


04th Oct, 2022

1. Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Fazle Subhan, H.C for respondents present.

2. Representative of the respondents submitted order bearing endorsement No. 5277-85/EC dated 05.07.2022; whereby in compliance with the judgment of the Tribunal dated 18.01.2022, the petitioner has been reinstated in service conditionally and provisionally subject to the outcome of the CPLA. Learned counsel for the petitioner apprehends that the order reinstating the petitioner has not been given specific effect as regards the dates. It is in this respect observed that the order is passed in compliance with the judgment, therefore, whatever ^{was} ~~was~~ the terms of judgment those would be considered to be the part of this order. The instant execution petition is disposed off in the above terms. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 04th day of October, 2022.*


(Kalim Arshad Khan)
Chairman

11.08.2022

Nemo for petitioner.

Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Atta Ur Rehman, Inspector Legal for respondents present.

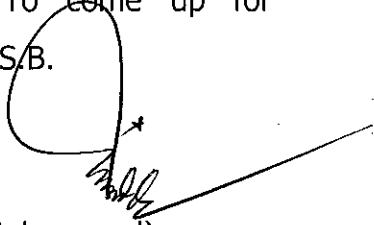
Representative of the respondent department submitted office order No. 5277-85/EC dated 05.07.2022 which is placed on file through which the petitioner is reinstated in service subject to the outcome CPLA. As nobody is present on behalf of petitioner. Therefore, notices be issued to petitioner and his counsel for further proceedings on 31.08.2022 before S.B.

(Fareeha Paul)
Member (E)

31.08.2022

Learned counsel for the petitioner present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Fazle Subhan, H.C for the respondents present.

Respondent department, produced a copy of office order bearing No. 5277-85/EC dated 05.07.2022 whereby the petitioner has been reinstated in service conditionally/provisionally subject to the outcome of CPLA by the august Supreme Court of Pakistan. Copy of the same is placed on file as well as provided to learned counsel for the petitioner. Learned counsel for the petitioner requested for adjournment on the ground that he will submit objection(s) on the office order submitted by the respondents on the next date. Adjourned. To come up for objection(s)/further proceedings on 04.10.2022 before S.B.


(Mian Muhammad)
Member (E)

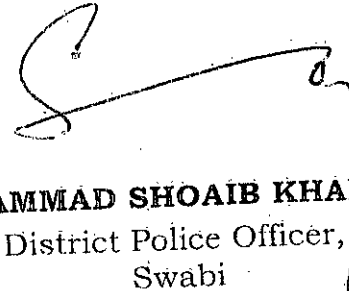
ORDER

In compliance of judgment dated 18.01.2022 of Khyber Pakhtunkhwa Service Tribunal Peshawar passed in Service Appeal No. 15574/2020 and in the light of directions dated 13.06.2022 passed in Execution Petition No. 147/2022 in above Service Appeal, Ex-FC Rahat Ali is hereby reinstated in service conditionally and provisionally subject to the outcome of CPLA.

OB No

635

Dated 05-07 /2022.



MUHAMMAD SHOAIB KHAN (PSP)
District Police Officer,
Swabi

No. 5277-85 /EC, dated Swabi the 05/07 /2022

Copy of above is forwarded for information to the:

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar w/r to his office Memo: No. 3060/Legal, dated 22.06.2022, please.
2. Regional Police Officer, Mardan.
3. Registrar, Khyber Pakhtunkhwa, Services Tribunal, Peshawar.
4. District Account Officer, Swabi.
5. DSP/HQrs, Swabi.
6. Inspector Legal Swabi.
7. Pay Officer.
8. Establishment Clerk.
9. Official concerned.

13th June, 2022

Petitioner in person present. Mr. Kabiruallh Khattak, Addl: AG alongwith Mr. Fazal Subhan, H.C for respondents present.

Learned AAG submits that he has telephonically informed the respondents but it is noted with serious that Head Constable put appearance with no order of implementation, therefore, respondents are directed to submit proper implementation report on the next date, failing which further coercive measures under Section-51 of the CPC would be taken against them. To come up for implementation report on 05.07.2022 before S.B.

(Kalim Arshad Khan)
Chairman

5th July, 2022

Learned counsel for the petitioner present. None for the respondents present.

Mr. Adeel Butt, Addl: AG on behalf of the respondents put appearance in early hours of the court and assured that he would submit compliance report in the matter in some moments but later on neither compliance was submitted nor he put appearance. Therefore, salaries of the judgment debtors attached. The Accountant General Khyber Pakhtunkhwa is directed to attach the salaries of the respondents not to release the same till further order by this Tribunal. Show cause notice be also issued to the respondents as to why they should not be proceeded under the Contempt of Court Ordinance-2003.

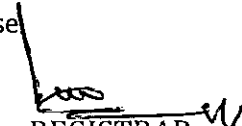


Last chance is given to the respondents to implement the judgment and submit compliance report on 06.09.2022 before S.B.

(Kalim Arshad Khan)
Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. _____ 147/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15.03.2022	<p>The execution petition of Mr. Rahat Ali submitted today by Mr. Taimur Ali Khan 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-	<p>Mailed by counsel 22/4/22</p> <p>28.04.2022</p>	<p>This execution petition be put up before to Single Bench at Peshawar on <u>28-04-2022</u>. Original file be requisite. Notices to the appellant and his counsel be also issued for the date fixed.</p> <p style="text-align: right;"></p> <p>Counsel for the petitioner present. CHAIRMAN</p> <p>Fresh notices be issued to the respondents for submission of implementation report. To come up for implementation report on 13.06.2022 before S.B.</p> <p style="text-align: right;"> (FARZEHA PAUL) Member (E)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 147 /2022
In Service Appeal No.15572/2020



Rahat Ali, Ex-Police Constable No.573 S/O Amir Sher R/O Village Naragi,
Tehsil Razzarh, District Swabi.

PETITIONER

VERSUS

1. Provincial Police Officer (PPO), Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar.
2. Regional Police Officer, Mardan Region Mardan.
3. District Police Officer (DPO), Swabi.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 18.01.2022 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.15572/2020 in the Honourable Tribunal against the order dated 22.10.2019, whereby the appointment order dated 09.04.2014 of the petitioner was withdrawn and against the order dated 04.02.2020, whereby the departmental appeal of the petitioner has been rejected.
2. The said appeal was heard by this Honourable Service Tribunal on 18.01.2022. The Honourable Service Tribunal accepted the appeal, set aside the impugned order dated 22.10.2019 and 04.02.2020 and reinstated the petitioner into service with all back benefits. (Copy of judgment dated 18.01.2022 is attached as Annexure-A)

3. That the Honourable Tribunal in its judgment dated 18.01.2022 reinstated the petitioner, but after the lapse of about two months the petitioner was not reinstated by the respondents by implementing the judgment dated 18.01.2022 of this Honourable Tribunal.
4. That the petitioner also filed application to respondent No.3 for implementation of judgment dated 18.01.2022, but despite that the petitioner has been reinstated by the respondents. **(Copy of application is attached as Annexure-B)**
5. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 18.01.2022 of this Honourable Service Tribunal in letter and spirit.
7. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 18.01.2022 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 18.01.2022 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.


PETITIONER
Jehan Ali

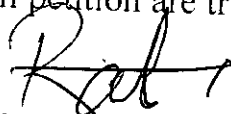
THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.




DEPONENT

(2)

A

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Service Appeal no-15574/2020

15574

In Ref: to AWP No. _____-P/2020.

In

WP No. 1864-P/2020.



Rahat Ali, Ex-Police Constable, No. 573 and S/O Amir Sher R/O Village Naragi, Tehsil Razzarh, District Swabi.....**PETITIONER.**

VERSUS

- 1) Provincial Police Officer (PPO), Khyber Pakhtunkhwa, Central Police Office (CPO), Peshawar.
- 2) Regional Police Officer, Mardan Range Mardan.
- 3) District Police Officer (DPO) Swabi.....**RESPONDENTS.**

Amended Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 as amended up-to date.

PRAYERS IN WRIT PETITION:

On acceptance of this amended petition, the final impugned order dated 04-02-2020 passed by the respondent No. 2 may be set-aside whereby departmental representation of the petitioner was rejected/filed and the first impugned order dated 22-10-2019 passed by the respondent No. 3 was upheld whereby the enlistment order as Constable dated 09-04-2014 in respect of the petitioner was withdrawn and in consequence thereof, the petitioner may very graciously be reinstated on his parent post with all consequential back benefits and all allied allowances.

Respectfully Sheweth:

- 1) That the petitioner is bonafide citizen of the Islamic Republic of Pakistan, Domiciled in the Province of Khyber Pakhtunkhwa and resident of village Narangi, Tehsil Razzarh, District Swabi and law abiding person having to enjoy every legal and constitutional rights duly protected by the command of the Constitution.

-FILED TODAY

Deputy Registrar

16 OCT 2020

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 15574/2020

Date of Institution ... 03.12.2020

Date of Decision ... 18.01.2022



Rahat Ali, Ex-Police Constable, No. 573 and S/O Amir Sher R/O Village Naragi,
Tehsil Razzarh, District Swabi. ... (Appellant)

VERSUS

Provincial Police Officer (PPO), Khyber Pakhtunkhwa, Central Police Office (CPO),
Peshawar and two others. ... (Respondents)

Usman Khan Turlandi,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant was appointed as Constable vide order dated 09-04-2014. His appointment order, however was withdrawn vide order dated 22-10-2019. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 04-02-2020, thereafter, the appellant filed Writ Petition No. 1864-P/2020; which was converted into service appeal vide judgment dated 26-11-2020 and was referred to this Tribunal with prayers of the appellant that the impugned orders dated 22-10-2019 and 04-02-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that appellant was real brother of Shaheed Constable Nawaz Ali, but the appellant was not appointed


TESTED

ADMINISTRATIVE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

against Shaheed brother quota, which is evident from the appointment order dated 09-04-2014; that as per policy notification dated 18-05-2007 issued by the respondents, another brother of the appellant namely Jehan Ali was recruited as PASI against 5% quota reserved for son/brothers of police Shuhada vide order dated 02-02-2016; that his appointment order was also withdrawn vide order dated 22-10-2019, which is contrary to law, rule and norms of natural justice, as one brother was martyred in line of duty, another was discharged and the appellant was also discharged due to the reason that he is not entitled for the benefit of Shaheed package knowing the fact that the appellant was never appointed against Shaheed quota but was erroneously linked up with the case; that the fact remains that the appellant neither applied for Shaheed quota nor was selected against that quota, rather he was selected on merit, hence withdrawal of his appointment order is illegal and without lawful authority and against the norms of natural justice; that the action and inaction of the respondents shows malafide, which is contrary to Article-4, 25 and 27 of the constitution; that the appellant has not been treated in accordance with law, as appointment order of the appellant was withdrawn without serving any notice or affording opportunity of defense to the appellant, hence substantive as well as procedural law has vehemently been violated; that doctrine of locus poenitentiae vigorously refrains from any adverse action on part of the respondents, once an act even illegal has taken its field cannot be taken back, which principle on the touchstone of instant case is applicable.

03. Learned Additional Advocate General for the respondents has contended that the appellant was enlisted as Constable in Police Department against Shuhada quota as per prevailing policy at the time; that after submission of revised succession certificate by widow of Shaheed Nawaz Ali, minor child of Shaheed Nawaz Ali was declared as heir to the Shaheed, hence appointment order of the appellant was withdrawn being illegal; that at the time of issuance of

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

succession certificate, the fact of a child in the womb of widow of Shaheed Nawaz Ali was concealed from the court as well as from the department for a long time and when the relationship of widow of Shaheed with her in-laws become strained, she came to know about the legal rights of her minor daughter and applied for revised succession certificate, which was accepted vide order dated 30-07-2019; that in presence of minor child of the Shaheed, brothers and sisters are not entitled for the relief as per standing order dated 02-02-2017; that the respondents treated the appellant in accordance with law and no discrimination has been done with the appellant.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that brother of the appellant namely; Nawaz Ali being employee in the Police Department met martyrdom during performance of duties on 12-01-2014. For the purpose of compensation to the legal heirs of the Shaheed, a succession certificate was issued by the competent court of law on 02-04-2014, where widow, father and mother of Shaheed Nawaz Ali were declared as legal heirs of the Shaheed constable and Shaheed package (cash compensation) was distributed amongst them accordingly. In addition, as per notification dated 17-10-2003 as amended on 16-05-2007, 5% quota was also reserved for Shuhada sons and in absence of son; the real brothers were entitled to be appointed as PASI in place of Shaheed. Since Mr. Nawaz Ali being newly wedded had no offspring at that particular time, hence with no objection of his widow and in accordance with the policy, brother of the appellant namely Jehan Ali was appointed as PASI vide order dated 02-02-2016. Widow of Shaheed Nawaz Ali has given birth to a baby on 05-08-2014, who was named as Aneesa Begum. Widow of the Shaheed Nawaz Ali, came to know at a later stage, that minor Aneesa Begum, who born seven months after death of her father can also claim Shaheed Package (cash compensation), hence she approached the

ATTESTED

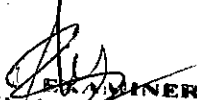
MEMBER
for Pakhtunkhwa
Service Tribunal
Peshawar

competent court of law for revocation/ amendments in the succession certificate, which was accepted and previous succession certificate issued on 02-04-2014 (before birth of Aneesa begum) was cancelled and revised succession certificate was issued on 30-07-2019, thereby including the minor Aneesa begum in legal heirs of Shaheed Nawaz Ali. Accordingly, Shaheed package was re-collected from the legal heirs and was distributed afresh with due share to the minor, but simultaneously appointment order of Mr. Jehan Ali PASI was also withdrawn vide order dated 22-10-2019 under the plea that in presence of minor child of the Shaheed, his brother cannot be recruited.

06. On the other hand, the present appellant, who is also real brother of Shaheed Nawaz Ali, but who was appointed as constable on 09-04-2014, but his appointment order nowhere mentions that the appellant was appointed as constable against Shaheed quota, but unfortunately he was also linked up with the case after submission of revised succession certificate dated 30-07-2019 by widow of the deceased Nawaz Ali and appointment order of the appellant was also withdrawn vide order dated 22-10-2019

07. The issue surfaced when the respondents issued a notification dated 02-02-2017 that brother/sister of the Shaheed shall not be considered for appointment as ASI, where minor child of the Shaheed is available, even if the widow has given consent in this behalf because she is not entitled to forego right of the minor. Coupled with it was submission of revised succession certificate by widow of Shaheed Nawaz Ali, which made the appellant as well as his brother Jehan Ali liable for the action so taken by the respondents. Since the appellant was appointed as constable on 09-04-2014 and his appointment order does not mention that the appellant was appointed under Shaheed package, but since he was brother of Shaheed Nawaz Ali, hence he was dragged under the policy dated 02-02-2017, which too was retrospectively applied on appellant and the appellant was removed from service under the plea that he was not entitled for such relief


ATTESTED


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 Khyber Pakhtunkhwa
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 Peshawar

in presence of minor of the deceased. Available record would suggest that cash compensation to legal heirs as well as recruitment of Shaheed son/real brother were two parts of such compensation, which were simultaneously allowed as per policy. The cash compensation was proportionately distributed amongst father, mother, widow and minor (Aneesa Begum), whereas his real brother (Jehan Ali) was appointed as PASI as per law and rule with no irregularity committed to this effect, but not only Jehan Ali was discharged from service but the appellant was also discharged, which however was not warranted as he was not recruited against Shaheed quota. The issue erupted when widow of the deceased applied for revised succession certificate to make sure claim of her minor in cash compensation, which was done accordingly, but the respondents retrospectively applied the policy dated 02-02-2017 on both brothers with the stance that the appellant had concealed the minor (Aneesa Begum) for a longer time, facts however are otherwise. The appellant neither concealed any fact nor committed any irregularity, rather he was appointed on merit and not under Shaheed quota. The baby was born after seven months of death of Nawaz Ali and after submission of the first succession certificate 28-03-2014, who could only be made entitled for the cash compensation and the revised succession certificate was never intended for dislodging the appellant or his brother, but in the meanwhile new policy came into field and the respondents misinterpreted the revised succession certificate in light of a policy dated 02-02-2017, which was formulated much after his appointment. It is well settled legal proposition that policy/notification can be applied prospectively and not retrospectively.

08. We have also observed that the appellant being a civil servant, was not supposed to be struck down with a single stroke of pen, rather he was required to be afforded appropriate opportunity of defense, which however was not warranted. Appointment of the appellant was made by competent authority by following the prescribed procedure, the appellant having no nexus with the mode

ATTESTED


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 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

of selection process and he could not be blamed or punished for the laxities on part of the respondents. The order affecting the rights of a person had to be made in accordance with the principle of natural justice; order taking away the rights of a person without complying with the principles of natural justice had been held to be illegal. Government was not vested with the authority to withdraw or rescind an order if the same had taken legal effect and created certain legal rights in favor of the appellant. Reliance is place on 2017 PLC (CS) 585. In the instant case, appointment of the appellant was never illegal; rather it was made in accordance with law.

09. We are of the considered opinion that the appellant has not been treated in accordance with law and was illegally kept away from his lawful duty, as he was not appointed in the category of Shaheed package in the first place and secondly he was wrongly attached with the Shaheed package. Not only the appellant but another brother of the appellant also fell victim to the policy notified on 02-02-2017.

10. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 22-10-2019 and 04-02-2020 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

18.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 10/3/22
Number of Words 28250
Copying Fee 20/-
Urgent 4/2
Total 34/-
Name of Copyist _____
Date of Completion of Copy 10/3/22
Date of Delivery of Copy 10/3/22

To

Honorable District Police Officer,
District Swabi.

B

**SUBJECT: APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 18.01.2022 PASSED BY THE
HONORABLE KP SERVICE TRIBUNAL IN SERVICE
APPEAL N.15574./2020 OF THE APPLICANT.**

Respected sir,

1. That the appointment order has withdrawn applicant on 22.10.2019 and his departmental appeal was rejected on 04.20.2020.
2. That the applicant aggrieved from the said orders filed Service Appeal No15574/2020 in the Honorable KP Service Tribunal Peshawar.
3. That service appeal of the applicant was heard by the Honorable Service Tribunal on 18.01.2022, which was accepted and the applicant was reinstated into his service with all back benefits. (Copy of judgment dated 18.01.2022 is attached as Annexure-A)

It is therefore most humbly requested that applicant may kindly be reinstated into service with all back benefits as per judgment of Honorable KP Service Tribunal.

Rahat

Applicant
RAHAT ALI.

VAKALAT NAMA

NO. _____ /2022

IN THE COURT OF KP Service Tribunal, Peshawar

Rahat Ali

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We, Rahat Ali

Do hereby appoint and constitute *Taimur Ali Khan, Advocate High Court 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____ /2022

Rahat

(CLIENT)

ACCEPTED

Taimur Ali Khan

TAIMUR ALI KHAN
Advocate High Court
BC-10-4240

CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar