

EP 28/2020

29.07.2020

Petitioner alongwith counsel and Addl. AG alongwith Aziz Shah, H.C for the respondents present,

The representative of respondents has produced copy of order dated 04.09.2019 issued by Superintendent of Police Headquarter Peshawar (placed on record). Through the order the petitioner has been reinstated in to service with all back and consequential benefits allowable under the law.

The petitioner, however, states that he has not been paid the amount of his salaries and other emoluments for the period he was kept away from duty through the order already struck down in appeal by this Tribunal.

As the reinstatement order has been issued the proceedings in hand are disposed of. The representative of respondents undertakes to facilitate the extension of back benefits to the petitioner after he puts in a written application for the purpose to the competent authority. The respondents are also required to allow the petitioner for presenting/explaining his claim for the purpose.

  
Chairman

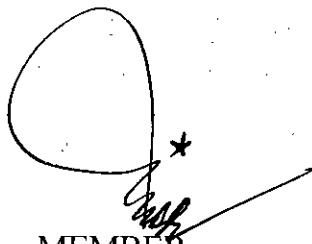
25.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.06.2020 before S.B.

  
Reader

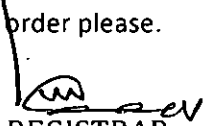


17.06.2020

Counsel for the petitioner and Asst: AG for respondents present. Notices be issued to the respondents for submission of implementation report on 29.07.2020 before S.B.

  
MEMBER

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. 28 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.01.2020	<p>The execution petition of Mr. Rahimullah submitted today by Mr. Haq Nawaz Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR -</p>
2-		<p>This execution petition be put up before S. Bench on <u>07/02/2020</u>.</p> <p> CHAIRMAN</p>
	07.02.2020	<p>Counsel for the petitioner present. Addl: AG for respondents present. Notice be issued to the respondents for submission of implementation report. To come up for further proceedings on 25.03.2020 before S.B.</p> <p> Member</p>

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

Rahim Ullah ..... Petitioner

**Versus**

Inspector General Police Khyber Pakhtunkhwa and others  
..... Respondents

**INDEX**

S. No.	Description of documents	Annexs	Pages
1.	Grounds of COC Petition		1-2
2.	Copy of Order dated 15.03.2019		3-9

Dated:- 20 /01/2020

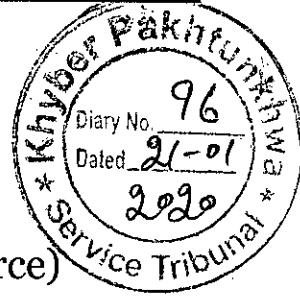
Petitioner

Through:-

  
**Haq Nawaz Khan**

Advocate High Court.

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



Rahim Ullah S/o Karim Ullah Ex-Driver No. 616, Elite Force)  
R/o Village Surezi Payan, Tehsil and District Peshawar.

..... Petitioner

**Versus**

1. Inspector General Police Khyber Pakhtunkhwa,  
Peshawar.
2. The Capital City Police Office, Peshawar
3. The SP Head Quarter, Police Line, Peshawar.

..... Respondents

**CONTEMPT OF COURT APPLICATION**

***Respectfully Sheweth:-***

*That the petitioner submits as  
under:-*

1. *That on 15/03/2019 the service tribunal Peshawar passed an order regarding his reinstatement on service to the post of Driver No. 616, Elite Force Khyber Pakhtunkhwa. (Copy of Order dated 15.03.2019 is attached)*
2. *That despite clear order of the Honourable Tribunal the respondents are still reluctant*

to comply the order of this Honourable Tribunal.

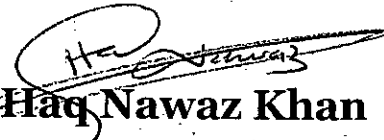
3. That the respondents delayed the matter for other reason without justification.
4. That petitioner is poor person and the attitude of department is unjustifiable.
5. That the petitioner has no other option to knock the door of this Honourable Tribunal once again.
6. That the petitioner send various applications to respondents, but no heed was paid to the petitioner.

It is therefore, most humbly prayed to kindly implement the order dated 15.03.2019.

Dated:- 24 /01/2020

  
Petitioner

Through:-

  
**Haq Nawaz Khan**  
Advocate High Court.

Faiza Advocate.

Faiza

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 1222/2017

Rahim ullah s/o Karim ullah Ex-Driver No.616 (Elite Force), R/o village surizai payan tehsile & District Peshawar.

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1265

Dated 22-11-2017

Vs

1 The Inspector General of Police Khyber Pakhtunkhwa Peshawar,

2 The Capital City Police Officer Peshawar

3 The SP Head Quarter, Police line Peshawar-----Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974, AGAINST THE IMPUDNED ORIGNAL ORDER DATED 12/07/2017 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL ON 04/08/2017 BUT THE SAME WAS REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 05/10/2017.

PRAYER:

ON ACCEPTANCE OF THE INSTANT APPEAL, THE IMPUGNED ORIGINAL DATED 12/07/2017 AND THE IMPUGNED APPELLATE DATED 05/10/2017 MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

REPECTFULLY SHEWETH.

Fact giving rise to the present appeal are as under:-

- 1 That appellant was appointed as driver in the police department of Elite Force on dated 08/07/2009. Throughout his service, he has satisfactorily performed his duties to the entire satisfaction of his superiors. ( copy of appointment is annex "A")
- 2 That in the year 2014, the local police( CTD ) involved the uncle of appellant in untraced FIR NO.218 dated 10/08/2014 U/S 387 PPC PS Michini Gate Peshawar and CTD police raided the house of appellant's uncle and they took away him to PS East Cantt (sharqi), hence the brother of appellant's filed a Habeas Corpus petition in the learned District & session judge, Peshawar who was pleased to direct the Bailiff of the court for search of appellant's uncle in concerned police station. The appellant along with other relatives accompanied the bailiff to the concerned police station .it is pertinent to mention here that the learned Addl: session judge, Peshawar released him on bail on 26/08/2014. During the pendency of the said bail petition the complainant appeared before the court and pleaded innocence of the appellant's uncle. ( copy of FIR and Habeas petition and court order is annex "B")

That on the ground of helping the court Bailiff, the appellant was punished for six days Quarter Guard and was also issued Show cause notice dated 18/08/2014 whereby vague

ATTESTED

REGISTRAR  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar

Re-submitted to Registrar and filed on 23/11/17

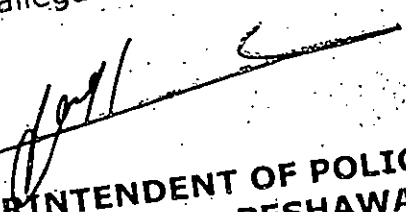
Re-submitted to Registrar and filed on 23/11/17. Show Cause Notice issued to appellant on date 12/07/2017

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**ORDER**

Subsequent upon the judgment order dated 15.03.2019 passed by the Hon'ble service Tribunal Peshawar in Service Appeal No.1222/2017, appellant Rahim Ullah (Ex-constable No.4328/616) is hereby re-instated in to service with immediate effect with all back and consequential benefits allowable under the law.

Furthermore, as per directions of the W/IGP he may not be posted in CTD in future as the allegations leveled against him were of serious nature.

  
**SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR**

OB NO. 2725  
Dated 2/9/2019

No. 2382-87 PA/HQrs dated Peshawar the 4/9/2019

Copy of above is forwarded for necessary action to:

- ✓ DSP/HQrs: Peshawar
  - ✓ DSP Legal, Peshawar
  - ✓ Pay Officer
  - ✓ OASI, CRC & FMC along-with complete departmental file
- Copy to be sent to



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Appeal No. 1222/2017

Date of Institution ... 02.11.2017

Date of Decision ... 15.03.2019



Rahimullah son of Karimullah Ex-Driver No. 616 (Elite Force), R/O village Surizai Payan Tehsil and District, Peshawar. ... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa Peshawar and two others. ... (Respondents)

Present.

Mr. Naqeebullah Khalil,  
Advocate.

... For appellant

Mr. Usman Ghani,  
District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. AHMAD HASSAN,


CHAIRMAN  
MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The facts emerging from memorandum of appeal are that the appellant was appointed as Driver in the Police Department on 08.07.2009. In the year 2014, the uncle of appellant was implicated in an untraced offence recorded through FIR No. 218 dated 10.08.2014 U/S 387-PPC at P.S Michini Gate Peshawar. As a consequence, he was taken away by the

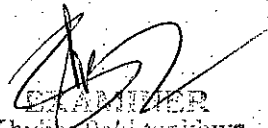
**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

CTD Police. The brother of appellant consequently filed a Habeas Corpus Petition before the learned District & Sessions Judge, Peshawar, wherein, the bailiff of the court was directed to search for the appellant's uncle in the concerned Police Station. The appellant alongwith other relatives accompanied the said bailiff. The uncle of appellant was released on bail on 26.08.2014. It is further noted in the appeal that due to the reason of helping out his uncle the appellant was punished for six days quarter guard and was also issued show cause notice dated 18.08.2014. The said notice was duly replied by the appellant, wherein, all the allegations were denied. Departmental proceedings were taken up against the appellant and resultantly he was dismissed from service on 14.01.2015. His departmental appeal also could not find favour and was rejected on 29.4.2015. Thereafter, a mercy petition under Rule 11-A of Police Rules, 1975 was also rejected on 08.12.2015. The appellant preferred Service Appeal No. 07/2016 before this Tribunal which was decided on 20.4.2017. The impugned order was though set aside by the Tribunal, the respondents were allowed to conduct denovo enquiry within a period of two months from the date of receipt of judgment.

2. Subsequent to the decision by this Tribunal denovo proceedings were initiated against the appellant and on 05.06.2017 he was issued a fresh charge sheet and statement of allegations. An enquiry committee for the purpose was constituted on 18.05.2017. Upon conclusion of proceedings the appellant was once again dismissed from service through

ATTESTED

  
 CLERK  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar


order dated 12.07.2017, impugned herein. The departmental appeal against the said order was also rejected.

3. We have heard learned counsel for the appellant, learned District Attorney on behalf of the respondents and have also gone through the available record.

It was mainly contended by learned counsel for the appellant that the allegations against the appellant could not be proved through cogent evidence during departmental proceedings. The respondents could not lay hands on any material adversely affecting the appellant. It was also stated that the earlier judgment of this Tribunal was not kept under consideration while conducting proceedings against the appellant.

Learned District Attorney, on the other hand, contended that all the codal formalities were fulfilled by the respondents during proceedings against the appellant. He further referred to the reply of show cause notice submitted by the appellant, besides his statement recorded on 20.06.2017. He emphasized that the appellant had admitted the follow up of proceedings consequent to the arrest of his uncle namely Hazratullah which was beyond the scope of his duty and commitment. The appellant, while posted at CTD Khyber Pakhtunkhwa Peshawar, was involved in illegal activities and lending support to the extortionists, terrorists and kidnapers. That, the said act amounted to gross misconduct on the part of appellant and was against the discipline of the force, it was added.

ATTESTED

  
 CLERK  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

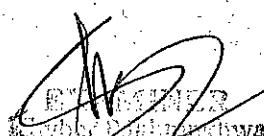
to the appellant. In this regard Section 11(1) of the Khyber Pakhtunkhwa Civil Servants (Efficiency & Disciplinary) Rules 2011 is reproduced as under:-

*"On acceptance of reply of the accused or on expiry of the stipulated period, if no reply received from the accused, the enquiry officer or the enquiry committee, as the case may be, shall inquire into the charges and may examine such oral or documentary evidence in support of the charges or in defence of the accused as may be considered necessary and where any witness is produced by one party, the other party shall be entitled to cross-examine such witnesses."*

*Opportunity of cross examining the witnesses being a mandatory requirement of the rules was not afforded to the appellant. Major penalty of removal from service was imposed by the respondents but neither any opportunity of personal hearing or defence was provided to the appellant, therefore, the impugned orders are illegal, void and liable to be set aside."*

The above reproduction suggests that the main ground for setting aside the order of dismissal of service of appellant passed on 14.01.2015 was that the appellant was never provided with opportunity of cross-examination of witnesses during the enquiry proceedings. It is astonishing to note that the departmental authority, while undertaking denovo proceedings, disregarded the earlier judgment of the Tribunal and

**ATTESTED**

  
 JUDGE  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

conveniently brushed aside the directions contained therein. Coupled with the said fact, it also requires to be mentioned here that the denovo proceedings including the statements of witnesses were verbatim reproduction of first enquiry. It is equally worth-noting that the gravity of charges against the appellant, as reflected in the charge sheet and statement of allegations, required cogent evidence for proof which, in our view, was lacking in the record relied upon by the respondents for passing the impugned order.

5. In view of the above, the appeal in hand is allowed as prayed for. The appellant is hereby reinstated into service with all back and consequential benefits allowable under the law.

Parties are left to bear their respective costs. File be consigned to the record room.





(AHMAD HASSAN)  
MEMBER

(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED.  
15.03.2019

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

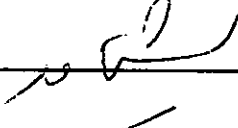

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Copying Fee 16-00  
Urgent 2-00  
Total 18-00  
Name of Copyist  
Date of Completion of Copy 20-3-19  
Date of Delivery of Copy 20-3-19

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ایڈوکیٹ:  بار کونسل ایسوسی ایشن نمبر: 8058-10-13 رابطہ نمبر: 03259407287		پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سر و سسر ایجنٹل چیئر مین خورشید

منجانب: سائل رحیم اللہ بنام انسٹیٹیوٹ جنرل ایجوکیشنل سروسز	دعویٰ: درخواست توسیع عدالت علت نمبر: مورخہ: جرم: تھانہ:
<b>بابت تحریر آگے</b>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کارروائی متعلقہ  
 آن مقام 25/11/2020 کو اور ان جہاں انہوں نے درخواستیں کی ہیں  
 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 برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مشورگی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے یقیناً کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخلہ منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے  
 المرقوم: 20-11-2020  
 DESHWAR BAK...  
 ACCEPTED

مقام:   
  
 Faiza

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

رحیم اللہ ولد سرور اللہ سائل مورخہ 25/11/2020