

16.1.2019 Petitioner alongwith counsel and Addl. AG
alongwith Muhammad Farooq, Inspector (Legal) for the
respondents present.

Learned AAG has produced copy of order dated
13.12.2018, which is placed on file, whereby the petitioner
has been reinstated into service from the date of removal. It is
also noted therein that the back benefits will take effect upon
the final outcome of decision of the Honourable Supreme
Court of Pakistan. The petitioner acknowledges the
communication of said order to him and states that he has
already joined his duty. Learned counsel for petitioner does
not object to the consignment of proceedings in hand.

The execution proceedings are therefore, consigned
to record room upon completion. The petitioner may apply for
its restoration in case any part relief granted to him remained
unsatisfied.

Chairman



ANNOUNCED

16.01.2019

05.12.2018

Counsel for the petitioner and Addl. AG alongwith Asghar Ali, H.C for the respondents present.

Representative of the respondents produced illegible copy of a receipt for deposit of expenses on account of filing CPLA in the august Supreme Court against the judgment under implementation. When asked about the date of filing of CPLA. He stated that the date of receipt was also the date of filing of CPLA. Learned AAG declined to own the statement of representative as he had not been contacted nor instructed by the respondents before the case was called for hearing.

It is a sorry state of affairs that junior officials are deputed to appear in important cases before the Tribunal. Often, the representatives are not aware of the proceedings either at the department or before the Tribunal. Learned AAG shall, therefore, take up the matter on priority basis with the senior officers of the respondent department and may require appearance of well conversant officials before the Tribunal, preferably, persons of officer rank.




The instant matter is adjourned to 16.01.2019, on which date the respondents shall produce copy of order of august Supreme Court requiring suspension of judgment under implementation or the implementation report, as the case may be.



Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. _ 367/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	10.10.2018	<p>The execution petition of Mr. Attaullah submitted by Naila Jan 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>11-10-18</p> <p>7</p>	<p>This execution petition be put before S. Bench on</p> <p style="text-align: center;"><u>19-10-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	19.10.2018	<p>Learned counsel for the petitioner present. Notice of the present execution petition be issued to the respondents for 05.12.2018. To come up for further proceedings on the date fixed before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 367 /2018

In

Service Appeal No: 1100/2016

Atta Ullah Ex-Constable No.263, District Police Bannu.

Versus

The Provincial Police officer, Government of Khyber
Pakhtunkhwa and others

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Dated: 10/10/2018

عطاء اللہ خان
Petitioner
Through
Naila Jan
Advocate, High Court
Peshawar

②

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. 367 /2018

In

Service Appeal No: 1100/2016.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1193

Dated 19-10-18

Atta Ullah Ex-Constable No.263, District Police
Bannu.

.....Petitioner

Versus

1. The Provincial Police officer, Government of Khyber Pakhtunkhwa.
2. The regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu.

.....Respondents

EXECUTION PETITION FOR
IMPLEMENTATION OF THE
JUDGMENT OF THIS HON'BLE
TRIBUNAL IN APPEAL No.
1100/2016 DECIDED ON
19/07/2018

Respectfully Sheweth,

1. That the above mention appeal was decided by this Hon'ble Tribunal vide Judgment dated 05/09/2018. (Copy of the judgment is annexed as annexure "A")

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2. That the relevant portion of the judgment is reproduced "*in the given circumstances without touching the merits of the case, the impugned orders are set aside and the appellant is reinstated in service. The departmental proceeding against the appellant shall be deemed pending and the Respondent department is at liberty to conduct and conclude the same by observing all the legal requirements and codal formalities. The present appeal is accepted in the above terms parties are left to bear their own costs. File be consigned to the record room after its completion*".

3. That the Petitioner after getting of the attested copy of same approached the Respondents 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.

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

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

It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.

Dated: 10/10/2018

ان عاىءكع

Petitioner

Through

Naila Jan

Advocate, High Court
Peshawar

AFFIDAVIT:-

I, Atta Ullah Ex-Constable No.263, District Police Bannu, 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.

ان عاىءكع
Deponent

ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC

(Signature)

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2018

In

Service Appeal No: 1100/2016

Atta Ullah Ex-Constable No.263, District Police Bannu.

Versus

The Provincial Police officer, Government of Khyber
Pakhtunkhwa and others

ADDRESSES OF PARTIES

PETITIONER

Atta Ullah Ex-Constable No.263, District Police
Bannu..

RESPONDENTS

1. The Provincial Police officer, Government of Khyber Pakhtunkhwa.
2. The regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu.

Dated: 10/10/2018.

طاب الله قلبه
Petitioner
Through
Naila Jan
Advocate, High Court
Peshawar

(5)

Amir Aⁿ

Sr. No. Date of order/proceeding

Order or other proceedings with signature of Judge or Magistrate

1

2

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1100/2016

Date of Institution ... 26.10.2016

Date of Decision ... 19.07.2018

Aita Ullah Ex-Constable No.263, District Police Bannu.

Appellant

Versus

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Bannu.

Respondents

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned

counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

2. The appellant (Ex-Constable No.263) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 26.10.2016 whereby he was awarded major penalty of dismissal from service and against the order dated 18.10.2016 whereby his departmental appeal was rejected.

3. Learned counsel for the appellant argued that the appellant was recruited as Constable in District Police Bannu in the year 2008 and while serving in the said capacity he was falsely

19.07.2018

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 ATTESTED
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 Peshawar

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implicated in a criminal case FIR No.504 dated 29.10.2014 u/s 506/186/189/216 PPC, Police Station Ghoriwala Bannu and was also proceeded against departmentally mainly on the ground that he resisted and attacked the police party during raid upon the house of POs Mehboob Khan and Mehmood Khan; that the appellant was awarded major punishment vide order dated 30.04.2015. However departmental appeal of the appellant was partially accepted and order of removal from service passed against him was set aside and the case was remanded back to the respondent No.3 for denovo inquiry. Further argued that as a result of denovo inquiry the appellant was awarded major punishment of dismissal from service vide illegal order dated 26.07.2016. That the departmental appeal of the appellant proved unsuccessful. Further argued that that without communicating the inquiry report and issuance of any show cause notice major punishment of dismissal from service was awarded to the appellant. Further argued that no chance of personal hearing was afforded to the appellant prior to the issuance of the impugned order of punishment. Further argued that the inquiry officer has not gathered any concrete evidence against the appellant as statement of any private/independent person was not recorded and that the appellant has not committed misconduct alleged against him. Further argued that the accusation leveled against the appellant are false and based on malafide. In support of his case learned counsel for the appellant referred judgment of this Tribunal passed in Service Appeal No.1040/2014.

Handwritten initials and a checkmark.

Handwritten signature.

ATTACHED
 Examiners
 of Pakhtunkhwa
 Service Tribunal
 Peshawar

4. As against that learned Deputy District Attorney resisted the present service appeal and contended that requisite legal requirements were adhered to prior to the issuance of impugned order of punishment. Further argued that Father and Uncle of the appellant were POs in a murder case and that the appellant has committed grave misconduct for the reason that when the police party raided the house of POs namely Mehboob Khan, Father and Mehmood Khan Uncle of the appellant, the appellant attacked the police party with threats of dire consequences. Further argued that the inquiry officer recorded the statements of witnesses/victims who deposed against the appellant and thereby gathered sufficient evidence against him.

5. Arguments heard. File perused.

6. There is no dispute that during the denovo proceedings neither inquiry report was served upon the appellant nor he was issued any show cause notice, moreover the impugned order was passed by the Competent Authority, without affording chance of personal hearing to the appellant.

7. Perusal of documents available on file, particularly the representation dated 06.05.2014 of the appellant to the appellate authority, would show that admittedly the Father and Uncle of the appellant were POs in a murder case and the local police conducted raids on the house for their arrest and that on the relevant day the appellant was also present in the house when the local police conducted raid and the appellant also protested. In this backdrop it

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[Signature]

[Signature]

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cannot be held at this stage that the appellant should not have been
departmentally proceeded at all.

8. The non observance of legal requirements as mentioned
above have rendered the impugned order of punishment not
sustainable even if one reaches to the conclusion that sufficient
evidence against the appellant is available on record. In the given
circumstances without touching the merits of the case, the impugned
orders are set aside and the appellant is reinstated in service. The
departmental proceeding against the appellant shall be deemed
pending and the respondent department is at liberty to conduct and
conclude the same by observing all the legal requirements and codal
formalities. The present appeal is accepted in the above terms.
Parties are left to bear their own costs. File be consigned to the
record room after its completion.

Sd/- M. Shankar Mishra
Member

Sd/- Shankar Hissam
Member

[Handwritten signature]

Certified to be true copy
JAN 20 1988
KARNATAKA
SERVICE TRIBUNAL
BANGALORE

②

وکالت نامہ

بعدالت: جسٹس خٹو خواہ سرس ٹریبونل ریشما

مورخہ: 10/10/2018 مقدم نمبر: 03129215471

بناام لولیس

منجانب: Petitioner

باعث تحریر آنکہ

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

آن مقام Peshawar کیلئے نائلہ جان ایڈووکیٹ ہائی کورٹ پشاور

کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کاروائی کا کام اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقرری ثالث و فیصلہ برخلاف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب، عذر داری درخواست زیر دفعہ (2) 12 ض د، درخواست بمراد برآمدگی و سرسبزی مقدمہ، درخواست بمراد منسوخی کاروائی و ڈگری یکطرفہ دائر کرنے جواب، جواب الجواب وغیرہ درخواست کاروائی اجراء دائر کرنے و وصولی چیک و رقم اور درخواست از ہر قسم کی تصدیق زر اس پر دستخط وغیرہ کرنے کا اختیار ہوگا۔ اپیل، اپیل دراپیل، نگرانی، نظر ثانی، رٹ و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت ضرورت مذکورہ کے عمل یا جزوی کاروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہو یا حد سے باہر ہو یا بیمار ہو یا کوئی ضروری کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 10/10/2018

کیلئے منظور ہے۔

Peshawar

مقام:

عطا اللہ عطا اللہ

العبد:

عطاء اللہ رضوان

ATTESTED & ACCEPTED:

نائلہ جان (ایڈووکیٹ)

ہائی کورٹ پشاور

OFFICE OF ADVOCATE GENERAL KHYBER
PAKHTUNKHWA PESHAWAR

RECEIPT

Received a sum of Rs. 2000/- (Rupees Two thousand only) as expenses (Photostat, binding, Supreme Court tickets, notice to respondent) for filing CPLA in e Supreme Court of Pakistan in its branch registry at Peshawar in connection with case title Service Appeal No. 1100/2016 Altaullah VS Govt. of KPK and others.

[Signature]
Advocate-at-Law
in Senior Court of P.
Judicial of Khyber Pakhtunkhwa
Peshawar
11/9/2018

OFFICE OF ADVOCATE GENERAL KHYBER
PAKHTUNKHWA PAKHTUNKHWA PESHAWAR

CERTIFICATE

Certified that Mr. Asghar Ali No. 342
Office of the DPO, Bannu
Attended this office on 11/09/2018 in connection with case
Title S.A. No. 1100/2016 Altaullah
Versus Govt. of KPK, etc

[Signature]
Advocate-at-Law
in Senior Court of P.
Judicial of Khyber Pakhtunkhwa
Peshawar
11/9/2018