

23.08.2021

Counsel for the petitioner and Mr. Muhammad Riaz Khan Paindakhel, Asstt.AG alongwith Khawas Khan, S.I (Legal) for the respondents present.

Learned AAG produced the copy of judgment dated 01.03.2021 of the August Supreme Court of Pakistan, whereby the judgment of this Tribunal dated 07.02.2019 under implementation has been set aside by the August Supreme Court of Pakistan. Thus this Execution Petition has become infructuous and is filed. File be consigned to the record room.



Chairman  
Camp Court, Swat

5.01.2021

Due to COVID 19, the case is adjourned to  
2 .03.2021 for the same as before.


  
Reader

02.03.2021

None for the petitioner present. Mr. Noor Zaman,  
District Attorney alongwith Mr. Khawas Khan, SI for  
respondents present.

As per information of the District Attorney that the  
august Supreme Court of Pakistan has decided CPLA in favour  
of the respondents, a copy of which is yet to be received. He  
requested for adjournment to produce the said judgment<sup>e</sup> of  
the apex court before the Services Tribunal on the next date.

Adjourned to 04.05.2021 before S.B at camp court  
Swat.

  
(Mian Muhammad)  
Member(E)  
Camp Court Swat

26.07.2021

To come up for further proceedings in the light of  
order dated 02.03.2021 on 23.08.2021 before S.B at  
Camp Court, Swat. Notices be issued to  
petitioner/counsel as well as respondents for the date  
fixed.


  
Chairman

Execution Petition No. 273/2019  
Wahid-ur-Rahman vs Govt

06.10.2020

Neither petitioner nor his counsel is present. Mr. Usman Ghani, District Attorney for the respondents is present.

Due to strike of the District Bar Association, Swat, learned counsel for the petitioner is not available today. Representative of the department is also absent, therefore, notice be issued to the respondents for submission of implementation report for 04.11.2020. File to come up for implementation report before S.B at Camp Court, Swat.

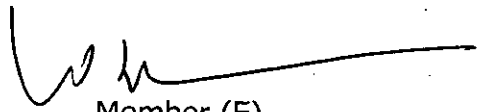
  
(MUHAMMAD JAMAL KHAN)  
MEMBER  
CAMP COURT SWAT

04.11.2020

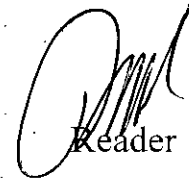
Petitioner in person present.

Learned Assistant Advocate General alongwith Khawas Khan Inspector for respondents present.

Implementation report was not submitted. Representative of respondents seeks time to furnish implementation report; granted with direction to positively submit implementation report on 05.01.2021, before S.B at Camp Court, Swat.

  
Member (E)  
Camp Court, Swat

02.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 08.07.2020, at camp court Swat.


  
Reader

08.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 07.09.2020, at camp court Swat.

  
Reader

07.09.2020 Petitioner alongwith counsel present.  
Mr. Riaz Khan Paindakheil learned AAG for respondents present.

Mr. Khawas Khan Inspector representative of respondents also present and requested for adjournment in order to submit implementation report. Last chance is given. To come up for implementation report on 06.10.2020 before S.B at Camp Court, Swat.

  
(Rozina Rehman)  
Member (J)  
Camp Court, Swat

08.01.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the petitioner is not available today. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Ishaq, Head Constable for the respondents present. Implementation report not submitted. Representative of the department requested for adjournment. Adjourned to 03.03.2020 for implementation report before S.B at Camp Court Swat.

(Muhammad Amin Khan Kundi)  
Member  
Camp Court Swat

03.03.2020

Learned counsel for the petitioner present. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the petitioner requested for adjournment. Adjourn. To come up for implementation report on 07.04.2020 before S.B. at Camp Court Swat.

Member  
Camp Court Swat




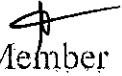
Due to corona virus tour  
to camp court swat  
has been cancelled to  
come up for the same on-  
02/06/2020  
Reade

## Form- A

## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 273/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.07.2019	<p>The execution petition of Mr. Waheed-ur-Rehman submitted today by Mr. Imdad Ullah Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-	<u>16-8-19</u>	<p>This execution petition be put up before touring S. Bench at Swat on <u>7-10-19</u>.</p> <p> CHAIRMAN</p>
	07.10.2019	<p>Counsel for the petitioner present. Notices be issued to the respondents for implementation report for <u>02.12.2019</u> before S.B at Camp Court Swat.</p> <p> (Muhammad Amin Khan Kundi) Member Camp Court Swat</p>
	03.12.2019	<p>Learned counsel for the petitioner present. Mr. M. Riaz Khan, Paindakhel, Assistant Advocate General alongwith Mr. Khawas Khan, SI for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for further proceedings on 08.01.2020 before S.B at camp court Swat.</p> <p> Member Camp Court Swat</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

Execution Petition No. 273 of 2019

Waheed-ur-Rahman Ex-Constable District Police Swat.

...Appellant

VERSUS

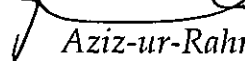
The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others.

...Respondents

INDEX

S #	Description of documents	Annexure	Pages
1.	Memo of Petition	....	1-2
2.	Affidavit	....	3
3.	Addresses of the parties	....	4
4.	Copy of the Judgment dated 07-02-2019	A	5-8
5.	Vakalat Nama	....	9

Appellant Through

  
Aziz-ur-Rahman  
Advocate Swat

Office: Khan Plaza, Gulshone Chowk,  
Mingora Swat, Cell 0333 929 7746

①

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. 273 of 2019

Waheed-ur-Rahman Ex-Constable District Police Swat.

...Petitioner



**VERSUS**

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.
3. The District Police Officer District Swat at Gulkada.

...Respondents

**APPLICATION FOR THE  
IMPLEMENTATION OF THE  
JUDGMENT DATED 07-02-2019 OF  
THIS HONOURABLE TRIBUNAL.**

---

Respectfully Sheweth:

- i. That the petitioner was dismissed from service feeling aggrieved of which the petitioner filed departmental appeal which finally ended in service appeal No. 1082/2017 before this honourable tribunal.
- ii. That this honourable tribunal vide its judgment dated 07-02-2019 converted the penalty of



- dismissal into compulsory retirement. Copy of the judgment is enclosed as Annexure "A".
- iii. That the petitioner has waited for the compliance of the judgment, but till date no action, whatsoever, has yet been taken by the respondents.
- iv. That the respondents are shying away from the implementation of the judgment in letter and spirit either on one pretext or another to the utter detriment of the petitioner.
- v. That in order to safeguard the valuable rights of the petitioner and in the best interest of justice the judgment passed by this honourable tribunal needs to be implemented in letter and spirit.

It is, therefore, very respectfully prayed that on acceptance of this petition the judgment dated 07-02-2019 may very kindly be implemented in letter and spirit.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

Petitioner  
*Waheed*

Waheed-ur-Rahman  
Through Counsel,  
*Imdad*  
Imdad Ullah  
Advocate Swat

3

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. \_\_\_\_\_ of 2019

*Waheed-ur-Rahman Ex-Constable District Police Swat.*

...Appellant

**VERSUS**

*The Provincial Police Officer Khyber Pakhtunkhwa,  
Peshawar and Others.*

...Respondents

**AFFIDAVIT**

*It is solemnly stated on Oath that all the contents of  
this execution petition are true and correct to the best of  
my knowledge and belief and nothing has either been  
misstated or kept concealed before this honourable  
tribunal.*

Deponent

*Waheed*

*Waheed-ur-Rahman*

Identified By:

*Imdad Ullah*

Advocate Swat



(4)

**BEFORE THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

Execution Petition No. \_\_\_\_\_ of 2019

*Waheed-ur-Rahman Ex-Constable District Police Swat.*

*... Appellant*

**VERSUS**

*The Provincial Police Officer Khyber Pakhtunkhwa,  
Peshawar and Others.*

*... Respondents*

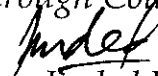
**ADDRESSES OF THE PARTIES**

Petitioner:

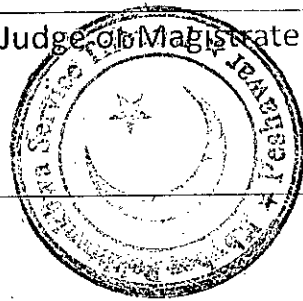
*Waheed-ur-Rahmani Ex-Constable District Police Swat.*

Respondents:

- 1. The Provincial Police Officer Khyber Pakhtunkhwa,  
Peshawar.*
- 2. The Regional Police Officer, Malakand, at Saidu  
Sharif, District Swat.*
- 3. The District Police Officer, District Swat, at  
Gulkada.*

Petitioner  
Through Counsel,  
  
Imdad Ullah  
Advocate Swat

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		<p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT SWAT</b></p> <p style="text-align: center;">Appeal No. 1082/2017</p> <p style="text-align: center;">Date of Institution ... 28.09.2017 Date of Decision ... 07.02.2019</p> <p style="text-align: center;">Waheed Ur Rehman Ex-Constable District Police Swat.</p> <p style="text-align: right;">-----Appellant</p> <ol style="list-style-type: none"> <li>1. The Provincial Police Officer Khyber Pakhtunkhwa. Peshawar.</li> <li>2. The Regional Police Officer Malakand at Saidu Sharif, District Swat.</li> <li>3. The District Police Officer District Swat at Gulkada.</li> </ol> <p style="text-align: right;">-----Respondents</p> <p style="text-align: center;">Mr. Imdad Ullah Advocate -----For Appellant Mr. Mian Amir Qadir District Attorney-----For Respondents</p> <p style="text-align: center;">-----</p> <p style="text-align: center;">Mr. Muhammad Hamid Mughal .....Member(J) Mr. Hussain Shah.....Member(E)</p> <p style="text-align: center;"><b>JUDGMENT</b> <b>HUSSAIN SHAH, MEMBER (E):</b> - Learned counsel for the appellant and Mr. Mian Amir Qadir District Attorney for the respondents present.</p> <p>2. The appellant was working as Constable in Police Department since 12.07.1996. He was deputed to the residence of Deputy Commissioner Swat. After his recovery from alleged illness he was denied acceptance of his report from duty. He was issued a final show cause notice on 05.06.2007 to which he replied. The</p>



07.02.2019

Attache


**ATTESTED**

AS

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ill due to the vital disease of dengue. He remain admitted in Hayat  
 persons and the reason of his absence from duty was due to falling  
 contended that the appellant was a law abiding and disciplined  
 hearing opportunity to the appellant to defend himself. He further  
 authorities failed to provide law-full and judicious  
 argued that only this fact is sufficient to prove that the relevant  
 is mandatory under the law to rebut such like evidence. He further  
 government institutions like Hayat Abad Medical Complex which  
 bothered to verify the medical certificates/documents from the  
 relevant authorities at each stage of the proceeding even did not  
 prolonged treatment in the government hospitals. Moreover the  
 certificates/documents testifying the fact that he was under  
 even to consider the cause of his illness and the medical  
 interest as the relevant authorities at each stage did not bothered  
 inquiry in the manner as prescribed in the law to protect his service  
 subjected. For instance the appellant was not associated with the  
 evident from the disciplinary proceeding to which the appellant was  
 appellant has not been treated in accordance with the law which is  
 3 The learned counsel for the appellant contended that the  
 28.09.2017.  
 30.08.2017 hence the instant service appeal preferred on  
 departmental appeal on 02.08.2017 which was rejected on  
 OR No.121 dated 20.07.2017. Being aggrieved he preferred a  
 and resultant he was dismissed from service vide impugned order  
 competent authority did not considered/accepted his explanation

15/11/17

ATTESTED  
  
 [Illegible text]

Abad Medical Complex for treatment. After he, being recovered from the daingee fever he undergone surgery of thigh for which he remain hospitalized. As such the absence of the appellant was not willful but beyond his control. During the entire proceedings neither the competent authority nor the appellate authority and the inquiry officer did not consider this factor and the appellant was subjected to harsh punishment for the absence which was beyond his control. The learned counsel for the appellant pleaded the tribunal to accept the appeal as per prayer.

*attached*

4. The learned District Attorney argued on behalf of the respondent department and contested the facts, grounds and arguments of the learned counsel for the appellant. Contended that the appellant was treated in accordance with the law and rules by issuing proper charge sheet and statement of allegations. A full fledged departmental inquiry was conducted against him and the appellant was fully associated with the inquiry proceeding and found guilty of willful absent. The competent authority issued final show cause notice and personal hearing was given to him in orderly Room. In the Para-wise comments of the replying respondents and the learned DA stated that the appellant neither brought his illness into the notice of authorities nor he applied for leave on health ground hence no injustice has been committed against the appellant therefore the appeal may be dismissed with costs.

**ATTESTED**


*[Signature]*  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

5. Arguments heard. File perused.

6. The perusal of the record on file shows that the appellant


07.02.2019

Learned counsel for the appellant and Mr. Mian Amir Qadir learned District Attorney for the respondents present, Vide our detail judgment of today of this tribunal placed on file, keeping in view his long service and taking lenient view this tribunal feels appropriate to modify the punishment of dismissal from service and convert it into compulsory retirement. The appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)

Member



(Hussain Shah)

Member

Camp Court Swat

ANNOUNCED

07.02.2019

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

9

In the matter of:-

Waheed-ur-Rahman (Petitioner)  
Appellant

VERSUS

The PPO. K.P. & O.S. Respondents

KNOWN ALL to whom these present shall come that I/we, the undersigned appoint

**AZIZ-UR-RAHMAN and IMDAD ULLAH**  
Advocates High Court

To be the advocate for the Petitioner in the above mentioned case to do all the following acts, deeds and things or any one of them, that is to say:-

- ❖ To acts, appear and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or revision or execution or at any other stage of its progress until its final decision.
- ❖ To present pleadings, appeals, cross objections or petitions for execution review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of the said case in all its stages.
- ❖ To withdraw or compromise the said or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- ❖ To receive money and grant receipts therefore, and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
- ❖ To employ any other Legal Practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate wherever he may think fit to do so.
- ❖ I understand that the services of aforesaid lawyer are hired irrespective of the outcome of the case.

And I/We hereby agreed to ratify whatever the advocate or his substitute shall to do in the said premises.

And I/We hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequences of his absence from the Court when the said case is called up for hearing.

And I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, the Advocate shall be entitled to withdraw from the prosecution of the case until the same is paid.

IN THE WITNESS WHEREOF I/WE hereunto set my/our hand(s) to these present the contents of which have been explained to and understood by me/us, this 08 day of 07 2019.

Waheed-ur-Rahman

(Signature or thumb impression)

(Signature or thumb impression)

(Signature or thumb impression)

Accepted subject to terms regarding fees

(AZIZ-UR-RAHMAN)  
Advocate High Court

Office: Khan Plaza, Gulshone Chowk  
G.T. Road Mingora, District Swat.  
Cell No. 0300 907 0671

Imdad Ullah  
(IMDAD ULLAH)  
Advocate High Court

Office: Khan Plaza, Gulshone Chowk,  
G.T. Road, Mingora, District Swat  
Cell No. 0333 929 7746



IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

4139

PRESENT:

MR. JUSTICE GULZAR AHMED, H.C.J.

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

Civil Appeal No.992 of 2020  
(Against the judgment dated 07.02.2019 passed by  
the Khyber Pakhtunkhwa Service Tribunal at Camp  
Court Swat in Appeal No. 1082 of 2017)

Provincial Police Officer, KPK, Peshawar and others.

...Appellant(s)

Versus

Waheed-ur-Rehman.

...Respondent(s)

For the Appellant(s): Barrister Qasim Wadood,  
Addl. A. G. KP.

For the Respondent(s): Mr. Tariq Aziz, AOR/ASC.

Date of Hearing: 01.03.2021.

ORDER

GULZAR AHMED, C.J.- Admittedly, the

Respondent has remained absent from duty for about  
four years. He was issued a charge sheet alongwith  
statement of allegations. A proper inquiry was conducted  
in which the Respondent was found guilty of the charge.

As such, final show cause notice was issued and  
personal hearing was also afforded to the Respondent.

Thereafter, by order dated 20.07.2017, the Respondent  
was awarded the major penalty of dismissal from service.

He preferred a departmental appeal, which was rejected  
on 02.08.2017. Therefore, he filed a Service Appeal before

the Khyber Pakhtunkhwa Service Tribunal the

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

tribunal. Such appeal of the Respondent was partly  
allowed by the Tribunal while the Respondent was  
entirely satisfied with the majority of findings from  
service imposed upon him was corrected into that of  
compulsory retirement.

It is noted in the impugned judgment of the  
Tribunal as also in the case of the Appellants that the  
Respondent never applied for grant of leave nor leave on  
the ground of his sickness was ever refused and the  
ground of sickness was introduced by him for the first  
time when disciplinary proceedings were initiated against  
him. Although, some documents were filed by the  
Respondent before the Tribunal regarding his sickness  
but as he had not applied for grant of leave for almost  
four years on the ground of his sickness, the Tribunal  
could not have reasonably believed in them for the reasons  
documents were introduced by the Respondent after  
inquiry had already been conducted against him. The  
Respondent, being an employee of a Disciplined Force,  
could not have remained absent from duty for such a  
long period of four years and such absence period could  
not at all be condoned by any means nor any premium  
for being absent from duty could be allowed to the  
Respondent by way of retirement dues. The Police  
Department using a Disciplined Force, has to maintain

**ATTACHED**

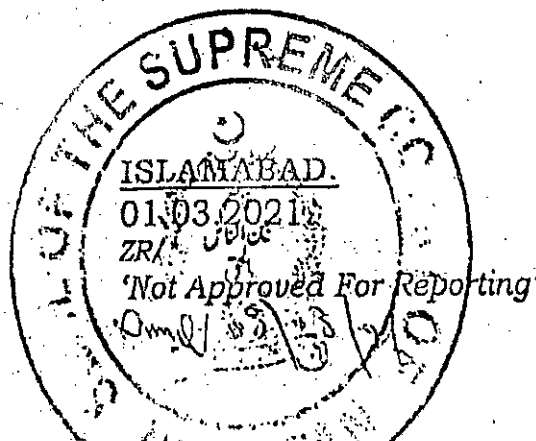
Senior Civil Associate  
Supreme Court of Pakistan  
Islamabad

www.psc.gov.pk

discipline is not maintained the whole department is likely to become an indiscipline force which is not the purpose for which the Police Force has been established. The Respondent, if at all, was sick he ought to have applied for grant of leave which admittedly he did not do. Consequently, we find that the impugned judgment of the Tribunal dated 07.02.2019 suffers from legal defect in that no sufficient reasons have been assigned as to why the penalty has been modified by the Tribunal which is required to give sufficient reasons for the same, which are not forthcoming herein. The only reason of long service is not a criterion on the basis of which the major penalty could be modified. As such, the impugned judgment of Tribunal dated 07.02.2019 is not sustainable and is accordingly set aside.

3. As a consequence, the listed appeal is allowed.

Sd-CJ  
Sd-J  
Sd-J



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