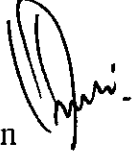


10.01.2019

Petitioner alongwith counsel and Addl. AG alongwith Muhammad Sheraz, H.C and Gulzar Khan, ASI for the respondents present.

At the outset learned AAG referred to the order dated 13.03.2018 passed by District Police Officer, Nowshera whereby the petitioner was dismissed from service. The petitioner admitted the receipt of copy of the said order and stated that he had preferred departmental appeal against the same on 16.11.2018.

In view of the above development where a fresh order of dismissal from service was passed against the petitioner the instant execution proceedings cannot further be proceeded. The same are, therefore, consigned to record room.

Chairman 

ANNOUNCED
10.01.2019

16.10.2018

Counsel for the petitioner present. M/S Gul Zad, ASI,CTD and Akbar Hussain, S.I alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Representative of the respondents submitted implementation report which is placed on file. A copy was also handed over the learned counsel for the petitioner. Case to come up for further proceedings on 21.11.2018 before S.B.

(Ahmad Hassan)
Member

21-11-2018

Since 21 November has been declared as Public holiday on account of 128th Rakhi-ul-maul therefore the case is adjourned to come up for the same on 10-1-2019

[Signature]
Reader

02.05.2018

None present on behalf of the petitioner. Mr. Kabirullah Khattak, Additional AG alongwith Gul Zad, ASI and Sheraz Khan, ASI 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.



Reader

24.07.2018

Learned counsel for the petitioner and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Muqaddar Inspector and Mr. Gulzar Khan S.I for the respondents present. Learned counsel for the petitioner seeks adjournment. Adjourned. To come up for implementation report 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 seeks further adjournment. Adjourned. To come up for implementation report on 16.10.2018 before S.B.



Member

FORM OF ORDER SHEET

Execution Petition No. 30/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	24.01.2018	<p>The Execution Petition of Mr. Momin Khan submitted to-day by Roeeeda 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-	06/02/18	<p>This Execution Petition be put up before S. Bench on- <u>12/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.02.2018	<p>Petitioner in person present. Notice be issued to the respondents for implementation report for 05.03.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member (J)</p> <p>05.03.2018</p> <p>Counsel for the appellat present and Assistant AG present. None present on behalf of respondent department. 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;"> (Gul Zeb Khan) Member</p>

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Execution petition No. 30/2018

in

S.A. No. 1299/2015

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 98

Dated 24/01/2018

Momin Khan, Ex ASI Khyber Pakhtunkhwa Elite Force

Appellant

Versus

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

**Execution Petition for Directing the
respondents to implement the judgment of
this honorable tribunal in letter and Spirit**

Respectfully Sheweth,

1. That the appellant/ applicant file service appeal No. 1299/15 in this August Tribunal against the order Dated 19/11/2012 where by the appellant was dismissed from service.
2. That this honorable Tribunal was pleased to accept the appeal of the appellant and set aside the impugned order and reinstate the appellant in service vide order Dated 09/10/2017. (Copy of order is attached)

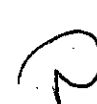
3. That the appellant submitted the judgment/ order Dated 09/10/2017 to the respondent but no action has been taken by the department so far.
4. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondent are legally bound to implement the judgment of this August 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 August Tribunal in letter and Spirit.

Dated:24/01/2018


Applicant

Through

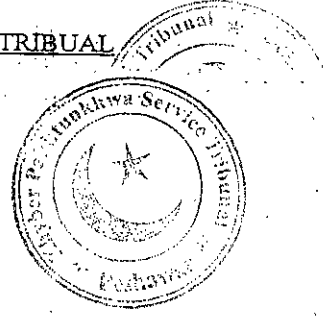

Roeeda Khan
&
Afshan Manzoor
Advocate High Court Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1299/2015

Date of Institution ... 10.11.2015

Date of Decision 09.10.2017



Momin Khan, Ex-ASI Khyber Pakhtunkhwa Elite Force. ... (Appellant)

VERSUS1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and 3 others.
... (Respondents)MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate --- For appellant.MR. KABIRULLAH KHATTAK,
Addl. Advocate General ... For respondents.MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBERJUDGMENTNIAZ MUHAMMAD KHAN, CHAIRMAN.- Arguments of the learned
counsel for the parties heard and record perused.FACTS

2. The appellant who was on deputation from Crimes Investigation Department now Counter Terrorism Department to Elite Force Khyber Pakhtunkhwa, was proceeded against departmentally by Borrowing Department and the Borrowing Department imposed penalty of dismissal from service on the appellant on 19.11.2012. The charge against the appellant was his involvement in two criminal cases. The appellant was finally acquitted in the first criminal case on 13.3.2013 and in the second criminal case

ATTACHED

[Handwritten signature]

[Handwritten signature]



on 05.05.2015. After second acquittal he filed a departmental appeal on 20.05.2015 which was rejected on 12.10.2015. Thereafter, the appellant filed the present appeal before this Tribunal on 10.11.2015.

ARGUMENTS

3. The learned counsel for the appellant argued that the very authority which has passed the order of dismissal was not competent authority for the reason that services of the appellant were admittedly borrowed by Elite Force from CID (CTD). That in such event the very order of dismissal is a void order being passed by an incompetent authority. That no limitation shall run against the void order.

4. On the other hand the learned Addl. Advocate General argued that the proper proceedings were conducted against the appellant. That since the services of the appellant were placed at the disposal of Elite Force, the Commandant of the Force has rightly passed the impugned order.

CONCLUSION.

5. Without adverting to the merit of the case, admittedly the services of the appellant were borrowed by Elite Force under Rule 9 of the Khyber Pakhtunkhwa Police Rules, 1975. Under this rule the punishment can be awarded only by the Lending Authority. The Borrowing Authority can only transmit the proposal to the Lending Authority with regard of the proceedings. In view of rule 9, this Tribunal is of the view that the impugned order has been passed by an incompetent authority and the order is void and no limitation shall run against such order.

6. In view of the above discussion, the Tribunal accepts the present appeal, sets aside the impugned order and reinstates the appellant in service. The case is sent back to the Borrowing Authority for proceedings under Rule 9 *supra* within a period of 3 months from the date of receipt of this judgment. Back benefits of the appellant shall be subject

ATTESTED
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Alum
 4/1/2016

to outcome of denovo proceedings. Parties are left to bear their own costs. File be
consigned to the record room.

Announced
09.10.2017

SD/- Niaz Muhammad Khan,
Chairman

Certified
copy
Khyber Pakhtunkhwa
Sindh
Balochistan

SD/- Gulzar Khan,
Member

Date of Execution of	12-10-17
Number of	1600
Copies	10
Urgent	2
Total	12
Name of	<i>[Signature]</i>
Date of	12-10-17
Date of Delivery of Copy	12-10-17

Review in Dham

50



22952

ایڈوکیٹ: P. D. Khan
بار کونسل ایسوسی ایشن نمبر:
رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخوا

بعدالت جناب: سر جسٹس ایچ بی ٹی کپک پشاور

منجانب: مسائل	دعویٰ:
موصن	علت نمبر: Execution
بنام	مورخہ:
گورنمنٹ وکیلز	جرم:
	تھانہ:

بابت تحریر آگہ

Accepted by P. D. Khan

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ آن مقام باہر کیلئے ہونے والے مسائل کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی 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 زرین 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 کاروائی 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 داختم 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: 24.1.18

المقام: _____
واہ شد _____
کے لیے منظور ہے۔

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



Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



No. 3780 /EF

Dated 14/03/2018

To : The Deputy Inspector General of Police,
Enquiry & Inspection, Khyber Pakhtunkhwa Peshawar.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-ASI MOMIN
KHAN ELITE FORCE

Memo: Kindly refer to your office Memo: No. 116/E&I, dated 17.01.2018, No. 302/E&I, dated 05.02.2018, No. 419/E & I, dated 09.03.2018 and this office Memo: No. 1294/EF, dated 24.01.2018.

It is submitted that de-novo departmental enquiry proceedings against Ex-ASI Momin Khan of this unit has been concluded as per directions of Khyber Pakhtunkhwa Services Tribunal and he has been dismissed from service in light of the enquiry report (photocopy enclosed for ready reference), please.

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

14/3/18

SAC/R.K.
File



Phone: 091-9211947

Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawar.

4th reminder

No. 4/18 /E&I, dated Peshawar the 17 / 03/2018

To: The Deputy Commandant,
Elite Force,
Khyber Pakhtunkhwa,
Peshawar.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-ASI MOMIN KHAN ELITE FORCE

Memo:

Please refer to your office letter No. 1501/E&I dated 10.11.2017 and followed by several reminders, the last one bearing No. 302/E&I dated 15.02.2018, on the subject cited above.

2. Reply into the subject matter is still awaited from your office, which may please be sent to this office, for the perusal of Worthy IGP at the earliest.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

E.C
9/3/18

2/18/18
12.3.18



PA
Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



No. 2636 /EF

PFS

Dated 20/02/2018

To : The District Police Officer,
Nowshera.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-ASI MOMIN KHAN ELITE FORCE

Memo:

Please refer to this office Memo: No. 962/EF, dated 18.01.2018.

Reply in the subject matter is still awaited from your office, which may please be sent to this office for the perusal of worthy IGP as the DIG Enquiry & Inspection Khyber Pakhtunkhwa Peshawar has asked vide letter No. 302/E & 1, dated 15.02.2018 (photocopy enclosed for ready reference).

(MUHAMMAD HUSSAIN) PSP

Deputy Commandant

Elite Force, Khyber Pakhtunkhwa, Peshawar

19/2/18

PFS

D.K.



Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawar.

03rd reminder

No. 302 /E&I, dated Peshawar the / { /02/2018

To: The Deputy Commandant,
Elite Force,
Khyber Pakhtunkhwa, Peshawar.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-ASI
MOMIN KHAN ELITE FORCE

Memo:

Please refer to this office letter No.1501/E&I dated 10.11.2017, several reminders, the last one bearing No. 116/E&I dated 17.01.2018 and your office letter No. ^{F/A}1294/EF dated 24.01.2018, on the subject cited above.

2. Reply into the subject matter is still awaited from your office, which may please be sent to this office for the perusal of Worthy IGP at the earliest.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

PPs attached
19/2/18

E. C
18/2

1467
16-2-18



Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



No. 362 /EF

Dated 18/01/2018

To : The District Police Officer,
Nowshera.

Subject: ENQUIRY REPORT

Memo:

Enclosed please find herewith a complete enquiry file of ASI Momin Khan of your district, who was on deputation to this unit, along with recommendation/report of denovo departmental enquiry proceedings conducted against him by Mr. Waqar Ahmed, SP HQrs: Elite Force Peshawar in light of judgment of Khyber Pakhtunkhwa Service Tribunal in service appeal No. 1299/2015 for passing proper order.

Encl:-----147 pages

(MUHAMMAD HUSSAIN) PSP
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa, Peshawar



OFFICE OF SUPERINTENDENT OF POLICE,
HEADQUARTERS, ELITE FORCE, PESHAWAR.



No. 09/R, SP HQr/EF, dated Peshawar the 16/01/2018

DEPARTMENTAL ENQUIRY REPORT

It is submitted that ASI Momin Khan willfully and deliberately absented himself from duty w.e.f 13.09.2010 to 19.11.2012 as he was charged in criminal case vide F.I.R No. 794, dated 08.09.2010 U/S 302,324,148,149 PPC, 7ATA Police Station Pabbi District Nowshera and departmental proceedings initiated against him, whereas he did not associated in enquiry proceedings despite repeated summons and proclamation published in the urdu daily News Paper.

With reference to the direction vide endorsement No. 18148-53/EF dated: 22.11.2017 of Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar. Wherein departmental enquiry for the scrutinizing the conduct of ASI Momin Khan with reference to charge level against him was entrusted to undersigned.

Facts leading to the instant departmental proceedings are that Momin Khan ASI (Hereinafter, only referred to an accused officer) was charged in criminal case F.I.R No.794 dated: 08.09.210 U/S 302,324,148,149, PPC, 7ATA Police Station Pabbi District Nowshera. He was proceeded against departmentally which culminate into his dismissal from service, vide order dated 19.11.2012.

He was arrested in another criminal case vide F.I.R No. 81 dated: 01.02.2013 U/S 17(3) haraba, 324, 353, 148,149,171, PPC 13AO of Police Station Lahore District Swabi.

According to statement of Fazal Meraj SI, accused officer arrested and recovery of Kalakove was made from his possession on vary day of the occurrence.

Accused officer was acquitted in the former criminal case on the basis of compromise and he was convicted by trial court in the latter case.

However, the appellate court recorded acquittal order in the case and set-aside the conviction order on acquittal of accused officer, he logged time barred departmental appeal, which was rejected. However, Khyber Pakhtunkhwa Service Tribunal accepted his service appeal No. 1299/2015 vide order dated: 09.10.2017 and remanded the case to the department for De-novo enquiry proceedings.

The service tribunal has based the judgment on the sole ground that Elite Force was borrowing authority therefore penalty imposed on accused officer by borrowing authority was not sustainable. The lending authority was the competent authority for

The defaulter officer was served the charge Sheet and summery of allegation on 22.11.2017. To the reply of charge sheet and summery of allegation which revealed that he accepted his absence period due to involvement in criminal case vide F.I.R No.794 dated: 08.09.2010 U/S 302,324,148,149 PPC, 7ATA Police Station Pabbi District Nowshera, but he did not mentioned about another criminal case vide F.I.R No. 81 dated: 01.02.2013 U/S 17(3) haraba, 324, 353, 148,149,171, PPC 13AO of Police Station Lahore District Swabi. (statement attached)

The defaulter officer was also cross examined where as he admitted 2nd criminal case in Swabi District, moreover he denied any recovery from his possession while a Kalakove was recovered from his possession on the vary day of occurrence. (Cross examination attached)

The following police officers were informed Telephonically for recording their statement and cross examination as they were I.O,s of the criminal cases in both districts.

1. Inspector Alam Zeb Khan
2. Inspector Hidayat Ur Rehman
3. SI Fazal Miraj
4. SI Wafadar Khan

But non of the above officers joined the enquiry process as witness. (D.D reports attached)

The Defaulter ASI Momin Khan was arrested red-handed in case F.I.R No. 81 dated: 01.02.2013 U/S 17(3) haraba 324, 353, 177, 148, 149, PPC 13AO Police station Lahore District Swabi. The acquittal from criminal cases on the basis of compromise and benefits of doubt is no ground for absolving from departmental charge. The long absence from duty and avoiding joining investigation couple with his arrest during chase by police is sufficient evidence for proving the departmental charge.

Therefore, the defaulter officer is found guilty of charge, however, it is recommended that the finding may be referred to the lending or parent department (District Police Nowshera) as his lien was transferred to parent district Nowshera vide CPO order endorsement No.2780-2802/E-II dated: 19.02.1998 for order, please.

Dismissed

Waqar Ahmed
(WAQAR AHMED)
Superintendent of Police
HQrs, Elite Force, Peshawar.