

09.07.2019

Petitioner alongwith his counsel and Addl: AG alongwith Mr. Muhammad ZAfran, ASI for respondents present.

In view of order dated 08.04.2019, whereby, the petitioner has been reinstated in service provisionally subject to the outcome of the CPLA pending before the apex court, the instant execution proceedings are consigned to the record room. The petitioner shall, however, be at liberty to apply for restoration of the proceedings in case any part of the relief granted to him remained unsatisfied after the decision of CPLA.

Announced:
09.07.2019


Chairman

22.04.2019

Counsel for the petitioner and Addl: AG alongwith Mr. Tasawar Khan, PASI for respondents present. Representative of the respondents produced order dated 08.04.2019, whereby the petitioner has been reinstated in service conditionally subject to the final outcome of the CPLA filed in the august Supreme Court of Pakistan and the same is placed on file. A copy of the same was also handed over the learned counsel for the petitioner. Case to come up for further proceedings on 11.06.2019 before S.B.


(Ahmad Hassan)
Member

11.06.2019

Counsel for the petitioner and Addl: AG for respondents present. Learned counsel for the petitioner sought adjournment. Adjourned. Case to come up further proceedings on 09.07.2019 before S.B.


(Ahmad Hassan)
Member

30.01.2019

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present and requested for further adjournment. Adjourned. To come up for implementation report on 12.02.2019 positively before S.B.


(Muhammad Amin Khan Kundi)
Member

12.02.2019


Petitioner with counsel present. Waqar Ahmad PSI representative of the respondent department present. Implementation report not submitted. Representative of the respondent department requested for time to furnish implementation report. Granted. To come up for further proceedings/implementation report on 18.03.2019 before S.B.


Member

18.03.2019

Petitioner with counsel present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Directions contained in order sheet dated 20.12.2018 has not been complied with by the respondents. Last opportunity is granted for submission of provisional implementation report, failing which coercive measures would be taken against the respondents. Case to come up for further proceedings on 22.04.2019 before S.B.


Member
(Ahmad Hassan)

15.10.2018

Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Arguments could not be heard due to general strike of the bar. Case to come up for further proceedings on 02.11.2018 before S.B.


(Ahmad Hassan)
Member

02.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 20.12.2018.


READER

20.12.2018

Petitioner with counsel present and stated that the respondent department is not implementing the judgment in question on the plea that it has filed CPLA before august Supreme Court of Pakistan. Respondent department is directed to furnish conditional implementation report or order of suspension of operation of judgment under implementation. Adjourn. To come up for conditional implementation report on 30.01.2019 before S.B.


Member



24.07.2018

Petitioner absent. Learned counsel for the petitioner absent. Mr. Muhammad Jan learned Deputy District Attorney present. Adjourned. To come up for implementation report otherwise reply/para wise comments on 31.08.2018 before S.B


Member

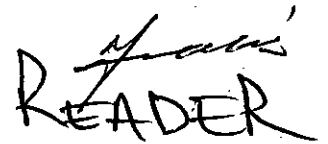
31.08.2018

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG requested for further time. Last opportunity granted. Adjourned. To come up for implementation report on 20.09.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

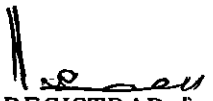



22.9.2018

Due to muharram ul haram
vacation the case was
not heard on 20.9.2018
Adjourned for 15-10-18


READER

FORM OF ORDER SHEET

Execution Petition No. 49/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	16.02.2018	<p>The Execution Petition of Mr. Irfat Ullah submitted to-day by Mr. Saadullah Khan Marwat 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-	26/02/18	<p>This Execution Petition be put up before S. Bench on <u>05/03/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;"> (Gul Zeb Khan) Member</p>
1	05.03.2018	<p>Counsel for the petitioner present. Notice be issued to the respondent department for submission of implementation report on 02.05.2018 before S.B.</p> <p style="text-align: right;"> Reader</p> <p>Petitioner alongwith junior counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 24.07.2018.</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR*Execution Petition no. 49/2018*

Misc Pett: No. _____ /2018

Irfat Ullah versus I.G.P & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Misc Petition		1-2
2.	Memo of A. No 712/12	"A"	3-5
3.	judgment dated, 14-12-2017	"B"	6-8
4.	Applications for implementation	"C"	9-10

Applicant.

Through



(Saadullah Khan Marwat)

Advocate

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

0311-9266609

Dated 16-02-2018

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR*Execution Petition No. 49/2018*

Misc Pett: No. _____ /2018

IN

S.A. No. 712 / 2012

**Khyber Pakhtunkhwa
Service Tribunal**

Irfat Ullah S/O Hakeem Khan

R/o Rehmat Abad Kark,

Police Constable No. 630.

District Karak Appellant

Diary No. 193Dated 16/02/2018**VERSUS**

1. Inspector General of Police,
KP, Peshawar.
2. Regional Police Officer,
Kohat Range Kohat
3. District Police Officer Karak Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPLICATION FOR DIRECTION TO RESPONDENTS
TO IMPLEMENT THE ORDER DATED 14-12-2017 OF
THE HON'BLE TRIBUNAL PASSED IN APPEAL NO
712/2012 AND TO INITIATE CONTEMPT OF COURT
PROCEEDINGS AGAINST THE RESPONDENTS FOR
NOT HONORING THE ORDER OF THE HON'BLE
TRIBUNAL:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

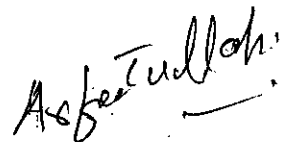
1. That on 28-06-2012, applicant filed Appeal No. 712/2012 before the hon'ble Tribunal against dismissal from service. (Copy as Annex "A")

2. That the said Appeal came up, after thorough probe, for hearing on 14-12-2017 and then the hon'ble Tribunal was pleased to accept the appeal and the dismissal order was set aside and the intervening period be treated as leave of the kind due. (Copy as Annex "B")
3. That the said judgment was remitted to the respondents on 10-01-2018 and 14-02-2018 by the appellant for compliance and implementation in letter and spirit. (Copy as Annex "C")
4. That respondents are not honoring the judgment of the hon'ble Service Tribunal.

It is, therefore, most humbly requested that judgment dated 14-12-2017 of the hon'ble Tribunal be implemented in letter and spirit hence forthwith and appellant be reinstated along with all service benefits.

OR

In the alternate, contempt of court proceedings be initiated against the respondents for non compliance of the judgment of the hon'ble Tribunal and they be punished under contempt of Court Law.



Applicant

Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal
Advocates

Dated 16-02-2018

3 ④

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.....\2012

Irfatullah Ex. Police Constable No.630 District
Karak.....Appellant

Versus

- 1. Inspector General of Police KPK, Peshawar.
- 2. Regional Police Officer Kohat Range Kohat.
- 3. District Police Officer Karak..... Respondents

Appeal under section 4 of the NWFP Service Tribunal Act, 1974 against the Office Order dated 31.05.2012 passed by Respondent No.2 whereby the Departmental appeal of the appellant against the order dated 21.03.2011 passed by respondent No. 3 was dismissed and the appellant dismissal was upheld.

Prayer in appeal:

On acceptance of this appeal the impugned orders dated 31.05.2012 & 21.3.2011 passed by respondent No. 2 & 3 respectively may be set-aside and the appellant may please be reinstated into service with all back benefits.

Respectfully Sheweth:

- 1. That one Dilfaraz alias Dilbori R\O Karak was arrested by the local police in case FIR NO.273 DATED 31.8.2008 U\Ss 367A, 337J, 34 PPC PS Takhti Nasrati.
- 2. That the said Dilfaraz was sent to hospital as per order of the court for treatment.
- 3. That the present appellant along with three others police constable were deputed with the accused in the hospital for his security.

4. That on 15.9.2008 the accused escaped from the custody, therefore, all the three police constables were booked under the law U\Ss 221,223,224,119PPC vide FIR no.392 dated 15.9.2008 PS Karak.

5. That appellant and others were tried by Add; Sessions Judge Karak, who vide judgment dated 17.3.2011 convicted and sentenced them to three years RI each U\S 119PPC. They were also convicted and sentenced U\S 221PPC for three years RI each with a fine of Rs.25000\ - or in default to undergo for three months SI. They were also convicted and sentenced U\S 223PPC for two years RI each with a fine of Rs.25000\ - or in default to undergo for three months SI.

6. That on appeal through judgment dated 6.4.2012 conviction of the appellant and others U\Ss 119,221PPC was set aside however, their conviction U\S 223PPC was maintained while sentence of imprisonment was also set aside and the sentence of fine was reduced to rs.10,000\ - each or in default to undergo for three months SI.

7. That respondent no.3 without waiting for the result of the appeal through order dated 21.3.2011 dismissed the appellant from service.

8. That thereafter, appellant preferred departmental appeal to respondent No. 2 which was dismissed vide order dated 31.05.2012 hence the present appeal against the orders dated 31.5.2012 & 21.03.2011 passed by respondent No. 2 & 3 inter alia on the following grounds

Grounds

- A- a. That the appellant has not been treated in accordance with law, and his right secured and guaranteed under the law and Constitution has been violated.
- B- b. That the appellant was punished for the same offence twice as earlier on 17.12.2008 vide order no.1655 his two annual increments has been stopped on account of the same offence.
- C- c. That the appellant has been proceeded against without affording him an opportunity of personal hearing or providing a chance for

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twice*

*Innocent
if given chance
will cooperate by
the inquiry officer*

defense which is violative of the principles laid down by the superior courts.

d. That no enquiry was conducted in accordance with sec. 3^A(2) of RSO and the impugned action was taken at the back of the appellant.

e. That before the enquiry to be conducted, the respondents have decided to remove the appellant from the Police Department by hook or by crook.

f. That the respondents imposed major penalty on the appellant by dismissing him from service without giving any cogent reasons.

g. That the impugned order dated 31.05.2012 and 21.3.2011 passed by respondent No. 2 & 3 are highly arbitrary, mala fide, discriminatory, whimsical and thus untenable.

It is, therefore prayed that on acceptance of this appeal the impugned orders dated 31.05.2012 and 21.3.2011 may be set-aside and the appellant be restored to his service with all back benefits.

Any other remedy deemed proper may also be allowed.

Ashrafullah

Appellant

Through

Nasir Mehmood

Nasir Mehmood Advocate,

13-D Haroon Mansion Peshawar.

AFFIDAVIT

I, Irfatullah Ex. Police Constable No.630 District Karak do hereby solemnly affirm and declare on oath that contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable tribunal

Irfatullah

Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.712/2012

Date of Institution 28.06.2012
Date of Decision 14.12.2017



Irfat Ullah Ex-Police Constable No. 630
District Karak.

(Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa, Peshawar & 02 others.

(Respondents)

Mr. Saad Ullah Khan Marwat,
Advocate

For appellant.

Mr. Riaz Painsa Khel
Assistant Advocate General

For respondents

MR. GUL ZEB KHAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER
MEMBER

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGMENT

GUL ZEB KHAN, MEMBER. The aforesaid appeal dated 28.06.2012 has been

judged by Irfat Ullah, Ex-Police Constable hereinafter referred to as the appellant, under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, wherein the appellant has impugned the office order dated 21.03.2011. The appellant preferred a departmental appeal, but the same was dismissed vide order dated 31.05.2012.

3. Learned counsel for the appellant argued that one Dilfaraz alias Diobori R/o Karak was arrested by the local police in a case under FIR No. 273 dated 31.08.2008 u/s 367A, 337J, 34PPC in PS Takhti Nasrati. That the appellant, alongwith three other police constables, was deputed with the accused in the hospital for his security. That on 15.09.2008 the accused escaped from the custody, therefore all the three police constables were booked u/s 221, 223, 224, 119PPC.

others were tried by Add. Sessions Judge Karak, who vide judgment dated 17.03.2011 convicted and sentenced each to three years RI u/s 119/PPC. They were also convicted and sentenced u/s 221/PPC for three years RI each with a fine of Rs. 25,000/- or in default to undergo for three months RI. They were also convicted and sentenced u/s 223/PPC for two years RI each with a fine of Rs. 25,000/- or in default to undergo for three months SI. That in the meanwhile, respondent No. 3 without waiting for the result of the appeal dismissed the appellant from service vide order dated 21.03.2011. Further argued that the appellant was punished for the same offence twice as earlier on 17.12.2008 vide order no. 1655 his two annual increments have been stopped on account of the same offence. That the appellant has been proceeded against without affording him an opportunity of personal hearing or providing a chance for defense which is violative of the principles laid down by the superior courts. That no enquiry was conducted in accordance with Section 3 A (2) of Removal from Service Special Power (Ordinance 2000) and the impugned action was taken at the back of the appellant. That it is quite clear that the respondents had decided, even before the arrival enquiry report to remove the appellant from the police department either by hook or by crook. That the respondents imposed major penalty on the appellant by dismissing him from service without giving any cogent reasons. Further argued that these orders, being illegal and very harsh, may be set aside and the appellant may be reinstated in service with all back benefits.

4. On the other side learned Deputy District Attorney argued that the appellant along with three other police officials was deputed with an accused in the hospital for his security. That the appellant was charged in case FIR No. 392 dated 15.09.2008 u/s 221, 223, 224, 119 PPC in PS Karak. That during trial proceedings

ATTESTED


P. S. KARAK

and convicted by learned Additional Session Judge Karak vide his judgment dated 17.03.2011. That through the judgment dated 06.04.2012, conviction of the appellant and others u/s 119, 221 PPC was set aside, and their conviction u/s 223 PPC was maintained while sentence of imprisonment was also set aside and sentence of fine was reduced to Rs. 10,000 each or in default to undergo for three months simple imprisonment. That the respondent No. 3 dismissed appellant from service on the result of his conviction. Further argued that appellant was proceeded on the allegation that he failed to provide security to the accused and was awarded major punishment of dismissal from service by the respondents after fulfilling all the codal formalities.

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.

6. It is not disputed that the appellant was initially charged u/s 221, 223, 224, 119 PPC in PS Karak and it is also not disputed that the learned courts have subsequently restricted the punishment only to the fine of Rs. 10,000/- which means that the quantum or nature of the ^ugilt was not that much which may warrant major penalty of dismissal from service. In these circumstances, the impugned orders appears to be harsh and not commensurate with the lapse/guilt on the part of the appellant and as such the punishment of dismissal from service of the appellant is set aside and the 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.

ANNOUNCE

14.12.2017

(Muhammad Hamid Mughal)

MEMBER

(Gul Zeb Khan)

MEMBER

Certified to be true copy

Khy/

بھنور جناب ڈسٹرکٹ پولیس آفیسر صاحب ضلع کرک۔

عنوان: رحم درخواست بمراد دوبارہ سروس پر بحالی

جناب عالی!

گزارش ہے کہ کہ سائل مورخہ 21.03.2011 کو محکمہ پولیس سے برخاست ہوا تھا۔ خیبر پختونخواہ سروس ٹریبونل نے مورخہ 14.12.2017 کو دوبارہ سروس پر بحال کرنے کا حکم کیا ہے۔ سائل ایک غریب آدمی ہے۔ گھر کا گزارہ بہت مشکل سے چلتا ہے۔ آج کل کے مہنگائی کے حالات میں سائل کا جینا بہت دشوار ہے۔

بذریعہ درخواست استدعا کی جاتی ہے کہ سائل کو خیبر پختونخواہ سروس ٹریبونل کے فیصلے کے مطابق سروس پر دوبارہ بحال کرنے کا حکم صادر فرمائیں۔

عریضہ

اپکا تابعدار سابقہ کانسٹیبل ارفت اللہ نمبر 630 ولد حکیم خان سکنہ رحمت آباد کرک

10/1/18

بھنور جناب ڈسٹرکٹ پولیس آفیسر صاحب ضلع کرک۔

عنوان: رحم درخواست، برادو بارہ سروس پر بحالی

جناب عالی!

گزارش ہے کہ کہ سائل مورخہ 21.03.2011 کو محکمہ پولیس سے برخاست ہوا تھا۔ خیبر پختونخواہ سروس ٹریبونل نے مورخہ 14.12.2017 کو دوبارہ سروس پر بحال کرنے کا حکم کیا ہے۔ سائل ایک غریب آدمی ہے۔ گھر کا گزارہ بہت مشکل سے چلتا ہے۔ آج کل کے مہنگائی کے حالات میں سائل کا جینا بہت دشوار ہے۔

بذیور درخواست استدعا کی جاتی ہے کہ سائل کو خیبر پختونخواہ سروس ٹریبونل کے فیصلے کے مطابق سروس پر دوبارہ بحال کرنے کا حکم صادر فرمائیں۔

عریضہ

اپکا تابعدار سابقہ کانسٹیبل ارفت اللہ نمبر 630 ولد حکیم خان سکنہ رحمت آباد کرک

14/2/2018

بعدالت جناب سرسٹریٹس ٹریبونل صوبہ سرحد پشاور

مجناب ایلٹ

محکمہ ٹریبونل

عزت المر

دعویٰ اپیل

باعث تحریر ایٹک

مترجمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے استدعا خالصتاً عرض کرتے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے باطنی نامہ و تقریر ثالث و فیصلہ بر عطف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تعلیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور تیسری نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مندرجہ کے کل یا اجزائی کاروائی کے واسطے اور وکیل یا ٹریبونل قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شاہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظر قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا دخرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

الرقوم 18 2 18

التعبید

التعبید

التعبید

Arbab Saif Ahmad
ایڈووکیٹ

سيد احمد خان مرقت
ایڈووکیٹ

Ahmedullah

من رخصتہ تار
ایڈووکیٹ

ORDER

In the compliance of the Khyber Pakhtunkhwa Service Tribunal order dated 18.03.2018 in Execution Petition No. 49/2018 wherein it was directed that last opportunity is granted for submission of provisional implementation report in accordance with the spirit of judgment of the tribunal dated 14.12.2017 is to be furnished announced by the Khyber Pakhtunkhwa Service Tribunal Peshawar in WP No. 712/2012 whereby the court accepted his appeal and as a consequence thereof set-aside the dismissal order and the intervening period was directed to be treated as leave of the kind due & on the approval of CPO Peshawar letter No. 1855/Legal dated 05.04.2019, therefore, the order is hereby implemented and Ex-Constable Ifat Ullah No. 630 is re-instated in service provisionally and conditionally subject to the outcome of CPLA subjudged in the honourable Supreme Court of Pakistan. He is allotted constabulary No. 96.

OB. No. 166

Dated 08/04/2019


District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 482042/EC, dated Karak the 15-04-2019

Copy of above is submitted for favour of information to:

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar w/r to his office letter No. 1855/Legal dated 05.04.2019.
2. The Registrar, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.


District Police Officer, Karak