


01.07.2019

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Suleman, Reader for the respondents present. On the previous date implementation report was submitted by the department but petitioner and his counsel were absent on the previous date therefore, notices were issued to them for today. Learned counsel for the petitioner Mr. Taimur Ali Khan, Advocate present today and stated that he has got no objection if the present execution petition is consigned to the record room being disposed of. Accordingly, the present execution petition is consign to the record room. However, If the petitioner is having some grievance he may restore the present execution petition by filing of restoration application.

ANNOUNCED

01.07.2019

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

11.04.2019

Petitioner in person and Addl. AG alongwith Muhammad Asif, DSP (Legal) for the respondents present.

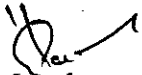
Representative of respondents states that the requisite implementation report will be submitted on next date of hearing.

Adjourned to 16.5.2019 before S.B.

  
Chairman

16.05.2019

Petitioner absent. Learned counsel for the petitioner absent. Mr. Usman Ghani learned District Attorney alongwith Suleman Reader present. Representative of the respondent department submitted copy of office order dated 02.05.2019. Learned District Attorney stated that in view of the office order dated 02.05.2019, the judgment of this Tribunal has been provisionally implemented subject to the decision of CPLA before august Supreme Court of Pakistan. Petitioner and his counsel be put to notice. Adjourn. To come up for further proceedings 01.07.2019 before S.B.




  
Member

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Execution Petition No. 39/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.1.2019	<p>The execution petition of Mr. Farid Khan submitted by Mr. Taimur Ali 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 29/1/19</p>
2-		<p>This execution petition be put up before S. Bench on <u>6-3-19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
06.03.2019		<p>Counsel for the petitioner present. Notice be issued to the respondents for implementation report for 11.04.2019 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>

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

Execution Petition No. 39 /2019  
In Service Appeal No.256/2016

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 149

Dated 29-1-2019

Farid khan, Ex-Constable No.685/SB,  
Police Head Quarter, Peshawar.

**PETITIONER**

**VERSUS**

1. The Provincial Police officer, KPK, Peshawar.
2. The Deputy Inspector of police, Special Branch, Peshawar. .
3. The Senior Superintendent of Police, Special Branch.

**RESPONDENTS**

.....

**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED 02.01.2019 OF THIS  
HONOURABLE TRIBUNAL IN LETTER AND  
SPIRIT.**

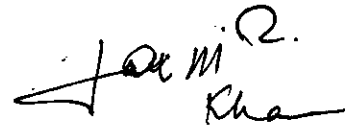
.....

**RESPECTFULLY SHEWETH:**

1. That the petitioner has filed service appeal No. 256/2016 against the orders dated 11.04.2011, whereby the petitioner was discharged from service and 29.01.2016, whereby the departmental appeal of the petitioner was rejected.
2. The appeal was finally heard by the this august Service Tribunal on 02.01.2019 and the august Tribunal was kind enough to accept the appeal, set aside the impugned order dated 11.04.2011 and 29.01.2016 and the appellant is reinstated into service and the intervening period was treated as leave of kind due. **(Copy of judgment dated 02.01.2019 is attached as Annexure-A)**
3. That the petitioner also filed application for implementation of judgment dated 02.01.2019, but the respondent department did not implement the judgment of this august Service Tribunal till date. **(copy of application is attached as annexure-B)**

4. That in-action and not fulfilling formal requirements by the department after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 02.01.2019 of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement the judgment dated 02.01.2019 of this august Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.



PETITIONER  
Farid Khan

THROUGH:



(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

&  
ASAD MAHMOOD  
Advocate High Court

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT

A (3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Appeal No. 256 /2016

K.W.P. Provincial  
Service Tribunal  
Diry No. 117  
Dated 18-2-2016

Mr. Farid Khan, Constable No.685/SB,  
Police Head Quarter, Peshawar.

**APPELLANT**

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The D.I.G. Special Branch, Peshawar.
3. The S.S.P, Special Branch, Peshawar.

**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 11.04.2011 WHEREBY THE APPELLANT HAS BEEN DISCHARGED FROM THE SERVICE AND THE ORDER DATED 29.01.2016 WHEREBY THE APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS IN VIOLATION OF SERVICE TRIBUNAL JUDGMENT.

ATTENTION

**PRAYER:**

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 11.04.2011 AND 29.01.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WILL BACK BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

**RESPECTFULLY SHEWETH:**

1. That the appellant was recruited as Constable in the Special Branch on 16.02.2008 for Canine Unit. The appellant duly joined the course under Army Personal but he returned the appellant without completing course. After returned, the appellant reported to the Establishment Section who referred the appellant to

*[Handwritten signature]*  
Peshawar

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Registrar

*[Handwritten signature]*

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17/3/16

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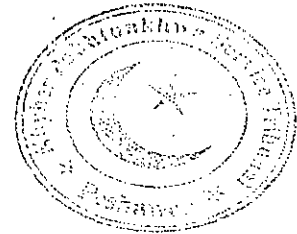
(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Appeal No.256/2016

Date of Institution ... 18.02.2016

Date of Decision ... 02.01.2019



Farid Khan, Constable No. 685/SB, Police Head Quarter, Peshawar.  
... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.  
... (Respondents)

Present.

MR. TAIMUR ALI SHAH,  
Advocate.

... For appellant

MR. ZIAULLAH,  
Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. HUSSAIN SHAH,

... CHAIRMAN  
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

The facts as laid in the memorandum of appeal are that the appellant was recruited as Constable on 16.02.2008 in Special Branch Canine Unit of Police Department. He was sent for training but returned before its completion. He reported to the Establishment Section of Special Branch and was referred to I.T Section. Thereafter, the appellant performed different duties including as Gunner with AIG Special Branch, and as Security personnel at the residence of SSP (Admin) etc. He was issued a show cause notice on 22.09.2010, wherein, it was noted that the appellant did not assume duty in Canine Unit. The notice was duly responded to. On 18.10.2010, the appellant along with one Ihsanullah was discharged from service under Police Rules, 1934 (Rule 12.21). The said order was, however, set

*Altaf*

Agency on behalf of the respondents and have also gone through the available record with their assistance.

*[Handwritten signatures and stamps]*

3. We have heard learned counsel for the appellants, learned Deputy District

purportedly, on account of having no substance and force. the receipt of judgment. On 29.01.2016 the appeal of appellants was rejected, the case and decide it on merits strictly in accordance with law within 45 days of appellants was remitted to the departmental appellate authority in order to examine Tribunal. The Tribunal decided the case on 23.12.2015, in terms, that the appeal of un-responded, therefore, the appellants filed Appeal No. 1314/2011 before this dated 11.04.2011. An appeal was preferred against the said order which remained Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 vide order ultimately, the appellants was discharged from service under the Khyber wherein he denied all the allegations and prayed for shelving the enquiry. said that, was also included. The appellants filed detailed reply to the charge sheet, after the suffer dogs, not taking interest in his assigned professional duties in the not qualified the prescribed training for dog handling nor could handle and look issued on 31.1.2011 against the appellants, wherein, the appellants was stated to have to the said enquiry report, yet another charge sheet and statement of allegations was compliance and absence from duty were not based on fact. Without any reference was conducted. The enquiry officer recommended that the allegations of non-officers. A detailed reply to the charge sheet was submitted where-after, enquiry himself without prior permission and failed to comply with the order of superior charge sheet and statement of allegations, wherein, it was alleged that he absented enquiry be conducted into allegations. On 26.10.2010, the appellants was issued notice and summary of allegations to the appellants. It was also noted that an aside by A.I.G Special Branch with directions for issuance of fresh show cause

5



It was contended by the former that the findings of enquiry dated 07.12.2010 were totally disregarded by the respondents. Similarly, the reply to charge sheet submitted by the appellant was not given due consideration. In view of learned counsel the case of appellant was not at all of absence as he was performing duty under the orders of his superiors at different places upon unsuccessful return from the Dog Handling Course. He was being regularly paid his salary all along, it was added. It was also contended that the proceedings against the appellant were taken under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000, however, he was awarded punishment of 'discharge' from service which was a term alien to the provisions of the Ordinance.

As against that, learned Deputy District Attorney stated that the appellant, at the relevant time when he was issued charge sheet and statement of allegations, was under probation and had to remain as such upto 16.02.2011. Therefore, the penalty awarded to him was very much in line with the provisions of Rule 12.21 of Police Rules, 1934. He further contended that the allegations against the appellant stood proved and the impugned order was not exceptionable on that score.

4. It shall be useful to reproduce hereunder the relevant portion of judgment passed by this Tribunal on 23.12.2015:-

*"From perusal of the record, it transpired that the appellant deliberately avoided to work in the Canine Unit for which he was specially enlisted and instead wanted to take shelter of different quarters in the Police Department by keeping himself posted in different Sections/Branches other than the unit of his original assignment. In spite of his being away from the designated position, he remained in the receipt of salary for performance of duty in different Sections/Positions other than the Canine Unit till his removal from service vide the impugned order dated 11.01.2011. The contention of the appellant that he remained on duty and was not heard by the relevant authorities before his removal from service*

*Attested*  
*[Signature]*

termining the same as mala fide on part of the competent authority could have been addressed by the appellate authority but no such orders of the said authority are available on the record. In view of the foregoing the Tribunal deem it appropriate to remit the case to the appellate authority to examine and decide the departmental appeal of the appellant on its merits strictly in accordance with law/rules within a period of 45 days from the receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

It is clear from above reproduction that the aspect of claim of appellant regarding performance of duty at different places other than the Canine Unit and the fact that he kept receiving monthly salary for the performance of duty, was also required to have been considered by the departmental appellate authority while deciding the appeal in pursuance to judgment by this Tribunal.

5. We consider that the argument of learned counsel regarding penalty of discharge from service not provided in the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance 2000, has much force. In the said context, it is clearly noticeable that the impugned order dated 11.4.2011 itself spoke to have been passed under the Ordinance *ibid* while, on the other hand, Section 3 of the said Ordinance provided major punishment in the form of 'dismissal' or 'removal' from service and, compulsory retirement or reduction to lower post or pay scale. The penalty of 'discharge' from service does not find any mention in the Ordinance, 2000. The impugned order is, therefore, liable to be struck down on the said score alone.

6. It is not denied that the appellant was recruited on 16.02.2008. In such case, he was to remain under probation for three years during which period he could have been discharged by the Superintendent in case he was not likely to prove an efficient police official. However, on 11.04.2011, i.e. the date of passing of

Attested  


*Alkhalid*

18-1-19  
18-1-19  
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(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
02.01.2019  
CERTIFIED TRUE COPY

(HUSSAIN SHAH)  
(MEMBER)

*[Signature]*

room

Parties are left to bear their respective costs. File be assigned to the record

kind due.

7. In view of the above, the appeal in hand merits acceptance which is accordingly allowed. Impugned orders dated 11.04.2011 and 29.01.2016 are set aside and the appellant is reinstated into service. The period interregnum his impugned discharge from service and reinstatement shall be treated as leave of the kind due.

For basic policing recruit course.

be adjusted in some other unit/section of the Special Branch, besides, sending him innocent. The enquiry officer recommended that the enquiry be filed and appellant for non-compliance or absence were not based on facts and that he was proved Branch. It was concluded that the allegations/charges levelled against the appellant recommended him to be adjusted/accommodated in other Section/Unit of Special of Crime Unit. After arrival, he reported for duty where-after A.I.G BDU/SAs also noted therein that the appellant was an untrained constable for the specific job findings of enquiry officer as noted in his report dated 07.12.2010. It was, inter-ferred against the appellant. Here it shall be of use to make a reference to the three years. In the said context, even otherwise, a discharge order could not be impugned order of discharge the appellant had clearly completed the period of

To,

The worthy Senior Superintendent of Police,  
Special Branch Peshawar.

APPLICATION FOR IMPLEMENTATION OF JUDGMENT

DATED 02.01.2019


Respected Sir,

That I was removed from service on 11.04.2011 against which I filed service appeal No. 1314/2011 in Service Tribunal, which was decided on 23.12.2015 in terms that the appeal of the appellant was remitted to the departmental appeal of the appellate authority in order to examine the case and decided on merit on which the my departmental appeal was rejected on 29.01.2016 by the appellate authority.

Then I again filed service appeal No. 256/2016 against the order dated 11.04.2011 and 29.01.2016 which was finally decided on 02.01.2019 in which the august Service Tribunal allowed the service appeal, set aside the impugned order and I was reinstated into service (copy of judgment is attached as Anneuxre-RI).

It is therefore, most humbly requested that the judgment 02.01.2019 may kindly be implemented and I may be kindly reinstated into service.

Your's obediently,

  
Farid Khan

Constable

22/1/19

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B 9

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar

Fazid Iqbal (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police Deptt (Respondent)  
(Defendant)

I/We Fazid Iqbal

Do hereby appoint and constitute **M.Asif Yousafzai, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

[Signature]  
( CLIENT )

ACCEPTED

[Signature]  
**M. ASIF YOUSAFZAI**  
Advocate  
Taimul Ali Khan  
Advocate

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**

Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240

Asad Mahmood  
Advocate