


22.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 27.04.2022 for the same as before.


Reader

27th April, 2022

Counsel for the appellant present. He produced copy of office order dated 20.01.2022 and states that the petitioner has been reinstated in service with all back benefits. His grievance has been redressed and wants to withdraw the instant execution petition. As a token of admission of his submission he signed the margin of the order sheet. Dismissed as withdrawn. Consign.


27/4/2022

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 27th day of April, 2022.*



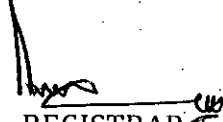
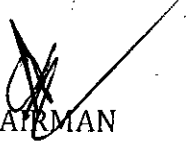

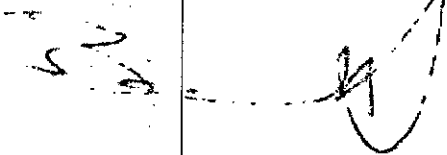


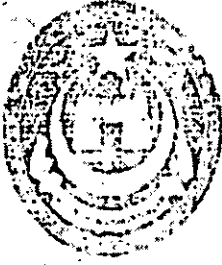
(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 377 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.12.2021	<p>The execution petition of Mr. Aurangzeb submitted today by Roeeda 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> <p>This execution petition be put up before S. Bench at Peshawar on <u>07/01/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>07.01.2022</p> <p>Rabia Muzaffar <i>Counsel</i> for the petitioner present. Notices be issued to the respondents. Case to come up for implementation report on 22.02.2022 before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p> <p style="text-align: left;"></p>



OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email dpo_mardan@yahoo.com

2022

ORDER

In compliance of the judgment dated 09.11.2021 passed by the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No. 6350/2020 titled "Ex-HC Aurangzeb No. 1853 Vs DPO Mardan & Others". His dismissal order issued vide OB: No. 1406, dated 01.07.2019 is set aside and he is hereby reinstated in service with all back benefits with immediate effect.

OB No. 1406

Date: 20-1-2022

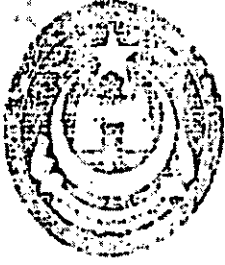
DB2/LB
20-1-22


District Police Officer,
Mardan

No. 456-61 /EC, dat. of Mardan the, 20/1/2022.

Copy forwarded to the:

1. Superintended of police Operation Mardan.
2. DSP HQrs: Mardan.
3. DSP Legal Mardan.
4. Pay Officer.
5. PA.
6. OSI.



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OB No. 1406

Date: 20-1-2022

D82/LB
20-1-22


District Police Officer,
Mardan

No. 2156-61 /EC, dat. at Mardan the, 20/1/2022.

Copy forwarded to the:

1. Superintendent of police Operation Mardan.
2. DSP HQrs: Mardan.
3. DSP Legal Mardan.
4. Pay Officer.
5. PA.
6. OSI.

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

Execution petition No. 377 /2021

In

S.A No. 6350/2020

Aurangzeb Ex-Head Constable No. 1853 R/o District
Mardan

VERSUS

District Police Officer 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	"A"	
4.	Wakalat Nama.		

Dated: 10/12/2021

Aurangzeb
Petitioner

Through

Roeda Khan
&
Sheeba Khan
Advocate, High Court
Peshawar

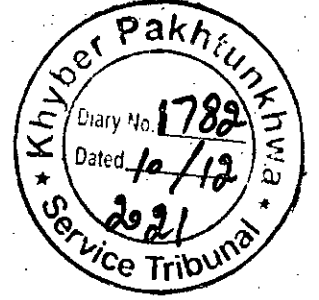
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Shykh

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Execution petition No. 377 /2021

In

S.A No. 6350/2020



Aurangzeb Ex-Head Constable No. 1853 R/o District
Mardan

VERSUS

1. District Police Officer Mardan
2. Regional Police Officer Mardan
3. Provincial Police Officer Khyber Pakhtunkhwa
Peshawar.

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
6350/2020 DECIDED ON 09/11/2021

Respectfully Sheweth,

1. That the above mention Service Appeal along
with two other connected appeal No.6351/2020
Title Abdullah Vs Police and Service appeal No.

6352/2020 title Ibrahim Vs Police was decided by this Hon'ble Tribunal vide Judgment dated 09/11/2021. (Copy of the judgment is annexed as annexure "A").

1. 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.

2. That the Petitioner has no other option but to file the instant petition for implementation of the judgment of this Hon'ble Tribunal

3. 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: 10/12/2021

Aurangzeb
Petitioner

Through

Roeeda Khan
&
Sheeba Khan
Advocate, High Court
Peshawar

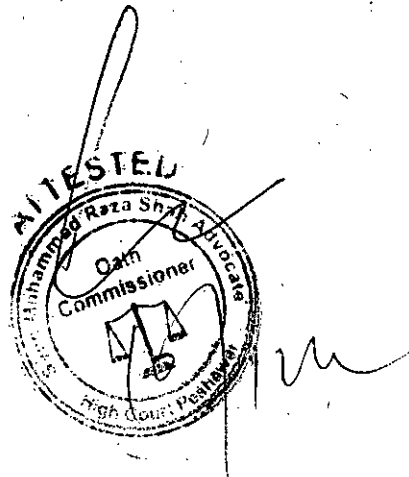
R
shk

AFFIDAVIT:-

I, Aurangzeb Ex-Head Constable No. 1853 R/o District Mardan, 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

Aurgzb



BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Execution petition No. _____/2021

In

S.A No. 6350/2020

Aurangzeb Ex-Head Constable No. 1853 R/o District
Mardan

VERSUS

District Police Officer and Others

ADDRESSES OF PARTIES

PETITIONER

Aurangzeb Ex-Head Constable No. 1853 R/o District
Mardan

RESPONDENTS

1. District Police Officer Mardan
2. Regional Police Officer Mardan
3. Provincial Police Officer Khyber Pakhtunkhwa
Peshawar.

Dated: 10/12/2021

Aurangzeb
Petitioner

Through

Roeeda Khan *R*
&
Sheeba Khan *SK*
Advocate, High Court
Peshawar

BEFORE THE HON'BLE SERVICE TRIBUNAL

PESHAWAR



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5692

Dated 29-6-2020

In Re S.A No. 6350 /2020

Aurangzeb Ex-Head Constable No.1853 R/o
District Mardan

Appellant

VERSUS

1. District Police Officer Mardan.
2. Regional Police Officer Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa
Peshawar.

Respondents

APPEAL U/S-4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE ORDER DATED 02/07/2019
WHEREBY THE APPELLANT HAS BEEN
AWARDED MAJOR PUNISHMENT OF
DISMISSAL FROM SERVICE AND AGAINST
WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL ON 05/04/2020
AGAINST THE ORDERS DATED 02/07/2019
WHICH HAS BEEN REJECTED ON 24/06/2020
ON NO GOOD GROUNDS

Filed to day
Registrar

Re-submitted to-day
and filed.

Registrar
29/6/2020

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 6350/2020

Date of Institution ... 29.06.2020

Date of Decision ... 09.11.2021

Aurangzeb Ex-Head Constable No. 1853
R/O District Mardan.

... (Appellant)

VERSUS

District Police Officer Mardan and two others.

... (Respondents)

MS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD RASHEED,
Deputy District Attorney

--- For respondents.

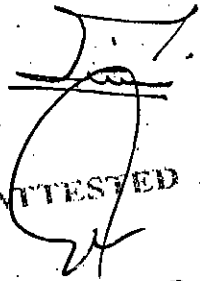
MR. SALAH-UD-DIN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Through this single judgment we intend to dispose of the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No. 6352/2020 titled "Ibrahim Versus District Police Officer Mardan and two others", as common question of law and facts are involved therein.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


2. Precise facts giving rise to filing of the instant as well as connected service appeals are that the appellants were proceeded against departmentally on the allegations of their

charging in case FIR No. 2 dated 01.01.2019 under sections 365-A/34 PPC registered at Police Station Kalu Khan District Swabi. On conclusion of the inquiry, the appellants were dismissed from service and their departmental appeals also remained unfruitful, therefore, they have now approached this Tribunal through filing of the appeals for redressal of their grievance.

3. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellants in their appeals.

4. Learned counsel for the appellants has contended that the inquiry proceedings were conducted at the back of the appellants and neither any opportunity of personal hearing was provided to them nor were they provided any opportunity of self defense; that the appellants were admittedly confined in prison at the time of inquiry proceedings against them, therefore, they were not in a position to properly defend themselves; that the inquiry proceedings were conducted in violation of relevant provisions of Khyber Pakhtunkhwa Police Rules, 1975, therefore, the impugned orders being void and illegal are liable to be set-aside; that the appellants were proceeded against on the allegations of their involvement in criminal case, however they have been acquitted by the competent court of law in the concerned criminal case; that the appellants were confined in prison and after their release, they approached the department for joining of their duty, however they came to know they have been dismissed from service, therefore, they filed departmental appeals, which were wrongly and illegally rejected; that the impugned orders being bereft of any legal sanctity may be set-aside and the appellants may be reinstated in service with all back benefits.

5. On the other hand, learned Deputy District Attorney for the respondents has contended that the appellants were involved in a criminal case of kidnapping for ransom and their illegal activities have stigmatized the police department; that



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

a regular inquiry was conducted against the appellants by complying all legal and codal formalities and as they were found guilty during the inquiry, therefore, they have rightly been dismissed from service; that the departmental appeals of the appellants were time barred, therefore, their service appeals are not maintainable and are liable to be dismissed with cost.

6. Arguments heard and record perused.

7. A perusal of the record would show that after charging of the appellants in the criminal case, they were arrested and sent to prison. They remained confined in prison and were released after their acquittal on 05.03.2020. The departmental appeals of the appellants were disposed by the Regional Police Officer Mardan vide separate orders dated 24.06.2020 and it is even evident from the said orders that the appellants were confined in prison at the time of inquiry proceedings against them. The said orders would also show that ex-parte action was taken against the appellants despite the facts that they were confined in prison, being charged in the criminal case registered against them. In this scenario, we are of the opinion that the appellants were not treated fairly, rather they were treated with discrimination. The impugned order dated 02.07.2019 also shows that the inquiry officer initially appointed for conducting inquiry in the matter had opined that the inquiry may be held in abeyance till the availability of the appellants, however the competent Authority disagreed with the inquiry officer and proceeded with the inquiry by appointing another inquiry officer for conducting inquiry in the matter. The procedure so adopted by the competent Authority has caused prejudice to the appellants in the inquiry proceedings against them.

8. Disciplinary action was taken against the appellants on the ground of their involvement in criminal case, however the appellants have been acquitted in the said criminal case by learned trial court vide judgment dated 05.03.2020. The

J. J.

REGISTERED

Member Pakhtoonkhan
Service Tribunal
Peshawar

appellants were proceeded against on the ground of their involvement in the criminal case, however after their acquittal in the criminal case, the very charge, on the basis of which the appellants were proceeded against has vanished away. Nothing is available on the record, which could show that the acquittal of the appellants have been challenged by the department through filing of appeal before the higher forum. In this situation, the acquittal order of the appellants has attained finality. It is settled law that acquittal of an accused in a criminal case even if based on benefit of doubt would be considered as honourable.

9. The appellants were acquitted in the criminal case on 05.03.2020 and they have alleged in their application for condonation of delay that it was after their acquittal that they came to know about their dismissal from service, therefore, they filed departmental appeals on 02.04.2020. In this view of the matter, the departmental appeals of the appellants are within time. Reliance in this respect is placed on PLD 2010 Supreme Court 695, wherein the worthy apex court has held as below:-

"We may also observe in this context that the respondent had been acquitted in the criminal case on 22.09.1998 and he had filed his departmental appeal on 12.10.1998, i.e within three weeks of his acquittal in the relevant criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case we have found it to be unjust and oppressive to penalize the respondents for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removal from service"

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

10. In light of the above discussion, the instant service appeal as well as connected Service Appeal bearing No. 6351/2020 titled "Abdullah versus District Police Officer Mardan and two others" as well as Service Appeal bearing No.

6352/2020 titled "Ibrahim Versus District Police Officer Mardan and two others", are accepted by setting-aside the impugned orders. The appellants are reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

09.11.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

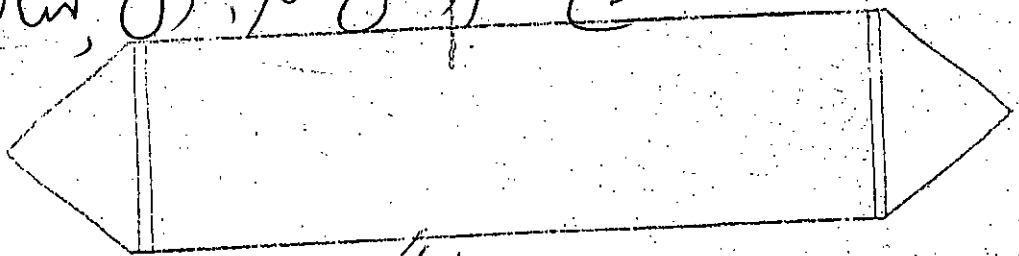
(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 23/11/21
No. 2800
305
45
31-
Date of Delivery of Copy 23/11/21
23/11/21

یعدالت حج سروس ٹرانسپورٹ سٹاؤف



اور ایل ایب بنام لریس

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی دکن کاروائی متعلقہ
آن مقام سٹاؤف کیلئے ایڈولٹ روٹن مان اینڈ سیان

مقررہ کر کے قرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کُل کاروائی کا کمال اختیار دیا گیا۔ نیز
دکن صاحب کو ماضی نامہ کرنے و تقررات نامتہ فیصلہ پر مخالفت دینے کے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
وزاں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا اگر کسی یکطرفہ یا ایسے کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل ٹرانسپورٹ و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کُل 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 بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساخت
پر واضح منظور ہے۔ ذیل ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانباً اتہائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا اذکالت نامہ لکھ دیا کہ سدر ہے۔

المرقوم 15 ماہ دسمبر 20

واہ العی

بمقام سٹاؤف کے لئے منظور ہے۔

Rae
Sik

Handwritten signature or stamp on the right margin.