

EP 147/20

04.08.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Muhammad Raziq, H.C for the respondents present. Representative of the respondents produced copy of order dated 03.08.2021, whereby which judgment under execution has been conditionally implemented till final decision on CPLA by the August Supreme Court of Pakistan. Copy of order is placed on file.

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


  
Chairman

19.01.2021

Petitioner present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Raziq Reader for respondents present.

Representative of respondents' department is directed to submit proper implementation report on 17.03.2021 before S.B.



(Rozina Rehman)  
Member (J)

17.03.2021

Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 25.05.2021 before S.B.



**Reader**

25.05.2021

Petitioner through counsel and Mr. Kabirullah Khattak, Addl. AG alongwith Muhammad Raziq, H.C for the respondents present.

Learned Addl. AG states that the respondent department has filed CPLA against the judgment of this Tribunal.

The respondents are required to ensure the implementation of judgment of this Tribunal subject to final decision of the Apex Court, if the judgment under implementation is not suspended in the meantime. Adjourned to 04.08.2021 before S.B.

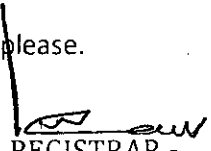




**Chairman**

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 147 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	<u>12.10.2020</u>	<p>The Execution Petition submitted by Mr. Adnan Khan through Mr. Noor Muhammad Khattak 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>
2-	27.11.2020	<p>This Execution Petition be put up before S. Bench on <u>27/11/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for petitioner is present. Notice be issued to the respondents for implementation report for 19.01.2021 before S.B.</p> <p style="text-align: right;"> (ATIQ-UR-REHMAN WAZIR) MEMBER (EXECUTIVE)</p>

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

Implementation Petition No. 147 /2020  
In  
Appeal No. 496/2016

**ADNAN KHAN**

**VS**


**POLICE DEPTT:**

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<b>S.NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE NO.</b>
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**PETITIONER/APPLICANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**  
**MOBILE NO.0345-9383141**

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

Implementation Petition No. 147 /2020

In

Appeal No. 496/2016

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 827

Dated 13/10/2020

Mr. Adnan Khan, Ex-Constable No.2773,  
Police Lines, District Peshawar.

..... PETITIONER

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 3- The Senior Superintendent of Police, Headquarters, Khyber Pakhtunkhwa, Peshawar.

.....PETITIONERS

**IMPLEMENTATION PETITION FOR DIRECTING**  
**THE RESPONDENTS TO OBEY THE JUDGMENT**  
**DATED 22.07.2020 IN LETTER AND SPIRIT**

**R/SHEWETH:**

- 1- That the petitioner filed Service appeal bearing No. 496/2016 before this august Service Tribunal against the impugned order dated 31.07.2013.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 22.07.2020 and was decided in favor of the petitioner vide judgment dated 22.07.2020 with the view that ***"The long and short of the above discussion is that appeal is partially accepted and the penalty of dismissal from service is modified/converted into stoppage of two (02) annual increments for two (02) years. The absence period and intervening period shall be treated as leave without pay"***. Copy of the judgment is attached as annexure.....A.
- 3- That after obtaining attested copy of the judgment dated 22.07.2020 the petitioner submitted the same before the respondents for implementation but till date the judgment of this Tribunal has not been implemented by the respondent in letter and spirit.

- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the judgment dated 2.07.2020 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

  
**PETITIONER**

**ADNAN KHAN**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**

**&**

  
**MIR ZAMAN SAFI**  
**ADVOCATES**

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

Implementation Petition No. \_\_\_\_\_/2020

In

Appeal No. 496/2016

**ADNAN KHAN**

**VS**

**POLICE DEPTT:**

**AFFIDAVIT**

I Noor Mohammad Khattak, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**



A-4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

APPEAL NO. 496 /2016

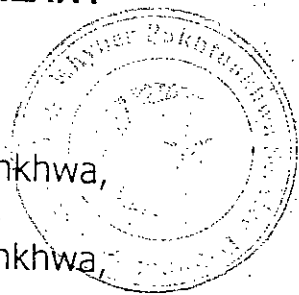
K.W.P. Tribunal  
Service Tribunal  
Diary No. 463  
Dated 11-5-2016

Mr. Adnan Khan, Ex: Constable No.2773,  
Police Lines Peshawar .....

**APPELLANT**

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 3- The Senior Superintendent of Police, Headquarters, Khyber Pakhtunkhwa, Peshawar.



..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 31.7.2013 WHEREBY THE APPELLANT WAS DISCHARGED FROM SERVICE AND AGAINST THE APPELLATE ORDER DATED 12.4.2016 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED ON NO GOOD GROUNDS**

**PRAYER:**

**That on acceptance of this appeal the impugned orders dated 31.7.2013 and 12.4.2016 may very kindly be set aside and the appellant may kindly be re-instated in to service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.**

ATTESTED

**R/SHWETH:**

**ON FACTS:**

1. The appellant was appointed as Constable in the respondent Department on the recommendation of Departmental selection committee. That after appointment the appellant has started performing his duty quite efficiently and up to the entire satisfaction of his superiors.
2. That appellant while performing his duty father of the appellant was became seriously ill and due to that reason the appellant requested the respondents for leave to look after his father during illness. Copies of the medical prescriptions are attached as annexure ..... **A.**

*[Signature]*  
Service Tribunal  
Peshawar

*[Handwritten notes]*  
11/5/16

ATTESTED  
*[Signature]*

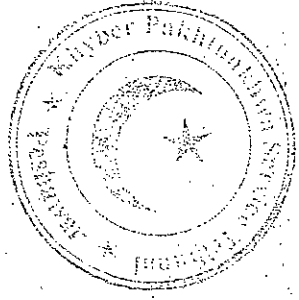


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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.496/2016

Date of Institution ..... 11.05.2016  
Date of Decision ..... 22.07.2020



Mr. Adnan Khan, Ex: Constable #.2773, Police Lines Peshawar.

(Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & 02 others.

(Respondents)

Mr. Noor Muhammad Khattak,  
Advocate

For appellant.

Mr. Kabir Ullah Khattak,  
Additional Advocate General

For respondents.

MRS. ROZINA REHMAN  
MR. ATTIQ UR REHMAN

MEMBER (J)  
MEMBER (E)

ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

JUDGMENT

ROZINA REHMAN, MEMBER :-

Pithy facts of the case are that appellant

was serving as Constable in the Police Department. Departmental proceedings were initiated against appellant on the allegation of absence from duty and upon culmination, major penalty of dismissal from service was imposed upon him vide impugned order dated 31.07.2013. He filed departmental appeal which was rejected on 12.04.2016, hence instant service appeal on 11.05.2016.

2. Learned counsel for appellant contended that appellant was not treated by the department in accordance with law and that Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 were violated. He argued

ATTESTED

22/7/20

⑥

that ex-parte proceedings were initiated against appellant and after conclusion, major penalty was imposed by the competent authority vide impugned order. He argued that the absence was not deliberate and intentional rather circumstances forced him to stay away from duty as his father was seriously ill and the respondents were requested for leave. Lastly, he submitted that absence period was treated as leave without pay and in addition to the said order, penalty in shape of dismissal from service of the appellant was also imposed which was not warranted and that such an act on the part of competent authority falls within the ambit of double jeopardy.

3. Conversely learned AAG argued that inquiry proceedings were properly conducted against appellant on account of willful absence from duty for two different periods and that two different inquiries were initiated and charge sheet alongwith statement of allegation were served upon the appellant besides final show cause notice at his given home address. He contended that all cogal formalities were observed before awarding major punishment.

**ATTESTED**

*[Signature]*  
 MEMBER  
 Service Tribunal  
 Peshawar

Perusal of record would reveal that appellant was departmentally proceeded on the allegations of absence from duty for two different periods without taking permission/leave. The first period is from 17.04.2012 to 25.04.2012 i.e. eight (08) days while second period starts from 15.10.2012 till the date of impugned order i.e. 31.07.2013 (09 months and 15 days). As per record, two different inquiries were initiated but the proceedings were ex-parte as appellant was not before the inquiry officer. The record is silent in respect of the intervening period between these two different periods for which appellant was charged i.e. the period in between 25.04.2012 to 15.10.2012. The respondents badly failed to show as to whether he remained absent during the period mentioned above which means that he

*[Signature]*  
 22/7/20

**ATTESTED**

*[Signature]*

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joined service after alleged absence of eight (08) days from 17.04.2012 to 25.04.2012. It was also not explained as to why departmental proceedings for absence of eight (08) days without permission were carried out so late when the appellant allegedly remained absent for the second time on 15.10.2012 and remained absent for nine (09) months and fifteen (15) days. It is also evident from the comments of the respondents that inquiry proceedings were conducted at the back of appellant. He was placed ex-parte. Whatever may be the circumstances, the appellant was condemned unheard and the moment he came to know about the proceedings, departmental appeal was filed. In order to look after his ailing father, he stayed away from duty and as per appellant, the absence was not willful and deliberate. He remained absent for few months and we are of the view that the penalty awarded to the appellant seems to be harsh.

5. The long and short of the above discussion is that appeal is partially accepted and the penalty of dismissal from service is modified/converted into stoppage of two (02) annual increments for two (02) years. The absence period and intervening period shall be treated as leave without pay. No order as to costs. File be consigned to the record room.

ANNOUNCED.

22.07.2020

(ATTIQ UR REHMAN)  
MEMBER (E)

(ROZINA REHMAN)  
MEMBER (J)

**ATTESTED**

Certified to be true copy

Khayal  
Service Tribunal  
Peshawar

**VAKALATNAMA**

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

\_\_\_\_\_ OF 2020

*Adnan Khan*

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

*Police Deptt:*

(RESPONDENT)  
(DEFENDANT)

I/We *Adnan Khan*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated. \_\_\_\_/\_\_\_\_/2020

*Adnan Khan*

CLIENT

**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

**SHAHZULLAH YOUSAFZAI**

**MIR ZAMAN SAFI**

&

**AFRASIAB KHAN WAZIR**  
**ADVOCATES**

OFFICE:

Flat No.4, 2<sup>nd</sup> Floor, Juma Khan  
Plaza, near FATA Secretariat,  
Warsak Road, Peshawar.  
Mobile No.0345-9383141

**ORDER**

Subsequent upon the judgment order dated 22.07.2020 passed by the Hon'ble service Tribunal Peshawar in Service Appeal No.496/2016, punishment order awarded to petitioner Ex-Constable Adnan Khan No.2773 issued vide OB No.2701 dated 31.07.2013 is conditionally modified/converted into stoppage of 02-annual increments for 02-years subject to final decision on CPLA by the apex court against the judgment referred to above through law department. Hence, the absence period and intervening period is treated as leave without pay.

  
**SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR**

OB NO. 20781  
Dated 31/8 /2021

No. \_\_\_\_\_ / dated Peshawar the \_\_\_/\_\_\_/2021.

Copy of above is forwarded for necessary action to:

- ✓ DSP/HQrs: Peshawar
- ✓ DSP Legal, Peshawar
- ✓ Budget Officer
- ✓ EC-I, OASI, CRC & FMC along-with complete departmental file

**POWER OF ATTORNEY**  
**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**  
**(ORIGINAL JURISDICTION)**

CP No. ....-P/2020

Provincial Police Office, Khyber Pakhtunkhwa,  
Peshawar & others

PETITIONER(S)

VERSUS

Mr. Adnan


RESPONDENT

I (we) Petitioner (Govt. of KPK) in the above suit/Appeal/Petition/Reference, do hereby appoint and constitute Mian Saadullah Jandoli, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid appellant [ or plaintiff(s) or Petitioner(s) or Respondent (s) or defendant (s) or opposite party] to commence and prosecute (or to appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the process of the Court, to appoint and instruct counsel, to represent the aforesaid appellant [ or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] in the above matter and to do all things incidental to such acting for the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party]. The aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] agree (s) to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority.

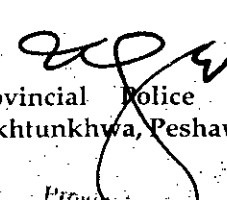
In witness whereof I/we do hereunto set my/our hand (s) this day of

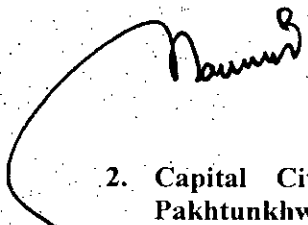
Signed with Official Seal stamp

Accepted

  
(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
(for KPK) Advocate-General's  
Office, High Court Building, Peshawar.  
Office No. 091-9210312, 9210119  
Supreme Court of Pakistan  
For Govt. of K.P.K., Peshawar

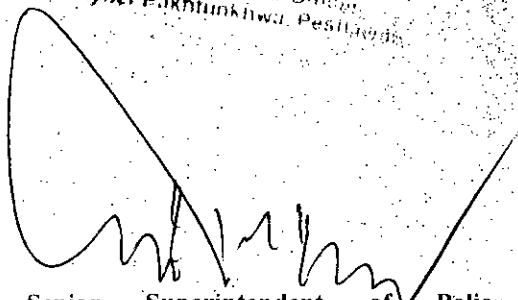
1. Provincial Police Officer, Khyber  
Pakhtunkhwa, Peshawar.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

  
2. Capital City Police Officer, Khyber  
Pakhtunkhwa, Peshawar.

Capital City Police Officer  
Peshawar

3. Senior Superintendent of Police,  
Headquarters, Khyber Pakhtunkhwa,  
Peshawar.

  
Superintendent of Police  
HQs CCP Peshawar.