

**BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,**  
**PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

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

Diary No. 2952

Dated 13/6/2022

**In Service Appeal: 864/2019**

Zeeshan Ahmad Junior Clerk Sub Jail, Dassu, Kohistan.

..... Appellant

**VERSUS**

- (1) The Secretary Home and Tribal Affairs Department,  
Khyber Pakhtunkhwa, Peshawar.
- (2) Inspector General of Prisons, Khyber Pakhtunkhwa ,  
Peshawar.
- (3) The Superintendent Sub jail Dassu, Kohistan.

..... Respondents

**INDEX**

S.No.	Description of documents	Annexure	Pages
1.	Copy of petition		1-2
2.	Copy of Judgment	A	3-6
3.	Wakalat Nama		

Zeeshan Ahmad  
Appellant

Through



**Roeda Khan**  
**Advocate High Court,**  
**Peshawar**

(1)

**BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL,**  
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- (2) Inspector General of Prisons, Khyber Pakhtunkhwa ,  
Peshawar.
- (3) The Superintendent Sub jail Dassu, Kohistan.

..... Respondents

.....

**EXECUTION PETITION FOR DIRECTING THE**  
**RESPONDENTS TO IMPLEMENT THE JUDGMENT**  
**DATED: 16/11/2022 OF THIS HONOURABLE**  
**TRIBUNAL IN LETTER AND SPIRIT.**

.....

**Respectfully Sheweth:**

1. That the appellant/Petitioners filed Service Appeal No. **864/2019** before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 16/11/2022. (Copy of Judgment is annexed as Annexure-A).

2

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment. And properly submitted an application to respondent Department for the implementation however they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.
3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.
4. That the respondent Department is legally bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment of this Hon' able Tribunal letter and spirit.

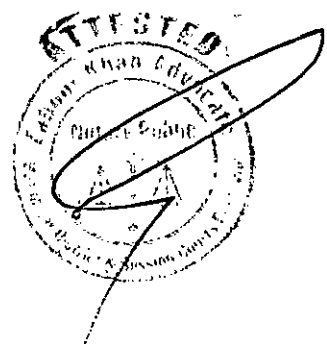
ذیشان احمد  
Appellant/Petitioner

Through   
Rooeda Khan  
Advocate High Court Peshawar

AFFIDAVIT

I, Zeeshan Ahmad Junior Clerk Sub Jail, Dassu, Kohistan. do here by solemnly affirm and declare on oath that all the contents of the above petition are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon' able Tribunal.

ذیشان احمد  
DEPONENT



Service Appeal No864/2019 titled "Zeeshan Ahmad-vs-The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and other", decided on 16.11.2022, by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN .. CHAIRMAN**  
**SALAH UD DIN .. MEMBER (Executive)**

*Service Appeal No.864/2019*

**Zeeshan Ahmed**, Junior Clerk, Sub Jail, Dassu Kohistan.  
.....(Appellant)

Versus

1. **The Secretary Home & Tribal Affairs** Department, Khyber Pakhtunkhwa, Peshawar.
  2. **Inspector General of Prisons**, Khyber Pakhtunkhwa, Peshawar.
  3. **The Superintendent Sub Jail**, Dassu Kohistan
- .....(Respondents)

Present:

Mr. Arshad Khan Tanoli,  
Advocate.....For appellant.

Muhammad Adeel Butt,  
Additional Advocate General.....For respondents.

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Date of Institution.....01.07.2019  
 Dates of Hearing.....16.11.2022  
 Date of Decision.....16.11.2022

**APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 04.11.2015 VIDE ANNEXURE 'A' WHEREBY, THE MAJOR PENALTY OF REDUCTION TO A LOWER STAGE IN A TIME SCALE FOR A PERIOD OF FIVE YEARS HAS BEEN IMPOSED UPON THE APPELLANT AND THE PERIOD OF HIS ABSENCE FROM 01.02.2015 TO 15.03.2015 (43 DAYS) HAS BEEN TREATED AS LEAVE WITHOUT PAY.**

**ATTESTED**

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN.:** The appellant is aggrieved of order dated 04.11.2015, whereby major penalty of reduction to a lower stage in a time scale for a period of five years was imposed upon him and the period of his absence from 01.02.2015 to 15.03.2015 (43 days) had been treated as leave without pay.

2. According to the appeal, the appellant was serving as Junior Clerk in the Prison Department and was in Sub-Jail Dassu, Kohistan; that because of his involvement in a criminal case, he remained absent from duty for 43 days, because of which he was awarded major penalty of reduction to a lower stage in a time scale for a period of five years and his absence period was treated as leave without pay vide impugned order dated 04.11.2015; that the appellant was acquitted from the charge by the learned Additional & Sessions Judge, Lahore on 19.02.2019 and he filed departmental appeal which was not responded within the statutory period, hence this appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

ATTENDED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



4. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. The first moot point for determination before us was question of limitation but that had already been settled vide the admitting note dated 13.07.2021 in the following manner:-

"However, in the impugned order, the competent authority deviated from his own tentative decision and imposed major penalty of reduction to a lower stage in a time scale for a period of five years. Apart from the said major penalty, the period of absence of 43 days was also treated as leave without pay. The impugned order on its face, for the reasons of absence of formal charge sheet at the time of commencement of enquiry proceedings, and on account of deviation of the competent authority from its tentative decision of imposition of minor penalty indicated in the show cause notice, is likely to suffer from voidness, if not rebutted by sufficient material and justification by the respondents. Thus, there is uncertainty as to whether the question of limitation will have any bearing or not".

7. The only question remained before this Tribunal for determination is whether the impugned order of reduction to a lower stage in a time scale for a period of five years. It is in this respect observed that the very and only charge against the appellant in the statement of allegation was that he remained absent from duty w.e.f

(b)

Service Appeal No864/2019 titled "Zeeshan Ahmad vs-The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and other", decided on 16.11.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Salah Ud Din, Member, Judicial, Khyber Pakhtunkhwa Service Tribunal, Camp Court Abbottabad.

01.02.2015 to 15.03.2015 that is 43 days and period of absence of 43 days was treated as leave without pay. The competent authority had thus itself regularized the absence of the appellant by treating the same as leave without pay, therefore, there existed no legal justification for awarding the impugned penalty to the appellant. We, therefore, allow this appeal and set aside the impugned order dated 04.11.2015. Costs shall follow the event. Consign.

8. Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 16<sup>th</sup> day of November, 2022.

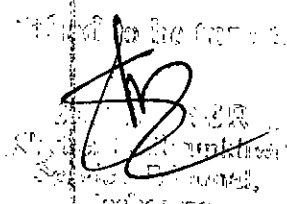


**KALIM ARSHAD KHAN**  
Chairman  
Camp court Abbottabad

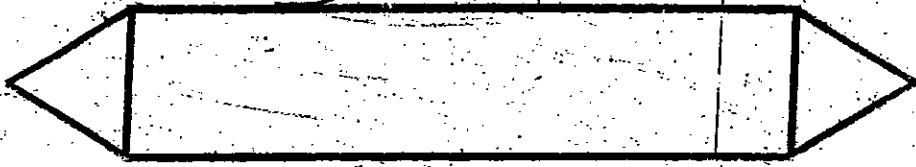


**SALAH UD DIN**  
Member (Judicial)  
Camp court Abbottabad

page 4-p. 11/01/2023  
20/-  
20/-  
12/01/2023  
12/01/2023



# بجرت سے کل سولہ کاہ



مورخہ

مقدمہ

دعویٰ

جرم

2023ء منجانب الیٹ

ذیالاحہ 13

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام

کیئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل 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 مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

2023ء

ماہ صفر

13

المرقوم

العبد د گ واہ العبد