and (4) of E&D Rules, 2011 by not affording opportunity to cross examine witnesses, nor recorded statements of witnesses in presence of appellant, thus deprived the appellant of his lawful right, which was not

ATTESTED
BY
Service Tribunal
Peshawar

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warranted by law. Reliance is placed on 2002 SCMR 433, 2012 PLC (CS) 728 and 1997 SCMR 1073. The first inquiry report and the impugned order dated 19-06-2015 were set aside by the appellate authority as proceedings so conducted were found incomplete. The inquiry officer in the de-novo proceedings placed reliance on the first inquiry report without conducting fresh inquiry and without issuing fresh showcause to the appellant, which was violation of provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. It is pertinent to mention that the inquiry which was set aside by the appellate authority was again made a base for penalizing the appellant once again, which however was not warranted. We have observed that 35 officials working on IBMS Data including the appellant were held responsible by FIA for wrong entries of passports, but it is astonishing to note that the appellant being a constable having no nexus with entries of data was involved in the case, which was neither investigated at the level of FIA nor by his parent department and the appellant was penalized only on the basis of a letter dated 26-08-2014 addressed to DPO Bannu by FIA authorities.

07. We are of the considered opinion that the appellant has not been treated in accordance with law and the proceedings conducted against the appellant is replete with deficiencies. Neither any proper inquiry was conducted nor statements of the witnesses were recorded in presence of the appellant and no charge was established against the appellant. The inquiry officer wrote letters to FIA repeatedly but with no response from the main complainants, i.e. the FIA authorities and finally the inquiry officer concluded his findings merely on the basis of surmises and conjectures. Main task of the inquiry officer was to prove such allegations with solid evidence, but the inquiry officer badly failed to prove such allegations. The respondents preferred to punish the appellant only based on presumptions; facts however, had to be proved and not presumed. Reliance is placed on 2002 PLC (CS) 503 and 2008 SCMR 1369. In order to justify their

ATTORNEY

CHANDLER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


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stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant.

08. There are enough grounds available on record to show that the appellant has not been treated in accordance with law and was treated discriminately. Neither the charges of negligence were proved against him nor the wrong entries of passports; despite he was awarded minor punishment in an unlawful manner without adhering to the method prescribed in law.

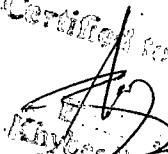
09. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 19-06-2015, 30-05-2017 and 17-05-2019 are set aside and two annual increments of the appellant are restored with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Date of Presentation of Application 15/4/22
Number of Words 2000
Copying Fee 24/-
Urgent 5/-
Total 26/-
Name of Copyist ---
Date of Reception of Copy 15/4/22
Date of Delivery of Copy 15/4/22

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

وکالت نامہ

عدالت جناب KP سوسائٹی ٹریبونل
خالد نبیاز بنام پو لیس
منجانب: Petitioner: تاریخ 15/4/2022
علت نمبر: مورخہ: بجرم: تھانہ:

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی وجوہد ہی بمقام
کے لیے ہے۔

نانکہ جان ایڈوکیٹ ہائی کورٹ پشاور

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو بروئے عدالت حاضر ہوتا ہوں گا اور ہونگی اور بوقت پکارے جانے مقدمہ
وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کرونگا اگر پیشی پر من مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے
برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا
بروز تعطیل یا کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے
ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداخت صاحب
موصوف مثل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی
ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور
داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی
مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم اتناعی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختیار نامہ پیروی کا اختیار
ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے
کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں نیز ایسے مشیر قانون کو ہر امر میں وہی اور ایسے ہی اختیارات حاصل ہونگے جیسے کہ
صاحب موصوف کو حاصل ہیں اور پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی
مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختیار نامہ لکھ دیتا کہ سدر ہے۔ مورخہ 15/04/2022۔ مضمون مختیار نامہ
سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

ATTESTED & ACCEPTED

جان ایڈوکیٹ ہائی کورٹ پشاور

خالد نبیاز (Petitioner)

رابطہ نمبر: 0312-9215471

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. 1241/2012 of 20

Appellant/Petitioner

D/O Bannu Versus

Notice to Appellant/Petitioner Khaliq Niaz **RESPONDENT(S)**
District Bannu Ex-Constable

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 02/06/2012 at 4:30 PM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No..... 231 of 20 22 SB

..... Ichahid Khan Appellant/Petitioner
Versus

District Police Officer Bannu Respondent
Respondent No..... (3)

Notice to: Inspector general of Police KPK

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 28/07/2022 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 1st

Day of..... July 20 22

(For Impl-ment-ation Report)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note:
1. The hours of attendance in the court are the same to that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.