

E.P 31/2019

03.05.2019

Counsel for the petitioner and Mr. Usman Ghani, District Attorney alongwith Zewar Khan, S.I(Legal) for the respondents present.

The representative of respondents has produced order bearing Diary No. 585 dated 22.01.2019 issued by Regional Police Officer Malakand at Saidu Sharif Swat. The departmental appeal of petitioner was rejected through the order which came to the knowledge of petitioner today before the court. The copy of the order has been endorsed to the AIG Legal, CPO Peshawar, District Police Officer, Dir Lower and Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar. The endorsement further complement the fact that the petitioner was not officially communicated the order after its passing.

Learned counsel for the petitioner states that the order of RPO rejecting the departmental appeal of the petitioner has given fresh cause of action and the petitioner will pursue legal remedy available to him. He, however, strongly condemned the action of respondents in terms of decision of departmental appeal beyond the period of three months from the date of passing of judgment in Appeal No. 562/2016. In his view the directions/order of the Tribunal was not implemented^{ed} in letter and spirit and the portion thereof was flagrantly violated.

Learned District Attorney states that he would take up the matter with the respondent department in order to avoid such delay in future.





In view of the above the proceedings in hand are consigned.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. **31/2019**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.1.2019	<p>The execution petition of Mr. Rahim-ud-Din submitted by Mr. Rizwanullah 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 21/1/19</p>
2-		<p>This execution petition be put up before S. Bench on <u>1-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
01.03.2019		<p>Petitioner in person present. Notice be issued to the respondents for implementation report for 03.04.2019 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AMIN KHAN KUNDI) MEMBER</p>
03.04.2019		<p>Counsel for the petitioner and Addl: AG for respondents present. Notices be issued to the respondents for submission of implementation report on 03.05.2019 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

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

Execution Petition No. 31 /2019

1. Rahim-Ud-Din S/O Syed Rehman, resident of Ajoo Talash, Tehsil Taimer Garha, District Dir Lower.

APPELLANT

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa and others

RESPONDENTS

I N D E X

S.No	Particulars	Annexure	Pages #
1	Execution Petition	—	1-4
2	Affidavit	—	5
3	Copy of judgment of this Hon'ble Tribunal dated 05/07/2018	"A"	6-9
4	Copy of letter No.1192/ST dated 11/7/2018	"B"	10
8	Wakalatnama	—	—

Rahim Ud Din

Petitioner

Through

Rizwanullah

Rizwanullah

Advocate High Court, Peshawar.

Dated: 20-01-2019

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

Execution Petition No. 31 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 110

Dated 21-1-2019

1. Rahim-Ud-Din S/O Syed Rehman, resident of Ajoo Talash, Tehsil Taimar Garha, District Dir Lower.

APPELLANT

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa.
2. The Deputy Inspector General of Police, Malakand Region, Saidu Sharif, Swat.
3. The District Police Officer, Dir Lower.
4. The Deputy Superintendent of Police, Head Quarter, Taimar Garha, District Dir Lower.

RESPONDENTS

**APPLICATION UNDER SECTION 7
(2) (D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 READ WITH
RULE 27 OF THE KHYBER
PAKHTUNKHWA PROVINCE
SERVICE TRIBUNAL RULES 1974
FOR INITIATING CONTEMPT OF
COURT PROCEEDINGS AGAINST
THE RESPONDENT NO. 2 FOR
DISOBEDIENCE OF THE**

ORDER/JUDGMENT DATED
05-07-2018 PASSED BY THIS
HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.562/2016.

Respectfully Sheweth,

Short facts giving rise to the present execution petition are as under:-

1. That the petitioner was serving as a constable at the relevant time. He was dismissed from service in utter violation of law. He after exhausting departmental remedy, invoked the jurisdiction of this Hon'ble Tribunal by way of filing service No.562/2016 praying therein that the impugned order may graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

2. That this Hon'ble Tribunal vide judgment dated 05/07/2018 disposed of the said appeal with the following observations and directions: -

“Learned District Attorney remained unable to rebut the contention of the learned counsel for the appellant that many of their colleagues of the appellant who were also dismissed from service on the ground of absence from duty were reinstated either by the Appellate Authority, or by the Review Board.

In the stated circumstances of the case, the order dated 31-10-2012 of the Appellate Authority and the order dated 13-04-2016 of the Review Board are hereby set aside.

Resultantly, the departmental appeal of the appellant shall be deemed pending, Appellate Authority (respondent No. 2) is directed to decide the same afresh with speaking order within a period of three months of the receipt of this judgment. The present service appeal is disposed of accordingly. Parties are left to bear their own cost. File be consigned to the record room.

(Copy of judgment is appended as Annex-A)

3. That the Registrar of this Hon'ble Tribunal vide letter No.1392/ST dated 11/7/2018 forwarded a certified copy of the said judgment to the Appellate Authority (respondent No.2) through registered post for strict compliance by virtue of Rule 28 of the Khyber Pakhtunkhwa Province Service Tribunal Rules, 1974.

(Copy of letter is appended as Annex-B)

4. That the Appellate Authority (respondent No.2) was under statutory obligation to have complied with the said judgment in letter and spirit by disposing of departmental appeal filed by the petitioner. But he did not bother for the same and the departmental appeal was not decided within the prescribed time as ordered by this Hon'ble Tribunal.
7. That the defiant and adamant conduct of appellate authority (respondent No.2) clearly amounts to willful disobedience of the order/judgment of this Hon'ble Tribunal and therefore requires to be dealt with iron hands by awarding him exemplary punishment under the relevant law. Reliance in this respect can be placed on the

judgment of august Supreme Court of Pakistan reported in
PLD-2012-SC-923 (citation-ff). The relevant citation of the
judgment is as under:-

**PLD 2012 Supreme Court 923
(ff) Contempt of court---**

---Court order, implementation
of---Contempt through
disobedience of court order
("disobedience contempt") by
executive and its functionaries---
Effect---Responsibility for
implementation (of court's
orders) had been made obligatory
on other organs of the State,
primarily the executive-When a
functionary of the executive
refused to discharge its
constitutional duty, the court was
empowered to punish it for
contempt.

In view of the above narrated facts, it is, therefore, humbly prayed
that contempt of court proceedings may graciously be initiated against the
respondent No.3 for disobedience of order/judgment of this Hon'ble Tribunal and
he may also be awarded exemplary punishment under the relevant law.

Any other relief deemed proper and just in the circumstances
of the case, may also be granted.

Dated: 21-01-2019

Through

Rahimuddin

Petitioner

[Signature]

Rizwanullah

M.A LL.B

Advocate High Court, Peshawar.

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

Execution Petition No. ____/2019

1. Rahim-Ud-Din S/O Syed Rehman, resident of Ajoo Talash, Tehsil Taimer Garha, District Dir Lower.

APPELLANT

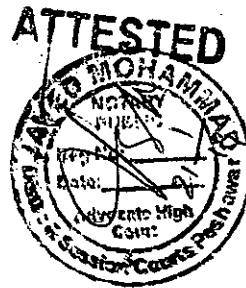
VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa and others.

RESPONDENTS

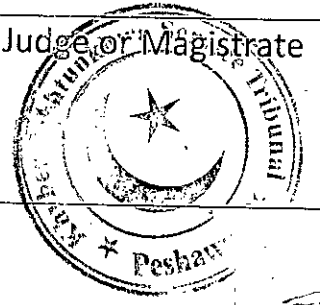
AFFIDAVIT

Rahim-Ud-Din S/O Syed Rehman, resident of Ajoo Talash, Tehsil Taimer Garha, District Dir Lower, do hereby solemnly affirm and declare that the contents of the accompanied execution petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



Rahimuddin
Deponent

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
At Camp Court Swat

Appeal No. 562/2016

Date of Institution ... 16.05.2016
Date of Decision ... 05.07.2018

Rahim Ud Din son of Syed Rehman, Resident of Ajoo Talash,
Tehsil Timregara, district Dir Lower.
Appellant

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. D.I.G, Malakand Region Saidu Sharif Swat.
3. D.P.O, Lower Dir.
4. D.S.P headquarter, Timergara Lower dir.

Respondents

Mr. Sajjad Ahmad Jan
Advocate-----**For Appellant**

Mr. Usman Ghani
District Attorney-----**For Respondents**

Mr. Subhan Sher Chairman
Mr. Muhammad Hamid Mughal Member

05.07.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellant

with counsel present. Mr. Usman Ghani learned District Attorney for the respondents present.

2. Learned counsel for the appellant stated that the appellant has filed the present service appeal against the order dated 20.08.2009 whereby he was dismissed from service on the ground of absence from duty and against the order dated 31.10.2012 vide which the

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

departmental appeal of the appellant was rejected; that the appellant has also challenged the order dated 13.04.02016 of the Review Board whereby departmental appeal/revision filed by the appellant was rejected. Learned counsel for the appellant argued that the appellant could not attend to his duties for a few months due to circumstances beyond his control as the mother of the appellant was severely ill. Learned counsel for the appellant argued that the appellant was met with discriminatory treatment as some of the colleagues of the appellant who were also dismissed under similar circumstance were reinstated either by the Appellate Authority or by the Review Board. Further argued that original impugned order of punishment of dismissal was also awarded to the appellant with retrospective effect hence being a retrospective punishment the original impugned order is a void order, and no limitation runs against the same. Learned counsel for the appellant in support of his contention regarding discriminatory treatment submitted copies of reinstatement order of F.C Muhammad Yar No.2118, Constable Noor khan No.462, Constable Jawad Hassan No.2111, Constable Atta Ullah No. 2240, Constable Waheed Khan No.4886 of FRP ; Constable Muhammad Shahid 4890 of FRP etc.

3. As against learned District Attorney resisted the present service appeal and defended the impugned orders on the ground mentioned therein.

4. Arguments heard. File perused.

5. Admittedly the impugned punishment of dismissal from

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

service was imposed upon the appellant with retrospective effect hence the original order of dismissal from service is void and no limitation would run against the same.

6. On the other hand, the Departmental Appellate Authority simply filed/regretted the departmental appeal of the appellant on the ground of limitation, which did not exist anymore as observed in the preceding para.

7. Learned District Attorney remained unable to rebut the contention of the learned counsel for the appellant that many other colleagues of the appellant who were also dismissed from service on the ground of absence from duty were reinstated either by the Appellate Authority or by the Review Board.

8. In the stated circumstances of the case, the order dated 31.10.2012 of the Appellate Authority and the order dated 13.04.2016 of the Review Board are hereby set aside. Resultantly the departmental appeal of the appellant shall be deemed pending. Appellate Authority/respondent No.2 is directed to decide the same afresh with speaking order within a period of three (03) months of the receipt of this judgment. The present service appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

05.07.2018

(Signature)
(Subhan Sher)
Chairman

(Signature) 27/8
Certified to be true copy

(Signature)
(MUHAMMAD HAMID MUGHAL)
MEMBER

(Signature)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Annex-B

10

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 1392 /ST

Dated 11 /07/2018

To

The Deputy Inspector General of Police,
Government of Khyber Pakhtunkhwa,
Malakand Region Saidu Sharif Swat.

Subject: ORDER/JUDGEMENT IN APPEAL NO. 562/2016, MR. RAHIM-UD-DIN.

I am directed to forward herewith a certified copy of Judgment/Order dated 05/07/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

Attested
Rahimuddin
Petitioner

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

50	1762	  
ایڈوکیٹ: Razaullah	بار کونسل ایسوسی ایشن نمبر: DC-09-0050	
رابطہ نمبر: 03005965843	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	

بعدالت جناب:

مخانب: Appellant	Execution Petitioner
Rahim-ud-Din	علت نمبر:
بنام	مورخہ:
Provincial Police officers and others	جرم:
	تھانہ:

بابت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

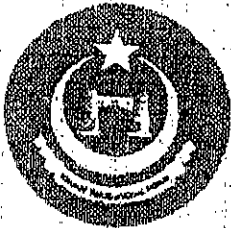
آن مقام Peshawar کیلئے Razaullah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی 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 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 دیا تاکہ سند رہے

المرقوم: 21-1-2019

المقام: Peshawar

المواہ شدہ: Razaullah

المقام: Peshawar



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-88 & Fax No. 0946-9240390

Email: dirmalakand@yahoo.com

ORDER:

This order will dispose off after re-examining the appeal dated 12/10/2012 (as a fresh) of Ex-Constable Rahim Uddin No. 434 of Dir Lower District for re-instatement into service in the light of august Service Tribunal, Khyber Pakhtunkhwa, Peshawar judgment dated 05/07/2018 in his service appeal No.562/2016.

Brief facts of the case are that Ex-Constable Rahim Uddin No. 434 of Dir Lower District while posted at Police Lines, Timergara absented from duty with effect from 09/06/2009 to 20/08/2009, without any leave or prior permission. He was issued charge sheet coupled with statement of allegation and an enquiry committee consisting of Mr. Khan Raziq Khan, the then SDPO Timergara and SI Dost Muhammad Khan, the then Cashier Police Lines, Timergara was constituted to probe into the matter and submit finding. The committee conducted proper departmental enquiry, recorded the statements of all concerned including father of the defaulter Constable. His father stated in his statement that his son is not interested to serve further in Police Force and has proceeded abroad. The Enquiry Committee in their findings stated that the defaulter Constable has gone to Saudi Arabia for seeking livelihood and there is no hope of his return to re-join his duty. The enquiry committee reached the conclusion that the charges leveled against the defaulter Constable Rahim Uddin No. 434 was proved without any shadow of doubt and recommended him for dismissal from service with effect from the date of his absence i.e 09/06/2009. Therefore, the then DPO Dir Lower agreed with the finding report of the enquiry committee and dismissed him from service from the date of his absence 09/06/2009 vide his office OB No. 1185 dated 20/08/2009. He was previously preferred an appeal before this office which was examined and filed by the then RPO Malakand vide this office Memo: No. 7854/E, dated 31/10/2012 being long time barred.

The defaulter Ex-Constable was provided opportunity of personal hearing and called him in Orderly Room on 14/11/2018 and de novo enquiry was conducted through DPO, Dir Lower. After thoroughly probe into the matter and detail enquiry finding report initiated that "The previous record of Ex-FC has been scrutinized carefully which shows that he had gone abroad on his own sweet will. His father and brother corroborated the version that Ex-FC is gone to Saudi Arabia and has no more interest in Police service. The present statement of Ex-FC has been perused with previous history which is very different from each other. It is worth mentioning here that Police service is disciplined one and one cannot be spared on mere presumption. The plea taken by the Ex-FC is not based on reality but only to escape himself from the serious touch. Therefore the Enquiry Office opinion, the previous orders may be kept intact".

585
22-01-19

On 02/01/2019, the defaulter Ex-FC was again called in Orderly room heard in person, but he badly failed to explain plausible reasons in his self defense perused enquiry papers and come to the conclusion to kept intact the order of then RPO Malakand and reject the current appeal.

Order announced

(MUHAMMAD SAIED) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 10/10-12 E

Dated 22/1/2019

Copy for information to the:-

1. AIG Legal, CPO Peshawar with reference to his office No.3221/Legal, dated 19/10/2018 for information.
2. District Police Officer, Dir Lower with reference to his office memo: No. 14596/BC, dated 06/12/2018.
3. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar with reference to his office memo: No. 1392/ST, dated 11/07/2018.

E.C./insp Legal
[Signature]

(MUHAMMAD SAIED) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

District Police Officer,
Dir Lower at Timergara

22/1