

22.12.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned AAG states that CPLA has been filed against the judgment under implementation. If the CPLA has been filed and the judgment has not been suspended, the respondents are under obligation to implement the judgment, subject to decision of CPLA by the august Supreme Court of Pakistan and on production of affidavit by the petitioner to the effect that in case the judgment under execution is set aside by the august Supreme Court of Pakistan, he shall be liable to refund the benefits received on strength of conditional order. Adjourned to 27.01.2022 before S.B.

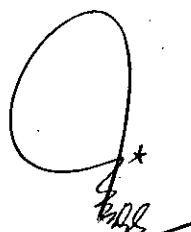
  
Chairman

27.01.2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Respondent-department produced office order dated 20.01.2022 whereby Service Tribunal's judgement dated 08.09.2021 has been implemented and the petitioner conditionally reinstated in service with intervening period treated as leave of the kind, subject to the outcome of CPLA. As such the instant execution petition stands disposed of in the above manner. File be consigned to the record room.

Announced:  
27.01.2022




  
(Mian Muhammad)  
Member(E)

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 220 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.10.2021	<p>The execution petition of Mr. Asif Siraj 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> <p>This execution petition be put up before S. Bench on <u>12/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-	12.11.2021	<p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents for the date fixed. To come up for implementation report on 22.12.2021 before S.B.</p> <p style="text-align: right;"> Chairman</p>

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. 220 /2021

In

Service Appeal No: 317/2017

Asif Siraj

**VERSUS**

The Provincial Police Officer KPK Office at CPO

Peshawar and Others

**INDEX**

S#	Description of Documents	Annex	Pages
1.	Execution Petition		1-3
2.	Affidavit.		4
3.	Addresses of Parties		5
4.	Copy of Judgment	"A"	6 to 11
5.	Wakalat Nama.		

Dated: 11/10/2021



Petitioner

Through



Roeda Khan  
Advocate, High Court  
Peshawar

(1)

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. 220/2021

In

Service Appeal No: 317/2017



Asif Siraj S/o Sirajul Haq, Constable/Photographer Police Department, Peshawar, R/o Karimpura Bazar, Street No. Agah Safee House No. 1999 Illaqa PS. Gulfat Hussain Shaheed, Hashtnaghri Peshawar City.

-----Appellant

**VERSUS**

1. The Provincial Police Officer Khyber Pakhtunkhwa Office at CPO Peshawar.
2. SSP Head Quarter, Peshawar, Office Police Lines Peshawar.
3. SP Head Quarter Peshawar.
4. Capital City Police Officer, Peshawar office at Police Lines Peshawar.
5. Deputy Superintendant of Police HQ, Peshawar.

-----*(Respondents)*.

**EXECUTION PETITION**  
**FOR IMPLEMENTATION**  
**OF THE JUDGMENT OF**  
**THIS HON'BLE TRIBUNAL**  
**IN APPEAL No. 317/2017**  
**DECIDED ON 08/09/2021**

**Respectfully Sheweth,**

1. That the above mention appeal was decided  
by this Hon'ble Tribunal vide Judgment

(2)

dated 08/09/2021. (Copy of the judgment is annexed as annexure "A").

2. That the Petitioner after getting of the attested copy of same approached the Respondent several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.

3. That the Petitioner has no other option but to file the instant petition for implementation of the judgment of this Hon'ble Tribunal.

4. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.


5. That the respondent department is bound to obey the order of this Hon'ble Tribunal by implementing the said judgment.

3

*It is, therefore, requested that on acceptance of this petition, the Respondents may directed to implement the judgment of this Hon'ble Tribunal.*

Dated: 11/10/2021

  
Petitioner

Through 

Roeeda Khan  
Advocate, High Court  
Peshawar

47

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. \_\_\_\_\_/2021

In

Service Appeal No: 317/2017

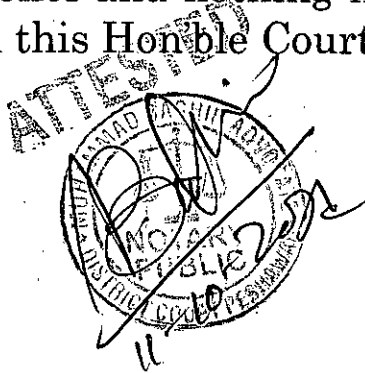
Asif Siraj

**VERSUS**

The Provincial Police Officer KPK Office at CPO  
Peshawar and Others

**AFFIDAVIT:-**

I, Asif Siraj S/o Sirajul Haq,  
Constable/Photographer Police Department,  
Peshawar, R/o Karimpura Bazar, Street No. Agah Safee  
House No. 1999 Illaqa PS. Gulfat Hussain Shaheed,  
Hashtnaghri Peshawar City, do hereby solemnly affirm  
and declare on oath that all the contents of above  
application are true and correct to the best of my  
knowledge and belief and nothing has been misstated  
or concealed from this Hon'ble Court.



(A)  
Deponent

(5)

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL PESHAWAR**

Execution petition No. \_\_\_\_\_/2021

In

Service Appeal No: 317/2017

Asif Siraj

**VERSUS**

The Provincial Police Officer, KPK Office at CPO  
Peshawar and Others

**ADDRESSES OF PARTIES**

**PETITIONER**

Asif Siraj S/o Sirajul Haq, Constable/  
Photographer Police Department, Peshawar, R/o  
Karimpura Bazar, Street No. Agah Safee House  
No. 1999 Illaqa PS. Gulfat Hussain Shaheed,  
Hashtnaghri Peshawar City.

**RESPONDENTS**

1. The Provincial Police Officer Khyber Pakhtunkhwa Office at CPO Peshawar.
2. SSP Head Quarter, Peshawar, Office Police Lines Peshawar.
3. SP Head Quarter Peshawar.
4. Capital City Police Officer, Peshawar office at Police Lines Peshawar.
5. Deputy Superintendant of Police HQ, Peshawar.

Dated: 11/10/2021

(A)

Petitioner

Through

(P)

Rozeeda Khan

Advocate, High Court

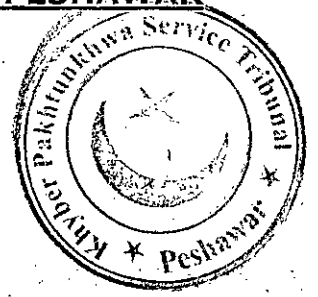
Peshawar



(G) (A)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 317/2017



Date of Institution ... 04.04.2017

Date of Decision ... 08.09.2021

Asif Siraj, son of Sirajul Haq, Ex-Constable/Photographer No.3559, Police Department, Peshawar, resident of Karimpura Bazar, Street Agha Shafee House No. 1999 Illaqa PS. Gulfat Hussain Shaheed, Hashtnagri, Peshawar City.

(Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and four others.

(Respondents)

ROEEDA KHAN,  
Advocate

For Appellant

USMAN GHANI,  
District Attorney

For Respondents

SALAH-UD-DIN  
ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case are that the appellant was appointed as Photographer constable on 21-07-2008. During the course of his service, he was proceeded against on the charges of his connections with criminals, but was removed from service on the charges of absence vide order dated 30-11-2010 and his absence period i.e. 2 months and 14 days were treated as without pay. The appellant filed departmental appeal dated 02-12-2010, which was

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

71

not responded. The appellant filed revision petition dated 22-09-2016, which was rejected on 21-02-2017 and communicated to the appellant on 21-03-2017, hence the instant service appeal instituted on 04-04-2017 with prayers that impugned orders dated 30-11-2017 and 21-02-2017 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 the impugned orders of the respondents are illegal, against the law and natural justice, hence the same are untenable in the eye of law and are liable to be set aside; that the allegations leveled against the appellant in the charge sheet are different from the one in the show cause notice and the impugned order of removal from service; that in the charge sheet it has been alleged that the appellant was having connections with criminals, narcotics sellers and gambler dens as well as showing his involvement in other illegal activities, but none of the allegations could be proved against the appellant, so the respondents changed the strategy and leveled the allegations of absence from duty and upon allegations of absence he was removed from service, which is illegal; that the appellant never absented from his lawful duty, but as is evident from record that on 07-08-2010, he was restrained by respondents from duty till the final disposal of inquiry proceedings against him and the same period was treated as absence from duty; that as per Section 5(4) of the Removal from Service (Special Powers) Ordinance, 2000, the competent authority was required to record reasons for dispensing with, of inquiry, which however were not recorded in case of the appellant; that for imposing major penalty, a regular inquiry must have been held to determine factual basis of such allegations, which were required to be proved in accordance with law, which however was not done in case of the appellant; that Removal from Service (Special Powers) Ordinance, 2000 was in field, whereas the appellant was proceeded against under the Khyber Pakhtunkhwa Government

**ATTESTED**

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*[Signature]*

(8)

Servants' (Efficiency & Discipline) Rules, 1973, which is illegal and without lawful authority and the impugned order is liable to be struck down on this score alone; that the whole proceedings are without authority and Coram non-judice; that when the basic order is without lawful authority and void ab-initio, then the entire superstructure raised thereon falls on the ground automatically. Reliance is placed on PLD 2008 Supreme Court 663 and PLD 2015 Supreme Court 380. On the question of limitation, the learned counsel added that no limitation shall run against such orders, which are void being Coram non-judice; that absence period of the appellant was treated as leave without pay, hence the very ground, on the basis of which the appellant was proceeded against has vanished away. Reliance was placed on 2006 SCMR 434.

03. Learned District Attorney appearing on behalf of respondents has contended that the instant appeal is badly time barred as his revision petition was rejected on the ground of limitation; that no plausible explanation was offered for condonation of delay; that the appellant was proceeded against departmentally on sensitive charges of having connections with criminals, narcotics sellers, which had led to his removal from service by the competent authority; that the appellant was proceeded against under the relevant law and was rightly penalized for the charges leveled against him.

04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant was proceeded against under two sets of rules at a time, i.e. Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973 and Removal from Service (Special Powers) Ordinance, 2000. Charge sheet/statement of allegations dated 05-08-2010 was served upon the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency &

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*(Signature)*

9

Discipline) Rules, 1973 with the charges of his connections with criminals, narcotics sellers and gambler dens as well as shown his involvement in other illegal activities and to this effect, DSP Civil Secretariat was appointed as Inquiry officer. The appellant vide his reply dated 16-08-2010 had denied all such allegations, rather he had contended that he was put behind the bar for 19 hours and was restrained from joining duty. Nothing is available on record to show that any such inquiry was conducted by the respondents, rather the show cause notice dated 16-11-2010 clearly shows that inquiry was dispensed with, but without recording any reason, thus the respondents skipped a mandatory step in the disciplinary proceedings, therefore action of authority in awarding major penalty of removal from service, in circumstances, was in sheer violation of principles of natural justice. Reliance is placed on 2011 PLC (CS) 387. It was astonishing to note that the charges in show cause notice were altogether different from the charges leveled in the charge sheet/statement of allegations. The show cause notice was served under Removal from Service (Special Powers) Ordinance, 2000, on the charges of absence from duty, which was responded by the appellant, who vehemently denied the charges of absence, rather he had contended that he was restrained from performing his duty, hence in circumstances how he could perform duty, when the respondents did not allow him to join his duty. We have noted that during the period in question, Removal from Service (Special Powers) Ordinance, 2000 was in field, but proceedings against the appellant were initiated under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 1973, which is illegal. The respondents however corrected their course and issued the impugned order of removal from service under Removal from Service (Special Powers) Ordinance, 2000, which clearly shows malafide on part of the respondents and which made the whole proceedings dubious, rendering the same as nullity in the eye of law. We have found another

**ATTESTED**

Secretary  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

*[Handwritten signature]*

irregularity, that charge sheet/statement of allegations contain serious allegation of his connections with criminals, which was required to be unearthed through a regular inquiry and inquiry officer to this effect was also appointed, but since the respondents were not in a position to prove such allegations, hence taking U turn, the respondents dispensed with the inquiry and changed the nature of allegations, which were confined only to the extent of absence from duty only. It however is on record that the appellant was closed to police lines and was asked not to join duty until finalization of the inquiry proceedings. Malafide on part of the respondents is also evident from the facts that charge sheet was issued on 05-08-2010, whereas his absence in the impugned order of removal from service is shown as 07-08-2010 to 15-10-2010. However, in both the eventualities, no inquiry was conducted against the appellant and he was removed from service arbitrarily without affording him proper opportunity of defense. The Supreme Court of Pakistan in its judgment reported as 2009 PLC (CS) 650 has held that regular inquiry is must before imposition of major penalty of removal from service. We have also observed that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august supreme court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. We are mindful of the question of limitation, but since the appellant was removed from service without observing proper procedure, rather the respondents were bent upon removing the appellant from service and the respondents had no case on merit except limitation and the supreme court of Pakistan in its judgment reported as PLD 2002 Supreme Court 84 have held that where on merits the respondents has no case, then limitation would not be hurdle in the way of appellant for getting justice.

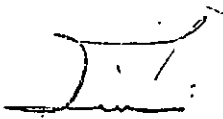
**ACCEPTED**  
JANUARY 2011  
Minister Public Relations  
Service Tribunal  
Islamabad


111

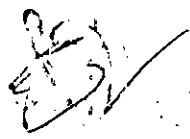
August Supreme Court has observed that the court should not be reluctant in condoning the delay depending upon facts of the case under consideration.


05. In view of the foregoing discussion, the instant appeal is accepted and the appellant is re-instated in service. The intervening period is treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
08.09.2021

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

  
(ATIQ UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

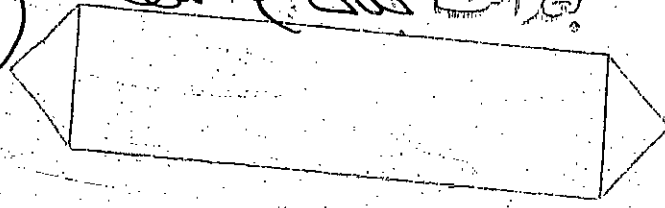


  
Certificate  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Application 12/10/21  
2800  
30  
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12/10/21  
Date of Withdrawal 17/10/21

بجالات جناب صاحب

کراچی



اسلام آباد  
کراچی

2021 پنجاب

پیام اہم

موردہ  
مقدمہ  
دعوی  
جرم

باعث تحریر آئی کہ

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

کلیئے **لوسٹ** کے لئے

آن مقام مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و اقرار ثالث و فیصلہ پر حلف دینے جو اب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور 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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے  
سبب سے ہوگا۔ کوئی نارنجی منقاس دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے کہ پیروی مذکور کریں۔ لہذا نکالت نامہ لکھ دیا کہ سند رہے۔

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المرقوم 11  
11  
2021

واہ الہ  
مقام  
کے لئے منظور ہے۔

## ORDER

Ex-Constable Photographer Asif Siraj No.3559 was awarded major punishment of dismissal from service by the then SP HQrs vide OB No.3924 dated 30.11.2010 on the charges of absence from duty w.e.f 07.08.2010 to 15.10.2010 and from 05.11.20210 to 11.11.2010 (02-months & 14-days).

In this regard he was filed departmental appeal before W/IGP Khyber Pakhtunkhwa against above punishment orders which was rejected/filed by the then IGP, KPK Peshawar vide No.S/827/17 dated 21.02.2017.

Being aggrieved of the orders, Ex-Constable Photographer Asif Siraj No.3559 instituted a service appeal No.317/2017 title as Asif Siraj son of Sirajul Haq, Ex-Constable/Photographer No.3559, Police Department Peshawar, resident of Karimpura Bazar, Street Agah Shafee House No.1999 Illaqa PS Gulfat Hussain Shaheed, Hashtnagri, Peshawar City before the Honourable Service Tribunal Peshawar. The Honourable Service Tribunal vide its judgment passed on 08.09.2021 has ordered that "in view of the foregoing discussion, the instant appeal is accepted and the appellant is re-instated in service. The Intervening period is treated as leave of the kind due."

In light of the Tribunal Judgment, DSP Legal opinion & kind approval of W/CCPO, Ex-Constable Photographer Asif Siraj No.3559 is hereby conditionally re-instated in service. The Intervening period is treated as leave of the kind due subject to the decision of CPLA which is still subjudice in the Apex Court.

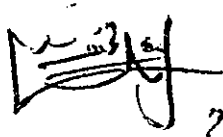
  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

OB: NO. 132 / Dated 20/1/2022

No. 251-57 /PA/SP/dated Peshawar the 20/1/2022

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. Pay Office,
4. OASI, CRC & FMC along-with complete departmental file.
5. Officials concerned.

  
20/1/22