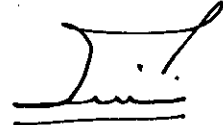


06.10.2021

Petitioner alongwith his counsel namely Syed Noman Ali Bukhari, Advocate, present. Mr. Mazhar Abbas, Steno alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and produced copy of corrigendum order dated 27.09.2021, which is placed on file. Learned counsel for the petitioner stated at the bar that opportunity may be granted to him for addressing arguments on the corrigendum order dated 27.09.2021. Adjourned. To come up for arguments before the S.B on 21.10.2021.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

21.10.2021.

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

Learned counsel for the parties have been heard. Obviously the matter of reinstatement after corrigendum has been given effect from the date of removal of the petitioner from service without any expression about back benefits allowed by the judgment. Anyhow the judgment of this Tribunal has been impugned before the August Supreme Court of Pakistan and if the same is maintained, the petitioner would be at liberty to seek payment of back benefits, if not voluntarily paid by the department. However, the other consequential benefits including the seniority and benefits for nomination of training etc. shall not be withheld by the Tribunal in the meantime. File be consigned to the record room for the time-being.



Chairman

EP 86/21

07.09.2021

Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Zeeshan, S.I (Legal) for the respondents present.

Copy of conditional reinstatement order of the petitioner has been produced and placed on file. Accordingly, the petitioner has been reinstated in to service with immediate effect on 26.03.2021. As far as spirit of the judgment is concerned, the appellant was reinstated with back benefits meaning that his reinstatement should have been effective from 11.06.2019 when he was removed from service. As far as financial benefits are concerned that are subject to the kind of leave due and could be kept pending till decision of the CPLA. The department assures that necessary corrigendum will be issued to make the petitioner's reinstatement effective from the date of removal from service i.e. 11.06.2019, subject to decision of CPLA. Case to up on 06.10.2021 before S.B.


Chairman

07.06.2021

Petitioner in person and Mr. Noor Zaman Khattak,
District Attorney for the respondents present.

Notice be issued to the respondents with direction to
implement the judgment under execution and submit
implementation report positively on 28.07.2021 before
S.B.



(Rozina Rehman)
Member(J)

08.07.2021

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

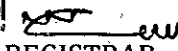


Learned AAG states that against the judgment under
execution the respondent department has filed CPLA
before the August Supreme Court of Pakistan but no date
of hearing is fixed so far. If the judgment under
implementation is not suspended, the respondents are
under obligation to implement the judgment, subject to
decision of CPLA by the August Supreme Court of Pakistan.
To come up for implementation report on 07.09.2021
before S.B.


Chairman

FORM OF ORDER SHEET

Court of _____

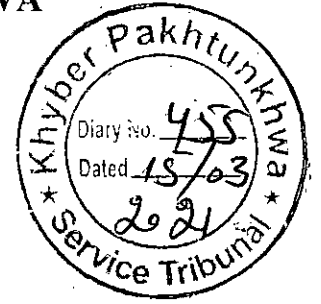
Execution Petition No. 86 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.03.2021	<p>The Execution Petition submitted by Mr. Waleed Mehmood through Syed Noman Ali Bukhari 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 on <u>02/04/21</u>.....</p> <p style="text-align: right;"> CHAIRMAN</p>
2	01.04.2021	<p>Junior to counsel for the petitioner present. Notice be issued to respondents for submission of implementation report on 07.06.2021 before S.B.</p> <p style="text-align: right;"> (Atiq Ur Rehman Wazir) Member (E)</p>

①

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

Execution Petition No. 86 /2021
In Service Appeal No.1077/2019



Mr. Waleed Mehmood Ex-constable,
Investigation Branch, District Hangu.

PETITIONER

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police Officer, Bannu, Region, Banuu.
3. District Police Officer HAngu.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 13.01.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

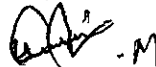
RESPECTFULLY SHEWETH:

1. That the applicant/Petitioner filed Service Appeal No.1077/2019 against the dismissal order.
2. That the said appeal was finally heard by the Honorable Tribunal on 13.01.2021. The Honorable Tribunal is kind enough to accept the appeal with all back benefits. **(Copy of judgment is attached as Annexure-A).**
3. That the respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 13.01.2021.
4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.

2

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 respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 13.01.2021 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/appellant.



PETITIONER
Waleed Mehmood

THROUGH:



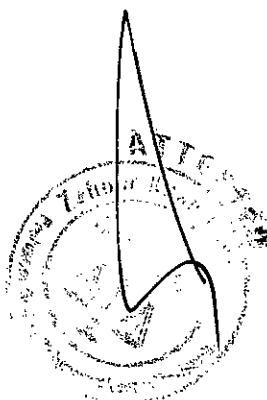
(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief.



DEPONENT



1
(3)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1077/2019.

Date of Institution ... 22.08.2019

Date of Decision ... 13.01.2021

Waleed Mehmood, Ex-Constable Investigation Branch, District Hangu.
... (Appellant)

VERSUS

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

Present.

Syed Numan Ali Bukhari,
Advocate.

... For appellant

Mr. Muhammad Rashid,
Deputy District Attorney,

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. ATIQ-UR-REHMAN WAZIR,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Instant appeal has been preferred against the order dated 11.06.2019 passed by respondent No. 3, whereby, major penalty of dismissal from service was awarded to the appellant. The appellant is also aggrieved of order dated 29.07.2019, issued by the respondent No. 2. Through the order his departmental appeal was rejected.
2. The appellant joined the Police Department as Constable on 12.05.2015. It is claimed that he was on bed rest due to fracture in his leg when falsely implicated in FIR No. 380 dated 27.02.2019 u/s 381-A PPC. He was charge sheeted on the allegation of recovery of two motorcycles from his godown. The appellant submitted reply to the charge sheet and denied the ownership of

ATTESTED

EX. MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4


godown. Final show cause notice was issued to the appellant where-after the impugned order dated 11.06.2019 was passed. His departmental appeal also could not find favour and was rejected on 29.07.2019.

3. Learned counsel for the appellant as well as learned Deputy District Attorney, on behalf of the respondents, heard and available record gone through.

4. It was the argument of learned counsel that the allegation against the appellant was based solely on the factum of having been charged in criminal case. On the other hand, he was acquitted under section 249-A Cr.PC on 01.10.2019. Speaking about the illegalities committed by the respondents during the departmental proceedings, it was emphasized that no enquiry report was provided to the appellant alongwith show cause notice. He was of the view that mere allegations could not form basis for penalty also in view of principles of natural justice, which were part of every statute. Learned counsel also contended that the appellant was penalized on the basis of presumptions which was not allowable under the law. In support of his arguments learned counsel referred to judgments reported as PLD 1981-Supreme Court-186, 2007-SCMR-192, 2008-SCMR-1516, 2002-SCMR-579, PLD 2010-695, 1998-SCMR-1993, PLD 2003-Supreme Court-187 and 2002-PLC(C.S) 503. Judgments of this Tribunal in Service Appeals No. 666/2016 and 847/2017 were also relied upon.

Learned DDA, while attempting to dislodge the arguments from other side, firstly referred to paragraph-2 in the Parawise comments by the respondents. He contended that the stolen motorcycles were duly recovered from the godown of the appellant; therefore, the departmental proceedings were rightly initiated against him. He further argued that the acquittal in criminal proceedings had no bearing upon the merits of departmental proceedings,

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar



(5)


therefore, the acquittal of appellant was to be disregarded in the instant case. He relied on 2007-SCMR-562 and 2006-SCMR-554. Decision in Service Appeal No. 1049/2015 was also referred to by him. It was the argument of learned DDA that all codal formalities were completed by the respondents in conducting proceedings against the appellant. The impugned orders were, therefore, not to be interfered with.

4. We have considered the available record in the light of arguments on behalf of the parties. On the record there is a copy of FIR dated 17.04.2019, wherein, the complainant Ziaul Haq did not charge anyone directly for theft of motorcycle(s). Needless to note, that the FIR was registered after about two months of the occurrence and upon recovery of incriminating articles. It was noted that the recovery was effected from the godown of the appellant. In the said context, it is important to note that no statement of any person from the locality, regarding the ownership of godown, was ever recorded. The respondents also failed to place on record any copy of the recovery memo in that regard. On the record, the appellant categorically denied the ownership/occupation of the godown and stated in his statement that the same was rented out to his uncle namely Wazir Khan son of Nasar Khan who paid the rent thereof. Wazir Khan was not included in the investigation proceedings, which was an act not very normal on the part of respondents.

5. We have also gone through the enquiry report dated 13.05.2019, wherein, inter alia, it has been noted that had the appellant been innocent, he should have attempted to complete the trial and awaited the decision on merits.

It is useful to iterate that the criminal proceedings/charge against the appellant was dropped u/s 249-A CPC. The view of enquiry officer, noted hereinabove, was based absolutely on conjectures and presumptions. The Enquiry Officer also

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar


 vmi.

(6)

grudged the exercise of his legal right by the appellant. He, therefore, could not be penalized in the matter by the competent authority.

6. The provision of copy of enquiry report alongwith the show cause notice has not been claimed by the respondents nor the stance of appellant in that regard is denied. Seeking guidance from 1987-SCMR-1562 and PLD-1981 Supreme Court-176, it is not unsafe to hold that the act on the part of respondents was fatal to the validity of orders passed against the appellant. The record is also silent regarding placing of appellant under suspension till the decision of criminal case. Thus the violation of CSR by the respondents is established through the record.

7. We are mindful of the fact that the charge against the appellant was squarely based on contents of FIR. The criminal proceedings ensuing therefrom resulted in acquittal of appellant. In the said manner the substratum of departmental proceedings vanished, therefore, the impugned orders lost validity. The judgments reported as PLD-2003-Supreme Court-187, 2007-SCMR-192 and 2008-SCMR-1516 are respectfully followed in the above context.

8. For what has been discussed above, the appeal in hand is allowed and the appellant is reinstated into service with back benefits. The absence period of appellant, however, shall be treated as leave of the kind due. The parties are, however, left to bear their respective costs. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN



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

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ANNOUNCED
13.01.2021

Date of Presentation of Application 18/01/2021
Number of Words 1600
Copying Fee 18/-
Urgent 4/5
Total 22/-
Name of Copyiest ---
Date of Completion of Copy 18/1/2021
Date of Delivery of Copy 18/1/2021

VAKALATNAMA

NO. _____/20

IN THE COURT OF KP. Service Tribunal Peshawar

Waleed Mahmood Khan

Appellant
Petitioner
Plaintiff

VERSUS

Police Department

Respondent (s)
Defendants (s)

I/WE Waleed Mahmood Khan

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____/20

Waleed M

(CLIENT)

ACCEPTED

Waleed M

**SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT**

CELL NO: 0306-5109438



**OFFICE OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION, HANGU**

Office Tele: 0925-623887
Office Fax: 0925-622887
Email: spinvestigationhangu@yahoo.com
headclerkinyhangu@gmail.com

Dated: Hangu, the 26 March, 2021

ORDER

In the light of the Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar, order announced on 13.01.2021, Letter No. 141 dated 20.01.2021 and execution petition No. 1077/2019, Ex-Constable Waleed Mehmood No. 46 is hereby conditionally / provincially reinstated in service till the outcome of CPLA with immediate effect.

It is further stated there is no vacant post of Constable in this Wing. In this regard Ex-Constable Waleed Mehmood No. 46 has been transferred to Operation Staff Hangu vide Worthy Regional Police Officer, Kohat Region Kohat order Endst. No. 3472-73/EC dated 15.03.2021.

OB No 17 /Inv:

Dated 26 / 03 / 2021

MM
Superintendent of Police,
Investigation, Hangu.

OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION, HANGU.

No. 1092 /Inv: dated Hangu the 26 / 03 / 2021

Copy of above is submitted for information to the :-

1. Dy: Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region Kohat please.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa, Peshawar w/r to his office Letter No. 470/Legal dated 25.01.2021.
4. District Police Officer Hangu.
5. Pay Officer/ SRC /Reader/OHC.

MM
Superintendent of Police,
Investigation, Hangu.



OFFICE OF THE
DISTRICT POLICE OFFICER,
HANGU

Tel No. 0925-623878 & Fax No. 0925-620135
Email: dpohangu8@gmail.com

CORRIGENDUM

Subject:-

ORDER

In the light of Honrable Service Tribunal, Khyber Pakhtunkhwa, Peshawar order announced on 13.01.2021 vide letter No. 141, dated 20.01.2021, Execution Petition No. 1077/2019 and SP, Investigation Hangu Order Endst: No.1092/Inv; dated 26.03.2021, Ex-Constable Waleed Mehmood No.80 is hereby conditionally/provincially reinstated in service with effect from 11.06.2019 instead of immediate effect till the outcome of CPLA.

**DISTRICT POLICE OFFICER,
HANGU 27/9.**

No. 8444-48/EC, dated Hangu, the 27/09/2021.

Copy of above is submitted for favour of information to the:-

1. Deputy Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa Peshawar w/r to his office letter No. 470/Legal, dated 25.01.2021.
4. Superintendent of Police, Investigation Hangu w/r to his office order Endst: No. quoted above.
5. Pay Officer, SRC, Reader & OASI for information and necessary action.

**DISTRICT POLICE OFFICER,
HANGU 27/9.**