

08.04.2021-

Due to demise of The Worthy Chairman,
the Tribunal is defunct, therefore the case
is adjourned to 15/07/2021 for the same
as before


Reader

15.07.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Arif Saleem, Steno for the respondents present.

Representative of the respondents has produced copy of order No. 3973-75/SRC, dated 12.03.2021, whereby in pursuance to the judgment under implementation, financial back benefits have been accorded to the petitioner. Learned counsel for the petitioner expressed his satisfaction and requested that instant execution petition may be consigned.

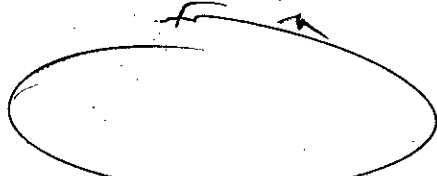
In view of the above, instant execution petition is filed and consigned to the record room.


Chairman

09.11.2020

Nemo for the petitioner. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Since the Members of the High Court as well as of the District Bar Associations, Peshawar, are observing strike today, therefore, learned counsel for petitioner is not available today. Adjourned to 28.12.2020 on which date to come up for arguments before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

28.12.2020

Clerk to counsel for petitioner is present. Mr. Asif Masood Ali Shah, Deputy District Attorney and Mr. Muhammad Rasheed, Deputy District Attorney, for the respondents are also present.

The bench was informed that the learned counsel representing petitioner is indisposed of today. Request for adjournment was made, the appeal is adjourned to 10.02.2021 on which to come up for arguments before S.B.


(MUHAMMAD JAMAL KHAN)
MEMBER

10.02.2021

Petitioner with counsel present.


Kabir Ullah Khattak learned Additional Advocate General alongwith Arif Salim Stenographer for respondents present.

Last opportunity is given with direction to submit proper implementation report on or before 08.04.2021 before S.B.


(Rozina Rehman)
Member (J)

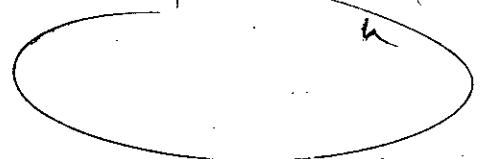
23.06.2020 Counsel for the petitioner present.

Notice to respondents was not issued due to note reader, therefore, notice be issued to the respondents for implementation report for 06.08.2020 before S.B.



Member (J)

06.08.2020 Mr. Muhammad Shafique, Advocate for petitioner is present. Mr. Kabirullah Khattak, Additional AG alongwith representative of the department Mr. Arif Saleem, Steno are also present. Learned Additional AG submitted reply on implementation report. Learned counsel for the petitioner is seeking time for submission of reply. Time granted. File to come up for submission of reply on 23.09.2020 before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER

23.09.2020 Counsel for the petitioner and Addl. AG alongwith Arif Saleem, Steno for the respondents present.

Learned counsel has submitted rejoinder to the objection. To come up for arguments on 09.11.2020 before S.B.







Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 31 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.01.2020	<p>The execution petition of Mr. Zubair-ur-Rehman submitted today by Mr. Hassan U.K Afridi 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>21/02/2020</u>.</p> <p> CHAIRMAN</p>
	21.02.2020	<p>Counsel for the petitioner present. Notices be issued to the respondents for implementation report for 31.03.2020 before S.B.</p> <p> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>
	31.03.2020	<p>Due to public holiday on account of COVID-19, the case is adjourned to 23.06.2020 for the same. To come up for the same as before S.B.</p> <p> Reader</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. 31 /2020

In

Service Appeal No.694/2018

Zubair ur Rehman.....**Appellant/Applicant**

V E R S U S

Inspector General of Police,

Khyber Pakhtunkhwa, Peshawar & others....**Respondents**

I N D E X

S#	Description of Documents	Annex	Pages
1.	Service Appeal		1-4
2.	Affidavit		5
3.	Addresses of parties		6
4.	Order/Judgment Of Tribunal dated 11.06.2019		7-9
5.	Order of respondent No.3 dated 08.02.2018		10
6.	Service Appeal		11-15
7.	Departmental Appeal dt.31.12.2019		16
8.	Letter dated 18.09.2019		17
9.	Letter dated 31.12.2019		18
10.	Wakalatnama		19

Appellant/Applicant

Through

Dated 23.01.2020

Hassan U.K Afridi

Advocate

Supreme Court of Pakistan

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. 31 /2020
In
Service Appeal No.694/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 776

Dated 23/01/2020

Zubair ur Rehman S/o Habib ur Rehman,
Constable- Belt No.494, Platoon No.119, FRP, Kohat
.....**Appellant/Applicant**

V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar
2. Deputy Inspector General of Police, Kohat
3. District Police Officer, Kohat**Respondents**

**EXECUTION PETITION UNDER SECTION 7
(2) (D) OF THE KHYBER PAKHTUNKHWA
CIVIL SERVANT ACT, 1974, OF THE
ORDER/JUDGMENT PASSED BY THE
HON'BLE TRIBUNAL VIDE DATED
11.06.2019.**

Filed to day
23/11/2020
Registrar

Respectfully Sheweth:-

Facts of the case

1. That the appellant/applicant was terminated
on 04.04.2014 and this Hon'ble Tribunal
reinstated the appellant/applicant vide order

dated 06.11.2017, with the direction to conduct de-nova inquiry with in three months.

2. That the respondents conducted de-nova inquiry, and imposed/awarded the major penalty on 08.02.2018 as reduction from higher stage to lower stage, in the same time scale of pay for period of three years and intervening period of treated as leave without pay.
3. That the appellant/applicant then filed department appeal, which was rejected, and the service appeal was accepted by this Hon'ble Tribunal on 11.06.2019 and set aside both the orders passed by the respondents No.17.04.2018 and 08.04.2018.
4. That the appellant/applicant then submitted an application before the respondents to award/granted me the all back benefits as restrotion of increment since 04.04.2014, the intervening period between 04.04.2014 and 11.06.2019 be consider/counted in the service of appellant/applicant, the salary of the appellant be awarded/granted with back.

benefit since 04.04.2014 and also the salary since 04.04.2014 to 16.06.2019 etc.

5. That the respondents are not bothered to ply the satisfactory reply, therefore the appellant/applicant filed the present execution petition on the following grounds:

GROUND S:

- A. That the denial of respondents to award/grant the all back benefits to the appellant/applicant is against law and justice and is highly objectionable.
- B. That the order under which, the reduction from higher stage to lower stage, and time scale of pay for the three years and intervening period is created as leave without pays has been set aside and the appeal of the appellant/applicant has accepted, meaning there by that the appellant/applicant is entitled of the all back benefits as appellant/applicant prayed in his service appeal.
- C. That if this Hon'ble Tribunal is not agreed with the execution petition, then this execution

petition may kindly be considered as appeal and converted to appeal.

- D. That some the grounds may be adduced at the time of arguments with the permission of this Hon'ble tribunal.

It is, therefore most humbly prayed that on acceptance of this execution petition, all back benefits as salary since 04.04.2014 be restored, the present salary may be measured from 04.04.2014 etc may kindly be awarded/granted to the appellant/applicant in accordance with law.

Any the relief, the Honourable Court may deem fit for the safe administration of justice



Appellant/Applicant

Through

Dated 23.01.2020.



Hassan U.K Afridi
Advocate
Supreme Court of Pakistan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. _____/2020

In

Service Appeal No.694/2018

Zubair ur Rehman.....**Appellant/Applicant**

V E R S U S

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar & others....**Respondents**

A F F I D A V I T

I, Zubair ur Rehman S/o Habib ur Rehman, Constable-997 R/o Shah Poor, Kohat, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Zubair ur Rehman
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Execution petition No. _____/2020

In

Service Appeal No.694/2018

Zubair ur Rehman.....**Appellant/Applicant**

V E R S U S

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar & others....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Zubair ur Rehman S/o Habib ur Rehman,
Constable- Belt No.494, Platoon No.119, FRP, Koha

RESPONDENTS:

1. Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar
2. Deputy Inspector General of Police, Kohat
District Police Officer, Kohat



Appellant/Applicant

Through

Hassan U/K Afridi

Advocate

Supreme Court of Pakistan

Dated 23.01.2020

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 694/2018

Date of institution ... 17.05.2018

Date of Decision ... 11.06.2019



Zubair-ur-Rehman S/O Habib-ur-Rehman, Constable-997 R/o Shahpur, Kohat
(Appellant)

VERSUS

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

Mr. Hassan U.K Afridi
Advocate.

For appellant.

Mr. M. Riaz Khan Paindakhel
Assistant Advocate General

For respondents.

MR. AHMED HASSAN
MR. HAMID FAROOQ DURRANI

MEMBER(E)
CHAIRMAN

JUDGMENT

AHMED HASSAN, MEMBER:- Arguments of the learned counsel for the
parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that this is the second round of litigation. Previously, the appellant was dismissed from service on 04.04.2014. He assailed this order by way of filing service appeal in this Tribunal, which was accepted vide judgment dated 06.11.2017. The respondents were placed at liberty to conduct de-novo inquiry against the appellant. De-novo inquiry was conducted and vide impugned order dated 12.02.2018 major penalty of reduction from higher stage to lower stage in the

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

HASSAN -U.K- AFRIDI
(Advocate)
High Court Peshawar

time scale was imposed on him. He filed departmental appeal on 14.02.2018 and was rejected on 17.04.2018 followed by the present service appeal.

3. De-novo inquiry was not conducted in accordance with the procedure laid down in Police Rules, 1975. Charges leveled against the appellant could not be established during the course of inquiry proceedings.

4. Learned Assistant Advocate General argued that on the directions of this Tribunal de-novo inquiry was conducted against the appellant but he could not defend his position and was found guilty of charges leveled against him. Finally, punishment in accordance with his guilt was awarded to him after observance of all the codal formalities..

CONCLUSION.

5. To re-capitulate the past events attention is invited to the observations of this Tribunal content in Para-5 of the judgment dated 06.11.2017. As opportunity of cross examination was not afforded to the appellant, so it became a solid ground for his reinstatement and placing the respondents at liberty to conduct de-novo inquiry. A cursory glance at the de-novo inquiry report conducted by the respondents would reveal that they again repeated the same old mistake of not recording the statements of the concerned officials and extending opportunity of cross examination to the accused. This alone being a serious illegality amounted to non-observance of procedure laid down in Police Rules, 1975, thus rendered the entire proceedings as in effective, futile and without backing of law.

6. We have no hesitation in concluding that charges contained in the charge sheet/statement of allegations were vague, evasive and ambiguous. It is the requirement of rules that charge has to be precise, specific and conclusive. Our assertions are backed by numerous judgments of superior followed by this Tribunal in many appeals.

HASSAN U.K. AFRIDI
(Advocate)
High Court Peshawar

7. Furthermore, concocted/unfounded charges of consumption of alcohol relationship with characterless women were out rightly not proved against him in the inquiry report. As regards the charge of aerial firing while being drunk was not at all properly examined/scrutinized by the inquiry office. This charge is to be read in conjunction with that of using alcohol, which remained unsubstantiated. He remained unable to bring on record any solid evidence against the appellant to prove him guilty. His findings were mainly based on presumptions/suppositions. The appellant admitted that he fired a shot from the weapon but accidentally. It was incumbent upon the inquiry officer to have proved that he was not only drunk but also resorted to aerial intentionally/deliberately. Learned Assistant Advocate General and departmental representative were asked whether empties after aerial were found/collected, but they could not give any convincing reply? In these circumstances, it appears that high ups wanted to teach him a lesson/settle some previous scores, but finally produced a flopped film.

8. In view of the foregoing, the appeal is accepted. impugned order dated 08.02.2018 and 17.04.2018 are set aside. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.06.2019

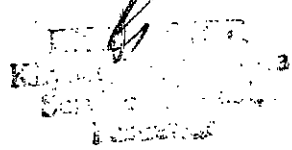
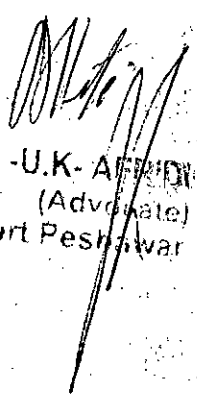


(AHMED HASSAN)
MEMBER



(HAMID FAROOQ DURRANI)
CHAIRMAN

Certified to be true copy

HASSAN-U.K. AFRIDI
(Advocate)
High Court Peshwar



OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

Tel: 0922-9260116 Fax 9260125

No 1411-13 /PA dated Kohat the 12/2 -2018

ORDER

This order will dispose of de-novo departmental proceedings initiated against Constable Zubair Ur Rehman No. 997/942 of this District Police under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

The essential facts arising of the case are that Constable Zubair Ur Rehman (hereinafter called accused) while posted at PS City was removed from service vide order dated 04.04.2014. The accused was involved/in league with bad character women, using Alcohol and also made aerial firing during drunk while on duty at Special - II City, Kohat

In compliance with the judgement of Service Tribunal dated 06.11.2017, denovo departmental proceedings initiated after approval. The SP Investigation Wing, Kohat was appointed as enquiry officer by the competent authorities. Charge Sheet alongwith statement of allegations issued to the accused official. The accused official was associated with the proceedings and afforded ample opportunity of defense by E.O. The accused official was held guilty of the charges vide finding of the enquiry officer.

Final Show Cause Notice alongwith copy of enquiry finding was served upon the accused official. Reply received unsatisfactory, without any plausible explanation.

Therefore, the accused official was called in Orderly Room, held on 08.02.2018 and heard in person, but he failed to submit any explanation to his gross professional misconduct.

Record gone through, which indicates that the accused official had committed the using of Alcohol and link with bad character women/aerial firing. The service record of the accused official also found indifferent.

In view of the above and available record, I agreed with the finding of enquiry officer, therefore, in exercise of powers conferred upon me under the rules ibid I, Abbas Majeed Khan Marwat, District Police Officer, Kohat impose a major punishment of reduction from higher stage to lower stage in the same time scale of pay for the period of 03 years on accused constable Zubair Ur Rehman No. 997/942. He is reinstated in service, the intervening period is treated as leave without pay and pay is hereby released.

Announced
08.2.2018

DISTRICT POLICE OFFICER,
KOHAT

OB No. 137
Date 02 /2018

No 1411-13 / PA dated Kohat the 12-2 2018.

Copy of above is forwarded for information and communication to the Reader, Pay officer, SRC and OHC.

HASSAN -U.K- AFRIDI
(Advocate)
High Court Peshawar



(N)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 694/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 725

Dated 17-5-2018

Zubair ur Rehman S/o Habib ur Rehman,
Constable-997 R/o Shah Poor, Kohat..... **Appellant**

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar
2. Deputy Inspector General of Police, Kohat
3. District Police Officer, Kohat **Respondents**

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, AGAINST THE IMPUGNED ORDER
VIDE DATED 08.02.2018 WHEREBY THE
MAJOR PENALTY HAS BEEN IMPOSED AS
REDUCTION FORM HIGHER STAGE TO
LOWER STAGE IN THE SAME TIME SCALE
OF PAY FOR THE PERIOD OF THREE YEARS
AND INTERVENING PERIOD TO TREATED
AS LEAVE WITHOUT PAY, AND THE
DEPARTMENTAL APPEAL FILED BY THE
APPELLANT ALSO REJECTED ON
17.04.2018 BY THE RESPONDENT NO.2,
WHICH ARE AGAINST LAW AND JUSTICE
AND ARE LIABLE TO BE SET ASIDE.

Filed to-day

Registrar

Re-submitted to-day
and filed.

Sandhu
21/5/18
Registrar

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

[Signature]
HASSAN - U.M. AFRIDI
(Associate)
High Court Peshawar

Prayer in Appeal:-


On acceptance of this appeal, the impugned order vide dated 08.02.2018 and order dated 17.04.2018 in departmental appeal may kindly be set aside and the appellant may please be posted in the Higher stage with full pay and the intervening period may please be considered with full pay and other benefits under the law/rules.

Any the relief, the Honourable Court may deem fit for the safe administration of justice


Respectfully Sheweth:-

Facts of the case

1. That the appellant was appointed as constable in the Police Department in District Kohat on 02.06.2006. (Copy of the appointed order dated 02.06.2006 is attached).
2. That the appellant has been performing his duty well and to the entire satisfaction of the superiors.


HASSAN -U.K.-AFRIDI
(Advocate)
High Court Peshawar

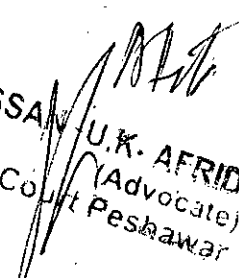
3. That a complaint was filed by the SHO concerned under made No.25 dated 27.03.2013 and an inquiry was conducted and after disciplinary procedure the appellant was dismissed on 04.04.2014 then the appellant was filed department appeal which was also rejected and then service appeal was accepted and the appellant reinstated in his service, however the respondents are at liberty to conduct a proper de-novo inquiry within three months.
4. That the de-novo-inquiry has conducted and the statements of allegations and charge sheet have been issued to the appellant on 08.01.2018 and after conducting inquiry, show cause notice also issued to the appellant.
5. That the appellant replied the show cause notice but the competent authority imposed/awarded the major penalty on 08.02.2018 as reduction from higher stage to lower stage, in the same time scale of pay for the period of three years and intervening period is treated as leave without pay and the department appeal also rejected vide dated


HASSAN J.K. AFRIDI
(Advocate)
High Court Peshawar

17.04.2018 hence the service appeal on the following amongst the other grounds:

GR OUN D S:

- A. That the impugned order vide dated 08.02.2018 and 17.04.2018 are against law fact and justice and are label to be set aside.
- B. That the appellant has not been dealt in accordance with law and rules.
- C. That the disciplinary proceedings initiated against the appellant is not according to law and rules as laid down in service laws.
- D. That the inquiry has not been conducted in accordance with law and the allegations leveled against the appellant have not been proved.
- E. That even the allegations have not been proved but the punishment is very much harsh and against the fundamental rights embodied in the constitution.
- F. That one sided inquiry was conducted, further that the inquiry officer recommended the punishment which is against law and justice


HASSAN U.K. AFRIDI
(Advocate)
High Court Peshawar

because the inquiry officer has no authority to recommended the penalty.

- G. That three punishments have been awarded, which is against law/rules.
- H. That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is, therefore most humbly prayed that on acceptance of this appeal, the impugned order vide dated 08.02.2018 and order dated 17.04.2018 in departmental appeal may kindly be set aside and the appellant may please be posted in the Higher stage with full pay and the intervening period may please be considered with full pay and other benefits under the law/rules

Any the relief, the Honourable Court may deem fit for the safe administration of justice

Appellant

Through

Hassan U.K Afridi
Advocate High Court

Dated 17.05.2018

HASSAN -U.K- AFRIDI
(Advocate)
High Court Peshawar

بھنور جناب ڈسٹرکٹ پولیس آفیسر (DPO) صاحب ڈسٹرکٹ کوہاٹ

16

Through Proper channel

عنوان: ڈیپارٹمنٹل ریپریٹیشن / Departmental Repretation

ڈیپارٹمنٹل ایپل: Departmental Appeal

جناب عالی!

سائل ذیل عرض کرتا ہے۔

1. یہ کہ سائل پولیس کے محکمہ میں سال 2006 سے پولیس کانسٹیبل (Police Constable) کی حیثیت سے ڈیوٹی سرانجام دے رہا ہے۔
2. یہ کہ سائل کو مورخہ: 04-04-2014 کو ناکردہ گناہ کی وجہ سے درخواست کیا گیا اور سروس ٹریبونل نے سائل کو بحال کیا۔
3. یہ کہ سائل کے خلاف De-Nove انکوائری کی گئی۔ اور مورخہ: 08-02-2018 کو سائل کو ٹائم سکیل کی سزا دی گئی۔ جس کے مطابق سائل کو Higher سے سٹیج Lower سٹیج تین سال کے لیے۔ (Intervening Period) کو Without Pay کر دیا گیا۔
4. یہ کہ سائل نے سروس ایپل دائر کی۔ جو کہ ایپل Accept کی گئی۔ مورخہ: 11-06-2015 کو۔
5. یہ کہ چونکہ سائل کی ایپل Accept کی گئی اور آرڈر مورخہ: 08-12-2018 کو ختم کر دیا گیا اور ایپل میں سائل کی استدعا تھی کہ سائل کو High Stage پر کیا جاتا ہے With fully کے ساتھ Commiden کیا جائے اور چار سالوں کے دوران سائل کو جو Back Benefit ملنے تھے وہ بھی سائل کو دی جائے۔
6. یہ کہ سائل نے محکمہ کو بار بار جا کر استدعا کی کہ سائل کو ایپل کے مطابق تمام مراعات وغیرہ دی جائے لیکن کوئی بھی سائل کی استدعا نہیں سن رہا۔ اس لئے مندرجہ بالا ایپل دائر کی جاتی ہے۔

لہذا استدعا ہے کہ منظوری ایپل درخواست ہذا سائل کو سروس ایپل کے مطابق تمام مراعات، تنخواہیں جو کہ چار سال یعنی Intervening Period میں ملنی تھی۔ وہ سائل کو دی جائے۔

زیر اہم: بیٹ نمبر 4947

FRP-Platoon-119 Kohat

موبائل: 0334-952412

HASSAN U.K. AFFRIDI
(Advocate)
High Court Peshawar

ڈی پی اڈ صاحب کوہاٹ

ایس پی ایف آر پی۔

آئی جی صاحب KPK پشاور

ڈی آئی جی صاحب کوہاٹ

Date - 31/12/2019

کاپی نو:

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17

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 4535-36 /Legal dated Peshawar, the 18/09/2019.

To: - The Regional Police Officer,
Kohat.

8075
2/15/19

[Handwritten signature]
DIP Legal/SR/10/11

The District Police Officer,
Kohat.

Subject: - SERVICE APPEAL NO. 694/2018 ZUBAIR UR REHMAN VS INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA & 02 OTHERS.

Memo:-
Please refer to the subject cited case.

The appellant lodged another Service Appeal No. 694/2018 against the order dated 12.02.2018. The Honorable Service Tribunal vide judgment dated 11.06.2019 accepted the Service Appeal.

"In view of the foregoing the appeal is accepted, impugned order dated 08.02.2018 and 17.04.2018 are set aside."

Scrutiny Committee law department was approached to examine the case for lodging CPLA before Supreme Court of Pakistan. It was discussed in the meeting dated 31.07.2019 and was declared unfit for lodging CPLA vide minutes of meeting.

The grounds as proffered by the representative of the Department were that the court has ignored the record and material facts placed before it the Scrutiny Committee observed that the Khyber Pakhtunkhwa Service Tribunal has held in its judgment that the enquiry officer remained unable to bring own record any solid evidence against the appellant to prove him guilty. The Scrutiny Committee also observed that no empties after aerial firing were found collected. The Scrutiny committee asked the Departmental representative that on what ground the Department wants to file CPLA as they have failed to prove their case before the Khyber Pakhtunkhwa Service Tribunal upon which the Departmental representative could not forward any plausible ground for filing CPLA in the Apex Court of Pakistan.

The Competent Authority has directed to implement the judgment dated

11.06.2019.

[Handwritten signature]
HASSAN U.K. AFRIDI
(Advocate)
High Court Peshawar

[Handwritten signature]
AIG/Legal
For Inspector General of Police,
Central Police Office, Peshawar

18

M. A. Afridi

HASSAN - U. K. - AFRIDI
(Advocate)
High Court Peshawar



OFFICE OF THE SUPERINTENDENT OF POLICE,
FRP KOHAT RANGE, KOHAT
PH: NO. 0922-9260124, FAX: 0922-9260134

No. 2554 /EC, dated Kohat the 31/12 /2019

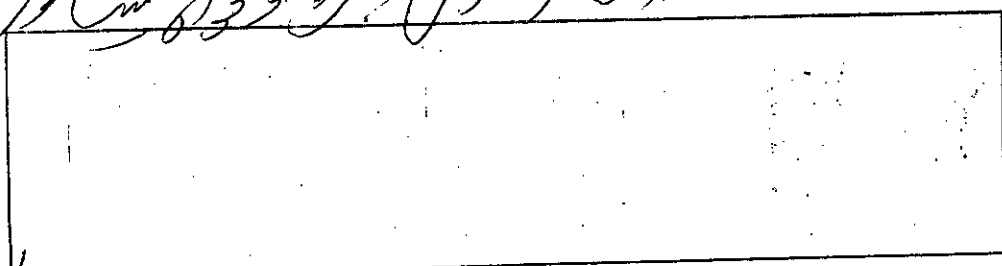
To: The District Police Officer, Kohat
Subject: APPLICATION

Memo: Kindly enclosed find herewith an application preferred by Constable Zubair ur Rehman No. 4947 recently transferred from District Police Kohat to FRP Kohat. His application, alongwith relevant documents is sent herewith for favour of consideration and necessary action please.

encl: 1 S. Roll.

o/c
SUPERINTENDENT OF POLICE, FRP
KOHAT RANGE, KOHAT

بعدالت سروس ڈیڑھ سو فیصد جیسر طرز پر



کورٹ فیس

Applicant / سہ منجانب

بنام آئی جی آر

CM-2020-18 Appeal-694/18

باعث تحریر آنکہ

مقدمہ
مقدمہ
دعویٰ
مجموعہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جوابدہی کل کاروائی متعلقہ آل مقام کے لیے حسن - یو۔ کے۔ - ڈیڑھ سو فیصد جیسر طرز پر (سہ منجانب کو) مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نام و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجرا اور وصولی چیک در روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرا اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی و نیز دائر کرنے اپیل نگرانی، نظر ثانی، پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزو کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ پر داختم منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اس کے مستحق کیا صاحب موصوف ہوں گے نیز بقایا خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقدمہ دورہ پر ہو یا حد سے باہر ہو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

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Accepted

کے لیے منظور ہے

HASSAN -U.K- AFRIDI
(Advocate)
High Court Peshawar

تصدیق

المترجم

مقا

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

Execution Petition No. 31/2020
In Service appeal No. 694/2018
Zubair ur Rehman

..... Petitioner / Appellant

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa, & others

..... Respondents

REPLY IN EXECUTION PETITION FILED BY THE PETITIONER

Respectively Sheweth:-

The respondents submit the parawise reply to the petition is submitted as under:-

Preliminary Objections:-

- i. That the petitioner / appellant has got no cause of action.
- ii. That the petitioner/ appellant has got no locus standi.
- iii. That the petition is not maintainable in the present form.
- iv. That the petition is bad in eyes of law.

ON FACTS:-


1. The petitioner being involved in illegal / immoral activities was proceeded with departmentally which culminated into his removal from service. The petitioner, after availing departmental appellate forum, approached this Honorable Tribunal in service appeal No. 731/2014. The Honorable Tribunal vide judgment dated 06.11.2017, directed for de-novo inquiry. The back benefits of the intervening period is directed subject to outcome of de-novo inquiry.
2. The charge leveled against the appellant was proved in the de-novo inquiry, hence awarded punishment vide order dated 08.02.2018 of respondent No. 3. As the appellant spent period out of service, therefore, the intervening period was treated as leave without pay.
3. As the appellant had not served during the intervening period, hence the period was treated as leave without pay on the principle of "No work, no wage".

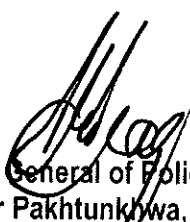
4. The judgment of this Honorable Tribunal dated 11.06.2019 was implemented in letter and spirit. It is pertinent to mention that there were no specific directions in the aforesaid judgment regarding grant of back benefits for intervening period to the petitioner / appellant. So far as his application is concerned, it is submitted that the concerned authority was informed accordingly as the petitioner is not entitled for the financial back benefits by respondent No. 3. Copy is **annexure A**.
5. In view of para No. 4, the execution petition is not maintainable.

Grounds:-

- A. Incorrect, the petitioner was treated in accordance with the judgment passed in service appeal No. 694/2018, by this Honorable Tribunal. Further no directions was given for awarding financial benefits to the petitioner for the intervening period. Copy is **annexure B**.
- B. As submitted in the above paras, the judgment does not pertains any specific directions regarding grant of back benefits to the petitioner / appellant.
- C. The execution petition is bad in eyes of law, not maintainable and liable to be dismissed.
- D. The respondents through their representative may also be allowed to submit other grounds during the course of hearing.

In view of the above, it is prayed that the execution petition may graciously be dismissed.


Dy Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 2)


Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No. 1)


District Police Officer,
Kohat
(Respondent No. 3)

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

Execution Petition No. 31/2020
In Service appeal No. 694/2018
Zubair ur Rehman

.....Appellant


VERSUS


Inspector General of Police,
Khyber Pakhtunkhwa, & others

..... Respondents

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.


Dy Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 2)


Inspector General of Police,
Khyber Pakhtunkhwa,
(Respondent No. 1)


District Police Officer,
Kohat
(Respondent No. 3)

Annexure "A"

03

The District Police Officer, Kohat.

The Superintendent of Police,
FRP, Kohat Range.

No. 317 /SRC dated Kohat the 7.1 /2020.

Subject: APPLICATION

Memo: -

Reference your office Memo No. 2554/EC dated 31.12.2019.

Fact of the case are that in persunance of Judgement of KPK Service Tribunal dated 06.11.2017. His appeal was accepted and intervening period out of service will be subject to the outcome of Denove enquiry. Proper approval of DIGP E&I KPK No. 1624/EC-I dated 11.12.2017, he was re-instated in service with immediate effect for the porpuse of Denove enquiry.

After denove enquiry he was re-instated in service and imposed a major punishment of reduction from the higher stage to lower stage in the same time scale of pay for the period of 03 years, the intervening period is treated as leave without pay vide this office OB No. 137 dated 08.02.2018. He submitted an appeal to W/RPO Kohat which was rejected vide order Endst: No. 4919/EC dated 19.04.2018.

Later on he was again preferred a mercy petition to Honorable Service Tribunal which was accepeted and impugned order dated 08.02.2019 and 17.04.2018 is set-aside and intervening period is not mentioned in service appeal No. 731/2014 and service appeal No. 694/2018, therefore he is not entitle to such benefit.

His application alongwith service roll are returned herewith.


DISTRICT POLICE OFFICER,
KOHAT

Annexure

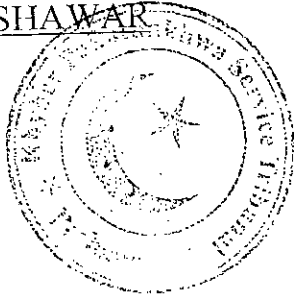
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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 694/2018

Date of institution ... 17.05.2018

Date of Decision ... 11.06.2019



Zubair-ur-Rehman S/O Habib-ur-Rehman, Constable-997 R/o Shahpur, Kohat.
... (Appellant)

VERSUS

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

Mr. Hassan U.K Afridi
Advocate.

For appellant.

Mr. M. Riaz Khan Paindakhel
Assistant Advocate General

For respondents.

MR. AHMED HASSAN
MR. HAMID FAROOQ DURRANI

MEMBER(E)
CHAIRMAN

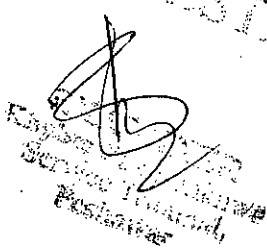
JUDGMENT

AHMED HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that this is the second round of litigation. Previously, the appellant was dismissed from service on 04.04.2014. He assailed this order by way of filing service appeal in this Tribunal, which was accepted vide judgment dated 06.11.2017. The respondents were placed at liberty to conduct de-novo inquiry against the appellant. De-novo inquiry was conducted and vide impugned order dated 12.02.2018 major penalty of reduction from higher stage to lower stage in the

ATTESTED


Khyber Pakhtunkhwa Service Tribunal
Peshawar

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time scale was imposed on him. He filed departmental appeal on 14.02.2018 and was rejected on 17.04.2018 followed by the present service appeal.

3. De-novo inquiry was not conducted in accordance with the procedure laid down in Police Rules, 1975. Charges leveled against the appellant could not be established during the course of inquiry proceedings.

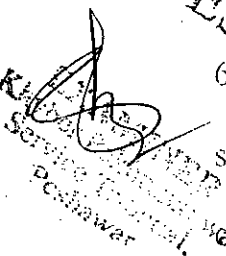
4. Learned Assistant Advocate General argued that on the directions of this Tribunal de-novo inquiry was conducted against the appellant but he could not defend his position and was found guilty of charges leveled against him. Finally, punishment in accordance with his guilt was awarded to him after observance of all the codal formalities.

CONCLUSION.

5. To re-capitulate the past events attention is invited to the observations of this Tribunal content in Para-5 of the judgment dated 06.11.2017. As opportunity of cross examination was not afforded to the appellant, so it became a solid ground for his reinstatement and placing the respondents at liberty to conduct de-novo inquiry. A cursory glance at the de-novo inquiry report conducted by the respondents would reveal that they again repeated the same old mistake of not recording the statements of the concerned officials and extending opportunity of cross examination to the accused. This alone being a serious illegality amounted to non-observance of procedure laid down in Police Rules, 1975, thus rendered the entire proceedings as in effective, futile and without backing of law.

6. We have no hesitation in concluding that charges contained in the charge sheet/statement of allegations were vague, evasive and ambiguous. It is the requirement of rules that charge has to be precise, specific and conclusive. Our assertions are backed by numerous judgments of superior followed by this Tribunal in many appeals.

ATTESTED


Assistant Advocate General
Service Tribunal
Peshawar

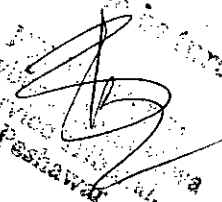
7. Furthermore, concocted/unfounded charges of consumption of alcohol, relationship with characterless women were out rightly not proved against him in the inquiry report. As regards the charge of aerial firing while being drunk was not at all properly examined/scrutinized by the inquiry office. This charge is to be read in conjunction with that of using alcohol, which remained unsubstantiated. He remained unable to bring on record any solid evidence against the appellant to prove him guilty. His findings were mainly based on presumptions/suppositions. The appellant admitted that he fired a shot from the weapon but accidentally. It was incumbent upon the inquiry officer to have proved that he was not only drunk but also resorted to aerial intentionally/deliberately. Learned Assistant Advocate General and departmental representative were asked whether empties after aerial were found/collected, but they could not give any convincing reply? In these circumstances, it appears that high ups wanted to teach him a lesson/settle some previous scores, but finally produced a flopped film.

8. In view of the foregoing, the appeal is accepted, impugned order dated 08.02.2018 and 17.04.2018 are set aside. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.06.2019


(AHMED HASSAN)
MEMBER


(HAMID FAROOQ DURRANI)
CHAIRMAN


Certified to be a true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

Execution petition No.31/2020

In

Service Appeal No.694/2018

Zubair ur Rehman.....Appellant

V E R S U S

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar & others...Respondents

**REJOINDER ON BEHALF OF THE
APPLICANT/APPELLANT**

Respectfully Sheweth:

Preliminary Objections:

That the preliminary objections are irrelevant and incorrect and have no legal footing;

REPLY ON FACTS:

1. Para No.1 is incorrect because both the impugned orders of the respondents No.2 and 3 have been set aside and the applicant/appellant has been reinstated in his original status.

2. That Para No.2 is incorrect the appellant/applicant is reinstated in his original status and he is legally entitled for all the back benefits.
3. That Para No.3 is denied as the applicant/appellant has not served due to his dismissal and the dismissal order has been set aside, so " No work no wage" is not applicable in the case of applicant/appellant.
4. That Para No.4 is incorrect because both the impugned orders of the respondents no.2 and 3 vide dated 06.11.2017 and 08.08.2018 have been set aside by this Hon'ble Tribunal and allowed the appeal and when appeal has allowed than the respondent No.2 and 3 have no authority to deny for awarding the back benefits to the appellant/applicant.
5. That Para No.5 is denied, the execution petition is well maintainable.

GROUNDS:-

- A. That Para A is denied, because when an appeal allowed in toto, meaning thereby the applicant/appellant is entitled for his back benefits.
- B. That Para B is denied and referred to para No.A
- C. That Para C is incorrect.
- D. No need of reply.

It is, therefore humbly prayed that on acceptance of this rejoinder, the execution petition, may please be allowed as prayed for.

Applicant/Appellant

Through

Hassan U.K Afridi
Advocate, Peshawar

Dated: 22.09.2020

AFFIDAVIT

It is stated on oath that the contents of the accompanying **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



DEPONENT

ATTESTED

ORDER

In pursuance of judgment of service Tribunal Peshawar in service appeal No. 694/2018 and subsequently order dated 11.06.2019 in execution petition the financial back benefit are accorded to constable Zubair-u- Rehman.


DISTRICT POLICE OFFICER,
KOHAT

No. 3973-75/SRC, dated Kohat the 12-3 /2021

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

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar for favour of information w/r to his office Memo No. 1253/L, dated 04.03.2021.
2. Regional Police Officer Kohat Region Kohat.
3. Superintendent of Police FRP Kohat.


DISTRICT POLICE OFFICER,
KOHAT