

16.01.2020

Nemo for petitioner. Addl. AG alongwith Abdur Razaq, Reader for the respondents present.

Representative of respondents states that the judgment under execution has been implemented and necessary order in that regard has been issued. He, however, is not in possession of the copy today as instant matter was not noted in his diary.

Adjourned to 23.01.2020 on which date the relevant order shall be positively provided.

Chairman



23.01.2020

Nemo for petitioner. Addl. AG alongwith Abdur Razaq, Reader for the respondents present.

Instant proceedings are for implementation of judgment of this Tribunal dated 14.12.2018 in Service Appeal No. 828/2017. The penalty of dismissal from service awarded to the petitioner was converted into compulsory retirement through the judgment.

The representative of respondents has produced today copy of notification dated 27.12.2019, whereby, the competent authority/respondent has converted the penalty awarded to petitioner into that of compulsory retirement. The document is made part of the record.

In the circumstances, the proceedings in hand are consigned to record. The petitioner may apply for restoration of proceedings in case his is dissatisfied, as per law, from the notification *ibid*.

Chairman



EP 66/19

05.11.2019

Counsel for the petitioner and Addl. AG alongwith Aziz Shah, Reader for the respondents present.

The representative of respondents states that respondents will release the pension of petitioner provided that an undertaking is furnished by him to the effect that in case of reversal/setting aside of judgment under implementation the entire amount received by him towards pension/commutation shall be refunded.

The petitioner concurs with the proposal made on behalf of the respondents.

To come up for further proceedings on 05.12.2019 before S.B.


Chairman

05.12.2019

Petitioner with counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Aziz Shah, Head Constable for the respondents present.

Learned counsel for the petitioner has provided copies of order passed by August Supreme Court of Pakistan in C.P No. 123-P of 2019 whereby the petition of respondents has been dismissed. On the other hand, the representative of respondents has submitted a copy of reference dated 03.12.2019 and states that the judgment under execution will be implemented without further loss of time. The proceedings are, therefore, adjourned to 16.01.2020 on which date implementation report shall positively be submitted.


Chairman

23.09.2019

Petitioner in person and Mr. Kabirullah Khattak, Additional AG for the respondents present.

Representative of the department states that the implementation report will be submitted positively on next date of hearing. Seeks adjournment. Adjourned to 16.10.2019 before S.B.


CHAIRMAN

16.10.2019

Counsel for the appellant and Addl. AG alongwith Muhammad Raziq, Reader for the respondents present.

Representative of respondents has provided copy of memo dated 30.09.2019 whereby a request for submission of application for early hearing of the CPLA has been reiterated.

On 25.07.2019 the respondents were clearly required to submit implementation report or any order of the apex court requiring suspension/setting aside of the judgment under implementation. On 23.09.2019 the representative of respondents undertook to submit the implementation report today, however, a different^t stance has been taken.

In the circumstances and as a last ^{al} the respondents are allowed a further opportunity to perform their part of obligation in line with the judgment under implementation failing which punitive action would be taken in accordance with law on next date of hearing.

Adjourned to 05.11.2019 for preliminary hearing before S.B.


Chairman

02.07.2019

Petitioner in person present. Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the petitioner is not available today. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned to 25.07.2019 for implementation report before S.B.



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

25.07.2019

Petitioner alongwith counsel and Mr. Usman Ghani, District Attorney for the respondents present.

The representative of respondents has again iterated that a CPLA has been preferred before the Apex Court against the judgment under implementation.

The record shows that similar stance is being maintained by the respondents ~~in~~ last three dates of hearing. The respondents are, therefore, required to produce on the next date any order of Apex Court regarding suspension of operation of judgment of the Tribunal or setting aside of the judgment under execution. Else, the implementation report positively be submitted.

Adjourned to 23.09.2019 before S.B.



Chairman

25.03.2019

Petitioner with counsel present. Implementation report not submitted. Muhammad Raziq H.C representative of the respondent department present and requested for adjourn. Adjourn. To come up for further proceedings/implementation report on 15.04.2019 before S.B


Member

15.04.2019

Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak learned Additional Advocate General present and stated that the department has filed CPLA against the judgment under implementation. Adjournment requested. Adjourn. To come up for further proceedings on 29.05.2019 before S.B


Member

20.05.2019

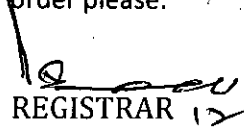
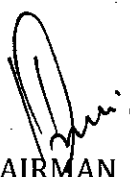
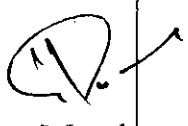
Learned counsel for the petitioner present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Aziz Shah Reader present and stated that CPLA has already been filed against the judgment of this Tribunal. Adjournment requested. Adjourn. To come up for further proceedings on 02.07.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 66/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.2.2019	<p>The execution petition of Mr. Arshad Ali submitted by Mr. Noor Muhammad Khattak 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 12/2/19</p>
2		<p>This execution petition be put up before S. Bench on <u>20-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	20.02.2019	<p>Learned counsel for the petitioner present. Notice of the present execution petition be issued to the respondents for 25.03.2019. To come up for further proceedings/implementation report on the date fixed before S.B.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation petition No. 66 /2018

In appeal No. 828/2017

ARSHAD ALI

VS

POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of petition	1- 2.
2.	Affidavit	3.
4.	Judgment	A	4- 6.
5.	Wakalat nama	7.

PETITIONER

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation petition No. 66 /2018

In appeal No. 828/2017

Khyber Pakhtunkhwa
Service Tribunal
Diary No: ala
Date: 12-2-2019

Mr. Arshad Ali, Ex-IHC No. 2874,
Police Line, Peshawar.....Petitioner

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Chief Capital City Police Office/DIG, Peshawar, Police Line, Peshawar.
- 3- SP/ HQRS, Peshawar.
- 4- DSP Legal, Office of CCPO, Peshawar.

IMPLEMENTATION PETITION FOR DIRECTING THE RESPONDENT DEPARTMENT TO IMPLEMENT THE JUDGMENT DATED 14-12-2018 IN APPEAL NO.828/2017 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the above mentioned appeal has been decided by this august Service Tribunal vide judgment dated 14-12-2018 in favor of the Petitioner. Copy of the judgment is attached as annexure.....A.
- 2- That the Petitioner filed the above mentioned appeal against the impugned order dated 20/07/2017 whereby the petitioner had been from service.
- 3- That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner with the directions that:-

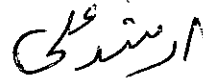
"As a sequel to above, the appeal is partially accepted, impugned orders dated 31.05.2017 and 20.07.2017 are set aside and the penalty of dismissal from service is converted into major penalty of compulsory retirement".

- 4- That Petitioner after obtaining attested copy of the judgment 14.12.2018 submitted before the respondents for implementation, but the respondents are not willing to implement the judgment passed by this august Service Tribunal.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the above mentioned judgment passed by this august Service Tribunal in letter and spirit.

Dated: 12.02.2019.

PETITIONER



ARSHAD ALI

THROUGH:



NOOR MOHAMMAD KHATTAK

&



**MIR ZAMAN SAFI
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation petition No. _____/2018

In appeal No. 828/2017

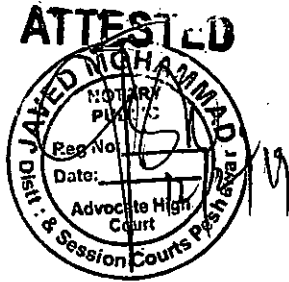
ARSHAD ALI

VS

POLICE DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak Advocate on the instruction and on behalf of my client do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




NOOR MOHAMMAD KHATTAK
ADVOCATE

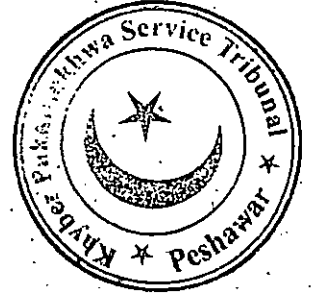
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A - (9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 828/2017

Date of Institution ... 03.08.2017
Date of Decision ... 14.12.2018



Arshad Ali, No. 2874 Ex-IHC Police Line, Peshawar R/O Mohallah Shena Village
Shahi Payan Tehsil and District, Peshawar. ... (Appellant)

VERSUS

Inspector General Police Khyber Pakhtunkhwa, Peshawar and four others.
... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER (Executive)
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the
parties heard and record perused.

FACTS

2. Brief facts of the case are that the appellant joined the Police Department as Food Constable on 13.07.1991. He was appointed as IHC in February, 2016. He is aggrieved, of impugned order dated 31.05.2017 through which major penalty of dismissal from service was imposed on him. He filed departmental appeal on 12.06.2017 which was rejected on 20.07.2017, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that after registration of FIR No. 476 dated 16.09.2016 under Section 223/224 PPC P.S East Cantt was registered

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ATTESTED

EXAMINER
Khyber Pakhtunkhwa

S

against the appellant and departmental proceedings were initiated. On winding up of the proceedings major penalty of dismissal from service was awarded to him. Proper inquiry as envisaged in Police Rules 1975 was not conducted, neither witnesses were examined nor opportunity of cross examination was afforded to him. He was also denied the opportunity of personal hearing. He has more than 25 years service at his credit and the penalty awarded to him appeared to be very harsh.

4. On the other hand learned Additional Advocate General argued that while posted in Police Lines Peshawar he was deputed for escort duty of under trial prisoner from Central Jail Peshawar to Judicial Complex Peshawar for production before the court. As after attending the court the appellant was taking the prisoner to the Central Jail without handcuff, so one accused namely Rahim Gul fled away from his custody and FIR was lodged against him. There-after enquiry was conducted and after observance of all codal formalities major punishment of dismissal from service was imposed on him.

CONCLUSION

5. Charges leveled against the appellant were proved during the course of enquiry. Ample opportunity of defense was provided to him but he was unable to establish his innocence. Co-accused Naveed in his statement highlighted that he tried his level best to persuade the appellant to follow rules but to no avail. The appellant has more than 25 years service at his credit though charges leveled against him have been proved but keeping in view his long service we are inclined to modify the impugned order.

6. As a sequel to above, the appeal is partially accepted, impugned orders dated 31.05.2017 and 20.07.2017 are set aside and the penalty of dismissal from service is

ATTESTED ATTESTED

EXAMINER
Khyber Pakhtunkhwa

6

converted into major penalty of compulsory retirement. Parties are left to bear their own costs. File be consigned to the record room.




(HAMID FAROOQ DURANNI)
CHAIRMAN



(AHMAD HASSAN)
MEMBER

ANNOUNCED
14.12.2018

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 27-12-18
Number of Words 1200
Copying Fee 800
Urgent 200
Total 1000
Name of Copyist [Signature]
Date of Completion of Copy 27-12-18
Date of Delivery of Copy 27-12-18

ATTESTED



VAKALATNAMA

Before the KP Service Tribunal, Peshawar

OF 2019

Arshad Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Arshad Ali

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2019

Arshad Ali
CLIENT

Noor Mohammad Khattak
ACCEPTED

NOOR MOHAMMAD KHATTAK

Muhammad Maaaz Madni
MUHAMMAD MAAZ MADNI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No. **0345-9383141**

Mir Zaman Sani
MIR ZAMAN SANI
ADVOCATE

POWER OF ATTORNEY
IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

CPLA. No. _____ /2019

Govt. of Khyber Pakhtunkhwa etc

PETITIONER(S)

VERSUS

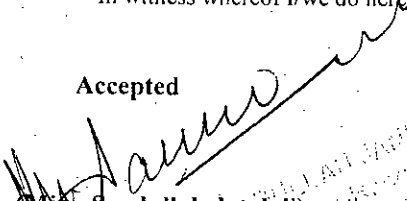
Arshad Ali

RESPONDENT(S)


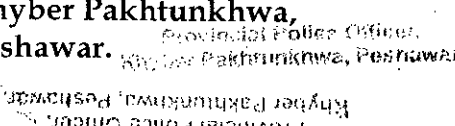
I (we) Petitioner/Govt. of KPK in the above suit/Appeal/Petition/Reference, do hereby appoint and constitute **Mian Saadullah Jandoli**, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid appellant [or plaintiff(s) or Petitioner(s) or Respondent (s) or defendant (s) or opposite party] to commence and prosecute (or to appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the process of the Court, to appoint and instruct counsel, to represent the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] in the above matter and to do all things incidental to such acting for the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party]. The aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] agree (s) to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority


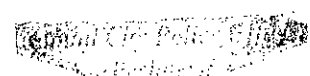
In witness whereof I/we do hereby set my/our hand (s) this day of

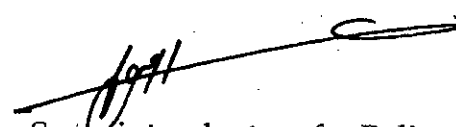
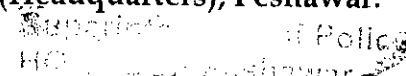
Accepted

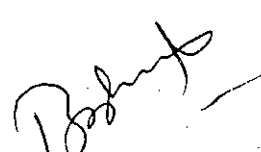
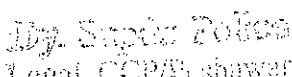

Mian Saadullah Jandoli
Advocate-on-Record
Supreme Court of Pakistan
(for KPK) Advocate-General's
Office KPK, High Court Building, Peshawar.
Office Tel. # 091-9210312, 9210119

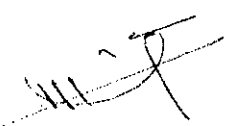
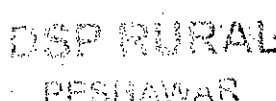
Signed with Official seal stamp


1- Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.



2- Capital City Police Officer,
Peshawar.



3- Superintendent of Police
(Headquarters), Peshawar.



4- Deputy Superintendent of Police,
Legal, CCPO, Peshawar.



5- Sub-Divisional Police
Officer, Rural, Peshawar.




OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 4725 /Legal dated Peshawar, the 30 / 09 /2019.

To: - The Secretary
Government of Khyber Pakhtunkhwa,
Home & TAs Department, Peshawar.

Attention:- SO (Court)

Subject:- FILING OF APPLICATION FOR EARLY HEARING BEFORE THE HONORABLE SUPREME COURT OF PAKISTAN SERVICE APPEAL NO. 828/2017 TITLED ARSHAD ALI VS INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA, PESHAWAR AND OTHERS.

Memo:-

Deputy Superintendent of Police Legal CCP Peshawar has placed request vide his office memo No. 1977/ dated 20.09.2017, for lodging early hearing application before Honorable Supreme Court of Pakistan in subject cited service appeal.

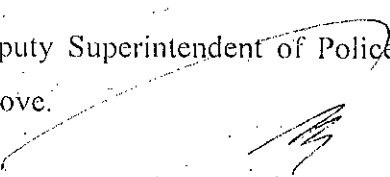
He is reported that the appellant joined the Police Department as Food Constable on 13.07.1991. He was appointed as IHC in February, 2016. He is aggrieved of impugned order dated 31.05.2017 through which major penalty of dismissal from service was imposed on him. He filed departmental appeal on 12.06.2017 which was rejected on 20.07.2017, hence the instant service appeal. The appeal is partially accepted, impugned orders dated 31.05.2017 and 20.07.2017 are set aside and the penalty of dismissal from service is converted into major penalty of compulsory retirement. CPLA cited as subject has already been lodged before the Supreme Court of Pakistan against the judgment of Service Tribunal.

It is therefore, requested that Law Department may be approached for onward approaching Advocate on record of Supreme Court at Peshawar for lodging early hearing application of the CPLA.


For SP Court & Litigation
CPO Peshawar.
27.09.2019

No. 4726 /Legal

Copy of the above is forwarded to the Deputy Superintendent of Police Legal CPO Peshawar with reference to his office memo quoted above.


For SP Court & Litigation
CPO Peshawar.
27.09.2019

107/18

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

C.P No.123-P of 2019

[Against the judgment dated 14.12.2018, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.828 of 2017]

*Inspector General of Police now
Provincial Police Officer, KP Peshawar
& others.*

...Petitioner(s)

Versus

Arshad Ali.

...Respondent(s)

For the Petitioner(s) : Barrister Qasim Wadood,
Addl:A.G, KP

For the Respondent(s) : N.R.

Date of Hearing : 20.11.2019

ORDER

Gulzar Ahmed, J:- Learned Additional Advocate General, KP states that the only thing, which is challenged by the petitioners is the conversion of penalty of respondent from dismissal to compulsory retirement by the Tribunal by the impugned judgment.

2. We have noted that such has been done by the Tribunal because the respondent has 25 years service to his credit and perhaps it was a first lapse on his part and during enquiry it was not established that he allowed the accused to flee away from his custody on account of receiving some illegal gratification and that there was only lapse and negligence on his part. In our view, the judgment of the Tribunal does not require interference for that no illegality in the same has been pointed out, more so, no

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

substantial question of law of public importance in terms of Article 212(3) of the Constitution is raised. The petition is, therefore, dismissed and leave refused.

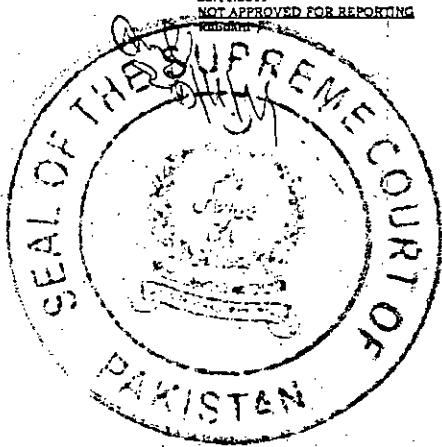
Sd/-J

Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Bench-II
ISLAMABAD
20.11.2019
NOT APPROVED FOR REPORTING



785-6/14

CP No: _____ Civil/Criminal

Date of Presentation: 21.11.19

No of Words: _____

No of Folios: 10

Requisition Fee Rs: 500

Copy Fee int: _____

Court Fee Stamps: 2.2

Date of Completion of Copy: 21/11/19

Date of delivery of Copy: 02/12/19

Compared by/Prepared by: _____

Received by: _____

2555 LB
03-12-19

Reference Attached

Sir,

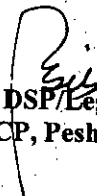
It is submitted that Ex-IHC Arshad Ali No.2874 of CCP, Peshawar had filed Service Appeal No.828/2017 before the Khyber Pakhtunkhwa Service Tribunal Peshawar against the punishment order of dismissal from service by SP HQrs Peshawar.

Brief facts of the case are that the appellant while posted at Police Line Peshawar was deputed for escort duty of under trial prisoner from Central Jail Peshawar to Judicial Complex Peshawar for production before the courts on 16.09.2016. after production in court the appellant while taking the prisoners to jail, without hand cuffs one of the accused namely Rahim Gul arrested u/s 14 FA/324/34 EXP/353/427/424/148/15 AA PS Badhaber Peshawar made escape good from his custody as such a criminal case FIR No.476 dated 16.09.2016 u/s 223/224 PPC PS East Cantt: against him was registered. The charges leveled against him were stand proved hence he was awarded major punishment of dismissal from service vide OB No. 2252 dated 31.05.2017 by SP Hqrs Peshawar. The appellant then filed a departmental appeal which after due consideration was also filed/rejected vide order No.1058-63/ PA dated 20.07.2017.

Feeling aggrieved the appellant then filed Service Appeal No.828/2017 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was contested through Government Pleader by submitting duly vetted Para-wise comments. The Hon'able Tribunal partially accepted his appeal, and the impugned orders dated 31.05.2017 and 20.07.2017 are set aside and the penalty of dismissal from service is converted into major penalty of compulsory retirement.(copy attached)

On procurement of judgment order dated 14.12.2018 this office moved request for filing CPLA against the judgment order which subsequently was filed in the apex court through law department, which the August Supreme Court of Pakistan has dismissed vide order dated 20.11.2019.(copy attached)

In view of the above, judgment order dated 14.12.2018 passed by the Hon'able Service Tribunal and judgment order dated 20.11.2019 passed by the August Supreme Court of Pakistan are submitted herewith for implementation please.

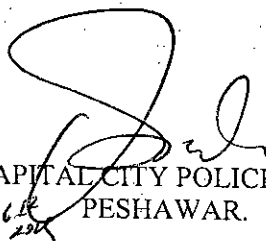

DSP/ Legal,
CCP, Peshawar.

FOR PUBLICATION IN THE KPK, POLICE GAZETTE PART-II
ORDERS BY THE CAPITAL CITY POLICE OFFICER, PESHAWAR.

NOTIFICATION.

Dated 27-12 /2019.

No. 37936 /EC-II, COMPULSORY RETIREMENT:- Consequent upon the judgment order dated 14.12.2018 passed by the Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar in service appeal No.828/2017 filed by (IHC Arshid Ali No.2874), followed by worthy PPO, KPK, Peshawar office order endst: No.106/LB, dated 09.01.2019 major punishment order of dismissal from service awarded to appellant issued vide OB: No.2252, dated 31.05.2017 passed by SP/HQrs:, Peshawar is hereby converted into compulsory retirement.


FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 37937-48 /EC-II, dated Peshawar the _____ /2019.

Copy of above is forwarded for information and necessary action to the:-

- Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- Addl: Inspector General of Police Investigation, Khyber Pakhtunkhwa, Peshawar alongwith two spare copies for Publication in the KPK, Police Gazette Part-II.
- SSP/Operations, Peshawar.
- SsP/HQrs: & Security, Peshawar.
- CC, PO, AS, EC-I, Fauji Missal.
- Pension Clerk & OSI.