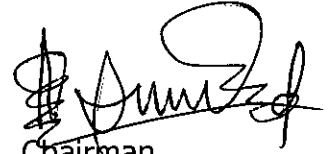


15.11.2021

Counsel for the appellant present and requested for withdrawal of the appeal unconditionally. His signature also obtained in the margin of order sheet. Request is accorded. The appeal is dismissed as withdrawn. File be consigned to the record room.



Chairman

Camp Court, A/Abad

ANNOUNCED

15.11.2021

*Dismissed with directions*

16.11.2020

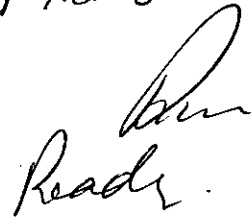
Counsel for the petitioner is present. Mr. Usman Ghani, District Attorney for the respondents is also present. Learned counsel for the petitioner seeks adjournment. Adjourned to 20.01.2021 on which date file to come up for further proceedings before S.B at Camp Court, Abbottabad.



(MUHAMMAD JAMAL KHAN)  
MEMBER  
CAMP COURT ABBOTTABAD

20.1.2021

Due to covid-19, The case is  
adjourned to 20-9-21 for the same.



Reader.

20.09.2021

Nemo for parties. Mr. Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Previous date was changed on a Reader's note, therefore, both the parties be put on notice for 15.11.2021 before S.B at Camp Court, Abbottabad.



(ATIQ UR REHMAN WAZIR)  
MEMBER (E)

Camp Court, A/Abad.

7/1/20

Due to covid ,19 case to come up for the same on / /  
at camp court abbottabad.

Reader

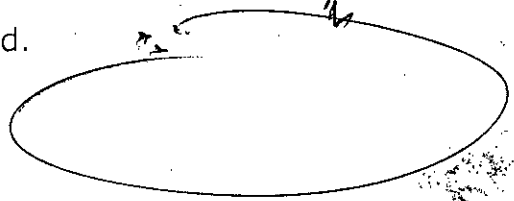
Due to summer vacation case to come up for the same on 11/9  
9 / 20 at camp court abbottabad.



Reader

14.09.2020

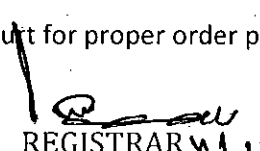
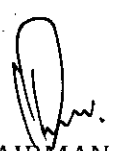

None for the petitioner is present at the time 03:00 P.M.  
Mr. Usman Ghani, District Attorney alongwith representative of  
the department Mr. Atif Ali, Litigation Officer are also present.  
The instant execution petition was adjourned due to summer  
vacations, therefore, notice be issued to petitioner as well as his  
counsel for 16.11.2020. File to come up for further proceedings  
before S.B at Camp Court, Abbottabad.



(MUHAMMAD JAMAL KHAN)  
MEMBER  
CAMP COURT ABBOTTABAD

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. 445/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.12.2019	<p>The execution petition of Mr. Mushtaq Ahmad received today by post through Mr. Abdul Saboor Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR 4/12/19</p>
2-		<p>This execution petition be put up before touring S. Bench at A.Abad on <u>22-01-20</u></p> <p> CHAIRMAN</p>
22.01.2020		<p>Petitioner in person present. Mr. Ziaullah, DDA for the respondents present. Notices be issued to the respondents for submission of implementation report. To come up for further proceedings on 20.02.2020 before S.B at camp court Abbottabad.</p> <p> Member Camp Court A/Abad</p>

**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**

Execution petition No 445 of 2019

IN  
Service appeal No 612/2018

Mushtaq Ahmed.....Appellant

**VERSUS**

The Inspector General of Police, Khyber  
Pakhtunkhwa, Peshawar.....respondents

**EXECUTION PETITION**

**INDEX**

S#	Description of documents	Annexure	Page#
1.	Memo of execution petition	-	1-5
2.	Affidavit	-	6
3.	Attested copy of judgment dated 22.10.2019	A	7-11
4.	Wakalt Nama	-	12

**Dated 02.12.2019**

  
**Mushtaq Ahmed**  
(Appellant)

Through:-

  
**ABDUL SABOOR KHAN**  
**ADVOCATE HIGH COURT**

**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**

Execution petition No 445 of 2019

IN

Service appeal No 612/2018 Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1261

Mushtaq Ahmed, Ex-Constable No. 342 Dated 4-12-2019  
 Police Lines upper Kohistan at Dassu.

.....**Appellant**

**VERSUS**

- 1) The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2) The Regional Police Officer, Hazara Region at Abbottabad.
- 3) The District Police Officer, Upper Kohistan at Dassu.

.....**Respondents**

**EXECUTION/IMPLEMENTATION**  
**OF THE JUDGMENT/ORDER OF**  
**THIS HONORABLE TRIBUNAL**  
**DATED 22.10.2019 PASSED IN**  
**THE AFORESAID SERVICE**  
**APPEAL.**

**PRAYER:-**

On acceptance of the instant execution petition, respondent no 03 be directed to implement the judgment dated 22.10.2019, passed in the aforesaid service appeal by this Honorable tribunal in its true letter and spirits.

**Respectfully Sheweth:-**

1. That, appellant filed the aforesaid service appeal before this Honorable tribunal for his reinstatement which was allowed and major penalty was converted into minor one on 22.10.2019.

(Copy of judgment dated 22.10.2019 is annexed as Annexure "A")

2. That, the said judgment/order was duly communicated to respondent no 03 by the registrar office as well as by the appellant himself, but so far, no effort worth name has been made by respondent no 03 to implement and execute the judgment passed by this Honorable tribunal in the aforesaid service appeal. Hence, the instant execution petition on the following grounds.

## **GROUNDS:-**

- A) That, the aforesaid service appeal was accepted vide judgment dated 22.10.2019.
- B) That, respondents, special respondent no 03, being competent authority is under legal obligation to implement/execute the judgment of this Honorable Tribunal, no sooner he gets the same. The said judgment was communicated to respondent no 03, but he failed to reinstate the appellant as per judgment of this Honourable tribunal dated 22.10.2019.
- C) That, so far, despite passage of more than 03 months, respondent no 03 has not implemented the judgment in question nor any serious efforts worth name is been taken to implement and execute the said judgment without any legal as well as factual cause and justification.
- D) That, the more the execution of the judgment is delayed, it is causing irreparable loss to the appellant.
- E) That, after the judgment was announced and no restraining order is in field from the Honorable appeal court, then there



remains no justification at all with respondent no 03 to delay the execution and implementation of the judgment in question.

- F) That, by not implementing the judgment by respondent no 03, he has also made liable to be proceeded for contempt of court of this Honorable tribunal.
- G) That, appellant has no other remedy except to file the instant execution petition for implementation of the judgment dated 22.10.2019, passed by this Honorable tribunal in the aforesaid service appeal.

**PRAYER:-**

On acceptance of the instant execution petition, respondent no 03 be directed to implement the judgment dated 22.10.2019, passed in the aforesaid service appeal by this honorable tribunal in its true letter and spirits.

**Dated 02.12.2019**



**Mushtaq Ahmed**  
(Appellant)

Through:-



**ABDUL SABOOR KHAN**  
Advocate High Court

**VERIFICATION :**

I, Mushtaq Ahmed, Ex-Constable No. 342 Police Lines upper Kohistan at Dassu, do hereby solemnly affirm and declare that the contents of fore-going Application are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed form this Honorable Tribunal.



**Mushtaq Ahmed**

**BEFORE THE SERVICE TRIBUNAL**  
**K.P.K PESHAWAR**

Execution petition No \_\_\_\_\_ of 2019

IN

Service appeal No 612/2018

Mushtaq Ahmed.....**Appellant**

**VERSUS**

The Inspector General of Police, Khyber  
Pakhtunkhwa, Peshawar.....**respondents**

**EXECUTION PETITION**

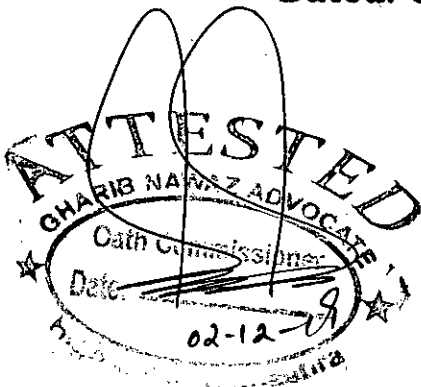
**AFFIDAVIT**

I, MUSHTAQ AHMED, EX-CONSTABLE NO. 342  
POLICE LINES UPPER KOHISTAN AT DASSU, DO  
HERBY SOLEMNLY AFFIRM AND DECLARE ON  
OATH THAT THE NO SUCH SUBJECT MATTER  
EXECUTION PETITION IN THE AFORESAID  
SERVICE APPEAL HAS EVER BEEN FILED  
BEFORE THIS HONORABLE COURT NOR  
PENDING NOR DECIDED. THAT THE CONTENTS  
OF FORE-GOING AFFIDAVIT ARE TRUE AND  
CORRECT TO THE BEST OF MY KNOWLEDGE  
AND BELIEF AND NOTHING HAS BEEN  
CONCEALED OR SUPPRESSED FROM THIS  
HONOURABLE TRIBUNAL.

Dated: 02.12.2019

**DEPONENT**

*Mushtaq Ahmed*  
Mushtaq Ahmed



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Amna  
Khyber Pakhtunkhwa  
Service Tribunal

APPEAL NO. 612 /2018:

Diary No. 666

Dated 07-5-2018

Mr. Mushtaq Ahmad, Ex-Constable No.342,  
Police Lines upper Kohistan.....

APPELLANT.

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer, Hazara Region at Abbottabad.
- 3- The District Police Officer, Upper Kohistan.

RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED  
ORDER DATED 23.2.2018 WHEREBY THE APPELLANT WAS  
DISMISSED FROM SERVICE AND AGAINST THE APPELLATE  
ORDER DATED 11.4.2018 WHEREBY THE DEPARTMENTAL  
APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO  
GOOD GROUNDS


PRAYER:

That on acceptance of this appeal the impugned orders dated 23.2.2018 and 11.4.2018 may very kindly be set aside and the respondents may be directed to re-instate the appellant on his service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

ATTESTED

  
Registrar  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

- 1- That appellant was the employee of the respondent Department and had served the respondent Department as Constable quite efficiently and up to the entire satisfaction of his superiors.
- 2- That during service as Constable in the respondent Department an FIR No.11 dated 28.1.2018 under section 353, 324/341 PPC was lodged against the appellant. That due to the above mentioned FIR the appellant was sent to judicial lock up and later on vide order dated 07/03/2018 the appellant was released on bail by the District & Session Judge, Kohistan. Copies of the FIR, record and release order are attached as annexure..... A, B & C.
- 3- That after release from judicial lock up the appellant visited his concerned quarter for joining of his duty but the concerned authority handed over the impugned dismissal order dated 23.2.2018 to the

Filed to-day  
Registrar  
7/5/18

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

Service Appeal No. 612/2018

Date of Institution ... 07.05.2018

Date of Decision ... 22.10.2019

Mr. Mushtaq Ahmad, Ex-Constable no. 342, Police Lines Upper Kohistan.  
(Appellant)

VERSUS

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

MR. KAMRAN KHAN,  
Advocate

MR. USMAN GHANI,  
District Attorney

MR. AHMAD HASSAN  
MR. MUHAMMAD HAMID MUGHAL

For appellant.

For respondents

MEMBER (Executive)  
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the

parties heard and record perused.

ARGUMENTS.

02. Learned counsel for the appellant argued that he performed duty as Constable in the Police Department efficiently. That while in service FR no. 11 under Section 353-342/341 PPC was lodged against the appellant. He was sent to judicial lockup and subsequently, released on bail by the District & Sessions Judge, Kohistan vide order dated 07.03.2018. After release, he went to join duty but impugned dismissal order dated 23.02.2018 was handed over to him. It is pertinent to point that the said order was passed in utter violation of laid down procedure. Feeling aggrieved, he filed departmental appeal on 12.03.2018 which was rejected

on 11.04.2018 followed by the present service appeal. Regular enquiry was not conducted in the service appeal in hand. Neither statements of the concerned were recorded nor opportunity of cross examination was afforded to the appellant besides show cause notice before imposition of penalty was also not served on him. In addition to this opportunity of personal hearing was also denied to the appellant. He was acquitted of the criminal charges vide judgment dated 16.02.2019. Learned counsel for the appellant further stressed that penalty awarded was very harsh. Reliance was placed on case law reported as 2008 SCMR 1369, 2007 SCMR 1860, PLJ 2008 (S.C) 65, 2002 SCMR 57, 2019 PLC (C.S) 255, 2005 PLC(C.S) 450, PLD 2010 S.C 695, 2005 PLC (C.S) 311, 2008 SCMR 1406, 2007 SCMR 857 and 2002 SCMR 690.

03. Learned District Attorney argued that the appellant was on night patrolling duty alongwith other colleague and were also in possession arms and ammunition on 28.01.2018. He left Shafiqullah, Constable and went to an unspecified place alongwith official rifle SMG which was snatched by un-known dacoits. A criminal case through FIR was registered against the appellant. He was sent to judicial lockup and apart from criminal proceedings departmental action was also initiated against the appellant and upon culmination, major penalty of dismissal from service was awarded to him. He was guilty of mis-conduct and dealt with according to law and rules.

### CONCLUSION

04. The appellant alongwith Shafiqullah no. 57 were deputed for night patrolling duty at Shatial Bazar on 28.01.2018. He left his colleague in the bazaar and went towards an unspecified destination, where his official rifle SMG was snatched by

ATTESTED

Signature  
 Service Tribunal  
 Pakistan

the dacoits. That FIR was lodged against the appellant. He was arrested by the Police and sent to judicial lockup, he was released on bail through order dated 07.03.2018. On release he came to know about award of major penalty and thereafter, preferred departmental appeal, which was dismissed followed by the present service appeal.

05. The record placed before us revealed that enquiry was not conducted in the mode and manner prescribed in the Police Rules 1975. It was incumbent upon the enquiry officer to have recorded statements of the concerned and also providing opportunity of cross examination to the appellant but this mandatory requirement of the rules was not observed thereby making these proceedings disputed/controversial (2008 SCMR 1406). When show cause notice was not served so copy of the enquiry report was also not given to him which deprived him providing proper defence and observance of due process (2005 PLC (C.S) 311, 2007 SCMR 1860, PLJ 2008 S.C 65). Opportunity of personal hearing was also denied to the appellant (2008 SCMR 1369). Moreover, he was acquitted of the criminal charges vide judgment dated 16.02.2019 and SMG snatched from him was also subsequently recovered. Having been acquitted of the criminal charge that laid foundation for initiation of departmental action died its natural death and imposition of any penalty on the strength of the same was not warranted (2002 SCMR 57). We are in agreement with the learned counsel for the appellant that punishment awarded was very harsh and did not commensurate with the quantum of guilt on the part of the appellant. Under Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against and the present service has all the ingredients for modification of penalty!

ATTESTED



RECORDED

P-11

06. As a sequel to above, the appeal is accepted and the major penalty of dismissal from service is converted into minor penalty of stoppage of two annual increments for two years. The intervening period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)  
Member  
Camp Court Abbottabad.

(MUHAMMAD HAMID MUGHAL)  
Member

ANNOUNCED

27-10-2019

2000	29-10-19
24-00	
4-00	
28-00	
<hr/>	
	29-10-19
	29-10-19

Certified to be true copy

Secretary  
Camp Court  
Abbottabad



# وکالت نامہ

بعدالت KPK سروس ٹریبونل پشاور

مشتاق احمد

بنام

انسپیکٹر جنرل آف پولیس وغیرہ

Execution petition in Service appeal No 612/2018

منجانب:

اپیلانٹ

باعث تحریر آنکھ!

اندریں مقدمہ عنوان بالا اپنی طرف سے برائے بیرونی وجوہات ہی بمقام سروس ٹریبونل پشاور

## عبدالصبور خان ایڈووکیٹ ہائی کورٹ

کو بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رُود و عدالت حاضر ہوتا رہوں گا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ پکھری کے مقررہ اوقات سے پہلے یا بروز تعطیل بیرونی کرنے کے مجاز نہ ہونگے اگر مقدمہ مقام پکھری کے آگے یا پیچھے سماعت ہونے پر مظہر کو کوئی نقصان پہنچے تو صاحب موصوف ذمہ دار نہ ہوں گے اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراء کے ذریعے وکالتی و نظریاتی، اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا، ہر قسم کا بیان دینے اور سپرد ثالثی و راضی نامہ و دستبرداری و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا فیصلہ ڈگری و اجراء ڈگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ فیس کرنے کا مجاز ہوگا۔ بصورت ضرورت بدوران مقدمہ یا اپیل و نگرانی کسی دوسرے وکیل یا پیر سٹر کو بجائے خود یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیرونی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ مجھے کل ساختہ پرداختہ مثل ذات خود منظور و قبول ہوگا۔ لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے۔ مضمون وکالت نامہ سن لیا اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

مورخہ 02.12.2019

مشتاق احمد

مشتاق احمد، سابقہ کانسٹیبل نمبر 342 پولیس لائن اپر کوہستان

Attested & Accepted  
Abdul Saboor Khan  
Advocate High Court