


04.10.2021

Mr. Mir Zaman Safi, Advocate, for the petitioner present. Mr. Sajjad Ali Abbasi, Office Assistant alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Mr. Sajjad Ali Abbasi, stated at the bar that implementation report will positively be submitted on the next date. Adjourned. To come up for submission of implementation report before the S.B on 04.11.2021.


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

04.11.2021

Counsel for the petitioner and Mr. Kabirullah Khattak, Addl. AG alongwith Sajid Ali Abbasi, Assistant for the respondents present.

Representative of the respondents has produced copy of office order bearing endorsement No. 8446-51/Estab/D/Adjst: dated 01.11.2021, whereby the petitioner has been reinstated into service provisionally/ conditionally with effect from the date the judgment of this Tribunal dated 27.07.2021, subject to final decision of the august Supreme Court of Pakistan. Copy placed on file. In view of the above, the present execution petition having been executed, is filed. However, petitioner may approach this Tribunal after final outcome of the august Supreme Court of Pakistan, if so advised.


Chairman

EP 97/21

27.07.2021

Counsel for the petitioner and Muhammad Adeel Butt, Addl. AG alongwith Sajjad Ali Abbasi, Office Assistant for the respondents present.

Representative of the respondents states that reinstatement order of the appellant will be issued subject to production of affidavit by the petitioner regarding outcome of CPLA. Case to come up for implementation report on 07.09.2021 before S.B.


Chairman

07.09.2021

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

Learned AAG seeks adjournment in order to contact the respondents and facilitate submission of implementation report on next date. Case to come up on 04.10.2021 before S.B.


Chairman

04.06.2021

Petitioner alongwith counsel present.

Although notice was not issued to the respondents but Mr. Muhammad Adeel Butt, learned AAG is in attendance and his attention has been diverted to the operative part of the judgment, whereby the impugned order dated 04.08.2014 was set aside and appellant stood reinstated into service. The intervening period between 05.08.2014 till passing of the judgment was treated as leave without pay. Obviously, the department will have to clear the position after notice whether any CPLA has been filed to challenge the judgment under implementation or not. If the CPLA has not been filed, the judgment has got finality and requires implementation in letter & spirit, without further delay; but if the CPLA has been filed and the judgment has not been suspended, even then the respondents are under obligation to implement the judgment, subject to decision of CPLA by the August Supreme Court of Pakistan. Learned Addl. AG shall also take up the matter with the respondents for proper order not only in instant case but also in other similar cases to present the available recourse of petitioner(s) to this Tribunal, for implementation of the judgment on his/their credit. Copies of this order be sent to the respondents alongwith notice. To come up for implementation report on 27.07.2021 before S.B.

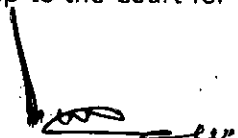

Chairman

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 97 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14.04.2021	<p>The Execution Petition submitted by Mr. Muhammad Younas through Mr. Mir Zaman Safi Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p>
2-	27/05/2021	<p>This Execution Petition be put up before S. Bench on 04/06/2021</p>


REGISTRAR


CHAIRMAN



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2021
In
Appeal No. 437/2018

MUHAMMAD YOUNAS

VS

HEALTH DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	1- 2.
2-	Affidavit	3.
3-	Judgment	A	4- 7.
4-	Vakalat nama	8.

PETITIONER/APPLICANT

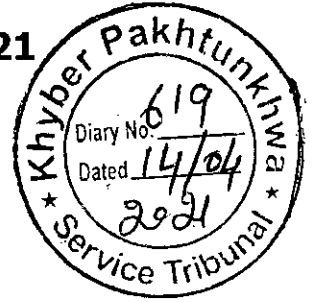
THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0323-9295295

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 97 /2021
In
Appeal No. 437/2018



Mr. Muhammad Younas, Chowkidar,
BHU Serhan, District Abbottabad.

..... **PETITIONER**

VERSUS

- 1- The Secretary Health Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Director Health Services Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The District Health Officer, District Abbottabad.

..... **PETITIONERS**

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT OF
THIS AUGUST TRIBUNAL DATED 17.02.2021 IN
LETTER AND SPIRIT.

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 437/2018 before this august Service Tribunal against the impugned order dated 04.08.2014.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 17.02.2021 and was decided in favor of the petitioner vide judgment dated 17.02.2021 with the view that ***"In view of the above, the impugned order dated 04.08.2014 is set aside and appellant stands reinstated into service. The intervening period between 05.08.2014 till date is treated as leave without pay"***. Copy of the judgment is attached as annexure.....**A.**
- 3- That after obtaining attested copy of the judgment dated 17.02.2021 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 very kindly be directed to implement the judgment dated 17.02.2021 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER


MUHAMMAD YOUNAS

THROUGH:


**MIR ZAMAN SAFI
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2021

In

Appeal No. 437/2018

MUHAMMAD YOUNAS

VS

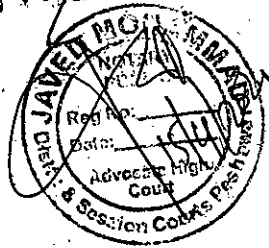
HEALTH DEPTT:

AFFIDAVIT

I **Mir Zaman Safi, 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.

ATTESTED


MIR ZAMAN SAFI
ADVOCATE



A - 4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD

Service Appeal No.437/2018

Date of Institution ... 02.04.2018
Date of Decision ... 17.02.2021



Muhammad Younas son of Muhammad Miskeen, Ex-Chowkidar, BHU
Serhan, resident of Village & P.O Sarha Tehsil & District Abbottabad.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Health
Department Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Sardar Muhammad Azeem,
Advocate

... For appellant.

Noor Zaman Khan Khattak,
District Attorney

... For respondents.

ROZINA REHMAN

... MEMBER (J)

ATIQ-UR-REHMAN WAZIR

... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER : This appeal has been filed against the
order dated 04.08.2014 whereby the penalty of removal from service was
imposed upon the appellant. It is the legality and validity of this order
which has been challenged by him in the present service appeal filed u/S 4
of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

17/2/21

2. Brief facts of the case are that appellant was appointed in Health Department as Chowkidar on 22.12.1997. Due to involvement in a criminal case, on 11.08.2013, he was arrested and sent to judicial lockup. The respondents' Department without waiting for the result of the criminal case, issued the impugned order dated 04.08.2014 whereby the appellant was removed from service. He was acquitted by the competent Court of Law on 16.12.2017, where-after, he filed departmental appeal on 04.01.2018 but the same was dismissed, hence the present service appeal.

3. The learned counsel for appellant argued that the order dated 04.08.2014 is against law, facts and norms of natural justice and that the appellant was not treated in accordance with law and rules. He argued that the absence of appellant from duty was due to his arrest in a criminal case which was not intentional and the situation was beyond the power of appellant. He contended that Seventeen years of service of appellant was not taken into consideration and the order was passed in a harsh manner and that too, without issuance of show cause notice and personal hearing of the appellant. He submitted that no proper inquiry was conducted and acquittal of the appellant by competent Court of Law was not taken into consideration. Reliance was placed on 1995 SCMR 950; 2013 SCMR 903; 2012 SCMR 165; 1998 PLC (C.S) 1430; 2012 SCMR 165; 2003 PLC (C.S) 514 and 2001 SCMR 269.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

4. Conversely, learned District Attorney argued that appellant remained absconder for a considerable time, never contacted the competent authority or any other official of the Department. He argued that after registration of FIR No.268, appellant remained absconder till his arrest on 21.11.2014. He argued that all the codal formalities were complied with ii.

⑥

shape of issuance of absence notice, publication in the newspaper but he shows no response, therefore, major penalty of removal from service was imposed upon him after finding him guilty of willful absence from duty. He, therefore, requested for dismissal of the instant service appeal.

5. The appellant initially appointed as Chowkidar in 1997 had rendered 17 years of service, when an F.I.R was lodged against him U/S 302/324 PPC on 11.08.2013 and as a result thereof he was arrested. The respondents declared him absconder and kept him under suspension w.e.f 11.08.2013. Simultaneously disciplinary proceedings were also initiated against him under Rule-9 of E&D Rules, 2011 on the charges of his willful absence due to his nomination in a criminal case and consequently, he was awarded major penalty of removal from service on 04.08.2014. The appellant remained in Jail until 16.12.2017, when he was acquitted from the charges and was released. The appellant preferred departmental appeal on 04.01.2018, which was rejected on 02.02.2018, thereafter instituted the instant service appeal on 02.04.2018. On the question of limitation it was noted that departmental appeal of the appellant was not rejected on the point of limitation but on merits. Authority would be deemed to have condoned the delay. Reliance is placed on 1995 SCMR 950. It was also observed that since the appellant was behind the bar, hence was unable to respond to the show-cause notice, hence was removed from service but after his acquittal, he preferred departmental appeal, which was rejected. No regular inquiry was conducted against appellant and he was not afforded opportunity to defend his case, as he was in judicial lockup.

ATTESTED

17/2/21
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6. Strictly legally speaking, the imposition of major penalty of removal from service on the basis of a flawed inquiry report particularly, after the appellant's acquittal in the criminal case by the Court of Competent Jurisdiction, appears to be a punishment dis-proportionate to the alleged charge of misconduct attributed to the appellant. In the circumstances, the appellant has made out a case for indulgence of the Tribunal. Reliance is placed on 2007 PLC (CS) 1327; 2001 SCMR 269 and 2003 PLC (CS) 514.

7. In view of the above, the impugned order dated 04.08.2014 is set aside and appellant stands reinstated into service. The intervening period between 05.08.2014 till date is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.


ANNOUNCED.


17.02.2021


(Attiq ur Rehman Wazir)
Member (E)
Camp Court, Abbottabad


(Rozina Rehman)
Member (J)
Camp Court, Abbottabad

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 13-4-2021
Number of Words 2000
Copying Fee 22 -
Urgees 4 -
Total 26 - 
Name _____
Date of Receipt of Copy 13-4-2021
Date of Delivery of Copy 13-4-2021

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

_____ OF 2021

Muhammad Younas

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Health Department

(RESPONDENT)
(DEFENDANT)

I/We Muhammad Younas

Do hereby appoint and constitute **MIR ZAMAN SAFI, 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. ____/____/2021

M. Y.
CLIENT

M. Zaman Safi
ACCEPTED

**MIR ZAMAN SAFI
ADVOCATE**

OFFICE:

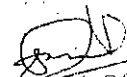
Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0323-9295295



OFFICE ORDER

With reference to judgment order of the honorable Khyber Pakhtunkhwa Service Tribunal dated 27.07.2021 in Appeal No.437/2018 (Implementation Petition No.97/2021) in respect of Mr. Muhammad Younas and affidavit on judicial stamp paper dated 23.09.2021 furnished by him to the effect he shall deposit all the emoluments drawn by him in case of reversal of case against him, Mr. Muhammad Younas S/o Muhammad Miskeen, Ex-Chowkidar is hereby re-instated into service provisionally / conditionally with effect from the date of above noted decision till the final decision of the honorable Supreme Court of Pakistan in CPLA No.238/20 2021. He is directed to report for duties at Type D Hospital Boi till the final decision by the honorable Supreme Court of Pakistan.

In case of reversal of judgment and order of honorable Khyber Pakhtunkhwa Service Tribunal Peshawar by August Supreme Court of Pakistan in the instant case of CPLA of this office, this re-instatement shall be deemed to have become void ab-initio.



District Health Officer,
Abbottabad.

No. 8446-5/Estab/D/Adjst; Dated Abbottabad, the

21 / 11 / 2021

Copy forwarded to the:-

1. Director General Health Services, Khyber Pakhtunkhwa Peshawar.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Section Officer (Lit-I) Government of Khyber Pakhtunkhwa Health Department Peshawar.
For information please.
4. Incharge, Type D Hospital Boi.
5. Accounts Section undersigned office.
6. Mr. Muhammad Younas S/o Muhammad Miskeen R/o Village & PO Sarhan Tehsil & District Abbottabad.
For information and necessary action.


District Health Officer,
Abbottabad.

District Health Officer, Link Road, Abbottabad.

Phone # 0992-931011

0992-931011