

17.04.2019

Petitioner with counsel and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the petitioner stated that he wants to withdraw the present execution petition. Consequently the present execution petition be consigned to the record room being not pressed. No order as to costs.



(Muhammad Hamid Mughal)  
Member


ANNOUNCED.

17.04.2019

09.01.2019

Petitioner in person and Addl. AG alongwith Muhammad Arshid Admin Officer for the respondents present.

Learned AAG has produced copy of notice by the Apex Court in CP No.1120/2018 wherein it is noted that the case is fixed on 10.01.2019 at Islamabad. He, therefore, requests for adjournment in order to make available the outcome of the matter before the Apex Court or filing implementation report, as the case may be. To come up on 11.03.2019 before S.B for further proceedings.

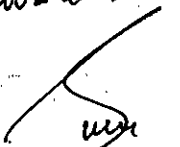


Chairman

11.03.2019

Petitioner present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjournment requested. Adjourn. To come up for further proceedings on 17.04.2019 before S.B

*I have with draw this case petition conditionally if inquiry come in my favour.*



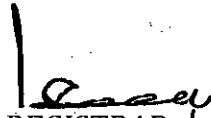


16/4/19



Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. \_ 365/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.10.2018	<p>The execution petition of Mr. Sher Khan submitted by him 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-	11-10-18	<p>This execution petition be put before S. Bench on <u>26/11/2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	26.11.2018	<p>Petitioner in person present. Notices be issued to the respondents. To come up for implementation report on 09.01.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 365 /2018

IN

Service Appeal No.1211/2014

Sher Khan..... Applicant/Appellant

Versus

The Secretary Govt. of KP  
& others ...Respondent/Judgment Debtors

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Application with affidavit			1-3
2.	Copy of the Judgment passed in Service Appeal No.1211/2014	16-02-2018	A	4-6
3.	Copy of application dated 05-04-2018	05-04-2018	B	7

Applicant/Appellant

In Person

Sher Khan,  
Data Processing Supervisor,  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar.  
R/o Lalazar Colony, University Campus,  
Peshawar

Dated: \_\_\_\_\_ / 10/ 2018

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 365 /2018

IN

Service Appeal No. 1211/2014

Khyber Pakhtunkhwa  
Service Tribunal

Date 11/9/18

Date 10-10-18

Sher Khan,  
Data Processing Supervisor,  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar.  
R/o Lalazar Colony, University Campus, Peshawar

...Applicant/Appellant

Versus

1. The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Law, Parliamentary Affairs and  
Human Rights Department Peshawar.
2. The Advocate General,  
Khyber Pakhtunkhwa, Peshawar

...RESPONDENTS/JUDGMENT DEBTORS

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APPLICATION UNDER CLAUSE (d) OF SUB-SECTION 2 OF THE SECTION 7 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR EXECUTION OF THE DECISION DELIVERED BY THE LEARNED BENCH OF THIS TRIBUNAL IN SERVICE APPEAL NO. 1211/2014 ON 16-02-2018. THEREBY IMPUGNED ORDER OF DISMISSAL FROM SERVICE WAS SET ASIDE AND APPLICANT WAS REINSTATED IN SERVICE.

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**Respectfully Sheweth,**

The application submits as under:-

1. That applicant, at the relevant time holding the post of Data Processing Supervisor (BPS-14). On the basis of charge of inefficient, I was dismissed from service on 30-04-2014 which was challenged in this Hon'ble Tribunal after exhausting departmental remedy which was allowed as per para 6 of the judgment dated 16-02-2018 in the following terms:

6- *“in the stated circumstances this Tribunal is of the view that the impugned punishment is excessive. Consequently for the purpose of safe administration of justice the impugned punishment is converted into withholding of two annual increments for a period of two years. The intervening period shall be treated as leave of the kind due”. Copy is attached (Annexed A).*


- A. That after obtaining the attested copy of the judgment, the same was provided to respondent No.1 & 2 for compliance but they are badly failed to act upon the judgment within stipulated period of two month rather matter is still dormant without any action.
- B. That on the expiry of stipulated period of two months, the applicant/appellant submitted an application dated 05-04-2018 vide dated 05-04-2018 (Annexure-B) for my reinstatement in service with all back benefits the same was met with the same fate.
- C. That the respondents have not executed the decision of this Hon'ble Tribunal and deliberately not reinstated the applicant into service after the expiry of the specified period.
- D. That the respondent authorities are acting in such a manner which amounting to refusal of execution of the decision in true spirit

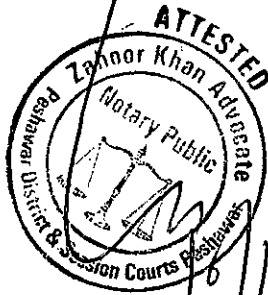
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It is therefore, most humbly prayed that on acceptance of this application, the respondents may graciously be strictly directed to execute the decision of this tribunal in letter and spirit and reinstate the applicant into service with all back benefits without any further delay and the defaulter may kindly be proceeded under the law of contempt and be penalized accordingly.

In Person

Applicant/Appellant

  
Sher Khan,  
Data Processing Supervisor,  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar.  
R/o Lalazar Colony, University  
Campus, Peshawar



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1211/2014

Date of Institution ... 26.09.2014  
Date of Decision ... 16.02.2018

Sher Khan, Ex-Data Processing Supervisor,  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar.  
R/O Lalazar Colony, University Campus, Peshawar.



(Appellant)

VERSUS

The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary  
Affairs and Human Rights Department Peshawar & others.

(Respondents)

Mr. Khush Dil Khan,  
Advocate

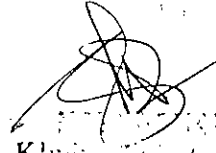
For appellant.

Mr. Muhammad Jan  
Deputy District Attorney

For respondents.

MR. GUL ZEB KHAN  
MR. MUHAMMAD HAMID MUGHAL

MEMBER  
MEMBER

**ATTESTED**  
  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 26.09.2014 has been lodged by Sher Khan, Ex-Data Processing Supervisor, hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein he has impugned the office order dated 30.04.2014 vide which he was dismissed from service. The appellant preferred departmental appeal on 30.05.2015 which was not responded.

3. Learned counsel for the appellant argued that the appellant was initially appointed as Data Processing Supervisor on 28.5.2003 on the recommendations of Khyber Pakhtunkhwa Public Service Commission and was performing his duties efficiently and honestly. That one lady (named Mst. Sultana) complained against



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him for misplacing her documents earlier given by her to the Advocate General Khyber Pakhtunkhwa for the purpose of filing CPLA in the Supreme Court of Pakistan. That on this issue, an enquiry was conducted in which neither any statement of any witness was recorded, nor any opportunity of cross examination was extended to the appellant. That even the statement of the then AOR (Mr. Shaukat Hussain) was also not recorded because he was the incharge officer for all CPLA cases in the office of Advocate General Khyber Pakhtunkhwa. That the allegation in the charge sheet/statement of allegation was totally wrong and ill conceived as the appellant has no concern at all with the CPLA cases of private individuals/litigants. That respondent No. 2 has mala fide and deliberately held him responsible for a criminal case of private party and initiated disciplinary proceedings against him which has no legal sanctity and not sustainable under the rules on subject. Further argued that the inquiry officer has conducted inquiry in slipshot manner as no cogent evidence was produced against the appellant. That the impugned order based on such erroneous and fallacious charges is of no legal effect and liable to be set aside. That the impugned order has been passed at the back of appellant as no opportunity of personal hearing was provided to him to defend his case which is violation of the fundamental rights and the principle of natural

ATTESTED Justice

4. On the other side learned Deputy District Attorney argued that the charge leveled against the appellant was initiated on a complaint having Diary No. 939 dated 04.02.2014 of a lady. That the report was sought by respondent No. 2 from the Advocate On Record, who confirmed the contents of the complainant. That during the inquiry, statement of the complainant lady was examined in the presence of the appellant. Further argued that the case has its own facts and evidence and there is no malafide or ill-will on the part of the respondent No. 2 against the appellant. Further argued that in criminal cases the Respondent No. 2,

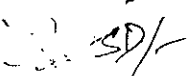
Khyber  
Service  
Peshawar

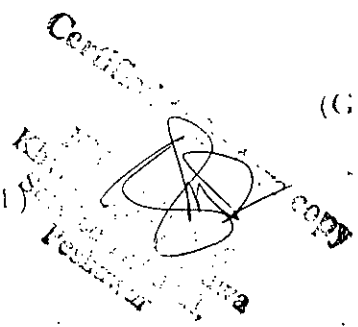
being Principal Law officer of the Province is fully competent to filling of appeal before the Apex Court. That specific allegation has been leveled against the appellant. That charge sheet, statement of allegation were served upon the appellant. Inquiry proceedings were conducted and show cause notice were also to be issued to the appellant which he also replied. The inquiry was conducted in fair and transparent manner. That the appellant was given ample opportunities to defend himself, therefore the appeal may be rejected.

5. We have heard arguments of the learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record available on file.

6. Learned counsel for the appellant remained unable to substantiate his plea that the impugned order was passed without fulfillment of codal formalities and adherence to legal requirements. But on the other hand the inquiry officer has not recorded the statements of relevant staff or at least those who are working in the chain of command within the organization. The AOR concerned also shared the responsibility to dispose of office work in time however the inquiry officer has not bothered to associate the AOR concerned with the inquiry proceedings, nor given any reason as to why his statement was not recorded. In the stated circumstances this Tribunal is of the view that the impugned punishment is excessive. Consequently for the purpose of safe administration of justice the impugned punishment is converted into withholding of two annual increments for a period of two years. The intervening period shall be treated as leave of the kind due. The present appeal is disposed of accordingly. Parties are left to bears their own cost. File be consigned to the record room.

ANNOUNCE  
16.02.2018

  
(Muhammad Hamid Mughal)  
MEMBER

  
Certified copy

  
(Gul Zeh Khan)  
MEMBER

To

1) The Secretary Govt. of Khyber Pakhtunkhwa,  
Law, Human Rights and Parliamentary Affairs  
Department, Civil Secretariat, Peshawar

2) A.G. KP, Peshawar

**SUBJECT: APPLICATION FOR REINSTATEMENT OF APPLICANT IN VIEW OF JUDGMENT OF THE HON'BLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR PASSED IN SERVICE APPEAL NO. 1211/2014 DATED 16-02-2018 WITH ALL BACK BENEFITS.**

Respected Sir,

- 1- That I, applicant was working as Data Processing Supervisor in your attached Department office (Advocate General Office) but on the basis of alleged baseless charges, I was dismissed from service by the impugned order 30-04-2014 which was challenged by me in Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar through Service Appeal No.1211/2014 after exhausting departmental remedy.
- 2- That appeal was thoroughly contested by the parties, in the end, by accepting my appeal, the impugned punishment of dismissal from service was converted into minor penalty b withholding two annual increments for a period of two years vide judgment dated 16/02/2018. **(Judgment Copy is attached as Annexed A)**

I, therefore, humbly pray your honour to kindly accept my this application and restore my service with all back benefits and allow me to resume my duty.

Thanks

Yours obediently

Sher Khan,  
Data Processing Supervisor  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar

*Restored copy*

Dated 05/04/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. \_\_\_\_\_/2018

IN

Service Appeal No.1211/2014

Sher Khan..... Applicant/Appellant

Versus

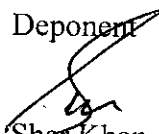
The Secretary Govt. of KP  
& others

...Respondent/Judgment Debtors

AFFIDAVIT

I, Sher Khan, Ex. DPS, Advocate General office KP, Peshawar , do hereby affirm and declare on oath that the contents of the this application for execution of the decision of this Hon'ble Tribunal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

  
Sher Khan,  
Data Processing Supervisor,  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar.  
R/o Lalazar Colony, University  
Campus, Peshawar



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Execution Petition No. \_\_\_\_\_/2018**

**IN**

**Service Appeal No.1211/2014**

**Sher Khan..... Applicant/Appellant**

**Versus**

**The Secretary Govt. of KP  
& others**

**...Respondents/Judgment Debtors**

**NOTICE.**

1. The Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Law, Parliamentary Affairs and  
Human Rights Department Peshawar.
2. The Advocate General,  
Khyber Pakhtunkhwa, Peshawar

**Please take notice Registered A/D post to the effect that I am filing Execution Petition in person against respondents for implementation of judgment with all back benefits passed on 16-02-2018 in Service Appeal No.1211/2014 before Hon'ble Service Tribunal as the applicant/appellant already submitted application for implementation of the said judgment on 05-04-2018.**



**Sher Khan,  
Data Processing Supervisor,  
Office of the Advocate General,  
Khyber Pakhtunkhwa, Peshawar.  
R/o Lalazar Colony, University Campus,  
Peshawar**

Before Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Execution Petition No. 365/2019

Application For Withdrawal (Conditionally)


Execution Petition No. 365/2019

Respectfully Shaveth:

- 1) That there were two cases CP No. 1120 & 1131/2018 were pending in Supreme Court of Pakistan against the decision of KP Service Tribunal against the appeal No. 1212 & 1211/2014.
- 2) That CP No. 1120/2018 had been decided in my favour and Supreme Court ordered to do fresh inquiry, and hence execution petition is also dismissed.
- 3) That now the petitioner dept. is in progress of necessary inquiry in light of Supreme Court order.
- 4) That I have already reinstated into service.

Therefore, it is humbly requested that I am withdrawing Conditionally my Exo-Petition No. 365/19 if inquiry come in my favour and if adverse then I will come in Execution Petition again.

Yours obediently

  
Sher Khan... Appellant

Dated 17/4/19