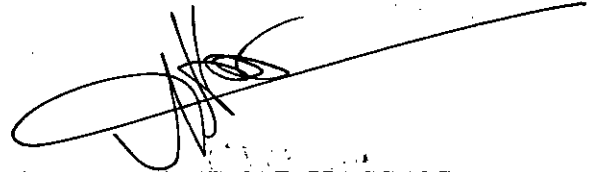


11.08.2017

Counsel for the petitioner and Asst; AG alongwith Mr. Javed Iqbal, DSP(Legal) for respondents present. Representative of the respondents produced copy of august Supreme Court of Pakistan order dated 02.05.2017 whereby stay has been granted in favour of the respondent-department. Copy handed over to petitioner. As such the petition is adjourned sine-die till disposal of the appeal in the august Supreme Court of Pakistan. Till then record of the instant petition be kept in safe custody.




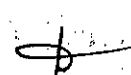
ANNOUNCED:  
11.08.2017



(AHMAD HASSAN)  
MEMBER

FORM OF ORDER SHEET

Execution Petition No: 46/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.03.2017	<p>The Execution Petition of Mr. Jamshed Ali submitted to-day by Uzma Syed 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-	20-3-17	<p>This Execution Petition be put up before S. Bench on - <u>4-4-17.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	04.04.2017	<p>Counsel for the petitioner present. Notices be issued to the respondents. To come up for implementation report on 02.06.2017 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	02.06.2017	<p>Petitioner in person and Mr. Javed Iqbal, Inspector Assistant AG for the respondents present. Petitioner requested for adjournment. Request accepted. To come up for implementation report on 11.08.2017 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

(2)

1575/17

THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT  
MR. JUSTICE EJAZ AFZAL KHAN  
MR. JUSTICE MAGNANI BAQAR

CIVIL PETITION NO. 1221 P of 2017  
(Against the Judgment dated  
22.1.2017 of the KPK Service Tribunal,  
Peshawar passed in Service Appeal  
No.881 of 2014)

Commandant, Elite Force, K.P. Peshawar and others  
Versus

Jamshed Ail

...Petitioner(s)

...Respondent(s)

For the petitioner(s): Mian Arshad Jan, Addl. A.G. KPK and  
Javed Iqbal, Inspector

For the respondent(s): in person.

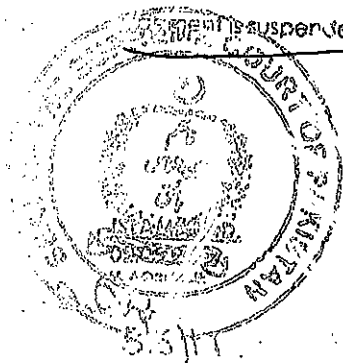
Date of Hearing: 02.05.2017.

ORDER

Plaz Afzal Khan, J. Contends that while the appeal was allowed on the basis of a discrepancy with the assets held by the deceased and payment of Debt to the legal heirs, Respondent cannot be said to have been acquitted outrightly in the circumstances and that fact of the respondent was proved against his defence on account of being absconded, the case could have been remanded back for de novo inquiry. Therefore, the order of reinstatement in the circumstances does not appear to be correct.

2. Points raised need consideration. We, therefore, grant leave to appeal in this case. Let the appeal be prepared on the available record with the liberty to the parties to add thereto.

CMA No.244-P of 2017: This CMA is allowed. Operation of the impugned judgment is suspended till final disposal of the appeal.



Plaz Afzal Khan, J  
Plaz Iqbal Nagor, J

Certified to be True Copy

Supreme Court of Pakistan  
Islamabad

1575/17

[Signature]

# BEFORE THE KPK SERVICE TRIBUNAL

## PESHAWAR

Execution Petition no. 46/2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 210

Dated 15-3-17

In the matter of Appeal No. 881/2014

Jamshed Ali S/o Hazrat Ali R/o Mohallah Ismail Khel, Abba Khel, Ex-Constable Belt No. 763, Platoon No. 56, Lakki Marwat.

..... Appellant

### **VERSUS**

1. Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Superintendent of Police, Elite Force, Khyber Pakhtunkhwa, Peshawar.

..... Respondents

### APPLICATION FOR THE IMPLEMENTATION

### OF THE JUDGMENT AND ORDER DATE

27/01/2017 OF THIS HONORABLE

### TRIBUNAL

#### **RESPECTFULLY SUBMITTED:-**

1. That the above noted service appeal was pending adjudication in this Honorable Tribunal and was decided vide Judgment and Order dated 27/01/2017.
2. That vide Judgment and order dated 27/01/2017 this Honorable Tribunal was pleased to accept the appeal of the appellant in the following terms.  
"We are constrained to accept the appeal and reinstate the appellant in

Service from the date of his dismissal. The intervening Period may be treated as leave of the kind due. Parties are left, However left to bear their own costs file be consigned to the record room. (Copy of the Service Tribunal Judgment attached)".

3. That the Judgment of this Honorable Tribunal was duly communicated to the respondents. However, they remain reluctant to implement the Judgment of the Honorable Service Tribunal.
4. That the appellant also submitted application for the implementation of the Judgment to the respondents but of no avail.
5. That the respondents are duly bound under the law to implement the Judgment and order dated 27/01/2017 of this Honorable Service Tribunal in its true letter and spirit.

It is therefore, prayed that on acceptance of this implementation application the respondent may be directed to implement the Judgment / order date 27/01/2017 of this honorable Tribunal in its true letter and spirit with all back benefits.

Dated: 15/03/2017

  
Appellant

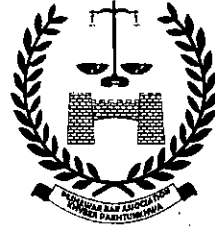
Jamshed Ali

Through

  
**UZMA SYED**

Advocate, High Court

Peshawar



74271

ایڈووکیٹ/دستخط: Bma

بارکول ابار ایسوسی ایشن نمبر:

رابطہ نمبر: 0311-9440376

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس ٹریبونل پشاور

دعویٰ:	منجانب: <u>Appellant</u>
علت نمبر:	<u>جمشید علی</u>
موضوع:	<u>بنام</u>
جرم:	<u>پولیس</u>
تھانہ:	

**باعتبار آنکہ**

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

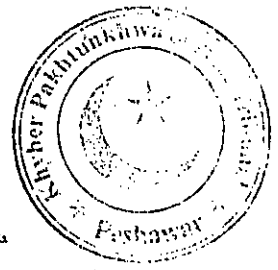
آن مقام پشاور کیلئے سروس ٹریبونل کو مکمل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر حالت و فیصلہ برحمت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں مدد تخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا 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 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 جانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار 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 مندر ہے۔

المرقوم: 15-3-2017

Accepted

العبد گواہ شد العبد

مقام پشاور کے لئے منظور ہے۔



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 881/2014**

Date of institution ... 23.06.2014

Date of judgment ... 27.01.2017

Jamshed Ali S/o Hazrat Ali, R/o Mohallah Ismail Khel, Abba Khel,  
Ex-Constable Belt No. 763, Platoon No. 56, Lakki Marwat.

... (Appellant)

VERSUS

1. Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Superintendent of Police, Elite Force, Bannu.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA,  
SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER NO. 8571/EF, DATED  
12.06.2014 OF R. NO. 1, WHEREBY DEPARTMENTAL APPEAL DATED  
22.05.2014 AGAINST ORDER NO. 6449-57/EF, DATED 06.05.2013,  
DISMISSING APPELLANT FROM SERVICE, WAS REJECTED FOR NO  
LEGAL REASONS.

Mr. Saadullah Khan Marwat, Advocate.

.. For appellant.

Mr. Muhammad Adeel Butt, Additional Advocate General.

.. For respondents.

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant Jamshed Ali, filed the instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 06.05.2013 whereunder he was dismissed from service and rejection of his departmental appeal on 12.06.2014, hence the instant service appeal.

2. Brief facts giving rise to the above appeal are that the appellant was appointed as Constable in the Police Department on 30.05.2007. Afterwards he was implicated in a criminal case and disciplinary proceedings were initiated against him under Removal from Service (Special Powers Ordinance) 2000. On finalization of these proceedings major penalty of dismissal from service was imposed on the appellant.

ATTESTED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

3. The learned counsel for the appellant argued that vide FIR No. 659 dated 08.11.2011 under section-302/34 PPC was lodged in P.S Ghazni Khel in which the appellant was charged for murder of Nazir Ahmad. Charge sheet and statement of allegations were not served on the appellant and he was not associated with the inquiry proceedings. Final show cause notice before imposition of major penalty was also not served on the appellant. That after conclusion of trial of murder case the appellant was awarded death sentence alongwith fine of Rs. Three lacs by Additional Sessions Judge Lakki Marwat, against which appellant filed an appeal in the Peshawar High Court, Peshawar against the above judgment on 07.05.2014. That as a result of compromise, the appellant was acquitted of the charges by the Peshawar High Court, Peshawar. That the appellant submitted departmental appeal on 20.05.2014 for reinstatement in service which was rejected on 12.06.2014. That the order of dismissal from service was issued when the appellant was behind the bars and the impugned order of dismissal from service was issued with retrospective effect in violation of rules. That the appellant was proceeded under repealed law as RSO was repealed on 15.09.2011 and Efficiency and Disciplinary Rules were notified on 16.09.2011. Reliance was placed on 2012 SCMR 165 wherein it was held that offence was lawfully compromised and disposed of where by Civil Servant was acquitted, such acquittal of Civil Servant could not be taken his disqualification, coming in the way of his reinstatement in service. The issue of equation of payment of Diyat with conviction of in crime has been settled in this judgment. The learned counsel for the appellant prayed for acceptance of the appeal by reinstating in service of the appellant with all beck benefits.

4. Learned Additional AG argued that after being charged for the offense of murder on 08.05.2011, the appellant remained absconder till his arrest on 11.04.2012. That the appellant avoided service of charge sheet and summary of allegations, as such those were served on the father of the appellant. That the appellant was willfully and deliberately avoiding disciplinary proceedings and remained absconder for a long period. That the appellant was not acquitted by the appellate court but was released on the basis of compromise and payment of Diyat to the legal heirs of deceased person as such order amounts to conviction. He submitted that he appeal being devoid of merits may be dismissed.

ATTESTED

ENAMUL HAQ  
 MEMBER PESHAWAR  
 SERVICE TRIBUNAL  
 PESHAWAR



5. Arguments heard and record perused.

6. - Having gone through the record of the case, it transpired that disciplinary proceedings were not carried out in the mode and manner prescribed in the rules. The respondents have conceded that charge sheet and summary of allegations were served on the father of the appellant as such it is clear beyond doubt that the appellant was not associated with the inquiry proceedings. He was condemned unheard and Article 10 (A) of Constitution 1973 was violated. As unilateral disciplinary proceedings were conducted by the respondents so it was against the principle of *AUDI ALTERM PARTEM*. The Superior Courts in various reported judgments held in that case imposition of major penalty, show cause notice alongwith inquiry report will have to be served on the accused officer. No show cause notice was served in this case. The appellant proceeded under a repealed law of RSO, as RSO 2000 was repealed on 15.09.2011. It merits to mention here that the only charge leveled against the appellant was involvement in FIR-No. 659 dated 08.11.2011 under section-302/324 PPC which after acquittal had ceased to hold water. 2012 SCMR 165 has settled the issue of equation of payment of Diyat with conviction in crime such acquittal of Civil Servant could not be taken has disqualification coming in the way of his reinstatement in service.

7. We are constrained to accept the appeal and reinstate the appellant in service from the date of his dismissal. The intervening period may be treated as leave of the kind due. Parties are left, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
27.01.2017

Certified to be true copy  
of the original  
as per the  
original  
response

Sd/-  
MUHAMMAD AAMIR NAZIR  
MEMBER

Sd/-  
AHMAD HASSAN  
MEMBER