

15.03.2021

Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 20.05.2021 before S.B.


Reader

20.05.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 08.07.2021 for the same as before.


Reader

08.07.2021

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

Representative of the respondents has submitted copy of order dated 22.02.2021 of the August Supreme Court of Pakistan in C.P No. 550-P and 551-P/2020, wherein the operation of the judgment under implementation has been suspended.

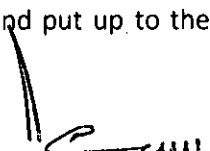

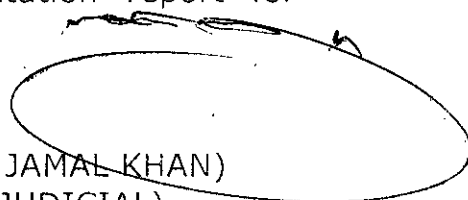
In view of the above, instant execution petition is adjourned sine-die till final outcome of the august Supreme Court of Pakistan. The petitioner is at liberty to apply for revival of the Execution Petition, after final outcome of the August Supreme Court of Pakistan, if so advised.


Chairman

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 176 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.12.2020	<p>The Execution Petition of Mr. Muhammad Ayub submitted by him 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-		<p>This Execution Petition be put up before S. Bench on <u>15/01/2021</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
15.01.2021		<p>Petitioner is present in person. Notice be issued to the respondents for implementation report for 15.03.2021 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p>

BEFORE THE KHYBER PAKHTUNKUWA
SERVICE TRIBUNAL PESHAWAR

Executive Petition No. 176 /2020

In Service Appeal No. 695/2018

Mr. Muhammad Ayub
Deputy Superintendent Jail/PRO TO I.G. PRISON



.....Petitioner

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat Peshawar.
2. The Chief Secretary Khyber Pakhtunkhwa Civil Secretariat of Peshawar.
3. The Secretary Homes and Tribunal Affairs, Pakhtunkhwa Civil Secretariat of Peshawar.
4. The Inspector General of Prison, Khyber Pakhtunkhwa, near Judicial Complex, Peshawar.

.....Respondents.


INDEX

S.NO.	Description of Documents	Annex	Pages
1.	Executive Petition		1-2
2.	Affidavit		3
3.	Copy of Judgment	"A"	
4.	Petitioner in person		

Dated: _____/2020

THROUGH PERSON

APPLICANT


MR. MUHAMMAD AYUB
Deputy Superintendent Jail /
PRO TO I.G.Prison.

1. That the petitioner submitted the attested copy of the judgment of this Hon'ble Tribunal along with under diary No 20637 dated 13/10/2020 to the worthy Inspector General of Prison. (copy of application is annexed as annexure "B")
2. The respondent department has not responded to my application nor implemented the judgment of this Hon'ble Tribunal nor has intimated the reasons thereof for such non- implementation of such judgment.
3. That respondent/Department is legally bound to implement the judgment of this Hon'ble Tribunal in its true sense.
4. That the petitioner has no remedy except to file this execution petition.

It is, therefore, most humbly prayed that the response may be directed to implement the judgment of this Hon'ble Tribunal passed on 5/10/2020 in Service appeal No 695/2018 in favor of the applicant in letter and spirit.

Dated: _____/2020

Through Person,

Applicant



Mr. Muhammad Ayub
Deputy Superintendent jail/
Pro to I.G. Prison

BEFORE THE KHYBER PAKHTUNKUWA
SERVICE TRIBUNAL PESHAWAR

Executive Petition No. ¹⁷⁶_____/2020

In Service Appeal No. 695/2018

Mr. Muhammad Ayub
Deputy Superintendent Jail/PRO TO I.G. PRISON

.....Petitioner

VERSUS

The Government of Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat Peshawar and three other.

.....Respondents.

AFFIDAVIT

I, Mr. Muhammad Ayub Deputy Superintendent Jail / PRO TO I.G. PRISON., do here by solemnly affirm and declare on oath that all the contents of the instant Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



16.12.2020

DEPONENT.

DNOR 20687
13/10/20

To

The Secretary to Government of Khyber Pakhtunkhwa
Home and Tribal Affairs Department Peshawar.

Through: **PROPER CHANNEL.**

Subject:- **SERVICE APPEAL NO.695/2018 — JUDGMENT OF SERVICE
TRIBUNAL KHYBER PAKHTUNKHWA**


**(Service appeal under sections- of the service tribunal Act, 1974
against the act of the respondents who issued impugned order
dated 26-09-2017 (received to the appellant on 08-02-2018) vide
three years in present time scale was imposed upon the
appellant).**

Respected Sir,

I have the honour to state that the subject cited case has been decided by the Service Tribunal Khyber Pakhtunkhwa vide Judgment of Service Appeal No.695/2018 dated 05-10-2020 and in the judgment the undersigned has not been guilty of the charge of misconduct or corruption and the penalty of reduction to a lower stage for three years in present time scale is converted into reduction to a lower stage for one year in present time scale with no orders as to cost. Copy of Judgment is enclosed for perusal please.

It is therefore, humbly requested that the judgment of the Service Tribunal may kindly be implemented in my favour please.

Yours Obediently



(MUHAMMAD AYUB KHAN)
Assistant Superintendent Jail /
PRO to Inspector General of Prisons
Khyber Pakhtunkhwa Peshawar

①

**BEFORE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL,
PESHAWAR**



Service Appeal No. 695 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 677

Dated 10-5-2018

Muhammad Ayub Khan
Superintendent Judicial Lockup, District Swabi.

..... Appellant

Versus

1. Government of Khyber Pakhtun Khwa,
Through Chief Secretary,
Civil Secretariat, Peshawar.
2. Secretary Home and Tribal Affairs,
Province of Khyber Pakhtun Khwa,
Civil Secretariat, Peshawar.
3. Inspector General of Prisons,
Province of Khyber Pakhtun Khwa,
District Courts, Peshawar.

..... Respondents


SERVICE APPEAL UNDER SECTION-4 OF THE SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ACT OF THE
RESPONDENTS WHO ISSUED IMPUGNED ORDER Dated: 26-09-
2017 (RECEIVED TO THE APPELLANT ON 08-02-2018), VIDE
WHICH PENALTY OF REDUCTION TO A LOWER STAGE FOR
THREE YEARS IN PRESENT TIME SCALE WAS IMPOSED UPON

THE APPELLANT.

Prayer:-

- (i) On acceptance of the instant appeal, the impugned order of the Respondents Dated: 26-09-2017 may be set aside and the penalty of reduction to a lower stage for three years in present time scale may be declared illegal and void and the appellant may kindly be exonerated from the penalty.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Filed to-day

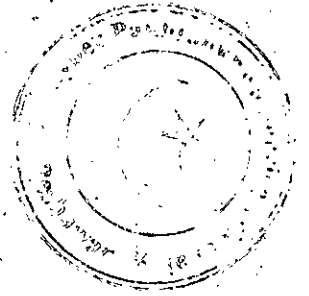
Registrar

10/5/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.695/2018

Date of Institution ... 10.05.2018
Date of Decision ... 05.10.2020



Muhammad Ayub Khan, Superintendent Judicial Lockup, District Swabi.

(Appellant)

VERSUS


1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and two others.

(Respondents)

Mr. Muhammad Asif Yousafzai,
Advocate ... For appellant.

Mr. Muhammad Jan,
Deputy District Attorney ... For respondents.

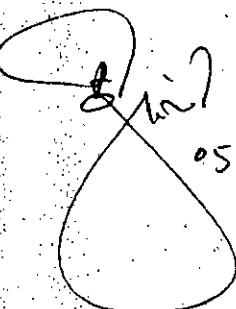
ARRESTED


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

MRS. ROZINA REHMAN ... MEMBER (J)
MR. ATIQ-UR-REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER : The captioned appeal has been filed against the order dated 26.09.2017 whereby penalty of reduction to a


05/10/20

lower stage for three years in present time scale was imposed upon appellant.

2. The brief facts forming the background of the captioned appeal are that in response to news item published in the Daily Mashriq dated 24.11.2016 reporting illegal release of prisoners from District Jail Mansehra, Provincial Ombudsman while taking cognizance of the news, asked the Inspector General of Prisons to submit details for their further action. In the meanwhile, basic information on similar lines from Central Prison Haripur was also demanded and it was reported by the Superintendent Central Prison Haripur that the dealing hands in that jail have manipulated the illegal releases of the prisoners by tempering with the record of the jail.

3. In response, thereto the Inspector General of Prisons constituted the committee consisted of Mr. Sabihzada Shah Jehan Superintendent HSP Mardan and Muhammiad Zahid Deputy Superintendent Incharge Sub Jail Dassu Kohistan for conducting preliminary fact finding inquiry into the illegal releases.

4. Pursuant thereto, inquiry was initiated and during proceedings, eight officers of the prisons department were placed under suspension including the present appellant under Rule-6 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, by the Provincial Government. The committee found sixteen convicts to have been benefitted of illegal remission either by way of tempering, making fake entries in the relevant record or on bogus education certificates etc. Formal inquiry was entrusted to Mr. Farrakh Sair Member-II Board of Revenue, Khyber Pakhtunkhwa with direction to conduct inquiry into the charges leveled against the officers/officials under Khyber Pakhtunkhwa

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

05/10/20

Government Servants (Efficiency & Discipline) Rules, 2011 and submit report within 30 days which was accordingly submitted and keeping in view the findings of inquiry officer, the competent authority served separate show cause notices to all the officers/officials. All of them except Mr. Ubaid Ahmad submitted their replies to the show cause notices within the stipulated period and requested for personal hearing before the competent authority. As per contents of summary for Chief Minister, Mr. Daud Khan Secretary Transport was authorized by the Chief Minister to give opportunity of personal hearing to the accused officers/officials on his behalf which was accordingly given. All the officers/officials were personally heard and report was submitted for approval of the Chief Minister and lastly the penalty of reduction to a lower stage for three years in present time scale was imposed upon the appellant vide order dated 26.09.2017 (communicated on 08.02.2018). He then filed review petition which was not attended to hence the present service appeal.

5. Learned counsel for appellant contended that the order dated 26.09.2017 is against law, facts and norms of justice, therefore, not tenable and liable to be set aside. He argued that the inquiry proceedings were defective because statements were not recorded in presence of appellant and he was not given the opportunity of cross-examination. He contended that the appellant was made victim of discrimination without any just and reasonable cause and that the order was passed without applying proper law and rules. He contended that the appellant was condemned unheard and his departmental appeal was not adjudicated. He submitted that the warrant branch played fraud and for that Noor ul Basar and Ubaid Ahmad were responsible who also confessed his guilt but even then, the appellant

ATTESTED

EXAMINER
Cyber Pakhtunkhwa
Service Tribunal
Peshawar

3/1/20

05/1/20

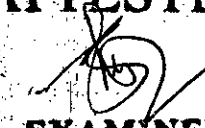
was penalized and lastly, he submitted that the appellant is not guilty of the charge of misconduct or corruption which is evident from the contents of the charge sheet, therefore, the impugned order may kindly be declared as illegal and unlawful.

6. Conversely, learned DDA fully supported the impugned order and contended that all coldal formalities were fully complied with by the inquiry officer. He submitted that the impugned order was properly communicated to the appellant because there exists proper mechanism for official communication. He submitted that post of Deputy Superintendent Jail is an important post and that higher the post, higher are the responsibilities and graver are the implications and consequences of their neglect. He submitted that all officers/officials were afforded the opportunity of personal hearing in terms of Section-15 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and Mr. Daud Khan was authorized by the Chief Minister to give opportunity of personal hearing on his behalf which was accordingly given and vide his report dated 19.09.2017, Khalid Abbas was recommended to be exonerated from all the charges. In the instant case recommendation furnished by the authorized officer who afforded the opportunity of personal hearing was approved and accordingly Khalid Abbas was exonerated from the charges. He submitted that the proposed penalty in show cause notice was found excessive by the authorized officer who vide order of the Chief Minister afforded the opportunity of personal hearing to all the accused officers/officials including

the present appellant in the light of Section-15 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and penalty of reduction to a lower stage for three years in his present time scale was


05/10/20

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

recommended which recommendations were approved by the Chief Minister. He submitted that case of the present appellant is entirely different from the case of Khalid Abbas, therefore, his appeal was requested to be dismissed.

7. For what has been discussed above, we are of the considered opinion that the charges of negligence/ inefficiency were established against the appellant (Muhammad Ayub) and others. It is also an admitted fact that the main perpetrator behind granting illegal educational remissions based on fake and manipulated documents was Ubaid Ahmad Warder (BPS-5), who admitted his guilt that he alone was responsible for manipulation and preparation of fake documents. Mr. Ubaid Ahmad Warder however, was dismissed from service and FIR lodged against him but other accused including the appellant cannot be absolved of the responsibilities to the extent of negligence. It however was noted that the fraudulent act of granting educational remissions to convict prisoners spreads over a period of four years, where the main culprit Mr. Ubaid Ahmad, who was a dealing hand and who manipulated and prepared fake documents in due course, very easily misguided the whole hierarchy of officers, hence they fell prey

to the act of negligence. It was further noted that penalty recommended by the inquiry officer does not commensurate with the gravity of the guilt of the appellant as he was not directly involved in the crime and for act of negligence, reduction to a lower stage for three years in present time scale was too harsh. There is no gain in saying that charges of guilty of misconduct or corruption are always considered at higher pedestal than the charge of inefficiency. No doubt the competent authority had jurisdiction to award any punishment to the Government employee according to law but for the purpose of safe administration of justice, such punishment should

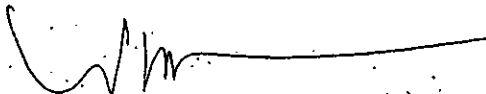
ATTESTED

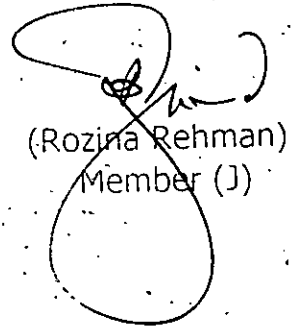
EXAMINER
 Cyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

05/10/20

be awarded which commensurate with the magnitude of the guilt otherwise the law dealing with the subject will lose its efficacy. In the instant case admittedly appellant is not guilty of the charge of misconduct or corruption, therefore, the penalty of reduction to a lower stage for three years in present time scale is converted into reduction to a lower stage for one year in present time scale with no orders as to costs. File be consigned to record room.

ANNOUNCED.
05.10.2020


(Attiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

Certified
True copy
F. 126/11/2020
Khyl. Jhunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 07/10/2020
Number of Words 2800
Copying Fee 30.00
Urgent _____
Total 30.00
Name of Copyst [Signature]
Date of Completion of Copy 12/10/2020
Date of Delivery of Copy 12/10/2020