

16.1.2019

Counsel for the petitioner and Addl. AG alongwith Aziz Shah, H.C for the respondents present.

Learned AAG has produced copy of order dated 14.01.2019 issued by S.P Headquarters Peshawar whereby the petitioner has been conditionally reinstated in service with immediate effect. It is also noted in the order that question of back benefits, if any, will be decided subject to finalization/decision of Apex Court.

Learned counsel for the petitioner, in view of the order, does not object to the consignment of instant proceedings.

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

Chairman



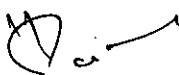


ANNOUNCED

16.01.2019

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. _ 344/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28.09.2018	<p>The execution petition of Mr. Ihsanullah submitted by Mr. Ijaz Ahmad Malik 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-	1-10-18	<p>This execution petition be put before S. Bench on <u>19-10-18.</u></p> <p style="text-align: right;"> MEMBER</p>
	19.10.2018	<p>Petitioner in person 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>

ORDER

Subsequent upon the judgment order dated 20.04.2018 passed by the Hon'ble service Tribunal Peshawar in Service Appeal No. No.344/2018, appellant Ihsan Ullah (Ex-constable No.4961) is conditionally re-instated in service with immediate effect. Since, CPLA against the instant Judgment order has been filed at Supreme Court of Pakistan which is still subjudice. Therefore, back benefit if any will be decided subject to finalization/decision of the apex court.

1091
**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB NO. 185

Dated 14/1/2019

No. 62-67 /PA/HQrs dated Peshawar the 14/1/2019.

Copy of above is forwarded for necessary action to:

- ✓ DSP/HQrs: Peshawar
- ✓ DSP Legal, Peshawar
- ✓ Budget Officer
- ✓ EC-I, OASI, CRC & FMC along-with complete departmental file

BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR

Execution petition no 344/2018

Ihsanullah

VERSUS

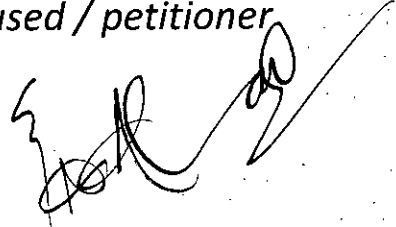
I.G.P & Others

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Accused / petitioner

Through



IJAZ AHMAD MALIK

Advocate, High Court,
Peshawar.

①

BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR

Execution Petition No- 344/18

Ihsanullah S/o Jehanzeb Khan R/o Saeed Abad, Bukhari Colony,
Dalazak Road, Peshawar.

.....Petitioner

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1120

Dated 28-9-18

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. C.C.P.O, Peshawar.
3. S.P, Cantt, Peshawar.

.....Respondents

**EXECUTION APPLICATION FOR IMPLEMENTATION OF
THE JUDGMENT / ORDER DATED 20/04/2018
TENDERED IN APPEAL NO. 903/2013.**

RESPECTFULLY SHEWETH:

1. That the petitioner filed a service appeal bearing No. 903/2013, whereby this Honourable Court has been pleased to accept the appeal of the petitioner vide judgment / order dated 20/04/2018. (Copy of the Judgment / Order is enclosed as Annexure "A").
2. That this Honourable Tribunal while accepting the appeal, the modified & converted the major penalty of discharge from service of the petitioner into stoppage of two annual increments for a period of two years.
3. That the petitioner submitted an application before the respondents along with the copy of the judgment / order

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of this Honourable Tribunal, but the respondents have not taken any action & the application of the petitioner has been kept without further proceeding and the petitioner has not been re-instated.

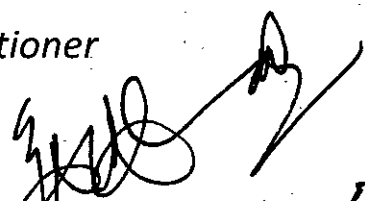
4. That the respondents are legally bound to Honour the Judgment of this Honourable Court, but up till now the petitioner has not been re-instated which amount to be the violation the orders of this Honourable Court, therefore the Judgment / Order of this Honourable Tribunal is liable to be Honored.
5. That the petitioner is suffering a lot from the last 5 years and further delay in implementing the Judgment / Order of this Honourable Tribunal would cause further irreparable loss and agonies.

It is therefore prayed that on acceptance of this petition the Judgment / Order of this Honourable Tribunal dated 20/04/2018 may very graciously be implement in its true letter and sprite and the petitioner be re-instated with all back benefits.

Any other remedy deemed proper and just may also granted.

Petitioner

Through


IJAZ AHMAD MALIK, Naz Zaib
Advocate, High Court, Kainat Tassiq
Peshawar.
Advocates

Dated: 27/09/2018

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BEFORE THE HONOURABLE SERVICE TRIBUNAL PESHAWAR

Ihsanullah

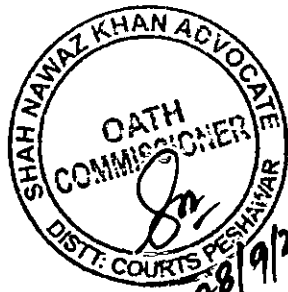
VERSUS

I.G.P & Others


AFFIDAVIT

I, Ihsanullah S/o Jehanzeb Khan R/o Saeed Abad, Bukhari Colony, Dalazak Road, Peshawar, do hereby solemnly affirm and declare on oath that all the contents of instant **APPLICATION** are true and correct to the best of my knowledge and belief and nothing has been concealed or misstated from this Honourable Court.

ATTESTED



Identify by:


DEPONENT

IJAZ AHMAD MALIK
Advocate, High Court,
Peshawar.



(K)

BEFORE THE CHAIRMAN SERVICES TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Appeal No. 903/2013

K.P. Province
Case No. 874
Dated 06-5-13

Ihsanullah son of Jehanzeb Khan, Ex-Constable, resident of Bukhari Colony, Dalazak Road, Peshawar..... Appellant.

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department, Civil Secretariat, Peshawar,
2. Inspector General of Police, Peshawar,
3. Chief Capital City Police Officer, Peshawar,
4. Superintendent of Police, Head Quarters, Peshawar..... Respondents.

Filed to file
[Signature]
6/5/13

re-submitted to file and filed.

[Signature]
17/5/13

Appeal under section 4 of the Services Tribunal Act 1971 against the impugned order No. 4398 dated 14/12/2012 of the respondent No. 4 whereby the appellant is discharged from his duties.

ATTESTED

[Signature]

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

B

/

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 903/2013

Date of Institution ... 06.05.2013

Date of Decision ... 20.04.2018



Ihsanullah s/o Jehanzeb Khan, Ex-constable, resident of Bukhari Colony, Dalazak Road, Peshawar. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs Department, Civil Secretariat, Peshawar and another. ... (Respondents)

MR. IJAZ AHMAD MALIK,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ PAINDAKHEL,
Assistant Advocate General

--- For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT

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


FACTS

2. The brief facts are that vide impugned order dated 14.12.2012 he was discharged from service and the period of his absence was treated as leave without pay. He filed departmental appeal on 07.01.2013, which was not responded within the stipulated period, hence the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that vide impugned order dated 14.12.2012 he was discharged from service and the period of his absence was

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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(B)

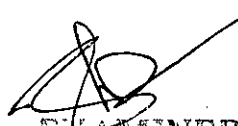
treated as leave without pay. Charge of absence leveled against the appellant was not based on facts, he was performing duty regularly. Various formalities required under the rules like cross examination of the witnesses etc were not observed during the enquiry proceedings.

4. On the other hand learned Assistant Advocate General argued that the appellant remained absent from duty w.e.f 22.12.2011 to 11.08.2012 (7 months 20 days). All codal formalities were observed before awarding him penalty of discharge from service.

CONCLUSION

5. During the scrutiny of record it was observed that the appellant was proceeded und the Khyber Pakhtunkhwa Civil Servants Removal from Service (Special Powers) Ordinance-2000, as is evident from the charge sheet and statement of allegations served on him vide endst: no. 25/E/PA dated 13.01.2012. The said Ordinance was repealed on 15.9.2011. As disciplinary proceedings were initiated against the appellant under repealed law, so the same were illegal, unlawful and not tenable in the eyes of law. Though the period of absence claimed by the respondents was seven months but perusal of charge sheet revealed that he was absent from 22.12.2011, while the statement of allegations was served on 13.01.2012, to which he replied accordingly. As such the period of his actual absence was not properly calculated by the respondents. In view of the above situation, we do not deem it necessary to touch other aspects of the case. Learned Assistant Advocate General was repeatedly confronted on this point to substantiate it through relevant record about but he was unable to give any satisfactory explanation.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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6. As a sequel to the above discussion, the appeal is accepted. The penalty of discharge from service is modified and converted into stoppage of two annual increments for a period of two years. Parties are left to bear their own costs. File be consigned to the record room.

*Sd/- Ahmad Hassan
Member*

*Sd/- M. Anis Khan Kundi
Member*

(M)

ANNOUNCED
20.04.2018

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application	10-7-18
Number of Words	1600
Copying Fee	10-00
Urgent	2-00
Total	12-00
Name of Copyist	<i>[Signature]</i>
Date of Completion of Copy	10-7-18
Date of Delivery of Copy	10-7-18

	66416
ایڈووکیٹ/دستخط: بار کونسل ابار ایسوسی ایشن فیڈرل رابطہ نمبر: 0300-5951730	
پشاور بار ایسوسی ایشن، خیبر پختونخواہ	

بعدالت جناب: سرورسٹریٹونز خیبر پختونخواہ ضلع شندور

منجانب: اصحابہ 	دعویٰ: رقم 110/2019 علت نمبر: مورخہ: جرم: تھانہ:
باعت حیرانگہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 ۱۸ بجے ایجاز و حدیث اور وصیت باقی چور کو دیل مقرر
 ان مقام
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز دیل صاحب کو
 راضی نامہ کرنے و تقریر حالت و فیصلہ برصن 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 کی طرف یا اپیل کی برآمدگی اور منسوخی نیز
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور دیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار ہو گا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ ہر داختم منظور و قبول ہوگا دوران مقدمہ
 میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سبب سے ہوگا وہ دیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام
 دورہ یا حد سے باہر ہو تو دیل صاحب پابند نہ ہوں گے کہ تیز رفتاری مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: 27.9.08

بد _____ واہ شد _____ بد _____

پتہ کے لئے منظور ہے۔

Accepted

Yusuf Ahmad Malik
Adv.
Dmt.

اصحابہ