

04.02.2020

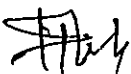
Clerk to counsel for the petitioner present. Addl: AG alongwith Mr. Akhtar Said, ASI (Legal) for respondents present. Representative of the respondents submitted^a copy of letter dated 27.01.2020 addressed to the DPO, Dir Lower for provisionally reinstatement of the petitioner, which is placed on file. He requested for time to submit implementation report on the next date of hearing. Adjourned. To come up for further proceedings on 18.03.2020 before S.B.


Member

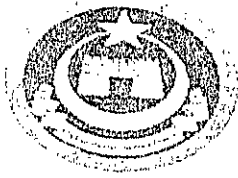
18.03.2020

Learned counsel for the petitioner present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mr. Nisar Ahmed, ASI (Legal) for respondents present.

Representative of the respondents submitted order dated 18.02.2020, whereby the petitioner has been reinstated in service which is placed on file. Learned counsel for the petitioner submitted before the court that his grievances have been redressed and does not want to further pursue his case. Since grievances of the petitioner have been redressed, therefore, the instant execution petition is hereby disposed of being executed. File be consigned to the record room.


(Hussain Shah)
Member (E)

Announced
18.03.2020



ORDER OF RE- INSTATEMENT INTO SERVICE

As per direction of CPO Peshawar Memo: No.645/Legal, dated 27-01-2020, and Judgment dated 01-07-2019 of Service Tribunal, Khyber Pakhtunkhwa, Camp Court Swat in Service Appeal No.425/2016, the Penalty of Ex-Constable Anwar Salam No.683 of dismissal from service is hereby converted /modified into stoppage of three annual increments for three years and the intervening period as well period of absence is treated as leave without pay, provisionally and conditionally subject to the outcome of CPLA (in Execution Petition No.260/2018).

On re-instatement in to service the pay of Constable Anwar Salam is hereby re-fixed @ **Rs: 12210/-** PM in revised BPS-07, with effect (i.e from the date of his rejoining into service). He is allotted new Constabulary No. 128.

1	Pay on 01-12-2013 in BPS-05(5400-260-13200) @	Rs: 6180/-PM.
2	Dismissed from service on dated 18-03-2015, and stopped his annual increment vide this office OB No. 1081, dated 16-10-2014 therefore not entitled for annual increment of 01-12-2014 and pay fixed @	Rs: 6180/-PM.
3	Pay Revised in BPS-05(6985-340-17185) @ on 01-07-2015 and pay fixed @	Rs: 8005/-PM.
4	Pay Revised in BPS-05(8590-420-21190) on 01-07-2016 and pay fixed @	Rs: 9850/-PM.
5	Pay Revised in BPS-05(10260-500-25260) on 01-07-2017 and pay fixed @	Rs: 11760/-PM.
6	Scale Up Graded From BPS-05 to BPS-07 on 01-03-2018 and Pay fixed @	Rs: 12210/-PM.

OB No. 111

Dated. 18-02 /2020

Maghd
District Police Officer,
Dir Lower.

18-02-2020

No. 2862-07/EC, Dated Timergara the, 18-02 /2020.

Copies for information and necessary action to :-

1. Regional Police Officer Malakand at Saidu Sharif swat, please.
2. AIG Legal Khyber Pakhtunkhwa Peshawar with reference to his Office Memo: No. 645/ Legal, dated 22-01-2019, please.
3. District Accounts Officer, Dir Lower.
4. Inspector legal, Dir Lower.
5. Pay Officer Local Office.
6. OASI Local Office, for further necessary action.

District Police Officer
Dir Lower



ORDER OF RE- INSTATEMENT INTO SERVICE

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OB No. 111
Dated. 18-02 /2020

Anwar Salam
District Police Officer,
Dir Lower.

17-02-2020

No. 2502-07/EC, Dated Timergara the, 18-02 /2020.

Copies for information and necessary action to :-

1. Regional Police Officer Malakand at Saidu Sharif swat, please.
2. AIG Legal Khyber Pakhtunkhwa Peshawar with reference to his Office Memo: No. 645/ Legal, dated 22-01-2019, please.
3. District Accounts Officer, Dir Lower.
4. Inspector legal, Dir Lower.
5. Pay Officer Local Office.
6. OASI Local Office, for further necessary action.

District Police Officer
Dir Lower

08.11.2019

Learned counsel for the petitioner present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondent present. None present on behalf of the respondent department, therefore, notice be issued to the respondent department to direct the representative to attend the court and submitted implementation report on the next date of hearing.

Adjourned to 18.12.2019 before S.B


(Hussain Shah)
Member

18.12.2019

Counsel for the appellant and Addl. AG alongwith Akhtar Naveed, ASI for the respondents present.

Representative of respondents states that an application for early hearing of CPLA against the judgment under implementation has been moved before the Apex Court. However, no date of hearing has yet been fixed.

The respondents are required to produce on next date any order of Apex Court suspending the operation of judgment under implementation or its setting aside altogether. Else, the implementation report shall be submitted.


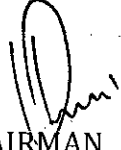

Adjourned to 04.02.2020 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 343 /2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.09.2019	<p>The execution petition of Mr. Anwar Islam submitted today by Roeeda 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-	18/09/19.	<p>This execution petition be put up before S. Bench on <u>11/10/19.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	11.10.2019	<p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents for submission of implementation report on 08.11.2019 before S.B.</p> <p style="text-align: right;">Chairman </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IMPLEMENTATION PETITION No. 343 /2019
IN
APPEAL NO.425/2016

ANWAR ISLAM

V/S

POLICE DEPARTMENT

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of rejoinder	1- 2.
2.	Affidavit	3.
3.	Judgment	A	4- 7

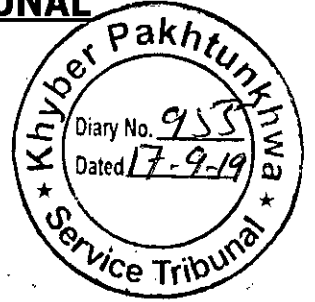
PETITIONER

THROUGH: 
SHAHZULLAH YOUSAFZAI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

IMPLEMENTATION PETITION No. 343 /2019

IN APPEAL No. 425/2016



Mr. Anwar Salam Constable No.683 District Police Timergara, R/O
Village Malakand Tehsile Timergara, District Dir Lower.

.....**Petitioner**

VERSUS

- 1- The District Police Officer, At Timergara Dir Lower .
- 2- The Regional Police Officer Malakand, At Saidu Sharife Swat.
- 3- The Inspector General Of Police Khyber Pukhtunkhwa, At Peshawar.

IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENT DEPARTMENT TO IMPLEMENT THE
JUDGMENT DATED 01-07-2019 IN APPEAL
NO.425/2019 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the above mentioned appeal has been decided in favour of petitioner by this august Service Tribunal vide judgment dated 01-07-2019. Copy of the judgment dated 01/07/2019 is attached as annexure.....**A.**
- 2- That the above mentioned appeal was allowed by this honorable tribunal with observation that" **the appeal is partially accepted, the appellant is reinstated in service and the penalty of dismissal from service is converted/modified into stoppage of three annual increments for three year. The period of absence and intervening period may be treated as leave without pay**".
- 3- That Petitioner after obtaining attested copy of the judgment dated 01.07.2019 submitted before the respondent no 1 for implementation, but the respondents are not willing to implement the judgment passed by this august Service Tribunal.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the above mentioned judgment passed by this august Service Tribunal in letter and spirit.

Dated: 17.09.2019.

PETITIONER


Anwar salam

THROUGH:


SHAHZULLAH YOUSAFZAI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

IMPLEMENTATION PETITION No. _____/2019

IN

APPEAL NO.425/2016

ANWAR ISLAM

V/S

POLICE DEPARTMENT

AFFIDAVIT

I, **SHAHZULLAH YOUSAFI** ADVOCATE HIGH COURT PESHAWAR, do hereby solemnly affirm that the contents of this **Implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


Shahzullah Yousafzai
Advocate High Court, Peshawar.

①

(4)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

In Re:
Service Appeal No. 425 /2016

D.W.P. Peshawar
Service Tribunal
Library No. 275
Date 28-3-2016

Anwar Salam Constable No.683;
Police Station, Timergara
R/o Village, Malakand,
Near Degree College, Timergara
District Dir (lower).....



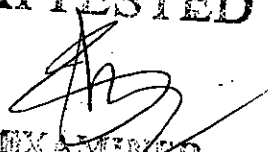
Appellant

V E R S U S

1. District Police Officer, at Timergara District Dir Lower
2. Regional Police Officer Malakand at Saidu Sharif Swat
3. Additional Inspector General of Police, Establishment, Central Police, Peshawar
4. D.I.G Police
Khyber Pakhtunkhwa at Peshawar
5. I.G.P Police
Khyber Pakhtunkhwa at Peshawar.....**Respondents**

**SERVICE APPEAL U/S 4 OF THE SERVICE
TRIBUNAL ACT 1974 FOR SETTING ASIDE
BOTH THE ORDERS OF DISMISSAL FROM
SERVICE OF THE APPELLANT BY THE
RESPONDENT NO.1 AND 2 AND TO
RESTORE/ ^{REINSTATE} THE APPELLANT ON HIS POST
WITH ALL BACK BENEFITS.**

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

28/3/16

re-submitted to-day
and filed:


Registrar

(5)

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

Service Appeal No.425/2016

Date of Institution ... 28.03.2016

Date of Decision ... 01.07.2019



Anwar Salam. Constable No. 683. Police Station, Timergara. R/O Village, Malakand. Near Degree College. Timergara. District. Dir (Lower).

(Appellant)

VERSUS

District Police Officer. at Timergara District Dir Lower and four others.

(Respondents)

MR. IMDAD ULLAH.
Advocate

For appellant.

MIAN AMIR QADAR.
District Attorney

For respondents.

MR. AHMAD HASSAN.
MR. MUHAMMAD HAMID MUGHAL

MEMBER(Executive)
MEMBER(Judicial)

ATTESTED
[Signature]
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS.

1. Learned counsel for the appellant argued that he was inducted as Constable in the Police Department in District Lower Dir in 2010 and performed duty regularly. Due to some compelling circumstances, he submitted an application for grant of leave which was not entertained by the respondents. He joined duty and again submitted an application for grant of two months leave to resolve personal issues, which remained unanswered. He was subjected to departmental enquiry and thereafter major penalty of dismissal from service was imposed on him vide impugned order dated 18.03.2015. Feeling aggrieved, he filed departmental appeal on 30.03.2015 which was dismissed vide order dated 26.06.2015. Thereafter he filed review petition under Rule 11-A of Police Rules 1975 but

CB

was turned down vide order dated 08.02.2016 followed by the present service appeal. Proper enquiry was not conducted and opportunity of defense and fair trial were denied to the appellant. Record of charge sheet/statement of allegations, show cause notice and enquiry report was not available on the case file nor produced during the course of hearing. Furthermore, penalty awarded to the appellant was not in accordance with the quantum of guilt and quite harsh.

3. Learned District Attorney argued that on account of willful absence from duty which constituted mis-conduct, disciplinary proceedings were initiated against the appellant and finally major penalty of dismissal from service was awarded to him. Proper application was never submitted for grant of leave to the competent authority alongwith medical prescriptions. He was treated in accordance with law and rules.

ATTESTED

CONCLUSION.

CHANDLER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4. Allegations of willful absence from duty w.e.f 11.11.2014 to 17.11.2014 (6 days) and 08.12.2014 to 03.02.2015 (fifty seven days) had been leveled against the appellant. Total absence period comes to sixty three days. As it constituted serious misconduct, therefore, disciplinary proceedings were conducted and finally major penalty of dismissal from service was awarded to him vide impugned order dated 18.03.2015. It is pointed out that the record of charge sheet and statement of allegations was neither available on case file nor any documentary evidence was provided by the respondents to substantiate that the same was served on the appellant. It transpired that disciplinary proceedings were conducted at the back of the appellant. Moreover, before imposing penalty, show cause notice was not served on the appellant. It tantamount to serious illegality and was a sufficient ground to render the subsequent proceedings as illegal and unlawful. To cut the long story short, it appeared that opportunity of defense and fair trial to the appellant were denied, rather condemned unheard.

5. It is worth mentioning that in departmental appeal preferred by the appellant ~~competent~~ cogent reasons for absence from duty were mentioned and the competent authority was required to properly scrutinize/examine it and thereafter, appropriate order could be passed. However, the same was dismissed through a stereotype order. Even review petition under Rule-11-A of Police Rules 1975 was turned down on the above grounds which were against the rules/invoque procedure.

6. Perusal of record would further reveal that punishment awarded to the appellant does not commensurate with the charge leveled against him. Penalty awarded to him appeared to be very harsh. This Tribunal in numerous cases of identical nature granted relief to the petitioners by modifying the penalty awarded to them. The present case squarely falls in the ambit of cases referred to above and strong justification is available for modifying the penalty. The principle of consistency also demands that he should be treated in the similar manner.

7. As a sequel to above, the appeal is partially accepted, the appellant is reinstated in service and the penalty of dismissal from service is converted/modified into stoppage of three annual increments for three years. The period of absence and intervening period may be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.




(MUHAMMAD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member
Camp court Swat

ANNOUNCED
01.07.2019

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

Date of Presentation of Application 24-7-18
Number of Words 1600
Copying Fee 20
Urgent 4
Total 24
Name of Copyist [Signature]
Date of Completion of Copy 24-7-18
Date of Delivery of Copy 24-7-18

[Signature]

قیمت
50 روپے

26628



ایڈوکیٹ: شہزاد

بار کونسل/ ایسوسی ایشن نمبر 4937-14-14-14

رابطہ نمبر: 8578851-0307

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

Kp Service Tribunal

بعدالت جناب:

مخانب: petitioner	دعویٰ: implementation petition
الفر سلام بنام پولیس ڈیپارٹمنٹ	علت نمبر: مورخہ: جرم: تھانہ:

باعث تحریر آنکہ

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

آن مقام میاں کیلئے مشاہد زوالاڈ ریسنسٹری 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 و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: 16/09/2019

الع بد گواہ شد الع بد

مقام میاں کے لیے منظور ہے۔

Accepted
by Shohzullah Younsai

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

الذات السلام
بند
بند

806
28/01/20

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

No. 645 /Legal dated Peshawar, the 27/01 /2020.

To: - The District Police Officer,
Dir Lower.

Subject: - EXECUTION PETITION NO. 343/2019 IN SERVICE APPEAL NO. 425/2016 TITLED EX-CONSTABLE ANWAR SALAM NO. 683 VS DISTRICT POLICE OFFICER, DIR LOWER.

Memo:-

Please refer to your office letter No. 136/LB dated 02.01.2020 on the subject cited above.

The Competent Authority has approved to reinstate appellant Constable Anwar Salam Provisionally and conditionally subject to outcome of CPLA.

[Signature]
AIG/Legal
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
23.01.2020

Inspector Legal
EC
→

District Police Officer
Dir Lower at Timargara

28/1/2020

E.C
Please issue conditional
provisional reinstatement
order.

[Signature]
insp. I
29-01-2020