

04.04.2018

Petitioner with counsel and Mr. Usman Ghani, District Attorney alongwith Mr. Hamayun Khan, SDFO for the respondents present. Wakalatnama in favour of Mr. ImdadUllah and Mr. Aziz-ur-Rehman, Advocate submitted. The departmental representative informed that the pay of the petitioner has been released by the department to his account on 29.03.2018.

The present execution petition is, therefore, disposed of as duly executed. The petitioner is, however, at liberty to file another petition, if he feels that the judgment has not been complied with. File be consigned to the record room.

ANNOUNCED
04.04.2018


Chairman
Camp Court, Swat

FORM OF ORDER SHEET

Execution Petition No. 37/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	07.02.2018	<p>The Execution Petition of Mr. Hayat Muhammad submitted to-day 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;"><i>[Signature]</i> REGISTRAR</p>
2-	8-2-18	<p>This Execution Petition be put up before Touring S. Bench at Swat on <u>8-03-18</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
08.03.2018		<p>Petitioner in person present. Notices be issued to the respondents. To come up for implementation report on 4.4.2018 before S.B at camp court, Swat.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman Camp court, Swat</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 37 /2018
In

Service Appeal No. 337/2017.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 139

Dated 07/02/2018

Mr. Hayat Muhammad, Forest Guard, Matta Forest Sub Division,
District Swat.

(Petitioner)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Forest, Environment and Wild Life Department, Peshawar.
2. The Chief Conservator of Forests, Malakand Forest Division Region-III, Saidu Sharif Swat.
3. The Conservator of Forests, Malakand Circle East, Saidu Sharif, Swat.
4. The Divisional Forest Officer, Swat Forest Division, Mingora Swat.
5. The Sub Divisional Forest Officer, Matta Sub Division, Swat.

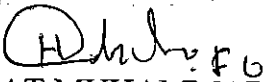
EXECUTION PETITION FOR PROPER IMPLEMENTATION OF
JUDGMENT DATED 04.12.2017 IN SERVICE APPEAL NO.
337/2017.

RESPECTFULLY SHEWETH

1. That the petitioner was dismissed from service on 26.01.2017 against which he filed service appeal No. 337/2017 before this Honourable Tribunal.
2. That vide judgment dated 04.12.2017, this Tribunal accepted the appeal and the petitioner was reinstated in service, however the department was at liberty to hold denovo proceedings in accordance with the law and rules. The issue of back benefits should also be subject to the final outcome of the denovo proceedings. (Annexure-A).
3. That vide order dated 08.12.2017, the appellant has been reinstated in service with immediate effect. (Annexure-B).

4. That the petitioner has not been paid current salary w.e.f 08.12.2017 till date despite his reinstatement in service.
6. That a period of more than two months elapsed but the departmental proceedings have not been conducted and concluded and under the law the petitioner is also entitled to back benefits.

It is, therefore, requested that the respondents may very kindly be directed to pay the petitioner salary for the period from his reinstatement in service i.e. 08.12.2017 as well as back benefits w.e.f. 26.01.2017 and oblige.


(HAYAT MUHAMMAD)

Petitioner

AFFIDAVIT

I Hayat Muhammad Forest Guard, Matta Forest Sub Division, Swat do hereby solemnly affirm and declare that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT



Service Appeal No. 336/2017

Date of Institution... 12.04.2017

Date of decision... 04.12.2017

Habibullah Khan Ex-Forest Guard, Incharge Lalku C. No. 31 to 46, Tehsil Matta, District Swat. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Secretary Forest, Environment and Wild Life Peshawar and 4 others. ... (Respondents)

MR. IMDADULLAH,
Advocate ... For appellant.

MIAN AMIR QADAR,
District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also dispose of service appeals No. 337/2017 of Hayat Muhammad and No. 338/2017 of Shah Kamin Khan as in all the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellants were dismissed on 26.01.2017 against which they filed departmental appeals on 06.02.2017 which were rejected on 29.03.2017 and

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CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Swat

thereafter they filed the present service appeals on 12.04.2017. The charges against the appellants were 5 in number which include creation of criminal obstruction in the process of checking of their beats, misbehavior with superior officers, covering of illicit damage, non compliance with the orders of the superiors and damage caused to the forests.

ARGUMENTS

4. The learned counsel for the appellants argued that the authority issued show cause notices to the appellants on 20.12.2016 mentioning five charges against the appellants which were duly replied to by the appellants. That many factual controversies are involved in the charges. That there is no mention of any reason for dispensing with the regular enquiry. That no personal hearing was afforded to the appellants. That one of the fact finding enquiry which was made the basis for initiation of departmental proceedings was carried out by the authority himself.
5. That in the appeal of Shah Kameen Khan, he attained superannuation on 12.01.2017 but the impugned order was passed 14 days after his superannuation which is an illegal act. That the appellant Shah Kameen Khan was awarded two major punishments retrospectively which is void order.
6. On the other hand, the learned District Attorney argued that the authority has rightly proceeded against the appellants under Rule 7 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. That there was sufficient record against the appellants. That the appellants were afforded personal hearing. That all codal formalities were fulfilled.

CONCLUSION

7. Rule 7 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 read with Rule 5 clearly states that the authority has the power to dispense with the regular enquiry but with reasons. In the present appeals no reason at all have been given by the authority for dispensing with the regular enquiry. The nature of the charges were such which required determination through evidence. One of the proof of such factual controversies is charge No. 2 in the show cause notice wherein it has been written that the staff accompanied with SDFO Matta were eye witnesses of the occurrence. The other charges also needed proof through evidence because all these charges have been refuted by the appellants in their reply to the show cause notice. The authority has also not mentioned that what documentary evidence was available against the appellants justifying the dispensation of the formal enquiry. One of the preliminary enquiry was conducted by the authority itself. The rules does not allow the authority to conduct preliminary enquiry. So much so that under sub rule 3 of Rule 10 of the above mentioned rules a formal enquiry cannot be conducted by the person who has conducted the fact finding enquiry. The rationale behind such rule is that the enquiry officer should not be prejudiced or biased on the basis of fact finding enquiry. The authority who himself conducted the fact finding enquiry would be biased towards the delinquent officials and no fair judgment is expected from such bias person.

8. In appeal of Shah Kameen Khan, the order has been passed after his superannuation and with retrospective effect. This order on both these counts is illegal and void. Reliance is placed on 1985-SCMR-1178.

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Government Servants (E&D) Rules
2011

9. In view of the above discussion, this Tribunal reaches the conclusion that the authority has not acted in accordance with the law and all the three appeals are therefore, accepted and appellants Habibullah and Hayat Muhammad are reinstated in service. The authority is however, at liberty to hold denovo proceedings in accordance with the rules and law as per observations mentioned above. The issue of back benefits of both the appellants shall be subject to the final outcome of the denovo proceedings.

10. Since Shah Kameen, appellant has attained superannuation and no further proceedings could be initiated against him and it has also been held above that the order against him is a void order, therefore, the same order is set aside and the penalties imposed on Shah Kameen Khan appellant are set aside. He shall also be entitled for the back benefits.

11. Parties are left to bear their own costs. File be consigned to the record room.

[Signature]

(Muhammad Hamid Mughal)
Member

[Signature]
(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED

04.12.2017

Certified to be true copy

[Signature]
Khan
Camp Court, Swat

Date of Presentation of Application 5-12-17
Number of Appeals 1000
Cr. No. 10-00
12-00
12-00
5-12-17
5-12-17

OFFICE ORDER NO. 52 DATED MINGORA THE: 08/12/2017 ISSUED BY MR. SHAH HUSSAIN DIVISIONAL FOREST OFFICER SWAT FOREST DIVISION MINGORA SWAT.

Consequent upon decision announced on 04.12.2017 by Khyber Pakhtunkhwa Services Tribunal Camp Court Swat, M/S Habibullah Khan and Hayat Muhammad Forest Guards are hereby re-instated in service and attached with SDFO Matta Forest Sub Division in the best interest of public service with immediate effect till further order.

Sd/-
(Shah Hussain)
Divisional Forest Officer
Swat Forest Divn: Mingora

No. 2542-45
/E,

Copy forwarded to the:

1. Conservator of Forests, Malakand Forest Circle East Saidu Sharif for favour information, please.
2. SDFO Matta for information and necessary action.
3. M/S. Habibullah Khan and Hayat Muhammad Forest Guards C/O SDFO Matta for information and necessary action.
4. Head Clerk/Accountant for information and necessary action.


Divisional Forest Officer
Swat Forest Divn: Mingora

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the matter of:-

[Signature] Appellant
VERSUS
[Signature] Respondent

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

AZIZ-UR-RAHMAN and IMDAD ULLAH
Advocates High Court

[Signature]
4-4-18

To be the advocate for the [Signature] 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 4 day of 4 2018.

(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)

Advocate High Court

Office: Khan Plaza, Gulshone Chowk,

G.T. Road, Mingora, District Swat

Cell No. 0333 929 7746

جامعہ نسری دہلی

جناب عالی

مدرسہ حقیدہ ہمدانیہ اور سرسویں ٹرینول KPR

نومبر 17، 12، 05 اپنا جامعہ نسری دہلی کے بارے میں
کئی باتوں پر آدھو کاپی لف دہلی کے بارے میں۔ اس کے علاوہ
دیگر امور ان بارے میں آدھو کاپی حرمیل کے بارے میں

کاپی کے اظہار عیبی

ڈاکٹر سرسویں ٹرینول کینیا اور

ڈی جیف کنزرویٹو علاقہ کنڈر پین عظام ننگلی سید پور

ڈی کنزرویٹو علاقہ کنڈر پین عظام ننگلی سید پور

5-12-07

صیانت و تحفظ کے بارے میں
سوائے ناریس ڈیولپمنٹ
سوائے

05-12-17

