

2591  
29/12/2022

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

Execution Petition No. \_\_\_\_\_/2022

In

Service Appeal No.8823/2020

Muhammad Fahad ..... *Appellant*

Versus

Govt. of KPK through Chief Secretary etc ..... *Respondents*

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**Petitioner In person**

*m. fahad*  
*Fahad*

Muhammad Fahad  
S/o Muhammad Imtiaz  
(Junior Clerk)  
District Attorney Swat  
R/o Mohallah Sultan Abad  
P.o Utmanzai,  
Tehsil & District Peshawar  
Cell No.0313-9039455

Dated 28.12.2022

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

Execution Petition No. \_\_\_\_\_/2022

In

Service Appeal No.8823/2020

Muhammad Fahad . . . . . *Applicant*

Versus

Govt. of KPK through Chief Secretary etc . . . . . *Respondents*

**APPLICATION FOR EXECUTION/  
IMPLEMENTATION OF ORDER DATED  
21.09.2022 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

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**Respectfully Sheweth:**

1. That the petitioner filed an Service Appeal before this Hon'ble Service Tribunal on 30.07.2020.
2. That the same was decided in favour of petitioner on 21.09.2022. **(Copy of Order dated 21.09.2022 is attached as Annexure A).**
3. That petitioner also submitted an Application before Director General Battagram for implementation of the aforesaid order dated 21.09.2022. **(Copy of the Application dated 10.11.2022 is Annexure-B).**

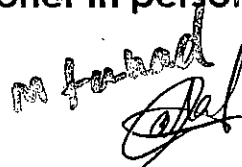
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4. That on 10.11.2022 Director General Battgram forwarded the aforesaid Application for further necessary action but same remain unfruitful. **(Copy of recommendation is attached as annexure Annexure-C).**
5. That till date no further action/remedy granted to petitioner, hence filing this execution/implementation petition before this Hon'ble Khyber Pakhtunkhwa Service Tribunal for necessary action.

It is therefore requested that on acceptance of the instant execution petition, the order dated 21.09.2022 may kindly be implemented in its due letter and spirit.

Any further relief deemed appropriate may also be granted in favour of petitioner.

**Petitioner In person**



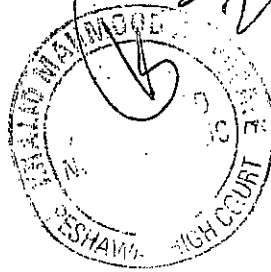
Muhammad Fahad  
S/o Muhammad Imtiaz  
(Junior Clerk)  
District Attorney Swat  
R/o Mohallah Sultan Abad  
P.o Utmanzai,  
Tehsil & District Peshawar  
Cell No.0313-9039455

Dated 28.12.2022

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AFFIDAVIT

I, Muhammad Fahad S/o Muhammad Imtiaz (Junior Clerk) District Attorney Swat R/o Mohallah Sultan Abad P.o Utmanzai, Tehsil & District Peshawar, do hereby solemnly affirm and declare that the contents of the accompanying **Execution Petition /Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon<sup>ble</sup> Court.



*[Handwritten Signature]*  
DEPONENT  
*m.fahad*

Amr A, G

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



Service Appeal No.8823/2020

**BEFORE:** MR. SALAH-UD-DIN --- MEMBER (J)  
MR. MIAN MUHAMMAD --- MEMBER (E)

Muhammad Fahad S/O Muhammad Imtiaz (Junior Clerk)  
District Attorney Swat. R/O Mohallah Sultan Abad P.O  
Utmanzai, Tehsil and District Charsadda.....(*Appellant*)

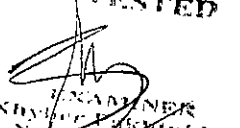
**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa Law, Parliamentary Affairs and Human Rights Department, Peshawar.
3. Director General for Law and Human Rights Khyber Pakhtunkhwa, Peshawar.
4. District Attorney, Swat..... (*Respondents*)

MR. FAZAL-E-WAHID, ... For appellant.  
Advocate

MUHAMMAD RIAZ KHAN PAINDAKHEL, ... For respondents.  
Assistant Advocate General.

Date of Institution.....30.07.2020  
Date of Hearing..... 20.09.2022  
Date of Decision..... 21.09.2022

ATTESTED  
  
ATTESTER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**JUDGEMENT**

**MIAN MUHAMMAD, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "by accepting of this service appeal, the impugned order dated 03.01.2020 and 03.07.2020 of the respondents whereby the appellant is initially removed from service as major penalty and later on the

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major penalty is modified by withholding of three annual increments and the period of alleged absence is treated as leave without pay and the appellant is reinstated in service with immediate effect as minor penalty may please be set aside by declaring both the orders as illegal, unlawful, against the rules, regulations governing the subject, constitution and the appellant may be reinstated without imposition of any kind of penalty with all back benefits".

02. Brief facts of the case, as per memorandum of appeal, are that the appellant was appointed as Junior Clerk (BPS-11) in the office of respondent No. 3 back in the year 2012, remained posted in District Nowshera for 05 years and lastly transferred to the office of respondent No. 4 in 2017. The appellant was proceeded against for willful absence under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and major penalty of "removal from service" was imposed on him vide order of respondent No. 3 dated 03.01.2020. His departmental appeal against the impugned order was partially accepted by the appellate authority (respondent No. 2) and the penalty of "removal from service" was modified/converted into minor penalty of "withholding of annual increments for three years." The appellant was also reinstated in service with immediate effect and his absence period w.e.f. 23.10.2017 was treated as "leave without pay" vide appellate order dated 03.07.2020. Feeling aggrieved with both the impugned orders, the same have been assailed in the service appeal instituted on

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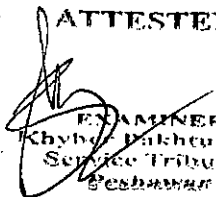
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30.07.2020 in the Service Tribunal which is under scrutiny for adjudication before us.

03. On admission of the service appeal in preliminary hearing on 13.01.2021, the respondents were put on notice to submit written defence through reply/para-wise comments. Reply/Parawise comments were submitted on 25.04.2022. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant after the sad demise of his mother in 2013 and being the sole male progeny, was looking after his ailing father suffering from mental disease and taking regular treatment from Psychiatrist. He therefore submitted application for grant of one year leave in 2017 when health condition of the appellant became very serious due to which he remained absent from duty for some time and the fact was brought in the notice of respondents from time to time. The appellant submitted his reply in response to the show cause notice published in the newspaper by the respondents. He also appeared before the committee for personal hearing, in pursuance of office order dated 30.09.2019 and duly submitted his explanation. The appellant was removed from service by the competent authority on 03.01.2020 but on his departmental appeal, the appellate authority modified the penalty, converted it into minor penalty of "withholding of annual

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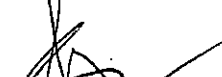
  
EXAMINER  
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Service Tribunal  
Peshawar



increments for three years” and the period of absence was treated as “leave without pay” on 03.07.2020. He vehemently contended that the absence of appellant was never willful but due to the reasons and circumstance beyond the control of appellant. The impugned orders are therefore illegal, unlawful, void ab-initio as well as coram-non-judice. Moreover, when the absence period of appellant was treated as “leave without pay” by the appellate authority then there remained no reason or justification for “withholding of annual increments for three years” on the ground that the absence period was regularized by the appellate authority himself. He relied on 2006-SCMR-434 and requested that both the impugned orders dated 03.01.2020 and 03.07.2020 be graciously set aside being illegal, unlawful, against the rules, regulations governing the subject case, the Constitution and the appellant may be reinstated without imposition of any kind of penalty with all back benefits, he concluded.

05. Learned Assistant Advocate General on the other hand, contended that the appellant did not submit proper applications for leave and even the application dated 10.02.2019 for one year leave (20.02.2018 -21.02.2019) was not only un-signed but submitted after having availed the unauthorized/unsanctioned leave. The appellant has admitted that he remained absent from duty. Moreover, the department has proceeded against the appellant for willful absence under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and all the procedural/codal formalities i.e; notices served through registered mail on his home

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Service Tribunal  
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address, Show Cause notice published in newspaper on 06.09.2019 and opportunity of personal hearing provided by the committee on 07.10.2019; were fulfilled under the Rules ibid where after he was rightly imposed the major penalty of removal from service. However, the appellate authority while taking lenient view, partially accepted his departmental appeal and modified the major penalty of removal from service into withholding of annual increments for three years and period of absence was treated as leave without pay. So, the appellant has been given adequate relief at the department level. The service appeal being devoid of legal footings may therefore, graciously be dismissed with costs, he concluded.

06. A careful perusal of the record reveals that the appellant was proceeded against for willful absence from duty under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and "removed from service" by respondent No. 3 on 03.01.2020 whereas his period of absence w.e.f 23.10.2017 was treated as "unauthorized absence from duty". The appellant assailed the penalty in departmental appeal before respondent No. 2 who partially accepted it and modified the major penalty of removal from service into minor penalty of "withholding of annual increments for three years. The period of absence was however, treated as "leave without pay" vide appellate order dated 03.07.2020. When the period of absence was treated as leave without pay by the appellate authority then the absence period was regularized and there was no justification left for further imposition of the minor penalty of

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Khyber Pakhtunkhwa Government  
Service Tribunal  
Peshawar

(9)

withholding annual increments for three years because the very ground of disciplinary proceedings vanquished when the period of absence was regulated by the appellate authority itself. Reliance is made on 2006 SCMR 434 and unreported judgement of the august Supreme Court of Pakistan rendered in Civil Petition No. 549-P of 2014 on 09.10.2020.

07. In view of the foregoing discussion, we have arrived at the conclusion that the appellate order of respondent No. 2 is suffering from legal infirmity and we are constrained to interfere with the impugned order of appellate authority. The impugned order dated 03.07.2020 is therefore, set aside and annual increments of the appellant are restored from the due date. Parties are left to bear their own costs. File be consigned to record room.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 21<sup>st</sup> day of September, 2022.*

(MIAN MUHAMMAD)  
MEMBER (E)

(SALAH UD DIN)  
MEMBER (J)

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 24-10-22  
Number of Words 2400  
Copying Fee 26/-  
Urgent 4/-  
Total 30/-  
Name of Copy \_\_\_\_\_  
Date of Copy 24-10-22  
Date of Delivery of Copy 24-10-22

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

محرمیت جناب ڈسٹرکٹ اٹارنی صاحب

Amex 3

جناب عالی

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مخبرون ادائیگی بقایاجات تنخواہ مورخہ 23/10/2017 تا 31/10/2022

۱۱) یہ کہ سائل کی تنخواہ بوجہ غیر جانسی بند غفی

یہ کہ سائل نے ڈیپارٹمنٹل اپیل دائر کی تھی جس پر ڈیپارٹمنٹ

نے سائل کے حق میں فیصلہ سنایا کہ سائل کی 3 سالانہ انکم ٹیکس

ختم کر کے بقایاجات تنخواہ عرصہ 3 سال منظور کر دیا گیا اور

سائل دوبارہ نوکری پر بحال کر دیا گیا۔

۱۲) یہ کہ سائل نے 3 سال کے بقایاجات تنخواہ نہ ملنے پر سروس ٹریبونل

پشاور میں سروس اپیل نمبر 8883/2020 دائر کی جس پر سروس ٹریبونل

نے سائل کے حق میں فیصلہ ٹورنٹ 21/9/2022 سنایا کہ سائل کی انکم ٹیکس بحال

کر کے بقایاجات تنخواہ کا حکم صادر فرمایا:

انتراض

Amex

11/10/22



OFFICE OF THE  
DISTRICT ATTORNEY  
BATTAGRAM

No.1674-76/DA/ BATTAGRAM

Dated. / 10/ 11 /2022

*Amma, CS*

(11)

To,

The Director General, Directorate  
General of Law and Human Rights  
Department of Khyber Pakhtunkhwa  
Peshawar.

Subject: PAYMENT OF ARREAR OF PAY AND ALLOWANCES W.E.F 23/10/2017 TO 31/10/2022

Respected Sir,

I have the honor to enclose find herewith an application in respect of Mr. Muhammad Fahad Junior clerk of this office along with copy of Judgment passed by the Service Tribunal Peshawar for further necessary action please.

AKHTAR HAYAT KHAN  
DISTRICT ATTORNEY  
BATTAGRAM

Endst. of even No. and Date

1. PS to Secretary Law Parliamentary Affairs and Human Rights Department Khyber Pakhtunkhwa Peshawar.
2. Office Copy

AKHTAR HAYAT KHAN  
DISTRICT ATTORNEY  
BATTAGRAM