

01.10.2019

Counsel for the petitioner and Addl. AG alongwith Rasheed Khan, DSP (Legal) for the respondents present.

The representative of respondents has submitted a report in pursuance to the last order of Tribunal dated 03.09.2019 which is placed on record. Learned counsel for the petitioner, on the other hand, states that he is under instructions to request for consigning of the proceedings in hand to the record.

Order accordingly.


Chairman

E.P No. 30/2019

03.09.2019 Petitioner alongwith his counsel and Mr. Rasheed Khan, DSP (Legal) for the respondents present.

Representative of the respondents has produced copy of order dated 06.08.2019 whereby the departmental appeal of the petitioner was rejected by the RPO Malakand. The same is placed on record.

Learned counsel for the petitioner referred to judgment under implementation and stated that the departmental appellate authority was made obligatory to decide the appeal of the petitioner through speaking order within three months of the receipt of copy of judgment. Next, it was contended that the matter was inordinately delayed by the respondents which called for imposition of heavy compensatory costs upon concerned respondents.

The representative of the respondents attempted to justify the apparent delay in carrying out the judgment of this Tribunal by referring to various events including time consumed in obtaining copy of the judgment and holding of the meeting of committee for the purpose of submission of CPLA against the judgment under the implementation.

The proceedings in hand are adjourned to 01.10.2019, on which date the respondents shall submit in writing their stance regarding justification of delay in executing the judgment under the implementation. The issue of cost will be decided upon submission of requisite explanation.


CHAIRMAN

19.07.2019

Petitioner alongwith counsel and Mr. Muhammad Jan, DDA alongwith Zewar Khan, S.I (Legal) for the respondents present.

The representative of respondents has produced copy of letter dated 25.06.2019 by District Police Officer, Dir Lower, whereby, request for decision of the departmental appeal of petitioner through a speaking order was made. Similar undertaking was given by the representative on last date of hearing in terms that the appeal of petitioner will be decided before next date.

It is a sorry state of affairs that the needful has not been done despite clear order by this Tribunal since 03.05.2019. In the circumstances, the departmental appellate authority is required to appear in person on next date of hearing in order to explain the inordinate delay in implementation of the judgment.

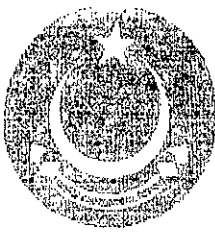
Adjourned to 03.09.2019 for further proceedings before S.B.


Chairman

17.06.2019

Petitioner alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zawar Khan, S.I (Legal) for the respondents present. The petitioner was dismissed from service on the allegation of absence from duty. The petitioner challenged the same through departmental appeal but the same was rejected thereafter the petitioner filed service appeal. The Service Appeal of the petitioner was partially accepted vide order dated 05.09.2018, the impugned order was set-aside and the departmental appeal of the petitioner was held to be deemed pending, appellate authority was directed to decide the same through speaking order within a period of three months of the date of receipt of judgment but the departmental appeal of the petitioner was not decided after statutory period despite repeated directions. Representative of the department namely Zawar Khan, S.I (Legal) requested for adjournment and stated that the departmental appeal of the petitioner will be decided before the next date. He is directed to produce implementation report positively on the next date. On the previous date of hearing, respondents was directed to produce the restraint order of the apex court but today representative of the departmental also not produce the same. Last opportunity granted. To come up for implementation report on 19.07.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.
Ph: 0946-9240388 & Fax No. 0946-9240390
Email: ebmalakandrpoler@gmail.com

ORDER:

This order will dispose off after re-examination of the appeal dated 15/04/2015 of Ex-Constable Yaqoob Khan No1093 of district Dir Lower for re-instatement into service in the light of August Service Tribunal, Khyber Pakhtunkhwa, Peshawar judgment dated 05/09/2018 in his Service Appeal No.357/2017.

Brief facts of the case are that Ex-Constable Yaqoob Khan No.1093 of District Dir Lower, while posted to Police Check Post Chakdara Bridge absented himself from duty with effect from 03/02/2009 till his dismissal date i.e 14/07/2009 without any leave or prior permission. He was issued charge sheet coupled with statement of allegations. An enquiry committee consisting of SDPO Maidan and SI Akhtar Shah, Investigation Lines, Cashier was constituted to conduct probe into the matter and submit finding. The committee conducted proper departmental enquiry, recorded the statements of all concerned including father of defaulter constable. Father of the defaulter constable stated in his statement that due to critical situation his son is not interested to serve further in Police force. The enquiry committee in their findings established the charge of dis-interests further in Police force leveled against him without any shadow of doubt and recommended him for dismissal from service from the date of absence i.e 03/02/2009. The then District Police Officer, Dir Lower agreed with the finding report of the enquiry committee and dismissed the defaulter Constable from service from the date of his absence i.e 03/02/2009 vide his office OB No.1027, dated 14/07/2009. He was previously preferred departmental appeal dated 14/04/2015 before this office, which was examined and filed by the then RPO, Malakand at Saidu Sharif, Swat vide this office Memo: No.3217/E, dated 14/04/2015 being time barred.

He was called in Orderly Room on 5/08/2019 and heard him in person. The appellant could not produce any cogent reason in his defense. Therefore, in exercise of powers vested to the undersigned kept intact the order of the then RPO, Malakand and reject the current appeal.

Order announced

5740
19/08/19

[Signature]
MURTAZA SADEED PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 8672-73 B.

Dated 06/08 2019.

Copy for information and necessary action to the-

- EC
1. AIG/Legal Khyber Pakhtunkhwa, Peshawar with reference to CPO Peshawar memo: No.3511/Legal, dated 16/07/2019.
 2. District Police Officer, Dir Lower with reference to his office memo: No. 17449/E, dated 23/07/2019.
- *****
- [Signature]*

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 submitted documents pertaining to filing of CPLA and application for its early hearing before the Apex Court. The same are placed on record.

The respondents shall produce copy of order of restraint passed by the apex court, if any, or order pertaining to setting aside of the judgment under implementation on next date of hearing. In case none of the said orders is passed in favour of the respondents the implementation report shall positively be furnished.




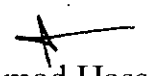
Adjourned to 17.06.2019 before the S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 30/2019

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. Yaqub Khan 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 Hassar) Member</p>

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

Execution Petition No. 30 /2019

1. Yaqoob Khan Ex- Constable No. 1093 R/O Badwan Bala , Tehsil Chakdara Zilla Dir Lower .

APPELLANT


VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

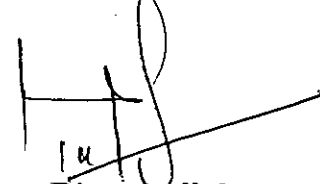
I N D E X

S.No	Particulars	Annexure	Pages #
1	Execution Petition	—	1-4
2	Affidavit	—	5
3	Copy of judgment of this Hon'ble Tribunal dated 05/09/2018	"A"	6-10
4	Copy of letter No.1907/ST dated 12/09/	"B"	11
8	Wakalatnama	—	—



Petitioner

Through



Rizwanullah

Dated: 20-01-2019

Advocate High Court, Peshawar.

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

Execution Petition No. 30 /2019

1. Yaqoob Khan Ex- Constable No. 1093 R/O Badwan Bala , Tehsil Chakdara
Zilla Dir Lower .

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 109

Dated 21-1-2019

APPELLANT

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Malakand, at Saidu Sharif, Swat.
3. The District Police Officer, Dir Lower at Timergara .

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
05-09-2018 PASSED BY THIS
HON'BLE TRIBUNAL IN SERVICE
APPEAL NO.357/2017.**

Respectfully Sheweth,

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

1. That the petitioner was serving as 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.357/2017 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 05/09/2018 disposed of the above appeal with the following observations and directions: -

“His departmental appeal and review petition were mainly rejected/dismissed being time barred. Respondents were bound to pass speaking order on his departmental appeal/review. Their action goes against the spirit of Section-21 (A) of the General Clause Act. Plea taken by the respondent was not correct, as impugned order was void. Similarly, the respondents were not able to defend the reinstatement of Aman-Ul-Mulk through documentary evidence. In this way learned counsel for the appellant has succeeded in making out a case of discrimination.

Foregoing, in view order of appellate authority dated 14-4-2015 and dated 10-11-2016 of PPO are hereby set-aside. Resultantly, the departmental

appeal of the appellant shall be deemed pending. Appellate authority is directed to decide it through a 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.1907/ST dated 12/09/2018 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 the 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:-

P L D 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.

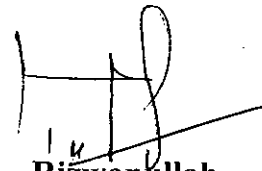
In view of the above narrated facts, it is, therefore, humbly prayed that contempt of court proceedings may graciously be initiated against the respondent No.3 for disobedience of order/judgment of this Hon'ble Tribunal and he may also be awarded exemplary punishment under the relevant law.

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



Petitioner

Through



Rizwanullah

M.A LL.B

Advocate High Court, Peshawar.

Dated: 21-01-2019

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

Execution Petition No. ____/2019

1. Yaqoob Khan Ex- Constable No. 1093 R/O Badwan Bala , Tehsil Chakdara Zilla Dir Lower .

APPELLANT

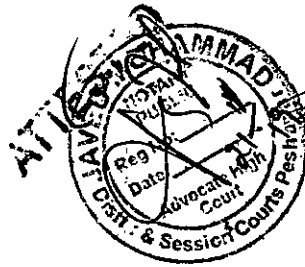
VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa and others.

RESPONDENTS

AFFIDAVIT

Yaqoob Khan Ex- Constable No. 1093 R/O Badwan Bala , Tehsil Chakdara Zilla 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.



Deponent

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

Service Appeal No. 357 /2017.

1. Yaqoob Khan Ex- Constable No. 1093 R/O Badayan Bala, Tehsil Chakdara
Zilla Dir Lower.



APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 387

Dated 14-4-2017

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa.
2. The Regional Police Malakand, at Saidu Sharif, Swat.
3. The District Police Officer, Dir Lower at Timergara.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 14/7/2009
PASSED BY THE DISTRICT
POLICE OFFICER DIR LOWER
(RESPONDENT NO.3) WHEREBY THE
APPELLANT WAS AWARDED MAJOR
PENALTY OF DISMISSAL FROM
SERVICE AGAINST WHICH A
DEPARTMENTAL APPEAL WAS
FILED BUT THE SAME WAS
REJECTED.**

Filed to Day
[Signature]
Registrar
14/4/17

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Prayer in Appeal

By accepting this appeal, the impugned orders dated 14/7/2009, 14/4/2015 & 10/11/2016 passed by the respondents may very graciously be set aside and

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mike

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT SWAT.

Service Appeal No. 357/2017

Date of Institution 14.04.2017

Date of Decision 05.09.2018

Yaqoob Khan Ex-Constable No. 1093 R/O Badwan Bala, Tehsil Chakdara Zilla Dir Lower. (Appellant)

VERSUS

1. The Provincial Police Officer, Govt: of Khyber Pakhtunkhwa and 2 others. (Respondents)

MR. RIZWANULLAH,
Advocate

For appellant.

MR. USMAN GHANI,
District Attorney

For respondents

MR. AHMAD HASSAN,
MR. SUBHAN SHER

MEMBER (Executive)
CHAIRMAN

JUDGMENT

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

ATTESTED



EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

FACTS

2. The brief facts are that appellant was appointed as Police Constable in 2002. While in service his mother fell ill and he applied for six months leave without pay which was not granted. Disciplinary proceedings on account of willful absence from duty were initiated and culminated in imposition of major penalty of dismissal from service w.e.f 03.02.2009 vide order dated 14.07.2009. His departmental appeal and review petition were rejected by the competent authority, hence the instant service appeal.

8
injection
against Mr
void order

ARGUMENTS

3. Learned counsel for the appellant argued that he fell and applied for six months leave without pay, but his request was rejected by the competent authority. Disciplinary proceedings initiated at the back of the appellant culminated in imposition of major penalty of dismissal from service w.e.f 03.02.2009 vide impugned order dated 14.07.2009. As the impugned order passed with retrospective effect so the same was void and no limitation runs against a void order. One Aman-Ul-Mulk, constable was also awarded major punishment of dismissal from service on account of willful absence in 2009. His departmental appeal was rejected by respondent no.2 alongwith the appellant. That Aman-Ul-Mulk and the appellant filed review petition before respondent no. 1. Appeal of the appellant was rejected being time barred, while that of fellow constable accepted and he was reinstated in service and de-novo inquiry ordered in his case. No charge sheet/statement of allegations was served on him and opportunity of personal hearing was also denied. Show cause notice was not served before imposition of the penalty. He was not treated according to Article-4, 10(A) and 25 of the Constitution. Reliance was placed on case law reported as 2007 SCMR 229, 2008 PLC (C.S) 224, 1985 SCMR-1178, 1996 SCMR 201, PLD 2007, SC 52, PLD 2008 SC, 663, 1996 SCMR 284, 2000 SCMR 1743, 2008 SCMR 1309, 2009 SCMR 412 and 2009 SCMR 605.

4. Learned District Attorney argued that no application for grant of leave was moved by the appellant. He remained willfully absent from duty and was guilty of misconduct. Resultantly, disciplinary proceedings were initiated against him. Charge sheet/statement of allegations was served/received by him. Show cause notice was also served on him. All codal formalities were observed before awarding punishment.

ATTESTED

[Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal.
 Peshawar

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CONCLUSION.

5. The appellant was charge sheeted on account of willful absence from duty. Major penalty of dismissal from service with retrospective effect was awarded to him. As such the impugned order dated 14.07.2009 is void and no limitation runs against a void order. Perusal of record revealed that assertions of the learned counsel for the appellant regarding non-fulfillment of codal formalities were not based on facts. All codal formalities were observed by the respondents before awarding punishment.

6. His departmental appeal and review petition were mainly rejected/dismissed being time barred. Respondents were bound to pass speaking order on his departmental appeal/review. Their action goes against the spirit of Section-24(A) of the General Clauses Act. Plea taken by the respondent was not correct, as impugned order was void. Similarly, the respondents were not able to defend the reinstatement of Aman-UI-Mulk through documentary evidence. In this way learned counsel for the appellant has succeeded in making out a case of discrimination.

7. Foregoing, in view order of appellate authority dated 14.4.2015 and dated 10.11.2016 of PPO are hereby set aside. Resultantly, the departmental appeal of the appellant shall be deemed pending. Appellate authority is directed to decide it through a speaking order with in a period of three 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.

Certified to be true copy

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

sdr
Ahmad Hassan
member
Comp court Swat

sdr
Subhan Sher
Chairman

ANNOUNCED
05.09.2018

Annex-B

(11)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 1907/ST

Dated 22 / 9 / 2018

To


The District Police Officer,
Government of Khyber Pakhtunkhwa,
Dir Lower at Timergara.


Subject: -

JUDGMENT IN APPEAL NO. 357/2017, MR. YAQOOB KHAN.

I am directed to forward herewith a certified copy of Judgement dated 05.09.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Attested

Petitioner

قیمت 50 روپے

ایڈوکیٹ: Razaullah
بار کونسل ایسوسی ایشن نمبر: bc-09-0050
رابطہ نمبر: 03005965843



پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

مخاتب: <u>Appellant</u>	<u>Execution Petition</u>
<u>Yaqoob Khan</u>	علت نمبر:
بنام	مورخہ:
<u>Provincial Police Office</u>	جرم:
<u>and others</u>	تھانہ:

بامث 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 یا طرفہ 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 لقرار 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 لکھی
المرقوم: Razaullah
مقام Peshawar only
کے لیے منظور ہے۔

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

CPLA. No. _____ /2018

Govt. of Khyber Pakhtunkhwa and others

PETITIONER(S)

VERSUS

Yaqoob Khan

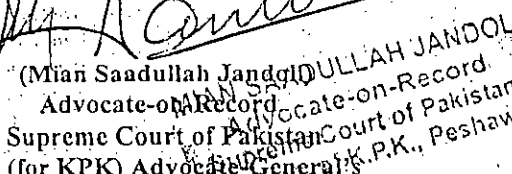
RESPONDENT(S)


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 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

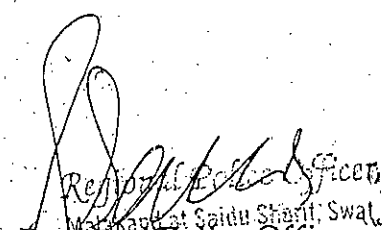
In witness whereof I/we do hereunto set my/our hand (s) this day of _____

Signed with Official seal stamp

Accepted


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

1- 
Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

2- 
Regional Police Officer,
Malakand at Saidu Sharif, Swat
Sharif, Swat

3- 
District Police Officer,
Dir Lower at Timergara

6-11-2018

issued on 23-10-2018

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 10527 /LB, dated Timergara, the 12 /04 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: FILING OF PETITION FOR EARLY HEARING AND SUSPENSION OF
PROCEEDING IN HONOURABLE SERVICE TRIBUNAL IN CPLA NO NIL
TITLED AS EX-FC YAQOUB KHAN VS DPO DIR LOWER AND OTHERS
AGAINST THE JUDGEMENT OF SERVICE TRIBUNAL DATED 05.09.2018 IN
SERVICE APPEAL NO. 357/2017

Memo: -

It is submitted that Ex-Constable Yaqoub Khan of this district Police dismissed from service, as a result of deliberate absence from duty. The appellant filed departmental appeals before the competent authority, which have been rejected. In last the appellant filed service appeal cited as subject and on 05.09.2018, the Service Tribunal disposed of the appeal and set aside the order of appellate authority dated 14.04.2015, and 10.11.2016, further held that departmental appeal of the appellant shall be deemed pending and directed the appellate authority to decide it through a seeking order within a period of three months of the receipt of the Judgment. The department send the case for filling CPLA against the judgment before the Supreme Court of Pakistan and the scrutiny committee approved the case for filing CPLA. On 06.11.2018, CPLA has been filed before the Supreme Court of Pakistan. In the meanwhile the appellant file E.P No. 20/2019 for implementation of the judgment dated 05.09.2018.

It is therefore requested that Law department may please be approached to file petition for early hearing and suspension of proceeding in the Honourable Service Tribunal please.


District Police Officer
Dir Lower

12-4-2019

D

Note:



OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 12420 /LB, dated Timergara, the 10 /05 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: **E.P NO. 30/2019 IN SERVICE APPEAL NO. 357/2017**
TITLED AS EX-CONSTABLE YAQOOB KHAN NO. 1093
VS DPO DIR LOWER AND OTHERS.

Memo: -

It is submitted that Ex-Constable Yaqoob Khan of this District Police was dismissed from service on account of absence from duty. His departmental appeals filed by the competent authority and then he filed service appeal No. 357/2017 before the Service Tribunal. On 05.09.2018, the Service Tribunal disposed off the appeal and set aside the order of appellate authority dated 14.04.2015 and 10.11.2016, further held that the departmental appeal of the appellant shall be deemed pending and directed the appellate authority to decide it through a speaking order within a period of three months. The department filed CPLA against the Judgment, while the appellant filed E.P No.30/2019 for implementation of judgment. Moreover this office has make correspondence with your good office for filing of petition for early hearing vide Letter No. 10527/LB, dated 12.04.2019. On 03.05.2019 the honorable Service Tribunal ordered that "respondents shall produce copy of order of restraint passed by the apex court, if any or order pertaining to setting aside of the judgment under implementation on next date of hearing. In case none of the said orders is passed in favor of the respondents, the implementation report shall positively be furnished. (Copy or order sheet enclosed).

Submitted for further necessary action please.


District Police Officer

Dir Lower

10/05/19

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 13419 /LB, dated Timergara, the 30/5 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: E.P NO. 30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX-
CONSTABLE YAQOOB KHAN NO. 1093 VS DPO DIR LOWER AND
OTHERS

Memo: - In continuation of this office letter No. 12420/ LB, dated
10.05.2019 and your good office endorsement No. 2647-48/ legal, dated 17-05-
2019 on the subject cited above.

It is submitted that the Honorable Service Tribunal has
directed vide order sheet dated 03.05.2019, to provide implementation report on
next date of hearing i.e. 17-06-2019.

Submitted for further necessary action please.


District Police Officer
Dir Lower

No. _____ /LB,

Copy submitted to the:-

Regional Police Officer Malakand at Saidu Sharif Swat for information please.


District Police Officer
Dir Lower

Yaqoob Khan

DEA

17.06.2019

Petitioner alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zavar Khan, S.I (Legal) for the respondents present. The petitioner was dismissed from service on the allegation of absence from duty. The petitioner challenged the same through departmental appeal but the same was rejected thereafter the petitioner filed service appeal. The Service Appeal of the petitioner was partially accepted vide order dated 05.09.2018, the impugned order was set-aside and the departmental appeal of the petitioner was held to be deemed pending, appellate authority was directed to decide the same through speaking order within a period of three months of the date of receipt of judgment but the departmental appeal of the petitioner was not decided after statutory period despite repeated directions. Representative of the department namely Zavar Khan, S.I (Legal) requested for adjournment and stated that the departmental appeal of the petitioner will be decided before the next date. He is directed to produce implementation report positively on the next date. On the previous date of hearing, respondents was directed to produce the restraint order of the apex court but today representative of the departmental also not produce the same. Last opportunity granted. To come up for implementation report on 19.07.2019 before S.B.

(Muhammad Amin Khan Kundi)
Member

To

The Honourable Chief Minister,
Khyber Pukhtoonkhwa
Peshawar

CR No. (18)
ANNEX
JBI

Subject: REVIEW PETITION

Respect fully it is stated that we have been served with a penalties notification order NO:SOH(E.V) 2-161/2007 Dated Peshawar 27/02/2013 which we have received by hand on 04/03/2013 forenoon

Respected Sir,

Brief facts of the review are as under

1. That the reviewer is BPS-19 Officer of the Health Department and while was posted as MS DHQ teaching Hospital DIKhan I was transferred to civil hospital Chodhwan vide order dated: 14/09/2011 prematurely and duty political basis. copy of the order is attached as Annexure A. I knock the door of Court for Justice and adapted the routine procedure before filing the case in the service tribunal Peshawar. The service tribunal KPK passed status quo order in favor of me, on the very first day of hearing. Copy of the judgment is attached as annexure B. The status quo order was not endorsed by secretary health. When I reach the DHQ hospital DIKhan requesting the MS DIK Khalid Aziz to please obey the court order. He not only refuse to obey the order he call the local police and I was arrested before registering the FIR. Later on the FIR was registered in Police Station Cantt. Which was too malafied one because section 506 needs inquiry before register the case, but the local police do not do as above.

OFFICE OF ADVOCATE GENERAL KHYBER
PAKHTUNKHWA, PESHAWAR

DEMAND

Required a sum of Rs. 2200/- (Rupees Two thousand and two hundred only) as expenses for filing CPLA (Photo State binding, Supreme Court tickets and notices to the respondent) in the Supreme Court of Pakistan in its branch registry at Peshawar in connection with case title Service Appeal No. 357/2017 Yaqoob Khan Versus Government of Khyber Pakhtunkhwa and others.

[Handwritten Signature]
MIAN DARSULLAH KHAN
ADVOCATE GENERAL
KHYBER PAKHTUNKHWA
PESHAWAR
23/10/2018

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

CPLA. No. /2018

Govt. of Khyber Pakhtunkhwa and others

PETITIONER(S)

VERSUS

Yaqoob Khan

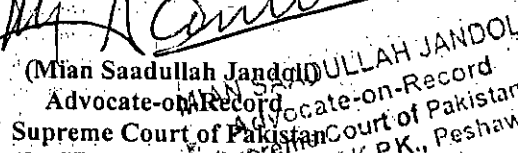
RESPONDENT(S)


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

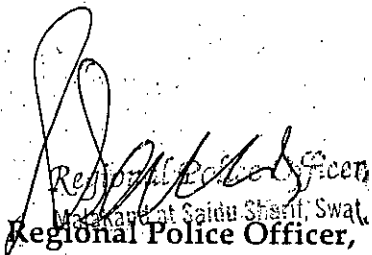
In witness whereof I/we do hereunto set my/our hand (s) this day of

Signed with Official seal stamp

Accepted


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

1- 
Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

2- 
Regional Police Officer,
Malakand at Saidu Sharif, Swat
Sharif, Swat

3- 
District Police Officer,
Din Lower at Timergara

6-11-2018
issued on 23-10-2018



OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 10527 /LB, dated Timergara, the 12 / 04 /2019


To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: FILING OF PETITION FOR EARLY HEARING AND SUSPENSION OF PROCEEDING IN HONOURABLE SERVICE TRIBUNAL IN CPLA NO NIL TITLED AS EX-FC YAQOUB KHAN VS DPO DIR LOWER AND OTHERS AGAINST THE JUDGEMENT OF SERVICE TRIBUNAL DATED 05.09.2018 IN SERVICE APPEAL NO. 357/2017

Memo: -

It is submitted that Ex-Constable Yaqoub Khan of this district Police dismissed from service, as a result of deliberate absence from duty. The appellant filed departmental appeals before the competent authority, which have been rejected. In last the appellant filed service appeal cited as subject and on 05.09.2018, the Service Tribunal disposed of the appeal and set aside the order of appellate authority dated 14.04.2015, and 10.11.2016, further held that departmental appeal of the appellant shall be deemed pending and directed the appellate authority to decide it through a seeking order within a period of three months of the receipt of the Judgment. The department send the case for filling CPLA against the judgment before the Supreme Court of Pakistan and the scrutiny committee approved the case for filing CPLA. On 06.11.2018, CPLA has been filed before the Supreme Court of Pakistan. In the meanwhile the appellant file E.P No. 20/2019 for implementation of the judgment dated 05.09.2018.

It is therefore requested that Law department may please be approached to file petition for early hearing and suspension of proceeding in the Honourable Service Tribunal please.


District Police Officer
Dir Lower
12-4-2019



OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER.

No. 15961 /LB, dated Timergara, the 25/06 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: EXECUTION PETITION NO. 30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX-CONSTABLE YAQOUB KHAN NO. 1093 VS DPO DIR LOWER AND OTHERS.

Memo: -

Kindly refer to this office letter No. 12420/LB, dated 10.05.2019 and your office letter No. 2811-A/Legal, dated 30.05.2019 addressed to Regional Police Officer Malakand and this office on the subject cited above.

It is submitted that on 17.06.2019, the honourable Service Tribunal directed Legal representative of this office to produce implementation report positively on next date of hearing. Last opportunity granted and 19.07.2019 is fixed for production of implementation report.

It is therefore requested that quarter concerned may please be directed to dispose of the appeal through speaking order as soon as possible or issue conditional implementation order, so that the same may be put up before the honourable Service Tribunal on next date of hearing i.e. 19.07.2019.

Copy of order sheet enclosed.

District Police Officer
Dir Lower

No. _____ /LB,

Copy submitted to the:-

Regional Police Officer Malakand at Swat for information with reference to above please.

1
District Police Officer
Dir Lower

✓
copy

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

No. 3511 /Legal dated Peshawar, the 16 107 /2019.

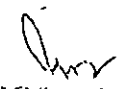
To: The Regional Police Officer,
 Malakand.

Subject:- EXECUTION PETITION NO.30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX-CONSTABLE YAQOOB KHAN NO. 1093 VS DISTRICT POLICE OFFICER, DIR LOWER & OTHERS.

Memo:-

Enclosed please find herewith a copy of letter No. 15961/LB dated 25.06.2019 received from District Police Officer, Dir Lower which is self explanatory.

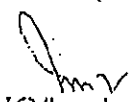
Consequent upon approval this office has already sent directions vide this office letter No. 2811/Legal dated 30.05.2019 in the subject matter.



AIG/legal
 For Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar

No. 3512 /Legal

Copy of above is forwarded for information to the District Police Officer, Dir Lower with reference to his letter quoted above.



AIG/legal
 For Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar

original

DETAIL REPORT IN LIGHT OF THE DIRECTIONS OF THE HONOURABLE SERVICE TRIBUNAL PESHAWAR VIDE ORDER SHEET DATED 03.09.2019 IN EXECUTION PETITION NO. 30/2019 REGARDING EXPLANATION OF DELAY IN THE IMPLEMENTATION OF JUDGMENT DATED 05.09.2018 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX- CONSTABLE YAQOUB KHAN NO.1093 VS DPO DIR LOWER AND OTHERS.

It is submitted That Ex- Constable Yaqoob Khan No. 1093 of this district was dismissed from service on 14-07-2019 on account of his willful absence from duty. He approached Service Tribunal Peshawar and on 05.09.2018, his appeal was partially accepted. The legal officer of District Dir Lower moved an application for collection of the attested Copy of judgment, but the Judgment was not prepared at that time and on 18-09-2018, attested copy has been collected.

Feeling aggrieved, the departments approached CPO Peshawar vide letter No 32862/LB, dated 25.09.2018 for further necessary action (Copy enclosed as annexure "A") On 03.10.2018, the CPO Peshawar forwarded the case to Law Department and Law department after proper scrutiny in a meeting held on 10.10.2018 declared the case as fit for filing CPLA (Copy enclosed as annexure "B"). The directions of filing CPLA received on 17-10-2018 and after taking signatures from all the Stakeholders on Power of Attorney and other necessary documents, on 06.11.2018, the CPLA has been filed before the Supreme Court of Pakistan (Copy enclosed as annexure "C").

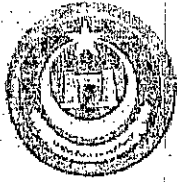
Correspondence has been made with high ups for filing of early hearing petition on 12.04.2019 (Copy enclosed as annexure "D"), but the case is still pending and no date has yet been fixed. In the mean while on 22.03.2019, the appellant filed Execution Petition No. 30/2019. The legal representative presented the documents regarding CPLA and application for its early hearing on 03.05.2019 and further appeared before the honourable Service Tribunal on each and every date of hearing i.e 03.05.2019 to 03.09.2019. Correspondence has been made with high ups on 10.05.2019, 30.05.2019, 25.06.2019, 23.07.2019 and 05.09.2019 about the repercussion in Execution petition No. 30/2019. (Copies enclosed as annexure "E", "F", "G", "H" and "I")The CPO Peshawar after proper scrutiny of the record has directed to pass speaking order vide letter No.2811/Legal, dated 30.05.2019. (Copy enclosed as annexure "J"). Consequently the speaking order was passed on 06.08.2019 (Copy enclosed as annexure "K").

PRAYER.

Keeping in view the above facts and circumstances, it is therefore humbly prayed that the delay regarding implementation of the judgment was not deliberate, but owing to official correspondence with high ups, which consumed time in process of passing the order. The explanation being genuine may kindly be considered in affirmative please.

Regional Police Officer,
Malakand
Regional Police Officer
Malakand.

Annexure (A)



OFFICE OF THE
DISTRICT POLICE OFFICER,
LOWER DIR

Ph#.0945-9250005 Fax#.09459250049
E-Mail: dpo.dirlower@gmail.com

To:-

The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhwa Peshawar

No. 32862 /LB, Timergara Dated the 25 / 09 /2018

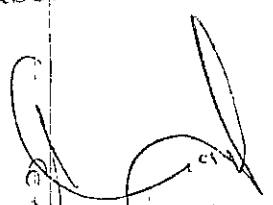
Subject:

SERVICE APPEAL NO.357/2017 TITLED AS EX -FC
YAQOOB KHAN NO. 1093 ORDER DATED 05.09.2018

Memo:

It is submitted that Ex-Constable Yaqoob Khan No. 1093 of this District Police was dismissed from service on account of his willful absence from duty. The departmental appeals of the appellant were rejected by the competent authority. The appellant filed the present service appeal and on 05.09.2018, the honorable Service Tribunal set aside the orders of appellate authority and directed the appellate authority to decide it through a speaking order within a period of three months.

The copy of the judgment dated 05.09.2018 is enclosed for information and further orders please.


District Police Officer
Dir Lower.



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

MINUTES OF THE SCRUTINY COMMITTEE MEETING.

(Agenda Item No.06)

SERVICE APPEAL NO.357/2017 TITLED YAQOOB KHAN VS PROVINCIAL POLICE OFFICER AND OTHERS.

A meeting of the Scrutiny Committee was held on 10-10-2018 at 12:00 hours in the office of Secretary Law Parliamentary Affairs & Human Rights Department under his Chairmanship to determine the fitness of the subject case for filing of appeal / CPLA in the proper forum. AAG (Mr. Wilayat Khan) was also present during the meeting being representative of Advocate General Khyber Pakhtunkhwa.

2. The Chairman of the Committee invited the representatives of Home / Police Department Mr. Imtiaz Ali AIG / Legal CPO Peshawar to apprise the Committee about the background of the case which he did accordingly and stated that disciplinary proceedings on account of willful absence from duty were initiated against the appellant, which were culminated and in possession of penalty of dismissal from service vide order dated 14-07-2009. And after the rejection of departmental appeal and review petition the subject service was filed in Khyber Pakhtunkhwa Service Tribunal. The Service Tribunal vide judgment dated 05-09-2018 disposed of the appeal and set-aside order of appellate authority dated 14-04-2015 and dated 10-11-2016 of PPO and further held that departmental appeal of the appellant shall be deemed pending and directed the appellate authority to deice it through a speaking order within a period of three months of the receipt of the judgment. Now the department intended to file CPLA on the following grounds:-

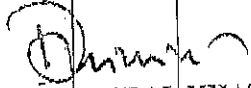
GROUNDS:-

3. The grounds as proffered by the representative were that the Service Tribunal has not taken into account the record placed before it for consideration. The appellant remained willful absent from duty and was guilty of misconduct. He further added that no application for grant of leave was moved by the appellant. The disciplinary proceedings initiated against the appellant were according to law and rules and there were no illegalities or irregularities in the disciplinary proceedings. A query was raised by the Scrutiny Committee that why the department was not going to the departmental appeal of the appellant with speaking order as per dictate of para-7 of the judgment. On which the representative stated and placed before the Committee the earlier order on the departmental appeal of the appellant was passed, which was a speaking order.

DECISION:-

4. After threadbare discussion it was decided with consensus by the Scrutiny Committee that the subject case was a fit case for filing of appeal / CPLA in the Supreme Court of Pakistan.

5. The representative of Home Department was advised to approach the office of Advocate General along with complete record of the case for doing the needful within the period of limitation under intimation to this Department.


TAHIR IQBAL KHATTAK
DEPUTY SOLICITOR

Armed "C"

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

CPLA. No. /2018

Govt. of Khyber Pakhtunkhwa and others

PETITIONER(S)

VERSUS

Yaqoob Khan

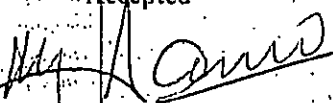
RESPONDENT(S)


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

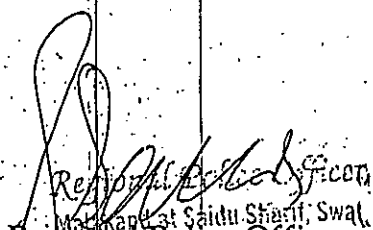
In witness whereof I/we do hereunto set my/our hand (s) this day of

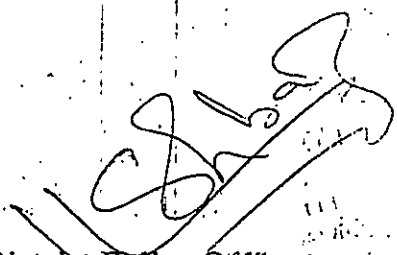
Signed with Official seal stamp

Accepted


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

1- 
Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Regional Police Officer,
Malakand at Saidu Sharif, Swat
Regional Police Officer,
Malakand at Saidu
Sharif, Swat

3- 
District Police Officer,
Dir Lower at Timergata

6-11-2018

Issued on 23-10-2018

Annexure (D)

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 10527 /LB, dated Timergara, the 12 / 04 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: FILING OF PETITION FOR EARLY HEARING AND SUSPENSION OF
PROCEEDING IN HONOURABLE SERVICE TRIBUNAL IN CPLA NO NIL
TITLED AS EX-FC YAQOUB KHAN VS DPO DIR LOWER AND OTHERS
AGAINST THE JUDGEMENT OF SERVICE TRIBUNAL DATED 05.09.2018 IN
SERVICE APPEAL NO. 357/2017

Memo: -

It is submitted that Ex-Constable Yaqoub Khan of this district Police dismissed from service, as a result of deliberate absence from duty. The appellant filed departmental appeals before the competent authority, which have been rejected. In last the appellant filed service appeal cited as subject and on 05.09.2018, the Service Tribunal disposed of the appeal and set aside the order of appellate authority dated 14.04.2015, and 10.11.2016, further held that departmental appeal of the appellant shall be deemed pending and directed the appellate authority to decide it through a seeking order within a period of three months of the receipt of the Judgment. The department send the case for filling CPLA against the judgment before the Supreme Court of Pakistan and the scrutiny committee approved the case for filing CPLA. On 06.11.2018, CPLA has been filed before the Supreme Court of Pakistan. In the meanwhile the appellant file E.P No. 20/2019 for implementation of the judgment dated 05.09.2018.

It is therefore requested that Law department may please be approached to file petition for early hearing and suspension of proceeding in the Honourable Service Tribunal please.

District Police Officer
Dir Lower

12-4-2019

Annexure (E)

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 12420 /LB, dated Timergara, the 10 / 105 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: E.P NO. 30/2019 IN SERVICE APPEAL NO. 357/2017
TITLED AS EX-CONSTABLE YAQOOB KHAN NO. 1093
VS DPO DIR LOWER AND OTHERS.

Memo: -

It is submitted that Ex-Constable Yaqoob Khan of this District Police was dismissed from service on account of absence from duty. His departmental appeals filed by the competent authority and then he filed service appeal No. 357/2017 before the Service Tribunal. On 05.09.2018, the Service Tribunal disposed of the appeal and set aside the order of appellate authority dated 14.04.2015 and 10.11.2016, further held that the departmental appeal of the appellant shall be deemed pending and directed the appellate authority to decide it through a speaking order within a period of three months. The department filed CPLA against the Judgment, while the appellant filed E.P No.30/2019 for implementation of judgment. Moreover this office has make correspondence with your good office for filing of petition for early hearing vide Letter No. 10527/LB, dated 12.04.2019. On 03.05.2019 the honorable Service Tribunal ordered that "respondents shall produce copy of order of restraint passed by the apex court, if any or order pertaining to setting aside of the judgment under implementation on next date of hearing. In case none of the said orders is passed in favor of the respondents, the implementation report shall positively be furnished. (Copy or order sheet enclosed).

Submitted for further necessary action please.


District Police Officer
Dir Lower

10/05/19

Annex (F)

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 13419 /LB, dated Timergara, the 30/5 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhwa Peshawar.

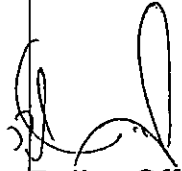
Subject: E.P NO. 30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX-
CONSTABLE YAQOOB KHAN NO. 1093 VS DPO DIR LOWER AND
OTHERS

Memo: -

In continuation of this office letter No. 12420/ LB, dated 10.05.2019 and your good office endorsement No. 2647-48/ legal, dated 17-05-2019 on the subject cited above.

It is submitted that the Honorable Service Tribunal has directed vide order sheet dated 03.05.2019, to provide implementation report on next date of hearing i.e. 17-06-2019.

Submitted for further necessary action please.


District Police Officer
Dir Lower

No. _____ /LB,

Copy submitted to the:-

Regional Police Officer Malakand at Saidu Sharif Swat for information please.


District Police Officer
Dir Lower

Annex "9"

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER.

No. 15961 /LB, dated Timergara, the 25/06 /2019

To: The Assistant Inspector General of Police,
Legal Khyber Pakhtunkhawa Peshawar.

Subject: EXECUTION PETITION NO. 30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX-CONSTABLE YAQOOB KHAN NO. 1093 VS DPO DIR LOWER AND OTHERS.

Memo: -

Kindly refer to this office letter No. 12420/LB, dated 10.05.2019 and your office letter No. 2811-A/Legal, dated 30.05.2019 addressed to Regional Police Officer Malakand and this office on the subject cited above.

It is submitted that on 17.06.2019, the honourable Service Tribunal directed Legal representative of this office to produce implementation report positively on next date of hearing. Last opportunity granted and 19.07.2019 is fixed for production of implementation report.

It is therefore requested that quarter concerned may please be directed to dispose of the appeal through speaking order as soon as possible or issue conditional implementation order, so that the same may be put up before the honourable Service Tribunal on next date of hearing i.e. 19.07.2019.

Copy of order sheet enclosed.

No. _____ /LB,

Copy submitted to the:-

Regional Police Officer Malakand at Swat for information with reference to above please.


District Police Officer
Dir Lower


District Police Officer
Dir Lower

✓
copy



Annex "A"

OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 17448 /LB, dated Timergara, the 23/07/2019

To: The Regional Police Officer,
Malakand at Saidu Sharif Swat

Subject: EXECUTION PETITION NO. 30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX-CONSTABLE YAQOOB KHAN NO. 1093 VERSUS DISTRICT POLICE OFFICER DIR LOWER AND OTHERS.

Memo: -

Kindly refer to your office Endst: No. 7748/E, dated 18.07.2019 on the subject noted above.

It is submitted that in the above case the detail's are mentioned as under:-

The appellant was dismissed from service on 14.07.2009 owing to his willful absence from duty. Later on he filed Service Appeal before the honourable Service Tribunal and on 05.09.2018, the appeal was partially accepted. The relevant portion of the order is hereby reproduced as below:-

"Foregoing in view order of appellant authority dated 14.04.2015, and dated 10.11.2016 of PPO are hereby set aside. Resultantly the departmental appeal of the appellant shall be deemed pending. Appellate authority is directed to decide it through a speaking order with in a period of three months of the receipt of this judgment. The present service appeal is disposed off accordingly"

The department feeling aggrieved, from the said order timely approached CPO Peshawar vide letter No. 32862/LB, dated 25.09.2018 (Copy enclosed as annexure "A") for filing CPLA (Civil petition leave to appeal), wherein after thread-bare discussion, in Law department, it was decided by the scrutiny committee on 10.10.2018, that the subject case is fit for appeal/CPLA in Supreme Court of Pakistan (Copy enclosed as annexure "B").

Consequently the CPLA/appeal was filed by Legal branch of this district within time, via office of Advocate on Record Supreme Court of Pakistan. Now the case is still pending before the Supreme Court of Pakistan and this office have already approached, through proper channel, for early hearing, but to no avail (Copy enclosed as annexure "C").

Notwithstanding the above steps taken by the department, the petitioner filed Execution Petition No. 30/2019 for implementation of the judgment, before Service Tribunal, wherein on 03.05.2019 the legal representative of this district, presented before the service Tribunal, documents pertaining to CPLA and application for early hearing before the apex court.

The same were accepted and placed on file and further directed to produce implementation order on the next date. Consequently, this office had timely informed the high ups, vide this office letter No- 12420/LB, dated 10.05.2019 (copy enclosed as annexure "D") about the repercussion in the Execution Petition. In response to this, the CPO Peshawar vide its letter No. 2811/ legal dated 30.05.2019 addressed to the office of worthy Regional Police Officer Malakand stating therein that the competent authority has directed to pass speaking order and to produce before the Tribunal on next date. (Copy enclosed as annexure "E") In spite of repeated requests from this office to high ups, no speaking order has been passed.

On 17.06.2019 last opportunity was granted to the respondents for implementation report by the Service Tribunal. (Copy enclosed as annexure "F"). Keeping in view the sensitivity of the execution petition, this office requested again to the office of worth Provincial Police Officer and worthy Regional Police Officer Malakand vide letter No. 15961/Legal, dated 25.06.2019 (Copy enclosed as annexure "G") for passing a speaking order or implementation report. In response to this, the CPO vide its letter No. 3511/Legal, dated 16.07.2019 endorsed the previous sanction, which has already been conveyed to the office of worthy Regional Police Officer Malakand on 30.05.2019. (Copy enclosed as annexure "H")

Unfortunately neither implementation order, nor speaking order has been issued by the competent authority, which resulted the embarrassment situation in the Tribunal vide order sheet dated 19.07.2019. (Copy enclosed as annexure "I")

Keeping in view the above mentioned facts and circumstances and to avoid any future implication/difficulties, your good office is requested to pass a speaking order as per para-7 of the judgment of Service Tribunal dated 05.09.2018 (copy enclosed).

No. 17450 /LB,

Copy submitted for information to the:-

Assistant Inspector General of Police Legal CPO Peshawar with reference to their office endst: No. 3512/Legal, dated 16.07.2019.

District Police Officer
Dir Lower

District Police Officer
Dir Lower

Amex "I"



OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

No. 20382 /LB, dated Timergara, the 05/09 /2019

To: The Regional Police Officer,
Malakand at Saidu Sharif Swat

Subject: EXECUTION PETITION NO. 30/2019 IN SERVICE APPEAL NO. 357/2017 TITLED AS EX- CONSTABLE YAQOOB KHAN NO. 1093 VERSUS DPO DIR LOWER AND OTHERS.

Memo: - In continuation of this office letter No. 17449/LB, dated 23.07.2019 on the subject noted above.

It is submitted that Execution petition No 30/2019 in Service appeal No. 357/2017 was fixed for hearing on 19-7-2019, wherein the Worthy Regional Police Officer Malakand was ordered to be present in person by 03.09.2019, in order to explain the inordinate delay in implementation of Judgment of Service Tribunal dated 05.09.2019.

The DSP Legal Swat called telephonically Inspector Legal of this district and ordered that make sure your presence on 03.09.2019 before Service Tribunal Peshawar on behalf of Worthy Regional Police Officer Malakand. In compliance with the orders of high-ups, the Inspector Legal of this district duly appeared before the honourable Service Tribunal Peshawar, wherein he presented the implementation order of the Worthy Regional Police Officer before the Service Tribunal Peshawar and explained to great extent the delay, but the opposite council reiterated the personal appearance of the Worthy Regional Police Officer Malakand and also prayed for levy of heavy cost, but the Service Tribunal did not pay heed to the first averment of the council, while ordered the respondents to furnish views/ comments in writing, pertains to delay, in the next date of hearing. The Execution Petition adjourned to 01.10.2019.

Application for order sheet dated 03.09.2019 has been moved but the same has not yet been received, when received, will be discriminated to your good office accordingly.

District Police Officer
Dir Lower

No. 20383 /LB,

Copy submitted for information to the:-

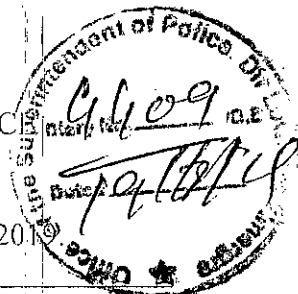
Assistant Inspector General of Police Legal Khyber Pakhtunkhawa
Peshawar.

District Police Officer
Dir Lower 5/9/19

Annex (J)



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



No. 2811 /Legal dated Peshawar, the 30 / 05/2019

To:- The Regional Police Officer,
Malakand.

Subject:- EXECUTION PETITION NO.30/2019 IN SERVICE APPEAL NO. 357/2017
TITLED AS EX-CONSTABLE YAOOUB KHAN NO. 1093 VS-DISTRICT
POLICE OFFICER, DIR LOWER & OTHERS.

Memo:-

Please refer to the District Police Officer, Dir-Lower Letter No. 12420/LB dated 10.05.2019 on the subject cited above.

The operational Para No.07 of the judgment is reproduced as under:-

“Foregoing in view order of appellate authority dated 14.04.2015 and dated 10.11.2016 of CPO are hereby set aside. Resultantly, the departmental appeal of the appellant shall be deemed pending. Appellate authority is directed to decide it thorough a speaking order with in a period of three months of the receipt of this judgment. The present Service Appeal is disposed off accordingly.”

As the dismissal order pertained to 2009 and departmental appeal was lodged in the year 2015, after delay of 06 years therefore CPLA was lodged against judgment dated 05.09.2018.

No date has been fixed in CPLA so far.

Now the petitioner has lodged Execution Petition for implementation of judgment. The Tribunal order sheet dated 03.05.2019 is reproduced as under:

“Counsel for the petitioner and Mr. Usman Ghani, District Attorney along with Zewar Khan SI (Legal) for the respondents present”.

The representative of respondents has submitted documents pertaining to filing of CPLA and application for its early hearing before the Apex Court. The same are placed on record.

The respondents shall produce copy of order of restraint passed by the apex court, if any, or order pertaining to setting aside of the judgment under implementation on next date of hearing. In case none of the said order is passed in favor of the respondents the implementation report shall positively be furnished. Adjourned to 17.06.2019 before the S.B.

The Competent Authority has directed to pass speaking order in compliance of Service Tribunal and provide the same before the Honorable Tribunal on date fixed, under intimation to this office.

Agla
SP Court & Litigation
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar

No. 2811-A /Legal

Copy of above is forwarded for information to the District Police Officer, Dir Lower with reference to his letter quoted above.

1/msp Legal

Agla
SP Court & Litigation
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar

[Signature]
District Police Officer,
Dir Lower at Timergara

19/6



Attention to DSP Lower
Annex

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.
Ph: 0946-9240388 & Fax No. 0946-9240390
Email: ebmalakandra@comail.com

ORDER:

This order will dispose off after re-examination of the appeal dated 15/04/2015 of Ex-Constable Yaqoob Khan No1093 of district Dir Lower for re-instatement into service in the light of August Service Tribunal, Khyber Pakhtunkhwa. Peshawar judgment dated 05/09/2018 in his Service Appeal No.357/2017.

Brief facts of the case are that Ex-Constable Yaqoob Khan No.1093 of District Dir Lower, while posted to Police Check Post Chakdarra Bridge absented himself from duty with effect from 03/02/2009 till his dismissal date i.e 14/07/2009 without any leave or prior permission. He was issued charge sheet coupled with statement of allegations. An enquiry committee consisting of SDPO Maidan and SI Akhtar Shah, Investigation Lines, Cashier was constituted to conduct probe into the matter and submit finding. The committee conducted proper departmental enquiry, recorded the statements of all concerned including father of defaulter constable. Father of the defaulter constable stated in his statement that due to critical situation his son is not interested to serve further in Police force. The enquiry committee in their findings established the charge of dis-interests further in Police force leveled against him without any shadow of doubt and recommended him for dismissal from service from the date of absence i.e 03/02/2009. The then District Police Officer, Dir Lower agreed with the finding report of the enquiry committee and dismissed the defaulter Constable from service from the date of his absence i.e 03/02/2009 vide his office OB No.1027, dated 14/07/2009. He was previously preferred departmental appeal dated 14/04/2015 before this office, which was examined and filed by the then RPO, Malakand at Saidu Sharif, Swat vide this office Memo: No.3217/E, dated 14/04/2015 being time barred.

He was called in Orderly Room on 5/08/2019 and heard him in person. The appellant could not produce any cogent reason in his defense. Therefore, in exercise of powers vested to the undersigned kept intact the order of the then RPO, Malakand and reject the current appeal.

Order announced.

5740
19/08/19

MUHAMMAD SAIED PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
"Salim"

No. 8672-73 E,
Dated 06/08/2019.

Copy for information and necessary action to the-

1. AIG/Legal Khyber Pakhtunkhwa Peshawar with reference to CPO Peshawar memo: No. 3511/Legal, dated 16/07/2019.
2. District Police Officer, Dir Lower with reference to his office memo: No. 17449/E, dated 23/07/2019.

EC

District Police Officer
Dir Lower

19/8/19