

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3426

Dated 6-2-2023

- Babar Mukhtiar Head Constable District Police Haripur presently posted in Motor Way Police at Haripur

.....(Petitioner)

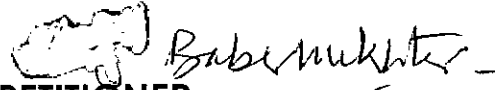
VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.

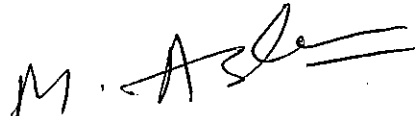
EXECUTION PETITION IN SERVICE APPEAL NO. 1142/2020

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PETITIONER

THROUGH


(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT PESHAWAR

Dated: 06-02-2023

①

BEFORE HONOURABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No.....

Babar Mukhtiar Head Constable District Police Haripur presently posted in Motor Way Police at Haripur.

.....(Petitioner)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.

EXECUTION PETITION IN SERVICE APPEAL NO. 11142/2020 FOR IMPLEMENTATION OF JUDGMENT/DECISION DATED 19-09-2022 OF THIS HONOURABLE SERVICE TRIBUNAL.

PRAYER: ON ACCEPTANCE OF INSTANT EXECUTION PETITION THE RESPONDENTS MAY GRACIOUSLY BE DIRECTED TO IMPLEMENT THE JUDGMENT/DECISION DATED 19-09-2022 OF THIS HONOURABLE SERVICE TRIBUNAL PROVISIONALLY/CONDITIONALLY SUBJECT TO OUTCOME OF CPLA BEING FILED BY THE RESPONDENTS.

Respectfully Sheweth:

1. That petitioner/appellant filed subject titled service appeal before this Honorable Service Tribunal against the order of Respondents whereby petitioner/appellant was awarded the punishment "Forfeiture of 03 (three) years approved service" and period remained out of service as leave without pay by respondents.
2. That this Honorable Tribunal on acceptance subject service appeal issued judgment/decision dated 19-09-2022 that "we are, therefore, unison on acceptance of this appeal. The period from the date of dismissal of the appellant till reinstatement shall be considered as on duty

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and accordingly his forfeited three years approved service is restored with all back benefits".

(Copy of judgment/decision dated 19-09-2022 is attached as Annexure-"A").

3. That on receipt of attested copy of the judgment/decision dated 19-09-2022 this Honorable Tribunal, the appellant requested the respondents for implementation of the judgment/decision.
4. That the respondents instead of implementing the judgment/decision of this Honorable Tribunal issued an undated and un-signed Notice that CPLA with stay application against the judgment/decision of Honorable KPK Service Tribunal was being filed by respondents before the Supreme Court of Pakistan in its Branch Registry at Peshawar. **(Copy of the Notice is attached as Annexure-"B").**
5. That despite petitioner's incessant approaches to respondents, he has not been granted the decided rights/benefits of his service. Appellant is facing financial distresses due to the reason.
6. That there is no stay order from the Apex Supreme Court of Pakistan against the judgment/decision dated 19-09-2022 of this Honorable Tribunal and in such a position respondents are legally bound to implement the said

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judgment/decision in its letter and spirit. Hence this Execution Petition on the following:

GROUND

- A) That as this Honorable Service Tribunal in its judgment/decision dated 19-09-2022 has decided that "we are, therefore, unison on acceptance of this appeal. The period from the date of dismissal of the appellant till reinstatement shall be considered as on duty and accordingly his forfeited three years approved service is restored with all back benefits".
- B) That there is no stay order from the Apex Supreme Court of Pakistan against the Judgment/decision dated 19-09-2022 of this Honorable Tribunal and the same is in field. Respondents are legally bound to comply with the said judgment/decision.
- C) That departmental authorities/respondents are reluctant to pay any heed to the judgment/decision dated 19-09-2022 of this Honorable Tribunal hence instant execution petition.
- D) That petitioner is facing financial distresses due to non-implementation of judgment/ decision of this Honorable Tribunal.

(4)

E) That instant Execution Petition is well within time and this Honorable Tribunal has got ever jurisdiction to entertain and adjudicate upon the same.

PRAYER:

It is, therefore, humbly prayed that this Honorable Tribunal may graciously be pleased to accept this Execution Petition and issue necessary orders/directions to the respondents to implement the judgment/decision dated 19-09-2022 of this Honorable Tribunal in its true letter and spirit.

Babar Mukhtar

PETITIONER

THROUGH

M. Aslam

(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
AT PESHAWAR

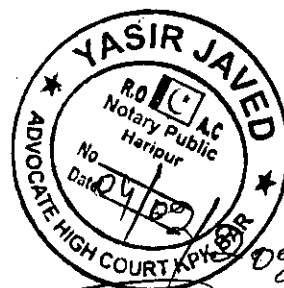
Dated: 6-02-2023

AFFIDAVIT

I, Babar Mukhtiar petitioner do hereby undertake/solemnly affirm that the contents of foregoing petition are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this Honorable Tribunal.

Dated 6-02-2023

M. Aslam
Through (Muhammad Aslam)
DEPONENT *Babar Mukhtiar*



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Annex - A

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



Service Appeal No.11142/2020

Date of Institution ... 21.09.2020
Date of Decision ... 19.09.2022

Babar Mukhtiar, Head Constable No.206 District Police, Haripur.
... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and
two others.
... (Respondents)

Muhammad Aslam Tanoli,
Advocate ... For appellant.


Kabir Ullah Khattak,
Additional Advocate General ... For respondents.

Rozina Rehman ... Member (J)
Fareeha Paul ... Member (E)

JUDGMENT

Rozina Rehman, Member(J): The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer
as copied below:

“On acceptance of instant service appeal both the
impugned orders dated 21.08.2019 and 19.08.2020 of
the respondents may graciously be set aside and
appellant be restored his three years forfeited
approved service and the period he remained out of
service be treated as on duty or leave of the kind due
with grant of all consequential service back
benefits.”


Rozina Rehman
Member (J)

(6)

2. Brief facts of the case are that appellant Babar Mukhtiar while posted in PS KTS Haripur in plain clothes duly equipped with weapon by showing criminal force arrested a person namely Zameer Khan near Paris Hotel and took him to Chungi No.2 and threatened him to register a false narcotics case against him if he failed to give illegal gratification of Rs.60,000/- and thus the appellant alongwith Constable Nadeem Shehzad extracted Rs.45000/- from him and charged him in case FIR No.120 dated 27.02.2018 U/S 3/4 EHO, PS KTS by doing illegal acts and omission in deviation of lawful duties, implicated himself in criminal offence vide case FIR No.127 dated 27.03.2018 which amounted to misconduct, therefore, was dismissed from service by DPO Haripur vide order dated 30.05.2018. He preferred departmental appeal which was also rejected. Being aggrieved, he filed Service Appeal No.851/2018 before this Tribunal which was accepted vide judgment dated 17.06.2019 with direction to the respondents to conduct de-novo inquiry. In the light of aforementioned judgment of this Tribunal, appellant was served with a charge sheet which was duly replied and lastly, he was awarded penalty of forfeiture of three years of approved service and the period he remained out of service was treated as leave without pay. He preferred departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Muhammad Aslam Tanoli learned counsel for appellant and Kabir Ullah Khattak learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

ATTACHED
[Signature]
[Stamp]

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4. Muhammad Aslam Tanoli Advocate learned counsel for appellant in support of appeal contended with vehemence that the impugned order dated 21.08.2019 and 19.08.2020 of the respondents are illegal, against law and facts as no proper departmental inquiry was conducted, hence, liable to be set aside. He contended that no show cause notice was issued and no opportunity of personal hearing was afforded to the appellant rather he was condemned unheard. It was further submitted that the appellant was not treated in accordance with law and rules and the respondents acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973; that the appellant discharged his assigned duties with devotion, dedication and honesty and was wrongly punished by the respondents as the allegations leveled against the appellant in the charge sheet are based on surmises and conjunctures which remained unproved and nothing was brought on record against the appellant in order to connect him with the commission of the alleged offence. He, therefore, requested for acceptance of the instant appeal.

5. Conversely, learned AAG submitted that a citizen namely Mumraiz Khan moved an application before the then DPO Haripur against the appellant Babar Mukhtiar and Constable Nadeem Shehzad on the allegations that the appellant alongwith Constable Nadeem Shehzad in plain clothes duly equipped with weapons and showing criminal force arrested his brother Zameer Khan and took him to the jurisdiction of Police Station KTS. That both the Police Officials threatened him to implicate him in heinous narcotics case if he failed to fulfill their demand of illegal gratification, thus they compelled him to pay Rs.60,000/- and after bargain, both the Police Officials took Rs. 45000/- from him and got register case FIR No.120

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dated 27.03.2018. He contended that as the acts and omissions of the appellant were offensive in nature, therefore, case FIR No.127 was registered against appellant and Constable Nadeem Shehzad as they had committed gross misconduct and appellant was issued charge sheet with statement of allegations. SP Investigation was appointed as Inquiry Officer who conducted proper departmental inquiry and in view of the inquiry report, he was awarded major punishment of dismissal from service. Lastly, he submitted that in view of the directions of this Tribunal, de-novo inquiry was conducted through Zulfiqar Khan Jadoon and after fulfillment of codal formalities, appellant was awarded minor punishment of three years approved service and period in which appellant remained out of service was treated as leave without pay.

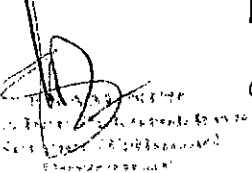
6. From the record it is evident that the appellant on search, recovered 480 grams of Charas from one Zameer Khan alongwith a sum of Rs. 45010/- and one Nokia Mobile Model' 6300. Recovery memo and murasila were prepared and sent to PS KTS for registration of FIR. On 28.02.2018, complete Challan was submitted and accused was also produced before the Judicial Magistrate, where he confessed his guilt and was awarded punishment. After release from jail on 04.03.2018, the accused Zameer Khan submitted an application before the Judicial Magistrate for return of recovered amount and mobile phone and vide order dated 07.03.2018, the accused received the said amount alongwith mobile phone. Instead of appreciating their performance, the respondents implicated appellant and Nadeem Shehzad in a false case. These facts were properly mentioned by this Tribunal in the judgment passed in Service Appeal No.852/2018. It was observed by this Tribunal that SHO and other

(9)

staff of concerned Police Station were hand in glove with drug paddlers.

7. The impugned orders of dismissal of the appellant from service were set aside and he was reinstated in service, however, the respondents were directed to conduct de-novo inquiry within a period of 90 days and the issue of back benefits were subject to the outcome of de-novo inquiry. In compliance of the judgment of this Tribunal, appellant was reinstated in service and was served with charge sheet alongwith statement of allegation and Mr. Zulfiqar Khan Jadoon was appointed as Inquiry Officer who conducted inquiry and submitted his report. The inquiry report is available on file which clearly shows that the Inquiry Officer did not record statement of any witness and no opportunity of defense was given to the appellant. Neither Register 19 was produced nor any extract from the said register was annexed with the inquiry report in order to show that entry of case property was made at a belated stage. Statement of Moharrir concerned was not recorded by the Investigation Officer and no chance was given to the appellant to cross examine the Moharrir on the point of entering the case property at a later stage. As per available record, proper FIR was registered against one Zameer Khan who submitted an application for pleading this guilt and vide order of the learned Judicial Magistrate Haripur, accused Zameer Khan was convicted and sentenced to undergo two days SI and to pay fine of Rs.500/-. Accused Zameer Khan also submitted an application for return of an amount of Rs.45010/- and Nokia Mobile on Supardari which application was also allowed by the same Magistrate and cash amount as well as mobile phone was returned to Zameer Khan in case FIR No.120 on Supardari on 07.03.2018. The appellant alongwith one Nadeem Shehzad were

ATTACHED



Handwritten signature and stamp, possibly indicating a date or official action.


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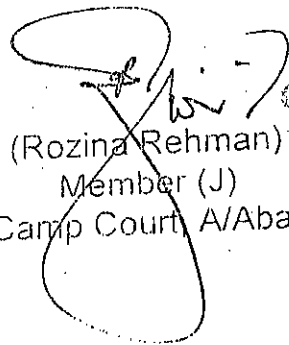
also implicated in case FIR No.127 dated 01.03.2018 U/S 382/342/506/34 PPC and in this regard complainant Mumraiz Khan who had leveled allegations against the present appellant recorded his statement on oath on 30.07.2018 in the Court of learned Judicial Magistrate, wherein, he requested for acquittal of accused being innocent and it was on 30.10.2018 when both appellant and Constable Nadeem Shehzad were acquitted U/S 249-A of Cr.PC.

8. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. The only charge against appellant was registration of FIR No.120 for taking illegal gratification and implicated an innocent person and then his involvement in case FIR No.127 and all these allegations have been vanished, making him re-emerge as a fit and proper person entitled to continue his service.

9. We are, therefore, unison on acceptance of this appeal. The period from the date of dismissal of the appellant till reinstatement shall be considered as on duty and accordingly his forfeited three years approved service is restored with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
19.09.2022


(Fateeha Paul)
Member (E)
Camp Court, A/Abad


(Rozina Rehman)
Member (J)
Camp Court, A/Abad
Certified to be true
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Name of Petitioner _____
Number of Writs _____
Filing Fee _____
_____ 22/09/2022
_____ 26/-
_____ 26/-
Name of Counsel _____
Date of Completion of Case _____ 05/10/22

وکالت نامہ

بعدالت جناب پروفیسر
 پیشانی پروفیسر
 پنجاب پروفیسر
 Petitioner پروفیسر

بالرئس پروفیسر
 19/11/2023 de

دعویٰ یا جرم Execution Petition باعث تحریر آنکہ

مندرجہ بالا عنوان میں اپنی طرف سے بیرونی وجوہی مقام ایسے آباد/پشاور
 ایدو ویکیٹ بدیں شرط ویکل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص
 روز بروز عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے ویکل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی
 پیشی پر مظہر حاضر نہ ہوں اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ
 ہوئے۔ نیز ویکل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز
 تعطیل بیروی کرنے کے مجاز نہ ہونگے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز پکھری کے اوقات
 کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے
 بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور قبول ہوگا اور صاحب
 موصوف کو عرضی دعویٰ اور درخواست اجراءے ذگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دخل تصدیق
 کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ذگری کے اجرا کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے
 کا ہر قسم کا بیان دینے اور سپروائشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و
 برآمدگی مقدمہ یا منسوخی ذگری یکطرفہ درخواست حکم اتمامی یا ذگری قبل از فیصلہ اجراءے ذگری بھی صاحب موصوف کو
 بشرط ادا نیگی علیحدہ بیروی مختار نامہ کرینا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے ویکل یا بیرسٹر
 کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہونگے جیسے صاحب
 موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیروی نہ
 کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سند ہے مضمون
 مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

مورخہ: 06-02-2023

Accepted by
 M. Aslam
 Saw

(Babar Mulktra)
 Babar Mulktra
 لاہور

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Annex B

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2022

Provincial Police Officer Khyber Pakhtunkhwa,
Peshawar & others

-----PETITIONERS

VERSUS

Babar Mukhtiar

-----RESPONDENT

NOTICE

Mian Saadullah Jandoli
TESTED
MIAN SAADULLAH JANDOLI
Advocate-on-Record
Supreme Court of Pakistan
For Govt. / Petitioners

UAMP D.P-558

PAKISTAN POST
RAD00713759

To

Babar Mukhtiar, Head Constable No.206 District Police Haripur

Please take notice Registered A/D post to the effect that I am filing
CPLA with stay application in the above titled case against the judgment of
the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Camp Court
Abbottabad dated 19/09/2022 in Service Appeal No.11142/2020 before the
Supreme Court of Pakistan in its Branch Registry at Peshawa.:

Dated this

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /Petitioners

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CA. No. _____/2022

Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department, Peshawar & others.....Appellants

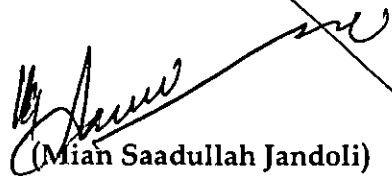
VERSUS

Haider Ali Shah.....ndent

VALUATION CERTIFICATE UNDER ORDER
SUPREME COURT ORDERS & RULES-1980

-I OF

I, Mian Saadullah Jandoli, Advocate for the appellants in the above cited appeal do hereby certify that the amount of the subject matter in dispute in the Court of first instance was, and also in dispute in appeal, is not less than fifty thousand rupees and the judgment and decree of the Lower Court has been upheld maintained in RFA No.27 of 2017 vide judgment & Decree dated 17-10-2022 by the Hon'ble Peshawar High Court Circuit Court, Chitral and the present appeal is filed under section 54 of the Land Acquisition Act 1894.


(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /appellants

