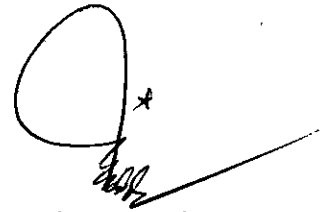


31.03.2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Muhammad Raziq, HC for respondents present.

In pursuance of the judgement of Service Tribunal dated 10.09.2021, the respondent-department produced before the court an order dated 28.03.2022 whereby judgement of the Service Tribunal has been conditionally implemented subject to the final decision on CPLA by the August Supreme Court of Pakistan. As such the execution petition stands disposed of being executed. File be consigned to the record room.

Announced:
31.03.2022

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line and a small asterisk-like mark.

(Mian Muhammad)
Member (E)

22.12.2021

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

Learned AAG states that CPLA has been filed against the judgment under implementation. If the CPLA has been filed and the judgment has not been suspended, the respondents are under obligation to implement the judgment, subject to decision of CPLA by the august Supreme Court of Pakistan and on production of affidavit by the petitioner to the effect that in case the judgment under execution is set aside by the august Supreme Court of Pakistan, he shall be liable to refund the benefits received on strength of conditional order. Adjourned to 10.02.2022 before S.B.


Chairman

10.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 31.03.2022 for the same as before.

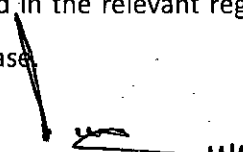



Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 221 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.10.2021	<p>The execution petition of Mr. Imran Khan submitted today by Roeda 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>
2		<p>This execution petition be put up before S. Bench on <u>12/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	12.11.2021	<p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents for the date fixed. To come up for implementation report on 22.12.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

ORDER

Ex-Constable Imran Khan No.3632 was awarded major punishment of dismissal from service by the then SP HQrs vide OB No.2001 dated 05.06.2013 on the charges of absence from duty w.e.f 23.02.2012 to 14.05.2012 and 29.11.2012 to 29.04.2013 (08-months).

In this regard he was filed departmental appeal before W/CCPO against above punishment orders which was rejected/filed by the then CCPO, Peshawar vide No.419-24/PA dated 13.03.2014.

Being aggrieved of the orders, Ex-Constable Imran Khan No.3632 instituted a service appeal No.589/2015 title as Imran Khan, Ex-Constable No.3632, Police Department Peshawar (Appellant), vs The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar & three others (Respondents). The Honourable Service Tribunal vide its judgment passed on 10.09.2021 has ordered that **"the appeal in hand is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty be treated as leave without pay."**

In light of the Tribunal Judgment, DSP Legal opinion & kind approval of W/CCPO, Ex-Constable Imran Khan No.3632 is hereby conditionally re-instated in service. The intervening period is treated as leave without pay subject to the decision of CPLA which is still subjudice in the Apex Court.


**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 789 / Dated 28 / 03 / 2022

No. 987-93 /PA/SP/dated Peshawar the 28 / 03 / 2022

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. Pay Office,
4. OASI, CRC & FMC along-with complete departmental file.
5. Officials concerned.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Execution petition No. 221 /2021

In

Service Appeal No: 589/2015

Imran Khan

VERSUS

The Provincial Police Officer KPK 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"	57-60
4.	Wakalat Nama.		

Dated: 11/10/2021

Imran Khan

Petitioner

Through

Roeeda Khan

Roeeda Khan
Advocate, High Court
Peshawar

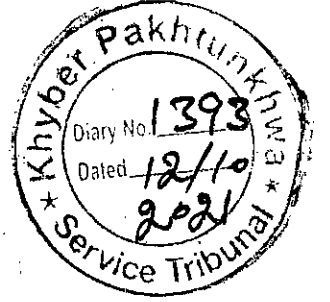
(1)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 221 /2021

In

Service Appeal No: 589/2015



Imran Khan Constable No.3632 District Police Peshawar.

-----*Appellant*

VERSUS

1. The provincial Police Officer, Khyber Pakhtunkhwa Peshawar
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Head Quarter Peshawar.
4. Superintendent of Police City Peshawar.

-----*(Respondents)*

EXECUTION PETITION
FOR IMPLEMENTATION
OF THE JUDGMENT OF
THIS HON'BLE TRIBUNAL
IN APPEAL No. 589/2015
DECIDED ON 10/09/2021

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 10/09/2021. (Copy of the judgment is annexed as annexure "A").

(2)

2. 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.

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

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

5. 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

3

*Respondents may directed to implement
the judgment of this Hon'ble Tribunal.*

Dated: 11/10/2021

Imran Khan

Petitioner

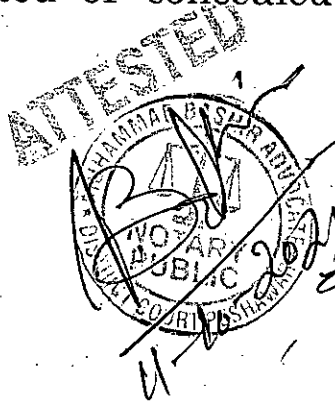
Through

RK

Roeeda Khan
Advocate, High Court
Peshawar

AFFIDAVIT:-

I, **Imran Khan Constable No.3632 District Police Peshawar**, 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.



Imran Khan

Deponent

(4)

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR**

Execution petition No. _____/2021

In

Service Appeal No: 589/2015

Imran Khan

VERSUS

The Provincial Police Officer KPK and Others

ADDRESSES OF PARTIES

PETITIONER

Imran Khan Constable No.3632 District Police
Peshawar.

RESPONDENTS

1. The provincial Police Officer, Khyber
Pakhtunkhwa Peshawar
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Head Quarter
Peshawar.
4. Superintendent of Police City Peshawar.

Dated: 11/10/2021

Imran Khan
Petitioner

Through

(RO)
Roeda Khan
Advocate, High Court
Peshawar

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

Appeal No. S89/2015

W.P. Province
Service Tribunal

Diary No. 312

Date 07-4-2015

Imran Khan Ex- Constable No.3632 District Police
Peshawar.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Head Quarters, Peshawar.
4. Superintendent of Police City, Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 05.06.2013, whereby the appellant has been awarded the major punishment of dismissal from service, against which the Departmental Appeal and mercy petition of the appellant have also been rejected vide orders dated 13.03.2014 and 06.03.2015, copy of the order dated 06.03.2015 was however was however communicated to the appellant on 13.03.2015.

Prayer in Appeal: -

On acceptance of this appeal the order dated 05.06.2013, orders dated 13.03.2014 and 06.03.2015, may please be set-aside and the appellant may be re-instated in service with full back wages and benefits of service, similarly the order dated 29.04.2014, may also be declared as illegal and be set aside.

re-submitted to-day
and filed.

REGISTERED

2/2/15

(6) R A

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 589/2015

Date of Institution ... 07.04.2015

Date of Decision ... 10.09.2021



Imran Khan Ex-Constable No.3632 District Police Peshawar.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and three others.

(Respondents)

ROEEDA KHAN,
Advocate

For Appellant

RIAZ AHMED PAINDAKHEIL,
Assistant Advocate General

For Respondents

SALAH-UD-DIN
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Constable in police department in the year 2010. During the course of his service, he was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 05-06-2013. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 13-03-2014. The appellant filed revision petition, which was also rejected vide order dated 06-03-2015. To the surprise of the appellant, another order of dismissal from service was also issued vide order dated 29-04-2014, hence the appellant was proceeded twice and was dismissed twice in two parallel inquiries on

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7

the charges of absence. The appellant filed the instant service appeal with prayers that the impugned orders dated 05-06-2013, 13-03-2014, 06-03-2015 and 29-04-2014 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law were badly violated; that no proper procedure has been followed before dismissal of the appellant from service, neither he has been served with charge sheet/statement of allegations nor he has been associated with the inquiry proceedings; that the whole proceedings were conducted ex-parte and the appellant was not afforded opportunity of defense, hence the whole proceedings are liable to be set aside; that the appellant was kept deprived of personal hearing and was condemned unheard; that no show cause notice was served upon the appellant before imposition of major penalty; that the period for which the appellant remained allegedly absent has been regularized by treating it leave without pay, thus the very ground on which the appellant was proceeded against has vanished and no penalty could lawfully be imposed upon him. Reliance was placed on 2012 TD (Services) 348; that the appellant was proceeded twice for the same charges; that it is needless to mention that the dismissal orders dated 29-04-2014 was issued at the time when the appellant was already dismissed from service and such order is having no legal effect; that the appellant has been awarded penalty with retrospective effect and no order of penalty can be made to operate with retrospective effect as such the impugned order is liable to be set aside on this score alone; that the penalty so imposed is harsh, which does not commensurate with guilt of the appellant.

03. Learned Assistant Advocate General appearing on behalf of respondents has contended that the appellant absented himself from lawful duty w.e.f 23-02-2012 till 14-05-2012 and 29-11-2012 till 29-04-2013 without permission/leave from the

ATTESTED

BY MINER
Khyber Pakhtunkhwa
Service Tribunal

competent authority; that the appellant was properly proceeded against under the relevant law and was rightly penalized. The learned admitted that the appellant was dismissed twice as during the course he was transferred to another station, where he again proceeded from lawful duty, hence he was proceeded against and in the process, he was dismissed again on the charges of absence, not knowing that he was already dismissed.

04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant was dismissed vide order dated 05-06-2013, against which the appellant filed departmental appeal dated 23-09-2013, which was rejected vide order dated 13-03-2014. The appellant filed revision petition, copy of which is not available on record, but its rejection order dated 06-03-2015 transpires that the appellant had filed revision petition within time as the same was not dismissed on ground of limitation. The instant appeal was filed by the appellant on 07.04.2015 which is within time.

05. What is available on record is a charge sheet/statement of allegations dated 05-04-2012 containing the charges of absence w.e.f 23-02-2012 to 05-04-2012 and for the purpose, SDPO/Suburb was appointed as inquiry officer. Final show cause dated 10-08-2012 is also available on record, but nothing is available on record to suggest that charge sheet/statement of allegations/ final show cause notice was served upon the appellant, as the appellant was not available for such service. The appellant in his appeal has contended that he was seriously ill and he duly informed the office regarding his illness, but which was not considered. Placed on record is medical prescriptions suggesting that the appellant was advised bed rest for months, which can be considered as true as the respondents neither deny nor objected to such prescriptions, which reveals that his absence was not willful and the Supreme Court of Pakistan in its judgment reported in 2008 SCMR 214 have held that leave without permission on medical grounds does not constitute gross misconduct.

ATTESTED


ATTESTED

9

entailing major penalty of dismissal from service. Placed on record is an inquiry report submitted by SDPO/Suburb, which reveals that ex-parte action was taken against the appellant and the appellant was not associated with the inquiry proceedings. It is also a well-settled legal proposition in light of judgments of the apex court that regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. The Supreme Court of Pakistan in its judgment reported in 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest justice. Obviously the appellant was not associated with the process of disciplinary proceedings and was condemned unheard. The appellant was ultimately awarded major punishment of dismissal from service vide order dated 05-06-2013 by Superintendent of Police Head Quarters Peshawar, and his absence period was also treated as leave without pay, the relevant portion of the impugned order is reproduced as under:-

"In light of findings of the inquiry officer and other material available on record, the undersigned came to the conclusion that the alleged official found guilty of the charges, he is hereby dismissed from service under Police & Disciplinary Rules, 1975 with immediate effect, hence the period, he remained absent from duty for 08 months is treated without pay".

The appellant was proceeded against on the ground of willful absence for the mentioned period, however the authority has treated the mentioned period, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august

ATTESTED


KH...
No...


109

Supreme Court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. Needless to mention that the appellant was also dismissed from service under the same charges of absence vide order dated 29-04-2014 by Superintendent of Police City and inquiry report placed on record was conducted by DSP/Sadar Circle and in this case also, the appellant was proceeded ex-parte, but such order have no legal sanctity as by the time, the appellant was already dismissed from service vide order 05-06-2013, but which definitely expose the level of coordination amongst offices of police department.

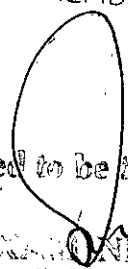
06. In light of the above discussion, the appeal in hand is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty be treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.09.2021


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

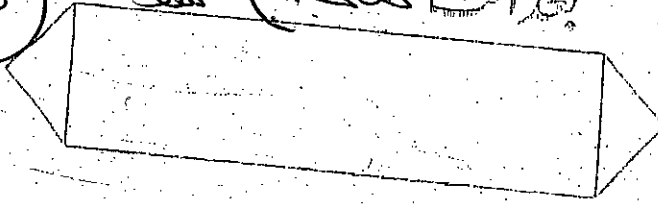

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/10/21
 No. 30-2800
 C 4-
 U 34
 T 34
 P 34
 B. 12/10/21
 Date of Delivery of Copy 12/10/21

بیت صواب



اسلام آباد
لوہی

2021ء پنجاب
عمران خان پیغام

موردہ
مقدمہ
دعویٰ
جرم

باعت تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آج کے لئے **دعا** کے لئے **دعا**

آن مقام مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پروتھن کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
یا اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے
سب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھنیا کہ سند ہے۔

Imran Khan

الم رقم ۶
ماہ اکتوبر 2021ء

الم
کے لئے منظور ہے۔
Acceptance
۱۹۶