

24.03.2022

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Arif Saleem, Steno for respondents present.

The respondent-department submitted office order dated 03.01.2022 whereby the Service Tribunal judgement dated 29.07.2021 has been conditionally and provisionally implemented subject to the outcome of CPLA filed in the august Supreme Court of Pakistan. Copy of the office order in question is placed on file and copy thereof provided to the petitioner. As such the execution petition stands disposed of being executed. File be consigned to the record room.

Announced:
24.03.2022


(Mian Muhammad)
Member (E)

04.11.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Fazal Mabood Inspector Legal for the respondents present.

Learned AAG seeks time. Request is accorded. Case to come up for implementation report on 15.12.2021 before S.B.


Chairman

15.12.2021

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Airf Saleem, Steno for respondents present.

Learned AAG requested for short adjournment to contact the relevant quarter and enable them to bring implementation report on the next date. To come up for further proceedings on 03.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

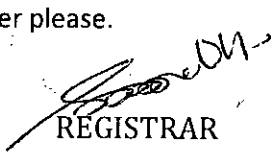

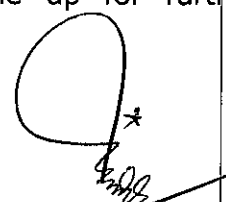
03.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 24.03.2022 before S.B for the same.


Reader

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 157 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	01.09.2021	<p>The execution petition of Mr. Wajid submitted today by Mr. Taimur Ali 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 at Peshawar on <u>01/10/21</u>.</p> <p> CHAIRMAN</p>
	01.10.2021	<p>Petitioner alongwith his counsel present.</p> <p>Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for further proceedings before the S.B on 04.11.2021.</p> <p> (MIAN MUHAMMAD) MEMBER (E)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 157 /2021
In Service Appeal No.5692/2020



Wajid, Ex-Constable No.1189,
Police Station Usterzai, Kohat.

PETITIONER

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Kohat.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 29.07.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.5692/2020 the order dated 21.04.2020, whereby the revision of the appellant for reinstatement under 11-A of Police Rules 1975 amended in 2014 has been rejected and against the order dated 17.08.2019, whereby the departmental appeal of the appellant against the order dated 09.08.2018, "whereby the appellant was dismissed from service" has been rejected.
2. The said appeal was finally heard by this Honourable Service Tribunal on 29.07.2021. The Honourable Service Tribunal accepted the appeal and the appellant was reinstated in service. The intervening period

POLICE DEPARTMENT

DISTRICT KOHAT

ORDER

In Compliance with the judgment dated 29.07.2021 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in service appeal No. 5692/2020 and approval of the competent authority vide letter No. 12339/Legal dated 30.12.2021, Ex-Constable Wajid No. 1189 is hereby reinstated in service with immediate effect, conditionally & provisionally subject to the outcome of CPLA. The intervening period is treated as leave of the kind due.

OB NO. 5 /SRC
Dated. 03-01-2022


DISTRICT POLICE OFFICER,
KOHAT

OFFICE OF THE DISTRICT POLICE OFFICER KOHAT

No. 5 /SRC, dated Kohat the 3-1 /2022.

Copy of above to Reader / OHC / Line Officer for information and necessary action.

5-1/22
22
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was treated as leave of the kind due. (Copy of judgment dated 29.07.2021 is attached as Annexure-A)

3. That the Honourable Tribunal accepted the appeal and reinstated the appellant into service on 29.07.2020, but after the lapse of more than one month the appellant was not reinstated by the respondents.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 29.07.2021 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 29.07.2021 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 29.07.2021 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.


PETITIONER

Wajid

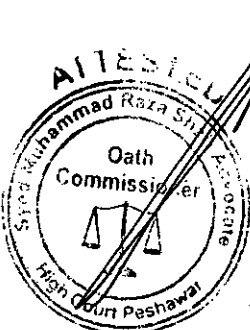
THROUGH:


(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



31 AUG 2021


DEPONENT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 5692/2020

Khyber Pakhtunkhwa
Service Tribunal

Case No. 3821

Dated 13-05-20



Wajid, Ex-Constable, No.1189,
Police Station Usterzai, Kohat.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region, Kohat.
3. The District Police Officer, Kohat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 21.04.2020, WHEREBY THE REVISION OF THE APPELLANT FOR REINSTATEMENT UNDER 11-A OF POLICE 1975 AMENDED IN 2014 HAS BEEN REJECTED AND AGAINST THE ORDER DATED 17.08.2019, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 09.08.2018 "WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE" HAS BEEN REJECTED FOR NO GOOD GROUNDS.

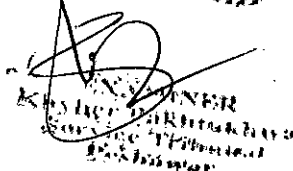
PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 21.04.2020, 17.08.2019 AND 09.08.2018 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to -day
and filed.

Registrar

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5692/2020

Date of Institution ... 13.05.2020

Date of Decision ... 29.07.2021



Wajid Ex-Constable, No. 1189, Police Station Usterzai, Kohat.

... (Appellant)

VERSUS

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

... (Respondents)

MR. TAIMUR ALI 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

ATIQ-UR-REHMAN WAZIR MEMBER (E): Brief facts of the case are that the appellant, while serving as constable in police department, was charged in a criminal case U/S 302/34 PPC dated 25-12-2017 and based on such reason, disciplinary proceedings were initiated against him, which ultimately resulted into imposition of major penalty of dismissal upon the appellant vide order dated 09-08-2018. The appellant filed departmental appeal on 29-07-2019 after confirmation of his pre-arrest bail granted by the trial court on 24-05-2019. His departmental appeal was rejected vide order dated 17-08-2019. The appellant filed review petition, which was also rejected vide order dated 21-04-2020. Feeling

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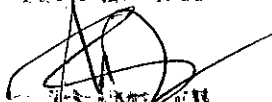
 MEMBER (EXECUTIVE)
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 PESHAWAR

aggrieved, the appellant filed the instant service appeal with prayers that he may be re-instated with all back benefits.

02. Written reply/comments were submitted by respondents.

03. Learned counsel for the appellant has contended that upon registration of FIR against the appellant, the respondents were required to suspend the appellant under CSR-194-A, till conclusion of criminal case pending against him, but the respondent did not wait for conclusion of the criminal case, rather initiated disciplinary proceedings at the back of the appellant. He further contended that no regular inquiry was conducted and the appellant was condemned unheard; that no charge sheet/statement of allegations as well as any show cause was served upon the appellant. Learned counsel for the appellant argued that the appellant filed departmental appeal after conformation of his pre-arrest bail, which was rejected. He further argued that the appellant was granted acquittal by the trial court vide judgment dated 07-12-2019 and as per rule 16.3 of Police, 1934, when a police official has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charges. Learned counsel for the appellant argued that the appellant filed departmental appeal after confirmation of his pre-arrest bail and filed review petition after acquittal from the criminal charges, as it would have been a futile attempt on the part of the appellant to challenge his removal from service before earning acquittal in the relevant criminal case and it would be unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case which had formed the foundation for his removal from service. Reliance is placed on PLD 2010 SC-695. Learned counsel for the appellant explained that after acquittal of the appellant, there was no material available with the respondents to maintain the major penalty of removal from service. Reliance is placed on 2003 SCMR 207, 2007 SCMR 192, 2002 SCMR 57 and 1993 PLC (CS) 460. On the question of limitation, learned counsel for the appellant

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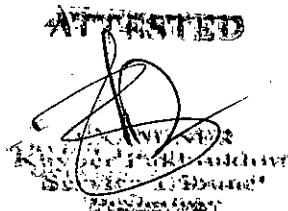

Notary Public
District Court
District of Columbia
Washington, D.C.

argued that the impugned order have been passed retrospectively i.e. from the date of registration of FIR against him, therefore the same is void and limitation does not run against the impugned order. Learned counsel for the appellant has prayed that the impugned orders are against law, fact and principle of natural justice hence may be set aside and the appellant may be re-instated in service with all back benefits.

04. Learned Deputy District Attorney appearing on behalf of the respondents has contended that the appellant was directly charged in an FIR U/Ss 302/34 PPC and there is no ambiguity of his involvement in a criminal case. He further contended that besides the instant case, the appellant has several bad entries in his service record. Learned Deputy District Attorney argued that the pre-arrest bail was confirmed on the basis of compromise with the complainant party, which is evident from the court order dated 14-05-2019. He further argued that the appellant was acquitted from the criminal case by extending him the benefit of doubt, which does not amount to honorable acquittal. Learned Deputy District Attorney explained that the instant appeal is badly time barred, as the impugned order was issued on 09-08-2018, whereas the appellant filed departmental appeal on 29-07-2019 after delay of eleven months, hence his departmental appeal was rejected being barred by time. Learned Deputy District Attorney prayed that the appellant was proceeded against as per law and rule and his appeal being devoid of any force may be dismissed.


05. We have heard learned counsel for the parties and have perused the record.

06. Record reveals that on registration of criminal case vide FIR No. 667 dated 25-12-2017, under sections 302/34 PPC, against the accused, disciplinary proceedings were initiated against him under Police Rules, 1975 for his involvement in a criminal case. The respondents were required to have suspended the appellant.

ATTESTED


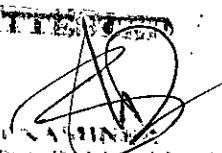
under CSR-194-A, till the conclusion of criminal case pending against him, however they straight away initiated disciplinary action against the appellant. We are conscious of the fact, that the appellant was not available at that particular time for disciplinary proceeding, however it appears that the absence of the appellant was not willful, rather the same was due to the fact that he was implicated in a murder case by his opponents. In such a situation, it would have been appropriate for the respondents to have waited for decision of the criminal case by a competent court of law. It is also settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegation, and based on the same, maximum penalty could not be imposed. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. Similarly, as per rule 16.3 of Police Rules, 1934, when a police official has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charges. The Apex Court in various judgments have held that if a civil servant is dismissed on account of his involvement in criminal case then he would have been well within his rights to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. As is evident from their comments, the respondents instead of adopting proper legal way, proceeded the appellant in haste and did not afford appropriate opportunity of defense as was required under the provisions of the rules, rather conducted proceedings only to the extent of fulfillment of codal formalities, hence the appellant was condemned unheard. Circumstances however, warranted consideration of his case as per law and rule. To this effect, the respondents violated rule 6 (1) (b) of Police Rules, 1975, as framing of charge and its communication to civil servant along with statement of allegations was not mere a formality but was a mandatory requirement, which was to be followed. Reliance is placed on 2000 SCMR 1743; In

ATTESTED


 CHAIRMAN
 SERVICE TRIBUNAL

PLJ 2016 Tr.C (Services) 326, it has been held that when a power is conferred on a public functionary and it is exercisable for benefit of any affected party then that party gets an implied right to move for exercise of such power. In case of imposing major penalty, principle of natural justice requires that a regular inquiry is to be conducted in matter and opportunity of defense is to be provided to civil servant proceeded against, which however was not done in case of the appellant. It was noted that the appellant was acquitted of the criminal charges by the trial court vide its judgment dated 07-12-2019. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he is innocent person. Moreover, after his acquittal, there was no material available with the authorities to maintain such penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. We are also mindful of the question of limitation, as the appellant filed departmental appeal after confirmation of his pre-arrest bail, but the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held "that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. It was unjust and oppressive to penalize civil servant for not filing his departmental appeal before earning his acquittal in criminal case, which had formed the foundation for his removal from service". Moreover, it is a well settled legal proposition that decision of cases on merits is always encouraged instead of non-suiting litigants on technical reasons including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.


07. In order to justify their stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant. Moreover, the appellant was acquitted of the charges by a trial court and all acquittals are honorable and there can be no

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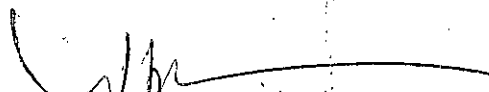
acquittals, which may be said to be dishonorable. Reliance is placed on 1998 SCMR 1993. The only charge, on the basis of which, the appellant was proceeded against was his involvement in a criminal case, however the same has vanished away due to acquittal of the appellant by competent court of law.

08. In view of the foregoing discussion, the instant appeal is accepted and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
29.07.2021

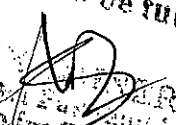


(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(ATIQU UR REHMAN WAZIR)
MEMBER (EXECUTIVE)

Certified to be true copy


Atiq ur Rehman Wazir
Services Tribunal
Feshawar

Date of Presentation of Application 01/9/21
Number of Words 2800
Copying Fee 30/-
Urgent 3/2
Total 34/-
Name of Copyist /
Date of Completion of Copy 01/9/21
Date of Delivery of Copy 01/9/21

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Wajid (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

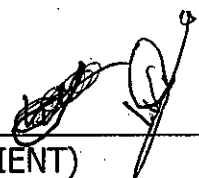
Police Dept (Respondent)
(Defendant)

I/We, _____

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021



(CLIENT)

ACCEPTED


TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

