

4th July, 2022

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

Learned AAG submitted copy of order No. 1798-1804/AG/7-9/Office Order dated 12.02.2022 whereby in compliance of the judgment of the Tribunal, the petitioner has been reinstated in service. Since the order of the Tribunal has been complied with, therefore, the instant execution petition is disposed off in the above terms. Consign.

Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 04th day of July, 2022.

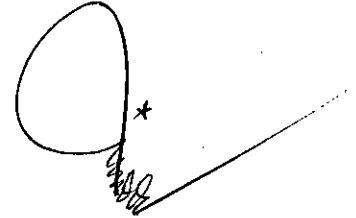


(Kalim Arshad Khan)
Chairman

04.04.2022

None for the petitioner present. Mr. Muhammad Adeel Butt,
Addl: AG for respondents present.

Implementation report not submitted. Notices be issued to
the respondents for submission of implementation report.
Adjourned. To come up for implementation report on 20.05.2022
before S.B.

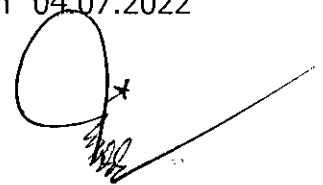


(MIAN MUHAMMAD)
MEMBER(E)

20.05.2022

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

Implementation report not submitted. Learned
AAG requested for time to contact the respondents for
submission of implementation report. Granted. To
come up for implementation report on 04.07.2022
before S.B.



(Mian Muhammad)
Member (E)



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 1798-1804 /AGI7-9/Office Order Dated Peshawar, the 12-Feb-2022

Address: High Court Building, Peshawar.
Tel. No. 091-9210119

Exchange No 9213833
Fax No. 091-9210270

OFFICE ORDER

In pursuance to the Order of the Hon'ble Supreme Court of Pakistan, delivered on 13/01/2022 in Civil Petition No. 460-P of 2021 (Govt. of Khyber Pakhtunkhwa versus Naik Muhammad) and Judgment of Khyber Pakhtunkhwa Services Tribunal, dated 29/06/2021 in Service Appeal No. 1358 of 2017 (Naik Muhammad versus Govt. of Khyber Pakhtunkhwa), the Advocate General, Khyber Pakhtunkhwa is pleased to re-instate Mr. Naik Muhammad, Ex-Senior Clerk (BPS-14) of this office in the same capacity w.e. from 21/08/2017 with all back benefits.

On re-instatement, the official is hereby posted in office of the Additional Advocate General, Bannu. He is further directed to report for duty in office of the Additional Advocate General, Bannu by 19/02/2021.

Sd/-
**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.**

Endst. No. & date even

Copy forwarded for information and necessary action to:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department, Peshawar.
2. The Additional Advocate General, Khyber Pakhtunkhwa, Bannu.
3. The District Accounts Officer, Bannu.
4. The Senior Administrative Officer of this office.
5. The Budget & Accounts Officer of this office.
6. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.
7. Official concerned.


(AYAZ KHAN)
ADMINISTRATIVE OFFICER

13.12.2021

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Implementation report not submitted. Learned AAG seeks time to contact the respondents for submission of implementation report on the next date. Granted. To come up for implementation report on 02.02.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER (E)

02.02.2022

Petitioner in person present. Mr. Muhammad Adeel Butt, Add: AG for respondents present. Preliminary arguments could not be heard due to learned Member (Executive) Mian Muhammad is on leave. To come up for further proceedings on 22.03.2022 before S.B.



Reader

22.03.2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG seeks time to submit implementation report. Adjourned. To come up for implementation report on 04.04.2022 before S.B.






Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 183 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.09.2021	<p>The execution petition of Mr. Naik Muhammad submitted today by Mr. Asad Mahmood 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 at Peshawar on <u>29/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	29.10.2021	<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of implementation report on <u>13.11.2021</u> before S.B.</p> <p style="text-align: right;"> Chairman</p>

The Implementation application of Mr. Naik Muhammad Ex-Senior Clerk Office of Advocate General KPK received today by post on 09.09.2021 is incomplete on the following scores which is returned to the counsel for the applicant for completion and resubmission within 15 days.

- 1- Affidavit may be got attested by the Oath Commissioner.
- 2- Two more copies/sets of the application along with annexures i.e. complete in all respect may also be submitted with the application.

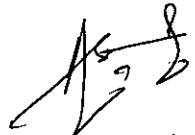
No. 1808 /S.T,

Dt. 09/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Mehmood Adv. Pesh.

- 1- Affidavit is duly attested
- 2- Two more copies are provided.


09/9

**BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL,
PESHAWAR**

Execution Petition No. _____/2021

In

Service Appeal No. 1358/2017

*Naik Muhammad, Ex-Senior Clerk, Office of Advocate General
KPK, Peshawar.*

..... **PETITIONER**

VERSUS

*Secretary, Law Department, Govt of Khyber Pakhtunkhwa,
Peshawar and 01 other.*


..... **RESPONDENTS**

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Petitioner

Through

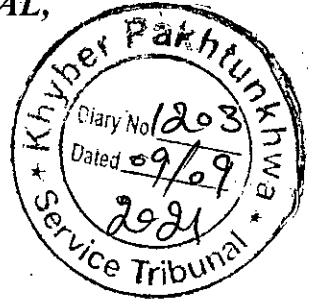

**Asad Mahmood
Advocate High Court**

**BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL,
PESHAWAR**

Execution Petition No. 183 /2021

In

Service Appeal No. 1358/2017



*Naik Muhammad, Ex-Senior Clerk, Office of Advocate General
KPK, Peshawar.*

..... **PETITIONER**

VERSUS

- 1. Secretary, Law Department, Govt of Khyber Pakhtunkhwa,
Peshawar.*
- 2. The Advocate General, Khyber Pakhtunkhwa, Peshawar.*

..... **RESPONDENTS**

**EXECUTION PETITION FOR
IMPLEMENTATION OF THE ORDER
DATED 29.06.2021 IN SERVICE APPEAL
NO. 1358/2017**

Respectfully Sheweth,

- 1. The petitioner was appointed as Naib Qasid in the year 1996
and reached to the rank of Senior Clerk.*
- 2. The petitioner was entangled in a corruption case through a
written complaint; departmental proceedings were initiated
against him and imposed a penalty of removal from service.*
- 3. The impugned order dated 21.08.2017, through service
appeal no. 1358/2017, was challenged but due to dissenting note
of the members, the instant service appeal was referred to the
larger bench of this Hon'ble Tribunal for conclusive order.*
- 4. The matter was finally adjudicated upon by the larger bench of
this Hon'ble Tribunal; the impugned order was set aside and the*

petitioner was reinstated into service with all back benefits vide order dated 29.06.2021. (Annexure-A)

5. *An application for re-instatement into service was moved by petitioner vide diary no. 6025 dated 15th July, 2021 (Annexure-B) and the respondents were made fully aware of consequences in defiance of the order, yet they openly flouted and are reluctant to implement the order dated 29.06.2021 in its letter and spirit, hence the instant execution petition.*

It is, therefore, most humbly prayed that on acceptance of this execution petition, the order dated 29th June, 2021 passed by this hon'ble Service Tribunal may kindly be implemented in its letter and spirit to bring the justice to its ultimate end.

[Signature]
Petitioner

Through

[Signature]
Asad Mahmood
Advocate High Court

AFFIDAVIT

It is hereby solemnly affirm and stated on oath that contents of this petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

[Signature]
Deponent

ATTESTED



[Signature]
13-9-21

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1358 /2017

Naik Muhammad, Ex-Senior Clerk
Office of Advocate General KPK Peshawar.

1395
28/12/2017

(Appellant)

VERSUS

1. The Secretary Law Department Government of Khyber Pakhtunkhwa Peshawar.
2. The Advocate General Khyber Pakhtunkhwa, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 21.08.2017 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 21.08.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTLY BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.


8/12/17

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Naib Qasid in advocate general office in the year 1996 and later on promoted to junior clerk and then promoted as senior clerk. The appellant since his appointment work with

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

Service Appeal No. 1358/2017

Date of Institution ... 08.12.2017

Date of Decision ... 29.06.2021



Naik Muhammad, Ex-Senior Clerk
Office of Advocate General Khyber Pakhtunkhwa Peshawar.
... (Appellant)

Versus

Secretary Law Department Government of Khyber Pakhtunkhwa
Peshawar and one other.
... (Respondents)

MR. ASAD MEHMOOD,
Advocate ... For appellant.

MR. RIAZ AHMAD PAINDAKHEIL,
Assistant Advocate General ... For respondents.

MR. SALAH-UD-DIN, ... MEMBER (JUDICIAL)
MS. ROZINA REHMAN, ... MEMBER (JUDICIAL)
MR. ATIQ-UR-REHMAN WAZIR, ... MEMBER (EXECUTIVE)

JUDGMENT

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant Service Appeal against the impugned order dated 21.08.2017, whereby the penalty of removal from service was imposed upon the appellant and the departmental appeal filed by the appellant was not responded by the appellate Authority.

2. Brief facts of the case are that the appellant has alleged that while serving as Junior Clerk in the Advocate General office Bannu bench, an altercation took place between the appellant and complainant Sharifullah, who was serving as HVC in Irrigation

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Department and was pursuing cases on behalf of Irrigation Department; that the appellant was then transferred from Bannu to Peshawar, however on account of previous altercation, Mr. Sharifullah prepared fabricated and false corruption case against the appellant in order to take revenge from the appellant; that disciplinary action was taken against the appellant by the department and on conclusion of the inquiry, he was removed from service vide order dated 21-08-2017, which was challenged through filing of departmental appeal, which was not responded with in the statutory period of ninety days, hence the instant appeal.

3. Respondents submitted their comments, wherein it was mainly alleged that the appellant was involved in corrupt practices and as the allegations against him were proved during the regular inquiry, therefore, he has rightly been dismissed from service.

4. The instant Service Appeal was decided by a Division Bench of this Tribunal on 31.01.2020 by rendering dissenting judgments, therefore, the appeal was referred to Larger Bench for its decision.

5. Learned counsel for the appellant has contended that as the complainant namely Sharifullah was having personal grudge with the appellant, therefore, he reported a false and concocted report to the office of Additional Advocate General in order to damage the career of the appellant. He next contended that neither the complainant Sharifullah nor Munawar Khan, regarding whose brother case, the appellant had allegedly demanded money from Sharifullah, had appeared before the inquiry committee for recording of their statements, which fact by itself signifies that the complaint filed against the appellant was false and baseless. He further contended that the inquiry was conducted in a slipshod manner and even an opportunity of personal hearing was not afforded to the appellant, therefore, the inquiry is tainted with material legal dents. He further argued that no material

ATTESTED

EXAMINER
Rajinder Prakash Khanna
Member Tribunal
Peshawar

whatsoever has been brought on record against the appellant during the inquiry, therefore, the impugned order of dismissal of the appellant is liable to be set aside, being not sustainable in the eye of law. Reliance was placed on 2008 SCMR 1369 and 2012 PLC (CS) 728.

6. Conversely, learned Assistant Advocate General for the respondents has argued that the appellant, while serving as Junior Clerk in the Advocate General office, had demanded money from one Sharifullah on the pretext that the then learned Additional Advocate General was demanding the same for extending concession to the party in its case against the Government. He further argued that a proper regular inquiry was conducted in the matter and it was proved that the appellant had demanded an amount of Rs. 60000/- on the pretext that the same shall be paid to Additional Advocate General Khyber Pakhtunkhwa, however the matter was decided against the party, from whom the appellant had taken Rs. 26000/-, therefore, the appellant returned Rs. 10000/- to the said party through easypaisa, while Rs. 5000/- were paid in cash, whereas the remaining amount is still outstanding against the appellant. He further contended that the appellant had brought bad name to the department, and the allegations against him were proved during a regular inquiry, therefore, he has rightly been removed from service.

7. Arguments heard and record perused.


8. The allegations against the appellant are that the complainant Sharifullah S/O Gul Muhammad Khan R/O Ghazni khel, Lakki Marwat, who was serving as HVC in the irrigation department Khyber Pakhtunkhwa, had met the appellant in connection with a civil petition pending adjudication in the worthy Supreme Court of Pakistan, with a view to have some favour for the respondent against the government in the said petition; that the appellant demanded Rs. 60000/- from Mr. Sharifullah, on the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

pretext that the then Advocate General has demanded the said amount and in this way the appellant managed to receive Rs. 26000/- from the complainant on the assurance that neither stay would be granted in the matter nor the same will be decided in favour of the Government. The result, however turned out other way round, therefore, the appellant returned Rs. 10000/- through easypaisa, while Rs. 5000/ were paid in cash, whereas Rs. 11000/- were still outstanding against the appellant.

9. It was upon the complaint of Sharifullah S/O Gul Muhammad Khan that disciplinary action was taken against the appellant. Similarly, Mr. Munawar Khan, who was serving as Naib Qasid in irrigation department, had met Sharifullah in connection with the civil petition pending in the august Supreme Court, in which the brother of Munawar Khan was respondent. The aforementioned Sharifullah and Munawar Khan did not opt to appear before the inquiry committee. The inquiry report would show that both Sharifullah and Munawar Khan were telephonically contacted by the inquiry officer, however they did not opt to appear for recording of their statements. Even the statement of departmental representative was not recorded in support of allegations against the appellant. When the very complainant has failed to appear before the inquiry officer for supporting the allegations against the appellant, it can be safely concluded that the allegations against the appellant remained unproved. It appears that during the inquiry proceedings, a letter dated 19-06-2017 allegedly issued by Mobilink office, University Road Peshawar addressed to the administrative officer Advocate General Office Khyber Pakhtunkhwa was the sole document, upon which, the inquiry officer based his findings for reaching the conclusion that the transaction of sending Rs. 10000/- by the appellant to the complainant stands proved. The afore-mentioned letter would show that although the details of the sender have been mentioned therein, however it does not show as to whom, the amount was

ATTESTED

 AMINER
 Pakhtunkhwa
 Tribunal
 Peshawar

To

The Advocate General,
Khyber Pakhtunkhwa, Peshawar

Subject:- RE-INSTATMENT IN SERVICE.

R/Sir,

I have the honour to submit that the applicant was serving as Senior Clerk in this office and unfortunately was removed from service on 21/08/2017. Against the said order I filed a Service Appeal in the Hon'ble Khyber Pakhtukhwa, Service, Tribunal Peshawar which was accepted and the applicant was re-instated in service with all back benefits.(Copy of judgment on 29/06/2021 is attached herewith).

It is, therefore, requested that I may kindly be re-instated in service with all back benefits as per judgment of Hon'ble Khyber Pakhtunkhwa, Service Tribunal, Peshawar and oblige.

Dated:15/07/2021

Yours obediently

(Nasir Muhammad)
Senior Clerk of this office.

ASAD MAHMOOD, Advocate High Court,

B.A, LL.B., Certificate in Sharia, Certificate of Proficiency in Enhanced Legal Skills (Sponsored by Embassy of Germany), Certificate on International Protection Organized by UNHCR for Lawyers, Certificate Course Organized by National Democratic Institute for International Affairs, Advisor on Industrial Agreements, and Industrial Relation Consultant, Management and Labour Laws Practitioner.

POWER OF ATTORNEY

BEFORE KP SERVICE TRIBUNAL, PESHAWAR

*Naik Muhammad, Ex-Senior Clerk, Office of Advocate General,
Khyber Pakhtunkhwa.*

.....*Petitioners*

Versus

*Secretary Law, Government of Khyber Pakhtunkhwa,
Peshawar and one other.*

.....*Respondents*

Hon' ble Tribunal:

Mr. Asad Mahmood, Advocate, is hereby empowered to institute, conduct, defend, compound, or abandon the legal proceedings, and to do on our behalf all other matters connected with the case before this Hon'ble Forum. Ab initio responsibility for keeping abreast of the case and attend thereto shall, however, lie upon the undersigned. Dismissal in default or for non-prosecution shall not, in any way, be attributed to the counsels. Power of Attorney was read over to me/us and I/we fully understood the contents thereof, and were found to the entire satisfaction of me/ours.

[Signature]
Petitioner

I hereby accept the case.

[Signature]
(Asad Mahmood)
Advocate High Court
Cell # 0344 906 4149

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Mazhar Alam Khan Miankhan
Mr. Justice Muhammad Ali Mazhar

CIVIL PETITION NO.460-P OF 2021

[Against judgment dated 29.6.2021, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar, in Service Appeal No.1358 of 2017]

*Government of Khyber Pakhtunkhwa
through Secretary Law, Parliamentary
Affairs and Human Rights Department,
Peshawar and another*

... Petitioner(s)

Versus

Naik Muhammad

... Respondent(s)

For the Petitioner(s) : Mr. Shumail Aziz,
Addl. Advocate General,
Khyber Pakhtunkhwa

Respondent(s) : N.R.

Date of Hearing : 13.01.2022

ORDER

GULZAR AHMED, CJ.- The Learned Additional Advocate General, Khyber Pakhtunkhwa (AAG) has referred to Section 5(2) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 (the Act of 1974) to contend that where split decision has been given by the two Members of the Tribunal, the whole Tribunal ought to have heard the appeal and decided the same. We note that Section 5 of the Act of 1974 provides for constitution of one or more Benches each consisting of the Chairman alone, or the Chairman and one or more Members, or one preferably Judicial Member or more Members to be

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

nominated by the Chairman. The Chairman has been given power to constitute Benches of the Tribunal and the impugned judgment has been passed by a three Member Bench of the Tribunal constituted by the Chairman.

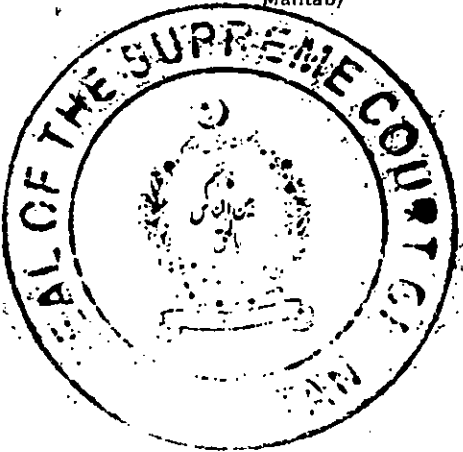
2. The submission of the learned AAG that all the Members of the Tribunal ought to have been heard the appeal does not find support from the law as is cited before us. No illegality in the impugned judgment is shown calling for interference by this Court. The petition is, therefore, dismissed and leave refused.

Sd/- CJ
Sd/- J
Sd/- J

Certified to be True Copy

[Signature]
Senior Court Associate
Supreme Court of Pakistan
Islamabad

Bench-I
Islamabad
13.01.2022
'NOT APPROVED FOR REPORTING'
Mahtab/



CR No: 1209/22 Civil/Criminal
 Date of Presentation: 19-1-22
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 Compared by/Prepared by: [Signature]
