


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 and furnished copy of the order dated 10th January 2019 passed in Civil Petitions against the judgment under implementation. Learned AAG also furnished office order dated 12.02.2019 whereby the appellant has been reinstated in service. Petitioner stated that he would not press the present execution petition any further.

In view of above, the present execution petition be consigned to the record room being not pressed. Nor order as to costs.



Member

ANNOUNCED.

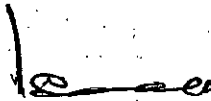


11.03.2019

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. _ 366/2018

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. 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-	11-10-2018	<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>

ٹیلی فون: 051-9082409
فیکس: 051-9206151

سپریم کورٹ آف پاکستان، اسلام آباد

مقدمات کی تاریخ سماعت اور دیگر تفصیلات جاننے کے لیے دیکھیے www.supremecourt.gov.pk

نوٹس مع عکس عدالتی حکم برائے تاریخ سماعت مقدمہ

C.P.1120/2018

سیکرٹری حکومت خیبر پختونخواہ بنام شیر خان

آپ کو بذریعہ نوٹس ہذا اطلاع دی جاتی ہے کہ درج بالا مقدمہ کی سماعت کے دوران سپریم کورٹ آف پاکستان، اسلام آباد نے مورخہ 03-01-2019 کو درج ذیل حکم جاری کیا ہے:-

"Relist in the next week."

۲۔ آپ کو اس ضمن میں مطلع کیا جاتا ہے کہ درج بالا مقدمہ کی آئندہ سماعت سپریم کورٹ آف پاکستان، اسلام آباد میں مورخہ 10-01-2019 صبح 09:00 بجے یا عدالت کی سہولت کے مطابق بعد میں کسی بھی وقت ہوگی۔

۳۔ آپ مذکورہ بالا تاریخ سماعت پر بذریعہ وکیل یا مقدمہ کی تیاری کر کے خود پیش ہوں۔ اس ضمن میں آپ اگر کوئی دستاویزات داخل کرنا چاہتے ہیں تو وہ مذکورہ تاریخ سے پہلے داخل کر دیں۔ ان عذرات کی بنا پر درخواست برائے التوا مقدمہ ہرگز قابل قبول نہ ہوگی۔

۴۔ مقررہ تاریخ کو اسلام آباد آنے سے پہلے عدالت عظمیٰ کی ویب سائٹ سے کاز لسٹ میں اپنے کیس کی تاریخ سماعت کی تصدیق کر لیں۔

۵۔ آپ کو مزید آگاہ کیا جاتا ہے کہ آپ اپنا اصل قومی شناختی کارڈ عدالت کے احاطہ میں داخلہ اور شناخت کے لئے ہمراہ لائیں۔

اسسٹنٹ سیکرٹری
(فکسچر)

اسلام آباد 7-1-2019

بنام:-

۱۔ ایڈووکیٹ جنرل خیبر پختونخواہ

C.P.1120/2018 to C.P.1131/2018

۲۔ سعد اللہ جندولی، اے او آر

C.P.1415/2018

۳۔ ایم ایس ننگ، اے او آر

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 366 /2018

IN

Service Appeal No.1212/2014

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.1212/2014	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

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 366 /2018

IN

Service Appeal No. 1212/2014

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1196

Dated 16-10-18

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

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. 1212/2014 ON
16-02-2018. THEREBY IMPUGNED ORDER OF DISMISSAL
FROM SERVICE WAS SET ASIDE AND APPLICANT WAS
REINSTATED IN SERVICE.

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:

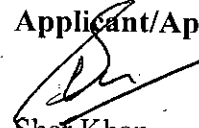
7- *“in the light of stated circumstances this Tribunal is of the view that the impugned punishment is excessive/harsh. Resultantly for the purpose of safe administration of justice the impugned punishment is converted to minor penalty of the censure. The intervening period shall be treated as leave 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

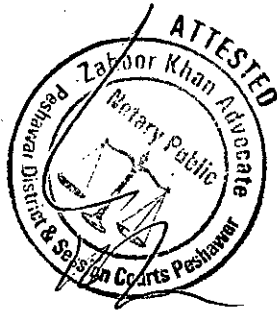
It is therefore, most humbly prayed that on acceptance of this application, the respondents may graciously be strictly directed to execute the decision of this tribunal in letter and spirit and reinstate the applicant into service with all back benefits without any further delay and the defaulter may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

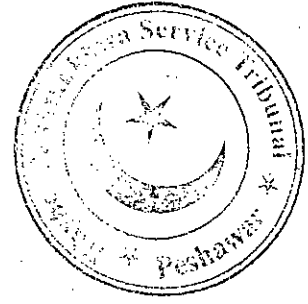


4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1212/2014

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. GULZEB KHAN ...
MR. MUHAMMAD HAMID MUGHIAL ...

MEMBER
MEMBER

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

GULZEB 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 Services 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 30.05.2014 which was not responded.

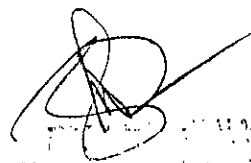
3. Learned counsel for the appellant argued that the appellant was initially appointed as Data Processing Supervisor in the office of Respondent No.2 on recommendations of the Public Service Commission vide order dated 28.05.2003 and has performed his duties honestly and efficiently with unblemished service

ord for more than 10 years. That the appellant, while working in the office of Advocate on Record (AOR), was charge sheeted on the allegation of delaying / time barring the filing of CPIA in the Supreme Court of Pakistan of about 36 court cases of various administrative departments. That a very prejudiced and defective enquiry was conducted wherein no opportunity of cross examination was provided to the appellant. That the appellant was allegedly held responsible for a task, which, under the job description of the organization, was not assigned to him. That the enquiry committee has not bothered to record the statement of the then AOR who was the directly supervising officer of the appellant. That the appellant is basically functioning as a data processing supervisor which is a computer related job and not a legal hand. That technically speaking it is the sole responsibility of the AOR to draft or dictate the case first, and not the task of the appellant. As regards the four specific cases at Serials No 4, 20, 31 and 34 of the list, the enquiry committee has not been able to put forth any evidence for it, rather those responsible have very clearly been mentioned in the last column of the list. That the impugned order being illegal and not entertain able under the law, may be set aside.

4. On the other side learned Deputy District Attorney argued that the impugned punishment was awarded after consulting all the facts and record vis-à-vis the gravity of the charges and in accordance with law. That the due process of providing opportunity of personal hearing has been duly provided. That the appeal may be rejected with cost.

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.

ATTESTED



Kln wa

6. Mainly charge against the appellant is that he did not process the cases in time to be filed in the august Supreme Court of Pakistan and thus the same became badly barred by time.

7. In the present case charge sheet and statements of allegation were admittedly served upon the appellant. The appellant also attended the inquiry proceedings. Show cause notice was also issued and replied by the appellant. The inquiry officer in the inquiry report held that the charges against accused stood proved. However it is also an admitted fact that the inquiry committee has not recorded the statement of then AOR, under whom the appellant was directly working and whose statement would have been of a deciding nature in the instant enquiry. The statement of the then AOR was also essential due to the fact that under the prevailing circumstances it was their joint responsibility to dispose of their office work, because the nature of very drafting of the CPLA cases require technical and legal input of the AOR. In the light of stated circumstances this Tribunal is of the view of that the impugned punishment is excessive/harsh. Resultantly for the purpose of safe administration of justice the impugned punishment is converted to minor penalty of censure. The intervening period shall be treated as leave of the kind due. The present service appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCE

16.02.2018

SD/-

(Muhammad Hamid Mughal)
Member

SD/-
(Gul Zeb Khan)
MEMBER

Certified to be true copy

Kh. [Signature]
Service [Signature]
Peshawar

Date of Presentation of Application	16-02-2018
Number of Words	1250
Copying Fee	8.00
Urgent	
Total	8.00
Name of Cop	[Signature]
Date of Completion	20-03-18
Date of Delivery	20-03-18

To

- 1) ✓ The Secretary Govt. of Khyber Pakhtunkhwa,
Law, Human Rights and Parliamentary Affairs
Department, Civil Secretariat, Peshawar
- 2) A. G., KPK, 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. 1212/2014 DATED 16-02-2018 WITH ALL BACK BENEFITS.

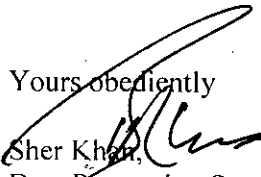
Respected Sir,

- 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.1212/2014 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 "Censure" 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

Dated 05/04/2018

7

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. _____/2018

IN

Service Appeal No.1212/2014

Sher Khan..... Applicant/Appellant

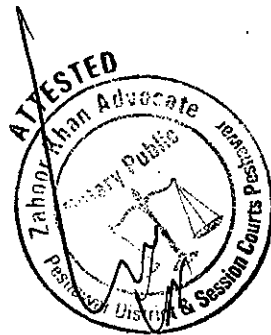
Versus

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

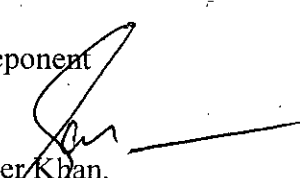
...Respondent/Judgment Debtors

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.1212/2014

Sher Khan..... Applicant/Appellant

Versus

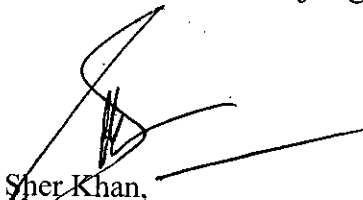
**The Secretary Govt. of KP
& others**

...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.1212/2014 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,



OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 3680-82 /AG

Dated Peshawar, the 12/02 /2019

Address: High Court Building, Peshawar.
Tel. No.091-9210119

Exchange No 9213833
Fax No. 091-9210270

OFFICE ORDER

In pursuance to para-5 of the Judgment of the Hon'ble Supreme Court of Pakistan, delivered on 10/01/2019 in Civil Petition No. 1120 of 2018 (Govt. of Khyber Pakhtunkhwa versus Sher Khan), the undersigned as the Competent Authority do hereby re-instate Mr. Sher Khan, Ex-Data Processing Supervisor (BPS-14) of this office and adjust him against the post of Junior Scale Stenographer (BPS-14), available in main office of the undersigned at Peshawar with immediate effect for the purpose of fresh enquiry against him. The pay and allowances etc of this period shall be determined after receipt of report of the Enquiry Committee. Since post of Data Processing Supervisor (DPS) no more exists after being re-designated as Computer Operator vide Notification No. KC/FD/SO(FR)/7-3/2015-16, dated 29/07/2016, therefore, the official is being re-instated as Stenographer (B-14).

The official is further directed to report for duty in this office within ten (10) days after receipt of this order.

**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.**

Endst. No. & date even

Copy forwarded for information and necessary action to:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Official concerned.

[Handwritten signature]
13/2/19

**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.**

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE YAKHYA AFRIDI

CIVIL PETITIONS NO.1120, 1131 & 1415 OF 2018
(On appeal against the judgment dated 16.02.2018 of the Khyber
Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal
No.1212 of 2014.)

Secretary Govt. of KPK, Law Parliamentary (in CPs 1120 and
Affairs & Human Rights Department, 1131/18)
Peshawar & another
Sher Khan (in CP1415 /18)
...Petitioner(s)

VERSUS

Sher Khan (in CPs 1120 and
1131/18)
Secretary Govt. of KPK, Law Parliamentary (in CP1415 /18)
Affairs & Human Rights Department,
Peshawar & another
...Respondent(s)

For the Petitioner(s): Mr. Qasim Wadood, Addl. AG, KPK
(in C.Ps.1120 & 1131/2018)
Mr. Misbahullah Khan, ASC.
(in C.P.1415/2018)

For the Respondent(s): Mr. Misbahullah Khan, ASC.
(in C.Ps.1120 and 1131/2018)

Date of Hearing: 10.01.2019

ORDER

UMAR ATA BANDIAL, J.— Civil Petition No.1120 of 2018: The
respondent is a Data Processing Supervisor working in the office of
the learned Advocate General, KPK since 2003. In the year 2007 he
was assigned to AOR section in the said office. A number of
government cases that were to be filed in the Supreme Court of
Pakistan were alleged to have been neglected by the respondent
rendering their filing to be time barred. An inquiry into the causes
of a large number of time barred cases was conducted by the

TESTED
m/s

Additional Advocate General. His report dated 26.09.2013 did not affix any responsibility upon the respondent. Subsequently, another inquiry was conducted resulting in a report dated 18.01.2014 by a committee headed by another Additional Advocate General. This report squarely acknowledges that the AOR in the Advocate General office had not been drafting cases in time. The previous report had noted that he had been ill most of the time and had been away for *Umrah* when he was well. The finding against the respondent is that he did not inform the Advocate General, KPK about the absence/unavailability or disinterest of the AOR.

2. A show cause notice dated 24.12.2013 confronted the respondent with delay in the filing of two cases. It is accepted by the learned Additional Advocate General appearing for the petitioners that both these cases were time barred when the files were delivered to the Advocate General's office. He adds that a number of other cases were also time barred and these have been noted in the inquiry report dated 18.01.2014. The respondent was dismissed from service vide order dated 30.04.2014. His appeal before the learned Tribunal has been partly accepted and his punishment has been reduced to "censure". Learned Additional Advocate General seeks the restoration of the punishment imposed by the employer office.

3. We consider that the inquiry report dated 18.01.2014 is vague in identifying the wrong committed by the respondent. We cannot therefore ascertain whether a punishment commensurate to the misconduct committed has been awarded to the respondent or not. The other cases noted in the inquiry report dated

RESTED
G
Court Approved

either to the respondent or on the record.

4. In the circumstances, we do not consider either dismissal of the respondent or his virtual exoneration in the terms directed by the learned Tribunal is appropriate. Accordingly, the impugned judgment dated 16.02.2018 of the learned Tribunal and the dismissal order dated 30.04.2014 are set aside. This petition is converted into an appeal and allowed in the terms noted above.

5. Office of the learned Advocate General shall conduct fresh inquiry into the allegations against the respondent after confronting him with the specific details of the cases in which he is alleged to have been negligent or in breach of duty.

Civil Petitions No. 1131 & 1415 OF 2018:

Adjourned.

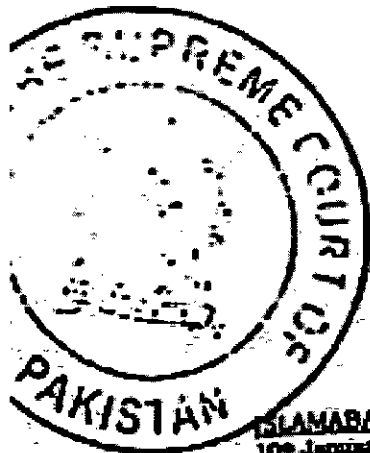
Sd/-J

Sd/-J

Sd/-J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad



ISLAMABAD
10th January, 2019.
Navod Ahmad

Not approved for reporting

1343/19

Case No: _____
 Date of Petition: 10.1.19
 No of Pages: 800
 No of Exhibits: 3
 Regulation Fee Rs. 500
 Copy Fee in: 500
 Court Fee Stamp: 1000
 Date of Completion of Copy: 21/1/19
 Date of delivery of Copy: _____
 Compared by/Prepared by: _____