

10.09.2018

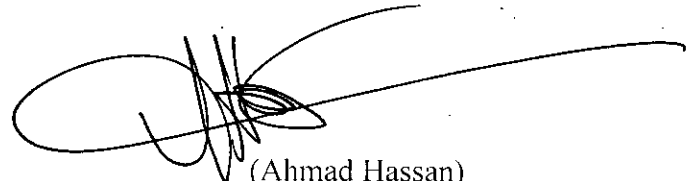
Petitioner Khawaja Wali, Petitioner in person alongwith his counsel Miss. Naila Jan, Advocate present. Mr. Asghar Ali, H.C alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. The above named representative stated that the impugned order has been challenged before the august Supreme Court of Pakistan. However, in the absence of any restraining/ suspension order issued by the august Supreme Court, the implementation of judgment of this Tribunal cannot be stopped. As such, the above named representative is directed either to produce stay/suspension order by the august Supreme Court of Pakistan or to produce conditional implementation order on 16.10.2018 before S.B.

11/11  
16.10.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the petitioner submitted order dated 28.09.2018 whereby the appellant has been reinstated in service and requested for withdrawal of the instant execution petition on the ground that the matter has been solved and the petitioner does not want to proceed further with this execution petition. In this respect his signature also obtained on the margin of the order sheet. As such the instant execution petition is hereby dismissed as withdraw. File be consigned to the record room.

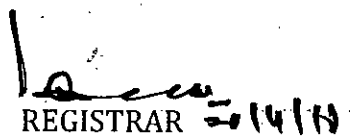

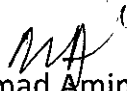

*I have withdrawn the said execution petition. / on before 16/10/2018*

Announced:  
16.10.2018

  
(Ahmad Hassan)  
Member (E)

FORM OF ORDER SHEET

Execution Petition No. 124 / 2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	20.04.2018	<p>The Execution Petition of Mr. Khawaja Wali submitted to-day by Naila Jan 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 20/4/18</p>
2-	15/05/18.	<p>This Execution Petition be put up before S. Bench on <u>21/05/18.</u></p> <p style="text-align: right;"> MEMBER</p>
21.05.2018		<p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 07.08.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>
07.08.2018		<p>Petitioner Noor Khan in person present. Mr. Asghar Ali, H.C. alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Petitioner made a request for adjournment. Granted. Case to come up for further proceedings on 10.09.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>

ORDER:

In compliance with the order of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 10.09.2018 in the Service Appeal No.124/2018, Ex-Constable Khwaja Wali No.1859, is hereby re-instated into service from the date of dismissal. The Constable was remained out of service for a period of 04-years, 07-months and 11-days, which is equal to 1686-days. From the calculation of Services in Police department as Constable, 227-days are in credit in his leave account. Therefore, 227-days period is converted into kind leave subject to provision of back benefits, while the remaining intervening period of 1459-days is converted as leave without pay.

OB No. 850  
Dated: 26-09 /2018.

District Police Officer,  
Bannu.

No. 12735-41 /EC dated Bannu, the 28-9 /2018.

Copy for information to:

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. P.1 Legal, Reader, Pay officer, SRC, OHC & Line Officer Bannu, for information and necessary action.

12735-41  
District Police Officer,  
Bannu.

P.1 Legal

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

Execution petition No. 124 /2018

In

Service Appeal No: 1313/2013

Khwaja Wali

**VERSUS**

Regional Police Officer Bannu AND OTHERS

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4.	Wakalat Nama.		

Dated: 20-04-2018

Through  
Petitioner  
Naila Jan Advocate  
Peshawar High Court  
Naila Jan  
Advocate, High Court  
Peshawar

D

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

Execution petition No. 124 /2018

In

Service Appeal No: 1313/2013

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 601

Dated 20-4-2018

Khawaja Wali S/o Ex Constable No. 1859 of District  
Bannu S/o Muhammad Rabbani R/o Nizal Bazar  
Bannu.

.....Petitioner

**V**ersus

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer Bannu .
3. Provincial Police Officer, Khyber Pakhtunkhwa  
Peshawar.

.....Respondents

**EXECUTION PETITION FOR**  
**IMPLEMENTATION OF THE**  
**JUDGMENT OF THIS HON'BLE**  
**TRIBUNAL IN APPEAL No.**  
**1313/2013 DECIDED ON**  
**08/01/2018**

**Respectfully Sheweth,**

1. That the above mention appeal was decided by  
this Hon'ble Tribunal vide Judgment dated 08-

Not for Circulate

2)

01-2018. (Copy of the judgment is annexed as annexure "A")

2. That the relevant portion of the judgment is reproduced present appeal is accepted the impugned order are set aside and appellant is reinstated in service intervening period shall be treated as leave of the kind due, parties are left to bear their own costs. File be consigned to the record room.

3. That the Petitioner after getting of the attested copy of same approached the Respondent several time for implementation of the above mention judgment. However they are using delaying tactics and reluctant to implement the judgment of this Hon'ble Tribunal.

4. That the Petitioner has no other option but to file the instant petition implementation of the judgment of this Hon'ble Tribunal

5. That there is nothing which may prevent this Hon'ble Tribunal from implementing of its own judgment.

*It is, therefore, requested that on acceptance of this petition the Respondents may directed to implement the judgment of this Hon'ble Tribunal by reinstating the Petitioner with all back benefits.*

Dated: 20/04/2018

Through Petitioner



**Naila Jan Advocate**  
Peshawar High Court  
Peshawar

Naila Jan  
Advocate, High Court  
Peshawar

AFFIDAVIT:-

I, Khawaja Wali S/o Ex Constable No. 1859 of District Bannu S/o Muhammad Rabbani R/o Nizal Bazar Bannu, do hereby solemnly affirm and declare on oath that all the contents of above application are true and correct to the best of my knowledge and belief and nothing has been misstated or concealed from this Hon'ble Court.

  
Deponent

20-04-18  
**NOTARIES**  
**NOTARY PUBLIC**

4

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

Execution petition No. \_\_\_\_\_/2018

In

Service Appeal No: 1313/2013

Khawaja Wali

**VERSUS**

Regional Police Officer Bannu AND OTHERS  
**ADDRESSES OF PARTIES**

***PETITIONER***

Khawaja Wali S/o Ex Constable No. 1859 of District  
Bannu S/o Muhammad Rabbani R/o Nizal Bazar  
Bannu.

**RESPONDENTS**

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer Bannu.
3. Provincial Police Officer, Khyber Pakhtunkhwa  
Peshawar.

Dated: 20/04/2018

***PETITIONER***

Through

**Naila Jan Advocate  
Peshawar High Court**

***Naila Jan***  
Advocate High Court  
Peshawar

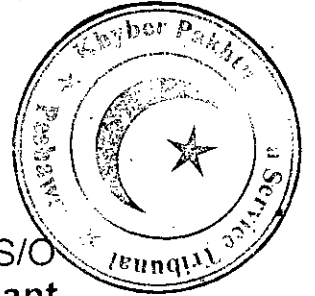


(S) *Amir A*

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 1313/2013

Khwaja Wali Ex Constable No 1859 of District Police Bannu, S/O  
Muhammad Rabbani R/O Nizal Bazar Bannu.....Appellant



**VERSUS**

- 1325*  
*09-09-13*
1. Regional Police Officer, Bannu Region Bannu.
  2. District Police Officer, Bannu.
  3. Provincial Police Officer, Khyber Pukhtoon khwa Peshawar
- .....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974**  
**AGAINST THE ORDER DATED 03-07-2013 OF**  
**RESPONDENT NO 1 WHEREBY DEPARTMENTAL APPEAL**  
**OF THE APPELLANT AGAINST THE ORDER DATED 28-05-**  
**2013 OF RESPONDENT NO 1 WHEREBY THE APPELLANT**  
**WAS AWARDED THE PUNISHMENT OF DISMISSAL FROM**  
**SERVICE AND THE PERIOD OF ABSENCE WAS TREATED**  
**AS LEAVE WITH OUT PAY AND PAY WAS RELEASED,**  
**HAS BEEN FILED.**

**PRAYER:-**

*9/9/13*

On acceptance of this appeal the impugned orders dated 03-07-2013 of Respondent No 1 and order dated 28-05-2013 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**Respectfully Submitted:-**

1. That the appellant joined Police Department as Constable in the year 2007 and since then performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.

**ATTESTED**

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

6

Sr. No  
Date of order/proceedings

1 2

Order or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1313/2013

Date of Institution ... 09.09.2013  
Date of Decision ... 08.01.2018

Khwaja Wali Ix Constable No.1859 of District Police  
Bannu, S/O Muhammad Rabbani R/O Nizal Bazar  
Bannu.

Versus

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer, Bannu.
3. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: -

Appellant, learned counsel for the appellant and Mr. Riaz Pinda Kheil, learned Assistant Advocate General on behalf of the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the respondents and made impugned the order

*Painda*

08.01.2018

**ATTESTED**

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

dated 28.05.2013 whereby he was dismissed from service on the ground of absence from duty. The appellant has also challenged the order dated 03.07.2013 whereby the departmental appeal of the appellant was rejected.

3. Learned counsel for the appellant argued that the appellant remained absent for the reasons beyond his control, as his father died and his mother and wife were seriously ill. Further argued that the respondent

department on one hand regularized the absence period of the appellant as leave without pay and on the other hand, vide the same order dated 28.05.2013 also awarded major penalty of dismissal from service for remaining absent.

Hence due to regularization of the absence period, awarding of the punishment of dismissal from service on the same ground of absence is illegal.

4. As against that learned AAG while opposing the present appeal argued that the appellant remained absent from duty without prior application and permission and was dismissed from service after the fulfillment of legal requirements.

5. Argument heard. File perused.  
6. It is not disputed that vide the original impugned

ATTESTED  
K. Srinivasulu Reddy  
Secretary  
K. Srinivasulu Reddy  
Secretary  
K. Srinivasulu Reddy  
Secretary

Lawyer

order dated 28.05.2013 the competent authority has regularized the absence period of the appellant as leave without pay and also dismissed the appellant from service on the same ground of absence from duty. This Tribunal has held in a number of judgments that once the authority has treated the absence period as leave without pay, then the awarding of punishment of dismissal from service on the same ground of absence is not tenable in the eyes of law. Reliance in this regard is also placed on judgment of the august Supreme Court of Pakistan reported in (2006 SCMR 434).

7. Consequently the present appeal is accepted, the impugned orders are set aside and the appellant is reinstated in service. Intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Announced sdy-M. Hanif Nighal,  
08-01-2018 Numb

sdy-Ahmad Hassan,  
Numb

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 18-4-18  
Number of Words 1600  
Copying Fee 10/-  
Urgent 2/-  
Total 12  
Name of Copyist [Signature]  
Date of Completion of Copy 18-4-18  
Date of Delivery of Copy 18-4-18

قیمت 50 روپے	 	25088
ایڈوکیٹ: Naila Jan	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر:		
رابطہ نمبر: 03129215471		

بعدالت جناب: جسٹس محمد رفیق شہزاد

مخانب: Appellant	دعویٰ: کروٹی اپیل
Khawaja wali ex constable بنام	Execution Petition No. 124/18
KP Police	مورخہ:
	جرم:
	تھانہ:

**باعت تحریر آگے**

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

آن مقام شہزاد کیلئے محمد رفیق شہزاد کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے 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 سند رہے

المرقوم: 20/4/2018

المقام: شہزاد

مقام: شہزاد کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Naila Jan Advocate  
Peshawar High Court

accepted

accepted  
by

Naila Jan  
APC

Khawaja wali Ex-Constable Distt Bannu