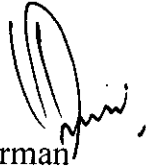


08.1.2019

Petitioner in person and Addl. AG alongwith Riaz Khan, Inspector for the respondents present.

The representative of the respondents has produced copy of order dated 01.03.2019 bearing 188-93/EF, dated 03.01.2019 which is placed on file. By virtue of that order the petitioner has been reinstated into service in compliance with the judgment under execution though conditionally and provisionally subject to the outcome of CPLA.

It seems, prima-facie, that judgment of the Tribunal passed in Appeal No. 774/2016 stands implemented. The petitioner also states at the bar that he has joined duty. The execution proceedings in hand are, therefore, consigned to record room. The petitioner shall be at liberty to apply for its restoration in case any part of his grievance remained un-redressed, but in accordance with the judgment.


Chairman

ANNOUNCED

08.01.2019

EP 151/2018

26.11.2018

Petitioner alongwith counsel and Addl. AG alongwith Muqarrab Khan, Inspector (Legal) for the respondents present.

Learned Addl. AG has submitted a copy of CPLA filed before the August Supreme Court against the judgment under implementation.

Learned counsel for the petitioner, however, stated that there was no order of suspension of the judgment under implementation as yet, therefore, the respondents were obligated^{ed} to implement the judgment under implementation.

In the circumstances, AAG requests for adjournment in order to submit the order^{of} restraint passed by the August Supreme Court, if any, or in the absence of such order, the implementation report. Adjourned to 08.01.2018 before S.B.


Chairman

09.08.2018

Petitioner Attaullah in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present and made a request for some time to submit reply/implementation report. Granted. To come up for reply/implementation report on 08.10.2018 before S.B.


Chairman



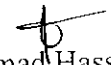

08.10.2018

Petitioner Attaullah, alongwith his counsel Miss Roeda Khan, Advocate present. Mr. Muhammad Sheraz, H.C alongwith Mr. Usman Ghani, District Attorney for the respondents present. The above named representative of the respondents made a request for adjournment. Granted. To come up for written reply/comments positively on 26.11.2018 before S.B.



Chairman

FORM OF ORDER SHEET

Execution Petition No. 151 /2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	18.05.2018	<p>The Execution Petition of Mr. Atta Ullah submitted to-day by Roeeda Khan 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-	28/05/18.	<p>This Execution Petition be put up before S. Bench on- <u>04/06/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	04.06.2018	<p>Counsel for the petitioner and Addl: AG for respondents present. Notices be issued to the respondents for submission of implementation report. To come up for implementation report on 09.07.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>
	09.07.2018	<p>Miss Roeeda Khan Advocate on behalf of petitioner present. None present on behalf of the respondents. Fresh notices be issued to the respondents. To come up for implementation report on 09.08.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No.  /2018

In

Service Appeal No: 774/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 570

Dated 18/05/2018

Attaullah Ex-Constable No. 512 Elite Force, R/o
Village and P.O Masho Khel, P/S Badhber District
Peshawar.

.....*Petitioner*

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police Commandant Elite Fore, Khyber Pakhtunkhwa Peshawar.
3. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

EXECUTION PETITION FOR
DIRECTING THE RESPONDENT
TO IMPLEMENT THE JUDGMENT
OF THIS HON'BLE TRIBUNAL IN
LETTER AND SPIRIT

Respectfully Sheweth,

1. That the applicant/appellant filed Service Appeal No.774/2016 in this August Tribunal against the order dated 05/05/2011, where the respondents/departments awarded the penalty of dismissal from service to appellant.
2. That this Hon'ble tribunal was pleased to accept the appeal of the appellant and set aside the impugned order dated 05/05/2011 and reinstated the appellant into service.
3. That the appellant submitted the judgment/order dated 04/04/2018 to the respondent/department.
4. That the respondent/department is legally bound to implement the judgment and this Hon'ble Tribunal in its true sense.
5. That the petitioner has no remedy except to file this execution petition.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment of this Hon'ble Tribunal in letter and spirit.

Dated: 17/05/2018

Ataish U
Applicant

Through *Roeeda*
Roeeda khan

&
Afshan manzoor
Advocates
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Execution petition No. _____/2018

In

Service Appeal No: 774/2016

Attaullah

VERSUS

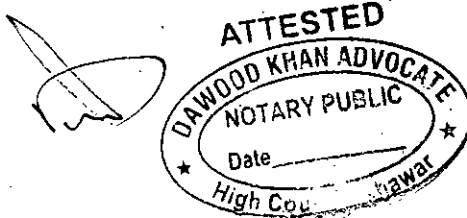
The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar
and others

Affidavit

I, Attaullah Ex-Constable No. 512 Elite Force, R/o Village and P.O Masho Khel, P/S Badhber District Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the instant Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent

17 MAY 2018



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



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 693

Dated 11-7-2016

Appeal No. 774/2016

Attaullah, Ex- Constable No.512 Elite Force, R/o
Village & P.O Masho Khel; P/S Badbher District
Peshawar.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar.
2. Additional Inspector General of Police/Commandant
Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa,
Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act, 1974,
against the order dated 05.05.2011, whereby
the appellant has been awarded the major
punishment of dismissal from service, against
which his departmental appeal was remitted by
this Honorable Tribunal vide its judgment and
order dated 13.04.2016 to the appellant
authority i.e Respondent No.2 for decision
afresh, has also been rejected vide order dated
09.06.2016.

Filed to-day

[Signature]
Registrar

11/7/16

Prayer in Appeal: -

On acceptance of this appeal the order dated
05.05.2011 and order dated 09.06.2016, may
please be set aside and the appellant may
kindly be reinstated into service with all back
benefits.

ATTESTED

[Signature]
Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Re-submitted to -day
and filed.

[Signature]
Registrar

29/7/16

Sr No Date of order/proceeding

2

Order or other proceedings with signature of Judge or Magistrate

3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 774/2016

Date of Institution ... 11.07.2016

Date of Decision ... 04.04.2018

Attaullah, Ex-Constable No.512 Elite Force, resident of Village & P.O Masho Khel, P/S Badbher District Peshawar.

Appellant

1. The Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police/Commandant Elite Force, Khyber Pakhtunkhwa Peshawar.
3. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.

Respondents

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned counsel for the appellant present. Learned Additional Advocate General for the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974. The appellant was awarded major punishment of dismissal from service vide order dated 05.05.2011. The departmental appeal of the appellant against the order dated 05.05.2011 was rejected vide order dated 12.07.2011. Thereafter, appellant approached this Tribunal by filing service appeal No.1457/2011. Resultantly this Tribunal set aside the appellate order dated 12.07.2011 and remitted the case to the departmental appellate authority for decision afresh. The appellate authority again rejected the departmental appeal of the appellant

04.04.2018

ATTESTED


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

vide order dated 09.06.2016. Hence the appellant again approached this Tribunal by filing the present service appeal.

3. Learned counsel for the appellant argued that the appellant was made member of raid party and due to some misunderstanding it was alleged that the appellant intended to steal Gold Made Necklace from a house during search proceedings. Further argued that the departmental proceedings were initiated against the appellant and ultimately the appellant was dismissed from service vide order dated 05.05.2011. That the departmental appeal of the appellant was also rejected vide order dated 12.07.2011, however the service appeal bearing No.1457/2011, of the appellant was partially accepted vide judgment dated 13.04.2016 and resultantly the appellate order dated 12.07.2011 was set aside with the direction to departmental appellate authority for decision afresh. That the departmental appeal of the appellant was again rejected vide order dated 09.06.2016 without observing legal requirements. That the punishment orders are illegal, unlawful, against the facts and that the appellant has not been treated in accordance with law. That the appellant was punished without observing the codal formalities and proper procedure and that the punishment awarded to the appellant is otherwise harsh and excessive.

4. As against that learned Additional Advocate General argued that the appellant was one of the member of the police party which conducted search operation and the appellant was caught red handed while committing theft of ornaments made of gold. Further argued

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

that the appellant was proceeded against departmentally and proper inquiry was conducted. Further argued that the inquiry officer examined various witnesses and after adopting procedural and codal formalities the appellant was awarded punishment. Further argued that being custodian of life and property of the citizens the appellant has committed a serious crime hence the impugned orders are not open to any exception.

5. Arguments heard. File perused.


6. In the present case the appellant replied the Charge Sheet, the inquiry officer recorded the statements of witnesses and found the appellant guilty.

7. In the original order dated 05.05.2011 whereby the major punishment of dismissal from service was awarded to the appellant, the authority has mentioned that the appellant was caught red handed while attempting to steal golden ornaments during search operation of a house.

8. From the material available on file it transpired that the appellant has not negated the fact that he had taken into possession gold made Necklace during search of the house, similarly this Tribunal in its judgment passed in service appeal bearing No.1457/2011 mentioned above noted that taking/keeping of the golden locket has been admitted by the appellant.

9. However it may also be mentioned that, in reply to Charge Sheet, the stance of the appellant was that he indeed wanted to deliver the gold made necklace to the inmates of the house and had

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

no intention to steal the same.

10. In view of the narrative of the appellant during the departmental action as mentioned above and that the appellant was produced before the high-ups as and when he took into the possession the gold made Necklace, this Tribunal is of the considered view that the punishment awarded to the appellant appears to be harsh, hence for the purpose of safe administration of justice the punishment awarded to the appellant is modified and converted into withholding of two (02) annual increments for a period of two (02) years. Resultantly the appellant is reinstated in service. The period intervening in between the original impugned order dated 05.05.2011 and this judgment shall be treated as extraordinary leave without pay. The present appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.04.2018

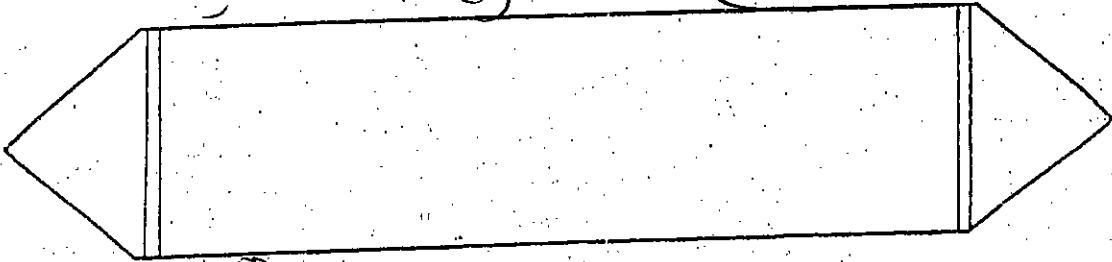
Ed. M. Hamid Nughal
Member

Ed. Ahmad Hassan
Member

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 10-5-18
Number of Words 2000
Copying Fee 12
Urgent 2
Total 14
Name of Copy [Signature]
Date of Completion of 10-5-18
Date of Delivery of Copy 10-5-18

بعد التجدد



2018 منجانب اسلام آباد

عطاء آغا بنام سردار

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی وجواب رہی دکل کاروائی متعلقہ

آن مقام کے لئے ~~دور درخت~~ ~~افسار~~ ~~جدید~~

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

دیکل صاحب کو راضی نامہ کرنے و تقرر ثالت ہ فیصلہ بر حلف دیئے جواب رہی ادرا قبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور صولی چیک در و پیرا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری کی طرفہ یا اپیل کی براندگی اور منسوخی

نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ

پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانش التوائے مقدمہ کے سبب سے وہ ہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیردی

مذکورہ کریں۔ لہذا دکالت نامہ لکھدیا کہ سند ہے۔

المرقوم ۱۶ ماہ ۲۰۱۸

العبد _____ واہ العبد _____

کے لئے منظور ہے۔

بمقام _____

Accepted By _____

دعویٰ



Office of the Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

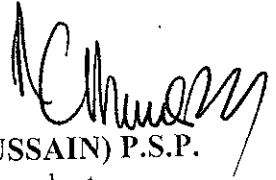


No. _____ /EF

Dated: 03/01/2019

ORDER

In light of Judgment of Service Tribunal Khyber Pakhtunkhwa, dated 13.04.2016, and legal opinion of AIG/Legal vide letter No. 5006/legal, dated 31.12.2018, Ex-Constable Attaullah No. 512 of this unit is hereby re-instated into service conditionally and provisionally subject to the outcome of CPLA till further order with immediate effect.


(MUHAMMAD HUSSAIN) P.S.P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 188-93 /EF

Copy of above is forwarded for information and necessary action to the:-

1. Superintendent of Police, Elite Force, HQrs: Peshawar.
2. Accountant, of Elite Force Pakhtunkhwa Peshawar.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar:
4. SRC/OHC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar. 50 Pages

R. H. FMC
File