12.09.2019

Petitioner in person and Addl. AG alongwith Asghar Ali, H.C for the respondents present.

The representative of the respondents has produced copy of order dated 06.09.2019 issued by District Police Officer, Bannu whereby the petitioner has been reinstated into service and the period he remained out of duty/service has been counted towards leave of the kind due. Placed on file.

In view of the development noted above instant proceedings are consigned to record. The petitioner may, however, apply for restoration of execution proceedings in case any part of relief granted to him remained unsatisfied.

Chairman

02.07.2019

Petitioner in person present. Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the petitioner is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned to 23.08.2019 for implementation report before S.B.

(MUHAMMAD AMIN KHAN KUNDI) MEMBER

23.08.2019

Counsel for the petitioner, and Mr. Kabeerullah Khattak, Addl. AG alongwith Muhammad Farooq, Inspector (Legal) for the respondents present.

The representative of respondents has produced copies of correspondence by District Police Officer Bannu addressed to the Provincial Police Officer Khyber Pakhtunkhwa Peshawar wherein it has been repeatedly enquired whether any CPLA has been preferred before the Apex Court against the judgment under implementation. The representative is not personally in the knowledge of a petition filed by the respondents.

In the circumstances the respondents are required to produce on the next date any order requiring suspension of judgment under implementation or its setting aside altogether. Else, the implementation report shall positively be submitted.

Adjourned to 12.09.2019 before S.B.

Chairman

## Form- A FORM OF ORDER SHEET

Court of		-
Execution Petition No.	204/2019	

	Court C	
	Executio	n Petition No. 204/2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	. 2	3
1	02.05.2019	The execution petition of Mr. Iftikhar Ahmad submitted today by Mr. Taimur Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please.
		la sev. dia
	•	REGISTRAR 2 1)
2-	09/05/19	This execution petition be put up before S. Bench on  17   05   19  CHAIRMAN
	17.05.2010	Learned counsel for the petitioner present. Notice of
	17.05.2019	e present execution petition be issued to the respondents for
		plementation report. Adjourn. To come up for
implementation report on 02.07.2019 before S.B.		
		Member

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution petition No. 2019/2019
In Service Appeal No.381/2018

Diary No. 546

Solvice Triburg

Iftikhar Ali shah, Ex-Constable, No.1148, Police Station City, Bannu.

#### **PETITIONER**

#### **VERSUS**

- 1. The Provincial Police Officer, KPK, Peshawar.
- 2. The Regional Police Officer, Bannu Region, Bannu.
- 3. The District Police Officer, Bannu.

RESPONDENTS

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED 02.04.2019 OF THIS HONOURABLE SERVICE TRIBUNAL IN LETTER AND SPIRIT.

#### RESPECTFULLY SHEWETH:

- 1. That the petitioner has filed an appeal bearing No.381/2018 in this august Service Tribunal against the impugned order dated 07.11.2017, whereby appellant was dismissed from service and against not not taking action on the departmental appeal of the appellant within the statutory period of 90 days.
- 2. That the said appeal was finally heard on 02.04.2019 and the Honourable Tribunal was kind enough to accept the appeal, set aside the impugned order dated 07.11.2017 and reinstate the petitioner into service and the period he remained out of duty/service was counted towards leave of kind due. (Copy of judgment dated 02.04.2019 is attached as Annexure-A)
- 3. That the petitioner has filed application for reinstatement in the light of judgment dated 02.04.2019 of this Honourable Tribunal,

but the respondents did not reinstate the petitioner till date. (Copy of application is attached as annexure-B)

- 4. That since the announcement of the judgment, the petitioner has waited for about one month to implement the judgment dated 02.04.2019, but the respondents has not taken action on the judgment dated 02.04.2019 till date.
- 5. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
- 6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this Honourable Service Tribunal in letter and spirit.
- 7. That the petitioner has having no other remedy except to file this execution petition for Implementation of judgment dated 02.04.2019 of this august Service Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 02.04.2019 of this august Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate, may also be awarded in favour of petitioner.

**PETITIONER** 

THROUGH:

(TAIMUR ALT KHAN) ADVOCATE HIGH COURT,

(ASAD MAHMOOD) ADVOCATE HIGH COURT

#### **AFFIDAVIT:**

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Service Tribunal.

DEPONENT

B 2 MAY

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 381/2018

Service Friday

Iftikhar Ali Shah, Ex- Constable, No.1148, Police Station City, Bannu.

(APPELLANT)

#### **VERSUS**

- 1. The Provincial Police Officer, KPK, Peshawar.
- 2. The Regional Police officer, Bannu Region Bannu.
- 3. The District Police Officer, Bannu.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 07.11.2017, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST NOT TAKING ACTION THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

#### PRAYER:

13/3/19

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 07.11.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT. ATTESTED

Khwa Pesistakhwa Service Inbundi, Peshawar

#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE PESHAWAR

Appeal No. 381/2018

Date of Institution ...

13.03.2018

Date of Decision

02.04.2019



Iftikhar Ali Shah, Ex-Constable No. 1148, Police Station City, Bannu. ... (Appellant)

#### **VERSUS**

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

Mr. Taimur Ali Khan, Advocate

Advocate.

For appellant

Mr. Muhammad Riaz Khan Paindakhel,

Asstt. Advocate General

For respondents.

MR. HAMID FAROOQ DURRANI,

MR. HUSSAIN SHAH,

CHAIRMAN -**MEMBER** 

Service Tribunal,

#### JUDGMENT

### HAMID FAROOQ DURRANI, CHAIRMAN:-

Instant judgment is proposed to dispose of also Appeal No. 382/2018 1. (Irfan Ullah Vs. the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others) as the appellants are aggrieved of order of their dismissal from service passed on 07.11.2017. Their departmental appeals remained un-responded, hence the appeals in hand.



Initially, the appellants were dismissed from service vide order dated 2. 08.07.2013 while their respective departmental appeals also could not find favour and were rejected on 07.08.2013. The appellants preferred Appeals No. 1305/2013 and 1306/2013, respectively, before this Tribunal. The said appeals were dismissed on 15.03.2016. The appellant approached the August Supreme Court of Pakistan through Civil Petitions No. 1330 and 1342 of 2016 against the judgment of Tribunal. The petitions came up for hearing on 13.12.2016, wherein, the order passed by the Apex Court was to the effect that the judgment of Tribunal dated 15.03.2016, as well as the impugned order of dismissal dated 08.07.2013, were set aside. The department was, however, required to conduct a denovo enquiry in accordance with law. It was also noted in the order that no back benefits shall be paid to the appellants at this stage but shall follow the final outcome of the denovo enquiry. In the said background, the appellants were reinstated into service for the purpose of denovo enquiry and Superintendent of Police (Investigation) Bannu was appointed as enquiry officer. The enquiry officer submitted his report on 14.02.2017, wherein, it was recommended that the denovo enquiry against both the appellants may be filed without further proceedings. The competent authority, not agreeing with the enquiry report dated 14.02.2017, ordered for a fresh enquiry, report whereof was submitted on 14.02.2017. In the subsequent enquiry the enquiry officer/Superintendent of Police, Elite Force, Bannu and D.I.Khan Divisions, noted the conclusion in terms that the accused and complainant parties did not want to pursue the enquiry proceedings while the witnesses stood by their statements recorded

ATTESTEI

hyod Programma 
Service Tricunal,

Peshawar

during earlier round of enquiry. It was further noted that in the circumstances there was no option except to rely on the statements of witnesses which were mostly in favour of the prosecution. Consequent to the second denovo enquiry the impugned order of dismissal from service was passed against the appellants on 07.11.2017.

3. We have heard learned counsel for the appellant, learned Assistant Advocate General on behalf of the respondents and have also gone through the available record.

Learned counsel for the appellant contended at the outset that there was no option with the competent authority to have brushed aside the report of enquiry officer recorded on 14.02.2017, while conducting denovo proceedings. The Khyber Pakhtunkhwa Police Rules, 1975 did not allow the exercise of such option in comparison to Rule 16(6) of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. The subsequent enquiry against the appellant was, therefore, in violation of the rules and the impugned order dated 07.11.2017 passed upon such enquiry was ill-founded. It was further contended that in the last round of enquiry statement of allegations and charge sheet were not served upon the appellants, hence the proceedings suffered from legal infirmity. In support of his arguments learned counsel relied on judgments reported as 2004-SCMR-916, 2014-SCMR-1263, 1997-SCMR-1073, 2008-SCMR-1369 and 2002-SCMR-433.

On the other hand, learned Asstt. A.G argued that all the witnesses relied on their statements recorded in the first round of denovo enquiry while

ATTESTED

Peshawar

the legal formalities were also adhered to in proceedings against the appellant. He also contended that the appellant claimed no ill-will against the complainant namely Muhammad Sadiq Khan.

The record transpires that one Muhammad Sadiq Khan son of Qadam Khan reported the matter to the local Police on 17.05.2013 at 1800 hours in terms that he alongwith his sister Mst. Jehanzeba had come to Bannu to see Dr. Karim Khan, As the appointment was given for the afternoon they went to Madina Hotel for taking rest. At about 11:00 hours two constables in uniform entered their room. They manhandled and also took away gold ear rings weighing one tola from the sister of complainant. The constables disclosed their names as Irfanullah and Iftikhar Shah. The complainant requested for proceedings against the culprits.

The occurrence was recorded in Daily Diary No. 33 dated 17.05.2013 wherein it was noted that the incriminating ear rings were recovered from accused Irfanullah. The appellants were, therefore, proceeded against and were dismissed from service on 08.07.2013.

The record transpires that after the order passed in Civil Petitions No. 1330 and 1342 of 2016 by the Apex Court, in the denovo departmental ATTESTED enquiry the conclusion was to the effect that the appellants, on the relevant day, made departure at 08.45 hours for routine gasht alongwith Damsaz Khan ASHO P.S Bannu City vide Daily Diary No. 10. They made their arrival report from gasht at 16:30 hours vide Daily Diary No. 30. It was also noted that SHO Bannu City had entered the report of the complainant Muhammad

e Froundl,

Peshawar



Sadiq Khan but neither his signature/were obtained on the report nor his NIC number was noted. Further, the mobile number of the complainant shown in the Daily Diary was not in use. It was also noted in the report that complainant had shown the occurrence to have taken-place in Madina Hotel while during the enquiry proceedings statement of witness Abdur Rahman of Rashid Hotel Bannu City was recorded. That, the time of occurrence was shown to be 11.00 hours while report was made on 18.00 hours. No reason for the delay of report was given in the Daily Diary. That, the statement of Sub Inspector Damsaz was clear to the effect that both the appellants were on duty with him and no such occurrence had taken-place during the entire duty hours. That, according to statement of Zafar Khan, Assistant Sub Inspector, Moharrir P.S City Bannu, the ear rings were lying in the Malkhana and no one came to claim ownership thereof. No statement of sister of complainant was recorded, it was added. The filing of enquiry was, therefore, recommended.

6. In the subsequent enquiry report dated 16.10.2017 it was noted that vide CPO, Peshawar letter dated 23.02.2017, it was conveyed that the enquiry officer had not tried to go to the depth of the facts but he had based his report on the statements of the accused constables and no value had been given to the earlier enquiry. (underlining is applied). The matter required further clarification through another officer. In the wake of said order, the second enquiry was conducted.



ATTESTED

ATTESTED

Service Triumed

9

In the concluding part of second enquiry report dated 16.10.2017, it 7. was noted that the enquiry file submitted by the DPO Bannu for seeking guidance on the points that the first denovo departmental proceedings, conducted in the light of decision of Apex Court, were recommended by the enquiry officer to be filed. That, the accused party was reluctant to pursue the second enquiry proceedings as they had knocked the door of August Supreme Court of Pakistan once again. Similarly, the complainant of the case was also not interested to associate himself in enquiry proceedings for one reason or the other. It was also noted that there was ambiguity regarding the legality of second de-novo proceedings. In return, he was directed by CPO to take proper decision and associate the accused officer with the proceedings and provide opportunity of defence to them. The report further stated that in the light of guidance of CPO, the accused party, complainant and other relevant police officers were again summoned through proper Parwana. Complainant appeared before the enquiry officer and recorded his statement, wherein, it was stated that he did not want to pursue his complaint. Similarly, the accused also appeared before the enquiry officer but they were not willing to record their statements as well as defence on the basis of plea that their case was subjudice before the highest forum. That, they were also given oppo...

to avail the same. opportunity of cross examination of prosecution witnesses but they refused

It was emphasized by learned Asstt. AG that the appellants refused to have their statement recorded, therefore, they could not question the legality and conduct of second denovo enquiry. Learned counsel for the appellant

produced the record pertaining to Criminal Original Petition No. 52 and 54 of 2017 filed by the appellants in Civil Petitions No. 1330/2016, and 1342/2016, respectively. The said petitions were preferred with the prayer for initiation of proceedings against the respondents on the count that the impugned judgment of Tribunal dated 15.03.2016 was set aside by the Apex Court on 13.12.2016. However, the respondents were reluctant to grant salary/back benefits to the petitioners after the recommendations for filing of enquiry made through report dated 14.02.2017. The petitions were disposed of 15.02.2018 as denovo enquiry had been conducted by then and punishment was imposed upon the appellants. It was in this context that the appellants abstained from recording their statements in the second denovo enquiry.

8. In our view, it is the case of respondents that fresh statements of witnesses were not recorded in the second round of denovo enquiry while, as per record, the statements previously recorded were relied upon by the enquiry officer. In the said manner, the impugned order dated 07.11.2017 was based on the material/statements recorded during the first round of denovo enquiry. This act on the part of respondents was not in accordance with order of the Apex court dated 13.12.2016, wherein, they were required in clear terms to conduct a denovo enquiry in accordance with law. The impugned order, therefore, can at the most be termed as a fresh order on previously available material. We are also inclined to agree with the arguments of learned counsel for the appellant regarding non-existence of

provisions pertaining to second enquiry by the competent authority in a single matter under the Khyber Pakhtunkhwa Police Rules, 1975. Admittedly, the proceedings against the appellants were undertaken under the said rules.

- There is also another significant feature of the case in hand. In the ordinary course of business, the complaint of Muhammad Sadiq dated 17.05.2013 should have been recorded in the form of a First Information Report which was not done so. Instead, the alleged occurrence was noted in the Daily Diary, not totally clear of manipulations. The facts laid in the report also do not appear to be free from doubt.
- 9. In view of the foregoing, we allow the appeals in hand and set aside the impugned order dated 07.11.2017. Resultantly, the appellants are reinstated into service, however, the period they remained out of duty/service shall be counted towards leave of the kind due.

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

be ture copy

MEMBER

<u>ANNOUNCED</u> 02.04.2019

(HAMID FAROOQ DURRANI) **CHAIRMAN** 

Date of Presentation of App.	10-04-18
Number of Words 2	500
Copying Fee	
Urgent 2	Annual Assessment and the second and
Total >2	
Nume of Copylia	
Date of Completion of Copp.	10-04-19
Date of Delivery of Carry	10-24-19

Virte Lesso (12) Coins St. : (Nois Au July Chil 24 der KARSIE CES ( Print) (73) 8019 の、ころでかし as Esois of the Solds 1 £ 25% OF \$ 3. 12 80 12 80/1 We of the Child Con lew, ill Color of Soll print ore 20 4 Brief SOUBLE THE o Cytis 2

# 

مورخه منام و بنام و المام و دعوي باعث تحريرا نكه مقدمه مندرج عنوان بالامين اپن طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقه - آن مقام لیسارم کیلے جمور می فال امور امریش در براری ا مقرر کرکے اقر ارکیا جاتا ہے۔ کہ صاحب موصوف کومقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کوراضی نامه کرنے وتقر ر ثالث و فیصله پرحلف دیتے جواب دہی اورا قبال دعویٰ اور بصورت ڈگری کرنے اجراءاوروصولی چیک وروپیدارعرضی دعویٰ اور درخواست ہرسم کی تقیدیق زرایں پردستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یاڈگری کیطرفہ یا پیل کی برامدگ اورمنسوخی نیز دائر کرنے اپیل نگرانی ونظر ٹانی و پیروی کرنے کا مختار ہوگا۔از بصورت ضرورت مقدمه مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کواپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔اورصاحب مقرر شدہ کوبھی وہی جملہ مٰدکورہ بااختیارات حاصل ہوں گے اوراس کاساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جوخر چہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔کوئی تاریخ پیشی مقام دورہ پر ہو یا حدسے باہر ہوتو وکیل صاحب پابند ہوں گے۔ کہ بیروی ندکور کریں۔ لہذا و کالت نامہ لکھدیا کہ سندر ہے۔ المرقوم

Ace the 1-20

n Mbc

#### ORDER:

In compliance with the order/Judgment of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar dated 02.04.2019 passed in the Service Appeal No. 381/2018 and Execution Petition No. 204/2019, dated 23.08.2019, Ex: Constable Iftiknar Ali Shah No. 1148, is hereby Re-Instated into Service, however, the period he remained out of duty/service is counted towards leave of the kind due.

OB No.  $\frac{75}{9}$ Dated:  $\frac{6.6.9}{9}$  /2019.

District Police Officer, Bannu

No. 14648-50,

dated Bannu, the 6/9 /2019.

Copy of above is submitted for favor of information to:

- 1. The Honorable Knyber Pakhtunkhwa Service Tribunal Peshawar w/r to his office letter No. 845/ST, dated 29.04.2019 and Execution Petition No. 204/2019, dated 23.08,2019.
- 2. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 3. Pay officer, Reader, SRC, OASI, Line Officer Bannu for information and necessary action.

District Police Officer, Banna.



### OFFICE OF THE DISTRICT POLICE OFFICER,

**BANNU** 

Phone No: 0928-9270 038

Fax No: 0928-9270045

No. 7423

/Dated Bannu, the

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.

#### APPEAL AGAINST THE ORDER DATED 02.04.2019 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO. 381/2018

Mr. Iftikhar Ali Shah Ex-Constable No 1148 of Police Department Bannu had filed an appeal u/s 4 of the Service Tribunal Act in Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar against the dismissal order passed by the then DPO Bannu vide order dated 07.11.2017.

The appeal was contested through Assistant Advocate General Khyber Pakhtunkhwa Peshawar and was decided in favour of appellant on 02.04.2019 by the Honourable Service Tribunal Peshawar. Attested photocopy of judgment received on 18.04.2019. Photo copies of judgment, Service Appeal and Parawise reply of Department are enclosed for your kind perusal.

In view of the above, it is requested that the said judgment may please be got examined through Law Department and Advocate General Khyber Pakhtunkhwa Peshawar as to whether it is fit for lodging an appeal in Apex Court of Pakistan or otherwise please.

District Police Officer,

Copy to the Regional Police Officer, Bannu Region, Bannu for favour of information please.

> District Police Officer, Bannu



# OFFICE OF THE DISTRICT POLICE OFFICER, BANNU

Phone No: 0928-9270 038

Fax No: 0928-9270045

No/10/2

/Duted Bannut, the

O /  $\nearrow$  /2019

The Provincial Police Officer, Khyber Pakhtunkhyen Peshawar.

APPEAL AGAINST THE ORDER DATED 02.04.2019 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO. 381/2018

Kindly refer to this office Memo No. 7473 dated 19.04.2019 on the subjected cited above.

It is submitted that this office may kindly be apprised about the present position of the subject appeal, please.

District Police Officer,



# OFFICE OF THE DISTRICT POLICE OFFICER, BANNU

Phone No: 0928-9270 038

Fax No: 0928-9270045

No. 12529

/Dated Bannu, the

31 / 07 /2019.

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.

APPEAL AGAINST THE ORDER DATED 02.04.2019 PASSED BY KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO. 381/2018

Kindly refer to this office Memo No. 7473 dated 19.04.2019 and 11012 dated 10.07.2019 on the subjected cited above.

It is submitted that this office may kindly be apprised about the present position of the subject appeal, please.

District Police Officer, Bannu