02.04.2020 Due to public holiday on account of COVID-19, the case is adjourned for the same on 25.06.2020 before S.B.

Reader

25.06.2020 Petitioner with counsel and Addl; AG alongwith Mr. Muhammad Naeem, HC for respondents present. Representative of the respondents produced copy of august Supreme Court of Pakistan order dated 02.03.2020, whereby stay has been granted in favour of the respondent-department. Copy handed over to petitioner. As such the petition is adjourned sine-die till disposal of the appeal in the august Supreme Court of Pakistan. Till then record of the instant petition be kept in safe custody.

ANNOUNCED:
25.06.2020

(MIAN MUHAMMAD)
MEMBER

16.01.2020 Petitioner in person. Addl. AG alongwith Sheraz, H.C for the respondents present.

The representative of respondents has produced a copy of memo. dated 18.12.2019, whereby, the Secretary, Home & Tribal Affairs Department Government of Khyber Pakhtunkhwa has been requested to cause the filing of application for early hearing of CPLA pending before the August Supreme Court.

The representative is once again apprised of the contents of last order, however, in view of the memo the respondents are provided with one more opportunity to submit the implementation report positively on or before next date of hearing. In case of their failure punitive action will be initiated against the defaulting official(s).

Adjourned to 24.02.2020 before S.B.

Chairman

24.02.2020 Petitioner alongwith counsel present. Mr. Kabirullah Khattak, Addl. AG alongwith Niaz Muhammad Inspector for the respondents present. Representative of the respondents submitted order dated 18.02.2000, copy whereof is handed over to counsel for the petitioner. To come up for further proceedings/arguments on 02.04.2020 before S.B.

(Hussain Shah)
Member

01.11.2019 Petitioner in person and Addl. AG alongwith Mian Niaz Muhammad, Inspector (Legal) for the respondents present.

The petitioner requests for adjournment in order to engage a counsel for his representation in the matter.

Adjourned to 05.12.2019 before S.B.

Chairman

05.12.2019 Syed Noman Ali Bukhar Advocate has submitted Vakalatnama on behalf of the petitioner and contends that the respondents have not taken any step towards implementation of judgment as yet.

The reply of execution petition, submitted by respondents on previous date, suggests that the CPLA has been preferred before the Apex Court against the judgment passed by the Tribunal. The representative appearing today states that the date of hearing in the CPLA is yet to be fixed.

In the circumstances, the respondents are required to produce any order of Apex Court to the effect of suspending or setting-aside of the judgment under implementation on next date of hearing. In case the relief is not granted to the respondents, the implementation report shall positively be submitted on the date fixed.

Adjourned to 16.01.2020 before S.B.

Chairman

E.P No. 193/2019

08.10.2019 Petitioner in person present. The Execution Petition was fixed for arguments on implementation report for 05.11.2019 but the petitioner submitted application to the effect that his counsel belong to Peshawar and requested that the present execution petition may be fixed at the Principal Seat Peshawar. The request of the petitioner seems genuine. Hence, the present execution petition is fixed at Principal Seat Peshawar. Notices be issued to the respondents accordingly. Case to come up for arguments on implementation report on 01/11/2019 before S.B at Principal Seat Peshawar.

01.11.2019 Petitioner in person and Addl. AG alongwith Mian Niaz Muhammad, Inspector (Legal) for the respondents present.

(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

The petitioner requests for adjournment in order to engage a counsel for his representation in the matter.

Adjourned to 05.12.2019 before S.B.

Chairman

02.07.2019 Petitioner in person present. Mr. Mian Amir Qadir learned Deputy District Attorney alongwith M/S Sheraz H.C and Niaz Muhammad Inspector present. Implementation report not submitted. Representative of the respondent department seeks adjournment. Adjourn. To come up for implementation report/comments on 03.09.2019 before S.B at Camp Court Swat.

Member
Camp Court, Swat.

03.09.2019 Petitioner in person present. Mr. Mian Amir Qadir learned Deputy District Attorney alongwith M/S Banaras Khan Inspector Legal and Sheraz H.C present and submitted implementation report/comments. Learned counsel for the petitioner not available. Adjourn. To come up for arguments on 07.10.2019 before S.B at Camp Court, Swat.

Member
Camp Court, Swat.

07.10.2019 Petitioner in person and Mr. Anwar-ul-Haq, Deputy District Attorney and Mr. Sardar Muhammad, ASI for the respondents present. Learned Deputy District Attorney seeks adjournment. Adjourned to 05.11.2019 for arguments on implementation report before S.B at Camp Court Swat.

(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

Form- A

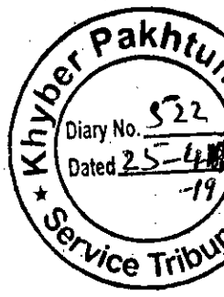
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 193/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	25.4.2019	The execution petition of Mr. Akhtar Ali submitted today by him may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR 25/4/19
2-	29-4-19	This execution petition be put up before touring S. Bench at Swat on 07-05-19 CHAIRMAN
	07.05.2019	No one present on behalf of petitioner. Notice of the present execution petition be issued to the respondents. To come up for implementation report/parawise comments on 02.07.2019 before S.B at Camp Court, Swat. Member Camp Court, Swat.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Implementation no 193 /2019

In **Appeal No 1003/17**

Akhtar Ali Constable No 2394 District, Swat
Petitioner.

Vessus

1. **The Provincial Police Officer, KPK, Peshawar**
2. **The Additional Inspector General of Police Elite Force, Khyber Pakhtunkhwa, Peshawar.**
3. **The Deputy Commandant Elite Force, KPK Peshawar.**

Respondents.

EXECUTION FOR THE IMPLEMENTATION OF JUDGMENT DATED 26/12/2018. IN THE ABOVE SERVICE APPEAL.

Respectfully:

1 That the above noted appeal was pending adjudication in this Honorable Tribunal and was decided vide judgment and order dated 26/12/2018.

2 That vide judgment and order dated 26/12/2018, this Honorable Tribunal while accepting the appeal of the appellant as prayed for . (Copy of the judgment is attached)

3 That the judgment and order of this HonorableTribunal, was duly communicated to the respondent by the applicant for implementation. Since no response was given to his application for the implementation of the judgment, however they are reluctant to implement the same.

4 That instead of implementing the judgment of this HonorableTribunal, the respondents are bent upon to victimize the applicant on one way or the other.

5 That as per the spirit of the judgment and order dated 26/12/2018 this Honourable Tribunal, the Respondents are bound to consider the case of the applicant for all back benefits. However they have not implemented the judgment and order of this Honorable Tribunal in its true letter and spirit so for.

6 That the respondents are legally bound to implement the judgment of this HonorableTribunal in its true letter and sprit without any further delay.

It is, therefore prayed that on acceptance of this application the judgment and order dated 26/12/2018 of this Honourable Tribunal be implemented in its true letter and spirit.

Applicant

Akhtar Ali Constable No 470
(In Person)

AFFIDAVIT;

I Akhtar Ali Constable No, 470 District Swat, do hereby solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 1003/2017

Date of Institution ... 11.09.2017

Date of Decision ... 26.12.2018

Akhtar Ali Ex-Constable No. 470 District Police Office, Swat ... (Appellant)

VERSUS

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

Present.

SYED NUMAN ALI BUKHARI,
Advocate. ... For appellant

MR. MUHAMMAD JAN,
Deputy District Attorney ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER(E)

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Instant judgment is proposed to decide also Appeals No. 1004/2017 (Mubarak Zeb Versus the Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and others) and No. 1005/2017 (Abdullah Shah Versus the Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and others) as identical facts and similar prayers are involved in all the appeals.

2. The facts as gatherable from memoranda of appeals are that during their service as constables in the Police Force the appellants were charge sheeted for

involvement in a criminal offence recorded through FIR No. 324 dated 06.06.2012. Consequently, the appellants were dismissed from service vide order dated 10.08.2012. The appellants ultimately filed Service Appeals No. 1145/2012, 1146/2012 and 1147/2012 before this Tribunal which were decided on 02.01.2017 in the following manners:-

> *"In view of the above we are constrained to accept the present appeals, set aside the impugned original as well as final orders and reinstate the appellants in service with the directions to the respondents to conduct denovo enquiry against the appellants by affording them opportunity of participation in the enquiry including cross-examining witnesses so produced during the enquiry. The said enquiry shall be conducted and concluded within a period of 3 months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room."*

3. In pursuance to the above decision the appellants were provisionally reinstated into service vide order dated 25.01.2017 and denovo enquiry against them was initiated. Upon completion of denovo proceedings the appellants were exonerated from the charges levelled against them through order dated 19.04.2017. However, the intervening period was ordered to be treated as leave of the kind due. Aggrieved from the part of order not allowing back benefits to the appellants, they submitted representation/appeal which was not responded to, hence the appeals in hand.

4. We have heard learned counsel for the appellants and learned DDA on behalf of the respondents and have also gone through the available record.

5. It was mainly contended by learned counsel for the appellants that upon their exoneration and reinstatement into service the appellants were entitled to back

benefits which were dis-allowed without assigning any reason. He relied on judgments reported as 2007-SCMR-855 and 2015-PLC(C.S)366.

On the other hand, it was contended that in the first round of appeals before this Tribunal the back benefits were not mentioned in the concluding part of judgment dated 02.01.2017, therefore, it could be presumed that the same were impliedly denied to the appellants. He relied on a judgment handed down by this Tribunal in Appeal No. 218/2016 and stated that as the appellants did not perform any duty for the period interregnum, therefore, they were not entitled to the relief. He also stated that it was the duty of appellants to have proved that they were not employed during the days they were out of police service.

6. It shall be useful to refer to the report of enquiry dated 22.3.2017, which was conducted after remand of the matter by this Tribunal to the respondents. It was categorically noted in the conclusion thereof that all the appellants were acquitted vide order dated 25.10.2012 on the basis of compromise, therefore, they were entitled for reinstatement in view of judgments reported as PLJ 2011-Supreme Court-280, 2015-SCMR-77, 2010-SCMR-1706, 2007-SCMR-855 and 1998-SCMR-1993. As regards the extension of back benefits to the accused/appellants, it was stated that there was nothing on record that they were gainfully employed during the period they remained out of service. Recommendations for back benefits were, therefore, also made in the report. On the other hand, it was recorded in the impugned order dated 19.04.2017 passed by respondent No. 3 that after thrashing all the relevant material the alleged charges levelled against the appellants could not be proved/established, however, the period they remained out of service was

treated as leave of the kind due. It is pertinent that no ground of difference of opinion was noted in the impugned order.

7. It has been laid down through judgments of Apex Courts that the grant of back benefits to an employee, who was reinstated by a Court/Tribunal or the department, was a rule and denial of such benefit was an exception. The appellants were held back from the performance of their duty with the respondent department owing to the departmental proceedings against them which was a circumstance beyond their control. The said proceedings were ultimately decided in favour of the appellants, therefore, should have entailed the extension of back benefits in their favour.

8. In view of the above we allow the appeals in hand as prayed for in the memoranda. The appellants shall, however, furnish affidavits regarding the fact that they did not remain gainfully employed during the period from 10.08.2012 to 19.4.2017. An undertaking shall also be recorded in the affidavit to the effect that if proved otherwise, they shall be liable for return of back benefits received in pursuance to the instant judgment.

Parties are left to bear their respective costs. File be consigned to the record room.

(HAMID FAROOQ DURRANI)
CHAIRMAN

(AHMAD HASSAN)
MEMBER(E)

ANNOUNCED
26.12.2018

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT SWAT

EP-No 193/19

Akhtar Ali VS PPO

Subject: **APPLICATION FOR TRANSFER OF THE EXECUTION PETITION TO THE PRINCIPAL SET AT PESHAWAR**

Sir,

That the instant execution is pending before this tribunal in which the next date of hearing is 5-11-2019.

That the counsel of the petition belong to Peshawar and practices too at Peshawar.

That the petition is constable in Police Department, and belong to poor family, therefor can not afford the travel charges of his counsel for each and every date of hearing.

It is therefore requested that the said execution may kindly be transfer to Peshawar.

Name: Akhtar Ali

Dated: 08-10-2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Execution No 193/2019

In Appeal No 1003/17

Akhtar Ali Constable No 2394 District, Swat .....**Petitioner**

VERSUS

1) The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

2) The Additional Inspector General of Police Elite Force, Khyber Pakhtunkhwa, Peshawar.

3) The Deputy Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.....**Respondents.**

Respectfully Sheweth

1. Admittedly, that the Honorable Service Tribunal vide Judgment dated 26-12-2018 in appeal No 1003/2017 filed by the appellant, the operating para of which is reproduced as below:-
   "In view of the above we allow the appeals in hand as prayed for the memoranda. The appellants shall, however, furnish affidavits regarding the fact that they did not remain gainfully employed during the period from 10.08.2012 to 19.04.2017. An undertaking shall also be recorded in the affidavit to the effect that if proved otherwise, they shall be liable for return of back benefits received in pursuance to the instant Judgment".
   However the Parent Judgment dated 02/01/2017 was challenged by the answering respondent vide CPLA No. 157/P-2019 in the Apex Supreme court of Pakistan which is pending sub-judice.
2. Pertain to record. However CPLA has been lodged in the Apex supreme court of Pakistan against the parent Judgment Dated 26.12.2018 in service appeal No.1003/2017.
3. As explained above at Para No.01.
4. This para is incorrect and misleading one. The appellant has been treated in the light of Judgment of this Honorable Service Tribunal.
5. Incorrect. The respondents even can not think / dare not to implement the judgment dated 26.12.2018 of this Honorable tribunal. Furthermore CPLA has already been lodged against the Parent judgment dated 26.12.2018 which is pending sub-judice before the supreme Court of Pakistan.
6. The judgment of this honorable tribunal dated 26/12/2018 will be followed in letter & spirit in the light of CPLA lodged as explained above.

قیمت 50 روپے

33887

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: سلیمان علی خان

بارکونسل/ایسوسی ایشن نمبر:

رابطہ نمبر:

بعدالت جناب: KPK Service Tribunal Peshawar

منجانب:

Akhtar Ali

بنام

Police Dept

دعویٰ: Executive Police

علت نمبر: 193/19

مورخہ

جرم:

تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ

آن مقام [illegible] کیلئے سلیمان علی خان کو وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو

راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق

زرِ این پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز

دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی

کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب

مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا

دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے

باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم:

PESHAWAR BAR ASSOCIATION

گواہ شد

العبد العبد

مقام _____ کے لیے منظور ہے۔

Attested & Accepted

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 6419 /Legal dated Peshawar, the 18/12/2019.

To: - The Secretary
Government of Khyber Pakhtunkhwa,
Home & TAs Department, Peshawar.

Attention:- SO (Court)

Subject:- **FILING OF APPLICATION FOR EARLY HEARING BEFORE THE HONORABLE SUPREME COURT OF PAKISTAN IN CPLA AND WP NO. 1003/17 TITLED AKHTAR ALI VS PPO & OTHERS.**

Memo:-

It is submitted that the Ex-Constable Akhtar Ali No. 470 District Police Officer, Swat has filed Service Appeal No. 1003/2017 against the respondents i.e Provincial Police officer, Khyber Pakhtunkhwa Peshawar, the Additional Inspector General of Police Elite Force Khyber Pakhtunkhwa Peshawar and Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar wherein he challenged the order dated 19.04.2017 passed by the above respondents.

Departmental representative of Elite Force Khyber Pakhtunkhwa Peshawar has contested and pursued the above appeal in Khyber Pakhtunkhwa Service Tribunal on behalf of respondents through Deputy District Attorney. Vide judgment dated 26.12.2018 of Khyber Pakhtunkhwa Service Tribunal Peshawar the appeal was decided in favor of appellant.

In view of the above we allow the appeals in hand as prayed for in the memoranda. The appellants shall, however. Furnish affidavits regarding the fact that they did not remain gainfully employed during the period from 10.08.2012 to 19.04.2017. An undertaking shall also be recorded in the affidavit to the effect that if proved otherwise, they shall be liable for return of back benefits received in pursuance to the instant judgments. CPLA has already been lodged before Supreme Court of Pakistan against the Judgment.

It is therefore, requested that Law Department may be approached for onward approaching Advocate on record of Supreme Court at Peshawar for lodging early hearing application of the CPLA and for suspension of the impugned judgment.

SP COURT & LITIGATION
CPO, Peshawar.
16.12.2019

No 6420 /Legal

Copy of above is forwarded to the Commandant Elite Force Khyber Pakhtunkhwa Peshawar with the reference your office letter No.18929/EF dated 12.12.2019.

SP COURT & LITIGATION
CPO, Peshawar.
16.12.2019

ELITE
KHYBER PAKHTUNKHWA, POLICE

Office of the Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 2655 – 61 /EF. Dated 18 / 02 /2020.

ORDER

In compliance with Judgment of Khyber Pakhtunkhwa Services Tribunal, Peshawar order sheet dated 05.12.2019 and AIG/legal opinion vide letter No. 829/Legal, dated 07.02.2020 the following officials are hereby granted full back benefits conditionally and provisionally subject to the outcome of CPLA for the period they requested:-

1. Const: Akhtar Ali No. 2394
2. Const: Mubarak Zeb No. 2420
3. Const: Abdullah Shah No. 4047

However, they will be signing an affidavit an if outcome of CPLA comes in favor of Police Department then they will deposit the same back benefits to the Department.

(ATTIQ ULLAH WAZIR) P.S.P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 1 /EF.

Copy of above is forward for information and necessary action to the:-

1. The Chairman, Khyber Pakhtunkhwa, Services Tribunal vide judgment dated quoted above.
2. AIG/Legal, CPO, Peshawar w/r to his letter under reference.
3. Superintendent of Police, HQrs: Elite Force, Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar with the directions to sign an affidavit with the above named officials accordingly.
5. S.R.C/FMC/ OHC, Elite Force Khyber Pakhtunkhwa Peshawar.

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

C.Ps.No.157-159-P of 2019

[Against the judgment dated 26.12.2018, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Appeals No.1003-1005 of 2017]

Provincial Police Officer KPK Peshawar & others. *(in all cases)*

...Petitioner (s)

Versus

Akhter Ali *(in CP No.157-P)*
Muharak Zeb *(in CP No.158-P)*
Abdullah Shah. *(in CP No.159-P)*
...Respondent(s)

For the Petitioner (s) (in all cases) : Barrister Qasim Wadood, Addl.A.G. KP

For the Respondent(s) : N.R.

Date of Hearing : 02.03.2020

ORDER

Gulzar Ahmed, CJ:- Learned Additional Advocate General, KP contends that the respondents were implicated in a criminal case being FIR No.324 dated 06.06.2012 pursuant to which they were dismissed from service on 10.08.2012. The respondents challenged such order of dismissal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar **(the Tribunal)**, who vide its order dated 02.01.2017, directed holding of a *de novo* enquiry. The *de novo* enquiry was conducted and thereafter, the respondents were exonerated from the charge vide order dated 19.04.2017, but the intervening period was ordered to be treated as leave of the kind due. Such last mentioned order was challenged by the respondents by filing of service appeals before the Tribunal

ATTESTED

claiming the back benefits. The Tribunal, vide impugned judgment/orders dated 26.12.2018, has allowed the service appeals and on furnishing of affidavits, directed the petitioner to pay the back benefits to the respondents.

2. Learned AAG has relied upon the Provision of Section 17 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, to contend that granting of back benefits is not a mandatory requirement, rather, it is upon the competent authority to make a decision on it and once the competent authority, for cogent reason, has not allowed the same, the Tribunal was not justified in granting the same. The learned AAG has further relied upon the order dated 13.11.2019, passed by this Court in Civil Petitions No.1935-1938/2018 in which leave to appeal has already been granted.

3. In view of above, leave to appeal is also granted in the present case. Office is directed to fix all the cases, involving similar question, before a larger Bench of this Court, as constituted by the Hon'ble Chief Justice, expeditiously, preferably immediately after three months.

C.M.As No.354-356-P/19

In the meanwhile, operation of the impugned judgment is suspended.

Sd/- CJ

Sd/- J

Sd/- J

Certified to be True Copy

E SUPREM