

08.02.2019

Petitioner in person and Addl. AG alongwith Aziz Shah, H.C for the respondents present.

Representative of respondents has produced copy of order dated 30.01.2019 passed by Superintendent of Police, Headquarter Peshawar, whereby, the petitioner has been reinstated in service with immediate effect. The petitioner, when confronted with the order, affirmed his reinstatement and joining of duty.

In view of the above instant execution proceedings are consigned upon completion.


Chairman

ANNOUNCED
08.02.2019

E.P No. 86/2018

10.12.2018

Petitioner alongwith his counsel present. Mr. Bashir Ahmad, DSP (Legal) alongwith Mr. Kabirullah Khattak, Additional for the respondents present. Implementation report not submitted. Leaned Additional AG requested for further adjournment. Adjourned. To come up for implementation report on 23.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member

23.01.2019

Learned counsel for the petitioner and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Aziz Shah Reader present. Implementation report not submitted. Representative of respondents seeks time to furnish implementation report. Granted. To come up for implementation report otherwise parawise comments on 08.02.2019 before S.B.


Member

17.07.2018

Counsel for the petitioner present. Mr. Sardar Shoukat Hayat, Adll: AG for respondents present. Notices be issued to the respondents for submission of implementation report. Adjourned. To come up for further proceedings on 30.08.2018 before S.B.



(Ahmad Hassan)
Member

30.08.2018

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the petitioner produced a copy of minutes of meeting held on 24.01.2018 wherein the case of the petitioner for filing of CPLA against the judgment of this Tribunal was declared as unfit, which is placed on record. In these circumstances the respondents are left with no option but to implement the judgment of this Tribunal dated 13.12.2017. They are directed to produce implementation report on or before the next date of hearing positively. To come up for implementation report on 23.10.2018 before S.B.



(Ahmad Hassan)
Member

23.10.2018

Due to retirement of Hon'ble Chairman, the tribunal is defunct. Therefore, the case is adjourned. To come up on 10.12.2018



READER

FORM OF ORDER SHEET

Execution Petition No. 86/2018

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	21.03.2018	<p>The Execution Petition of MR. Muhammad Naseer submitted to-day by Mr. Yasir Saleem Advocate 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	21/03/18	<p>This Execution Petition be put up before S. Bench on <u>02/04/18.</u></p> <p style="text-align: right;"><i>MA</i> MEMBER</p>
	02.04.2018	<p>None for the petitioner present. Addl: AG for respondents present. Adjourned. To come up for implementation report on 20.04.2018 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> (Ahmad Hassan) Member</p>
	20.04.2018	<p>Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Representative of the department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court. Adjourned. To come up for implementation report on 17.07.2018 before S.B.</p> <p style="text-align: right;"><i>MA</i> (Muhammad Amin Khan Kundi) Member</p>

8

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 86/2018

In the matter of
Appeal No. 79/2015
Decided on 13.12.2017.

Muhammad Naseer Ex-Constable No.141 District Police Peshawar.
(Applicant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
(Respondents)

INDEX

S. No.	Description of documents	Annexure	Page No.
1.	Memo of Appeal & Affidavit		1-3
2.	Copies of the judgment and order dated 13.12.2017	A	4 & 8
3.	Vakalatnama		

Naseer

Applicant

Through

Yasir Saleem
YASIR SALEEM

&

Jawad Ur Rehman
JAWAD UR REHMAN

Advocates Peshawar.

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 86/18

Khyber Pakhtunkhwa
Service Tribunal

Diary No: 296

Dated: 15/03/2018

In the matter of
Appeal No. 79/2015
Decided on 13.12.2017

Muhammad Naseer Ex-Constable No.141 District Police Peshawar.
(Applicant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Head quarters, Peshawar.

(Respondents)

***Application for the implementation of the
Judgment and Order dated 13.12.2017 of this
Honourable Tribunal.***

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 13.12.2017.
2. That vide judgment and order dated 13.12.2017 this Honourable Tribunal accepted appeal of the appellant in the following terms:

“8. As a result of the above discussion, this appeal accepted and the appellant is reinstated in service. The intervening period shall be treated as leave of the kind due.”

**(Copy of the Judgment and order dated
13.12.2017, is Attached)**

3. That the judgment of this Honourable Tribunal was duly communicated to the respondents, however the respondent department has not reinstated the applicant in service up till now, which is against the spirit of the judgment and order dated 13.12.2017 of this Honourable Tribunal.
4. That after judgment and order of this Honourable Tribunal, the applicant is continuously approaching the respondents for the implementation of the judgment, however they are reluctant to implement the judgment.

- 5. That the respondents are legally bound to implement the judgment of this Honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the respondents may please be directed to implement the judgment and order dated 13.12.2017 of this Honourable Tribunal in its true letter and spirit.



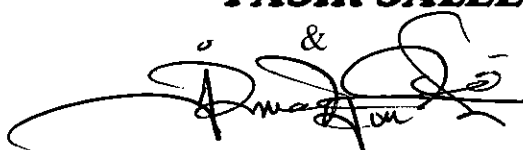
Applicant

Through



YASIR SALEEM

&

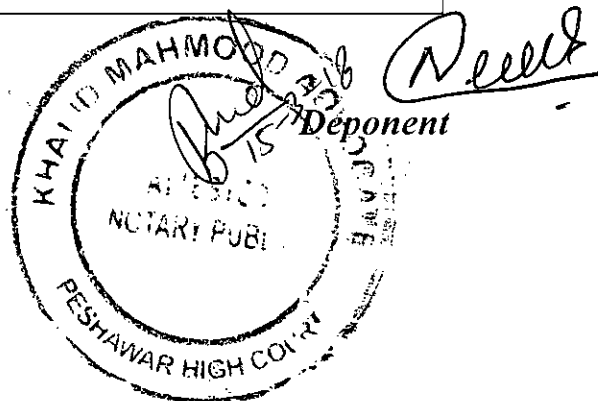


JAWAD UR REHMAN

Advocates Peshawar.

AFFIDAVIT

It is hereby solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.



Deponent

(4)



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

Appeal No. 79 /2015

~~...~~
No. 1248
Date 03-10-2014

Muhammad Naseer, Ex-Constable No.141, District
Police Peshawar.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated: 04.06.2014, whereby the appellant has been award the major Punishment of dismissal from service against which the departmental appeal dated: 13.06.2014 has also been rejected vide order dated: 22.09.2014.

~~...~~
9/10/14

Prayer in Appeal: -

On acceptance of this appeal impugned orders dated 04.06.2014, and 22.09.2014, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

ATTESTED

[Signature]
Secretary
Service Tribunal,
Peshawar

[Signature]

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 79/2015

Date of Institution ... 03.10.2014

Date of Decision ... 13.12.2017



Muhammad Naseer, Ex-Constable No. 141 District Police, Peshawar.

.. (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others.
... (Respondents)

MR. YASIR SALEEM,
Advocate

... For appellant.

MR. KABIRULLAH KHATTAK,
Addl. Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD AMIN KHAN KUNDI,

CHAIRMAN,
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.-

Arguments of the learned

counsel for the parties heard and record perused.

FACTS

2. - The appellant was dismissed from service on 04.06.2014, against which he filed departmental appeal on 13.6.2014 which was rejected on 22.09.2014 and thereafter, the appellant filed the present service appeal on 03.10.2014. The charge against the appellant was his involvement in a criminal case.

ATTESTED

Altaf

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS.

3. The learned counsel for the appellant argued that the appellant was acquitted in the criminal case on 19.11.2012. That the enquiry officer submitted his report on 14.10.2011 but the final show cause notice was issued to the appellant on 25.3.2014 after about two and half years. That in the meantime the appellant was also acquitted of the charge in the criminal case by the court of law. That the enquiry officer did not give his report on the basis of reliable evidence. That the findings of the enquiry officer is defective. He relied upon a judgment reported as PLD-2003-Supreme Court-187, in order to augment his arguments that when departmental proceedings were initiated only on the basis of criminal charge which was not proved in the criminal court, then the civil servant cannot be awarded penalty in the departmental proceedings. Learned counsel for the appellant also argued that in the final show cause notice the charge is different from the one which was in the charge sheet. That in the final show cause notice the charge is one of absence.

4. On the other hand the learned AAG argued that the appellant was involved in a criminal case. That a full-fledged enquiry was conducted. That the enquiry officer opined that the appellant was guilty of the charge. That mere delay in issuing final show cause notice cannot be made a ground for setting aside the penalty.

CONCLUSION.

5. It is now a settled jurisprudential principle of administrative of law that the criminal proceedings are separate to departmental proceedings. Acquittal in criminal case itself is no ground for exoneration in departmental proceedings. The judgment relied upon by the learned counsel for the appellant is not applicable to

ATTESTED

[Handwritten signature]

[Handwritten signature]

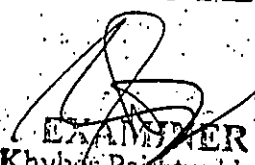
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,


(7)

the present case as in reported case there was no departmental enquiry, at all, which is not the case in the present appeal. However, the enquiry report was based on a very weak arguments and reasons. The reason given by the enquiry officer was that the proof of recovery of some weapons alongwith cartridges was established. therefore, the criminal case against the appellant was well founded. The enquiry officer did not record the statement of any witness or relied upon any other evidence regarding involvement of the appellant. From the record it appeared that originally the enquiry was conducted by Mr. Saleem Dad Khan, DSP (Rural) who submitted his findings on 14.10.2011. Thereafter, the authority sent back the enquiry to DSP (Rural) with some remarks. After remand Mr. Muhammad Zahir Shah, DSP submitted his report on 11.2.2014, again recommending the appellant for major punishment. The final show cause notice was given on 25.3.2014 after the report of Muhammad Zahir Shah, DSP. But in the final show cause notice the competent authority tentatively decided to impose penalty on the basis of willful absence from duty. Neither in the charge sheet nor in the enquiry report of Saleem Dad Khan or in the report of Muhammad Zahir Shah there is any mention of absence. It is strange to note that the punishment awarded to the appellant was on the charge of absence and not on the ground of his involvement in criminal case.

6. As observed above the charge of absence was never communicated or framed against the appellant nor any enquiry in this regard was conducted. But the final show cause notice pertained to the charge of absence and then the final order was passed on the basis of his involvement in the criminal case. The first enquiry report was not accepted by the competent authority and the same was remitted back, therefore, the first enquiry report has got no legal basis. The second final show cause notice has also got no relevancy with the charge sheet.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



8

7. The elements of due process like opportunity of cross examination and right of defence were also not provided to appellant.

8. As a result of the above discussion, this appeal is accepted and the appellant is reinstated in service. 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.


Announced
13.12.2017

sd/- Niaz Muhammad Khan
Chairman

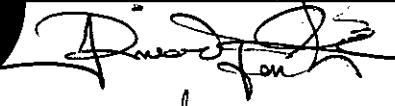


sd/- M. Amin Khan Kundli
Member

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation	18-12-17
No. of copies	2000
Copying Fee	12-00
Urdu	2-00
Total	14-00
Name of Clerk	
Date of Receipt	18-12-17
Date of delivery of copy	18-12-17

sd/-

50 روپے				31238
ایڈوکیٹ: <u>غلام امجد</u>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: <u>BC-16-6463</u>				
رابطہ نمبر: <u>0314-7373280</u>				

بعدالت جناب:

مخانب: Applicant	دعویٰ:
<u>محمد امجد</u>	علت نمبر:
<u>بنام</u>	مورخہ:
<u>لوگس و سیرہ</u>	جرم:
	تھانہ:

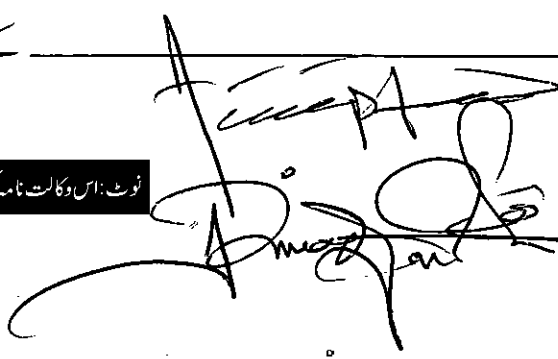
باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آنگہ
 آن مقام _____ کیلئے ڈاکٹر سلیم احمد جوڈالرز 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 بر حلف 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 داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ 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: _____
 الع بد گ واہ شد الع بد

مقام _____ کے لیے منظور ہے۔

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



Navid

SERVICE APPEAL NO.79/2015 TITLED AS MUHAMMAD NASEER VS PROVINCIAL
POLICE OFFICER KHYBER PAKHTUNKHWA AND OTHERS.

A meeting of the Scrutiny Committee was held on **24-01-2018 at 14:00 hours** in the office of Additional Secretary (Opinion) Law Department under his Chairmanship to determine the fitness of the subject case for filing of appeal / CPLA in the proper forum. Assistant Advocate General (**Mr. Rab Nawaz Khan**) was also present during the meeting being representative of Advocate General Khyber Pakhtunkhwa.

2. The meeting started with the recitation from the Holy Quran and thereafter. Chairman of the Committee invited the representative of **Police Department Mr. Falak Nawaz AIG / Legal / SP CPO Peshawar** to apprise the Committee about the background of the case. The representative informed the Scrutiny Committee that the appellant being aggrieved from the order of dismissal from service on the basis of his involvement in criminal case, filed the subject service appeal after exhausting departmental remedy. The Tribunal accepted the appeal and reinstated the appellant into service. The intervening period was treated as leave of the kind due. Now the department wanted to file CPLA against the judgment on the following grounds:-

GROUND:-

3. The grounds proffered by the representative were that the department conducted proper inquiry against appellant in accordance with law and the rules. The charges have been proved against the appellant. He further added that all the proceeding were in accordance with law and the rules. A query was raised that why the show cause notice was served on the appellant after delay of more than two and half year which factor was against the norms of inquiry proceedings as well as natural justice. On this the representative stated that the same were lapses on the part of the department.

DECISION:-

4. After threadbare discussion it was decided with consensus by the Scrutiny Committee, that the as there were lacunas in the proceedings against appellant which could not be defended in the upper forum while filing CPLA in the case, therefore the subject case was not a fit case for filing appeal / CPLA before the Supreme Court of Pakistan.



TAHIR IQBAL KHATTAK
DEPUTY-SOLICITOR



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

No.SO(Lit)/LD/9-13(125)Home/2017/ 9035-39/w
Dated Peshawar the 29/01/2018

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department.

Subject: SERVICE APPEAL NO.79/2015 TITLED AS MUHAMMAD NASEER
VS PROVINCIAL POLICE OFFICER KHYBER PAKHTUNKHWA,
PESHAWAR AND OTHERS.

Dear Sir,

I am directed to refer to Government of Home & Tribal Affairs Department letter No.SO(Courts)/HD/3-1/2017, dated 28/12/2017 on the subject noted above and to forward herewith minutes of the meeting held on 24-01-2018 in Law Department (which are self explanatory) for perusal and further necessary action, please.

Yours faithfully,

(ALAM ZEB)
SECTION OFFICER (Lit)

Endst: No.& Date Even.

Copy alongwith copy of minutes is forwarded to the:

1. AIG / Legal for Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Law Department Khyber Pakhtunkhwa.
3. PA to Deputy Solicitor Law Department.

Agb
SECTION OFFICER (Lit)


29-1-18

200
30-1-18

OFFICE OF THE INSPECTOR GENERAL OF POLICE, KPK
PESHAWAR.

No 340 /Legal Dated Peshawar the, 31/01 /2018.

Copy of the letter No. SO(Lit)/LD/9-13(125)Home/2017/1298-1302
W/E dated 10.01.2018 of Law department and decision of the Scrutiny
Committee is endorsed to Capital City Police Officer Peshawar, in
continuation of this office Endst: No. 2876/Legal dated 28.12.2017. The
Scrutiny committee did not approve the case for lodging CPLA.


AIG/Legal,

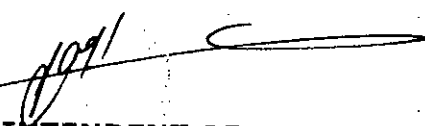
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

30.01.2018

No 307-LB

ORDER

Subsequent upon the judgment order dated 13.12.2017 passed by the Hon'ble service Tribunal Peshawar in Service Appeal No.73/2015, appellant Muhammad Naseer (Ex-constable No.141) is hereby re-instated in service with immediate effect. Hence, the intervening period i.e out of service is treated as leave kind of due.


**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB NO. 426
Dated 30/1/2019

No. 226-31/PA/HQrs dated Peshawar the 20/1/2019.

Copy of above is forwarded for necessary action to:

- ✓ DSP/HQrs: Peshawar
- ✓ DSP Legal, Peshawar
- ✓ Budget Officer
- ✓ OASI, CRC & FMC along-with complete departmental file