

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

C.M No. _____/2023

In execution petition No.152/2021
Appeal No.16650/2021D

REHMAT ULLAH

VS

SOCIAL SECURITY DEPTT:

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APPELLANT

THROUGH:


AFRASIAB KHAN WAZIR
ADVOCATE HIGH COURT
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

C.M No. _____/2023

In execution petition No.152/2021

Appeal No.16650/2021

Rehmat ullah, Driver (BPS-4), S/O Gul Rehman Employee of Social Security Institution R/O South Waziristan.....**PETITIONER.**

VERSUS

- 1- The Director General Employee Social Security Institution Khyber Pakhtunkhwa, Peshawar.
- 2- The Commissioner Employee Social Security Institution Khyber Pakhtunkhwa, Peshawar.

.....**CONTEMNOR.
RESPONDENTS.**

APPLICATION FOR PROCEEDING AGAINST DEFAULTERS/RESPONDENTS FOR NON IMPLEMENTATION OF ORDER SHEET DATED 01.11.2022 OF THIS AUGUST TRIBUNAL IN LETTER AND SPIRIT IN EXECUTION PETITION NO.16650/2021.

Respectfully sheweth:

- 1- That the appellant had filed service appeal No.16650/2021 which was allowed in favor of the appellant vides judgment dated 05.01.2022. Copy of Judgment dated 05.01.2022 is attached.....**A.**
- 2- That the respondents were reluctant to implement the Judgment of this august tribunal against which the petitioner filed execution petition before this August Tribunal vide Execution Petition No.152/2022.Copy of execution petition is attached.....**B.**
- 3- That after filing execution petition the Petitioner is reinstated into service with immediate effect by the respondents. Copy of order dated 22.09.2022 is attached as annexure is attached**C.**
- 4- That the on dated 01.11.2022 the Honorable Chairman of this August Tribunal clearly directed that as reproduced below **"the**

Respondents are directed to modify the order in accordance with the terms of the judgment and provide the copy of the same to the petitioner within a week. In case they do not do that the petitioner may come again in contempt. The instant execution petition is filed. Consign". Copy of order sheet dated 01.11.2022 is attached as annexure.....**D.**

5- That the petitioner attested copy of order sheet to the respondents but till dated they are not implementing direction of the tribunal to modify the order and benefits with effect from the dated of judgment of this August tribunal. Copy of letter dated 02.01.2023 is attached as annexure.....**E.**

It is therefore, most humbly requested that on acceptance of this application, proceedings may very kindly be initiated against the defaulters/respondents for not implementing the aforementioned order sheet in letter and spirit.

Dated: 15.03.2023

APPLICANT


REHMAT ULLAH

Through:


Afrasiab Khan Wazir
Advocate High Court
Peshawar.

Affidavit:

I, Mr. Rehmat Ullah S/O Gul Rehman R/O South Waziristan, Head office Peshawar social security Peshawar, do hereby declare and affirm that the contents of this application is true and correct to the best of my knowledge and belief and nothing has been concealed from this August tribunal so far.

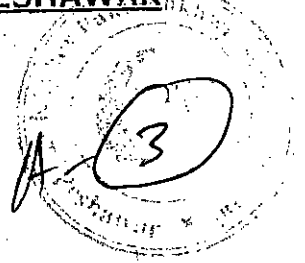

Deponent

FORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 16650/2021

Date of Institution ... 07.01.2021

Date of Decision ... 05.01.2022



Rehmat Ullah S/o Gul Rehman Ex-Driver PBS-4 Employee Social Security Institution R/o South Waziristan. ... (Appellant)

VERSUS

The Director General Employee Social Security Institution Khyber Pakhtunkhwa, and one another. ... (Respondents)

Roeeda Khan,
Advocate ... For Appellant

Noor Zaman Khattak,
District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQ-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant while serving as driver, was proceeded against on the charges of misconduct and was ultimately awarded with major punishment of compulsory retirement from service vide order dated 10-02-2012. The appellant filed departmental appeal, which was not responded, hence the instant service appeal with prayers that the impugned order dated 10-02-2012 may be set aside and the appellant may be re-instated in service with all back benefits.

02: Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under Constitution has badly been violated; that the impugned order is void as it has been passed without fulfilling the codal formalities; that no final showcause

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notice was served upon the appellant nor any opportunity of defense was afforded to the appellant; that the appellant was not associated with proceedings of the inquiry, hence he was condemned unheard; that the appellant was not afforded opportunity to cross-examine witnesses; that there is no proof and evidence regarding alleged charges leveled against the appellant; that no statement of witnesses has been recorded by the inquiry officer in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that the allegation so leveled are based on presumption, as nothing adverse had occurred due to lapses occurred on part of the appellant; that there is no solid allegation against the appellant in the charge sheet, rather such allegations spread over the whole career of the appellant, where the appellant is held guilty for loose nut bolt of front wheel of the vehicle under his use, which is an evasive allegation; another allegation is violation of discipline and rude behavior with staff, which is also factual in nature and which cannot be proved without conducting proper inquiry; another allegation is that due to the appellant vehicles of the department sustained damage, which also has not been proved against the appellant and is only to the extent of allegation; that imposing major penalty of compulsory retirement from service on such petty allegations is unjust as well as unjustified; that the impugned order is void ab initio, hence no limitation runs against such order; that the appellant preferred departmental appeal with some delay but the delay occurred due to peculiar circumstances in his home town, South Waziristan, where house and property was destroyed in army operation and the appellant was left homeless and family of the appellant shifted to Peshawar for safety; that the appellant was mentally traumatized both by terrorism at his home as well as due to compulsory retirement from service and the respondents were supposed to take a lenient view of the situation, but the respondents in utter violation of law and rule, imposed major penalty of compulsory retirement from service, thereby snatched the opportunity of earning livelihood; that the appellant was compulsory retired from service due to personal

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grudge of the respondent with the appellant and was bent upon removing the appellant from service at any cost; that keeping in view the peculiar circumstance of the case of the appellant, the appellant may be re-instated in service with all back benefits and the impugned order dated 10-02-2012 may be set aside.

03. Learned District Attorney for the respondents has contended that since the initial days of his appointment on 27-02-1998 till his compulsory retirement, performance of the appellant remained unsatisfactory coupled with complaints at every station throughout his service period; that the entire service period of the appellant was almost 14 years, which is consisting of 20 complaints, 19 explanations and 3 show cause notices; that upon such allegation of irresponsibility, the appellant was proceeded against within legal parameters; that departmental appeal of the appellant is badly time barred, hence not tenable in the eye of law; that proper charge sheet/statement of allegation was served upon the appellant, to which he responded, but his reply was found not satisfactory and he could not prove his innocence, hence he was awarded with major punishment of compulsory retirement from service.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that there is no specific allegation against the appellant in the charge sheet/statement of allegations leveled against him; rather the allegations so leveled are flimsy in nature. Funny part of it is that one of the major allegation is that nut bolt of front wheel of the vehicle under his use were loose, which could cause future accident. Rest of the allegations are regarding his rude behavior with staff and his casual behavior. Record would suggest that the respondents were bent upon removing the appellant from service on any pretext, hence collected all such charges spreading over his whole career and based upon his earlier lapses, the appellant was served with a charge sheet, to which the appellant responded denying all such allegations. In order to justify their stance,

Mentel
H. D.

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the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant. Needless to mention that the charges so leveled are based on presumption as nothing has been proved against the appellant, whereas an accused cannot be convicted on presumptions. Prosecution has to prove the guilt of an accused beyond all reasonable doubt. Reliance is placed on 1991 SCMR 244 and 2002 PLC (CS) 503.

06. Record would suggest that the appellant was neither served with any showcause notice nor any departmental inquiry was conducted and the appellant was penalized summarily on flimsy charges without adhering to the method prescribed in law. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

07. Moreover, It is a cardinal principle of natural justice of universal application that no one should be condemned unheard and where there was likelihood of any adverse action against anyone, the principle of Audi Alteram Partem would require to be followed by providing the person concerned an opportunity of being heard. The inquiry officer mainly relied on hearsay with no solid evidence against the appellant. Mere reliance on hearsay and that too without confronting the appellant with the same had no legal value and mere presumption does not form basis for imposition of major penalty, which is not allowable under the law. We are also mindful of the question of limitation as the

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appellant preferred his departmental appeal with a significant delay, but since the impugned order was passed in violation of mandatory provisions of law, hence no limitation would run for challenging such order. Reliance is placed on 2007 SCMR 834. We have also noted that the respondents have no case on merit except limitation and the Supreme Court of Pakistan in its judgment reported as PLD 2002 Supreme Court 84 has held that where on merits the respondents has no case, then limitation would not be hurdle in the way of appellant for getting justice. Supreme Court has observed that the court should not be reluctant in condoning the delay depending upon facts of the case under consideration. We are of the considered opinion that the appellant has got a strong case on merit; hence delay in submission of departmental appeal is condoned and he deserve to be treated on humanitarian grounds, as the appellant belong to an area which was hit by terrorism during the period and the appellant suffered alongwith his family and was displaced.

08. We are of the considered opinion that the appellant has not been treated in accordance with law and were compulsory retired from service without proper application of law, hence the instant appeal is accepted and the impugned order is set aside. The appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
05.01.2022

M. A. J.
H. V. D.

Ahmad Sultan Tareen
(AHMAD SULTAN TAREEN)
CHAIRMAN

Atiq-ur-Rehman Wazir
(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Office to be here copy
[Signature]
JUDGE
Islamabad
High Court

Date of Presentation of
Date of Verdict 24/01/22
Date of 26/1
Date of 30/1

21-01-2022
21-01-2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Execution petition No. 152/2022

B-8

In appeal No.16650/2021

Mr. Rehmat Ullah, Ex-Driver BPS-4, S/O Gul Rehman Employee of Social Security Institution R/O South Waziristan.....**PETITIONER.**

VERSUS

- 1- The Director General Employee Social Security Institution Khyber Pakhtunkhwa.
- 2- The Commissioner Employee Social Security Institution Khyber Pakhtunkhwa.

.....**RESPONDENTS**

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE JUDGMENT
DATED 05.01.2022 IN THE ABOVE TITLED APPEAL IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That the above mentioned appeal has been decided by this August Service Tribunal vides judgment dated 05-01-2022 in favor of the Petitioner. Copy of the judgment is attached as annexure.....**A.**
- 2- That the Petitioner filed the above mentioned appeal against the impugned order dated 10.02.2012 where upon the petitioner major penalty of compulsory retirement imposed a.
- 3-That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner with the directions that:-

"we are of the considered opinion that the appellant has not been treated in accordance with law and were compulsory retired from service without proper application of law, hence the instant appeal is accepted and the impugned order is set aside. The appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay. Parties are left to bear their own costs. File be considered to record room".

- 4- That Petitioner after obtaining attested copy of the judgment submitted before the respondents but the respondents are not

Rehmat Ullah



KHYBER PAKHTUNKHWA
Employees' Social Security Institution

Small Industries Estate Kohat Road, Peshawar.
Ph: 091-9212215-9212236 Fax: 9212212

ORDER NO 36

In compliance with judgment / order passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 16650 / 2021 dated 05-01-2022, Mr. Rehmat Ullah Driver (BPS-05), Khyber Pakhtunkhwa ESSI is hereby conditionally re-instated in service with immediate effect, subject to final decision / consequences of the Supreme Court of Pakistan in CPLA No. 1332/2022.

The intervening period is treated as extra ordinary leave without pay.

DIRECTOR GENERAL
Khyber Pakhtunkhwa, ESSI

SSP/Admn/No. 1361 - 75

Dated 22 /9/ 2022

Copy forwarded to the:

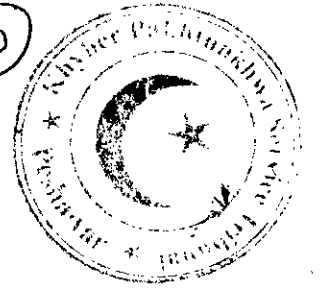
1. Vice Commissioner, Khyber Pakhtunkhwa, ESSI.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar for information reference Service Appeal No. 16650/2021 dated 05-01-2022.
3. All Directors Khyber Pakhtunkhwa, ESSI.
4. All Deputy Directors, Khyber Pakhtunkhwa, ESSI.
5. PS to Commissioner, Khyber Pakhtunkhwa, ESSI.
6. Mr. Rahmat Ullah Driver, Khyber Pakhtunkhwa, ESSI.
7. Personal file.
8. Office order file.

DIRECTOR GENERAL
Khyber Pakhtunkhwa, ESSI

M.A.D.
W.K.D.

16650/2020
Rahmatullah vs Govt

D-10



1st Nov, 2022

1. Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

02. Learned Addl: AG submitted copy of an office order No.36 bearing Endst: No. SSP/Admn/No.1361-75 dated 22.09.2022, to which learned counsel for the petitioner objected that it was passed with immediate effect whereas it ought to have been passed from the date of the judgment. The respondents are directed to modify the order in accordance with the terms of the judgment and provide the copy of the same to the petitioner within a week. In case they do not do that the petitioner may come again in contempt. The instant execution petition is filed. Consign.

03. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this 1st day of November, 2022.

(Kalim Arshad Khan)
Chairman

Certified to be true copy
SECRETARY
Peshawar Tribunal
Peshawar

Date of Presentation of Application 13/3/23
Number of words Page 1
Copying Fee 5/5/-
Agent 16/-
Number of Copies 13/3/23
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DIRECTORATE OF LOCAL FUND AUDIT KHYBER PAKHTUNKHWA

3RD Floor, Benevolent Fund Building, Saddar Road, Peshawar.
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NO. LFA/ESSI/Vol-2/2012 3003 02
Dated Peshawar the 02 / 08 / 2023

To

The Director Audit,
Employees Social Security Institute,
Khyber Pakhtunkhwa, Peshawar.

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Subject: - **1. INCREMENTS DURING EXTRA ORDINARY LEAVE**
2. SALARY OF BACK PERIOD

Please refer to your letter No.SSP/AUDIT/2760-62, dated 23-11-2022 on the subject cited above.

The judgment of the Honorable Service Tribunal Peshawar is quite clear and self-explanatory, wherein the intervening period is treated as extra ordinary leave without pay. Hence the intervening period is not eligible for increments. Moreover, the salary of the incumbent can not be released til final decision of the Honorable Supreme Court of Pakistan in CPLA No.1332/2022.

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DEPUTY DIRECTOR (HQ)
LOCAL FUND AUDIT
KHYBER PAKHTUNKHWA
PESHAWAR

Endt: No. & Date Even:

Copy forwarded to the:-

1. Vice Commissioner ESSI, Khyber Pakhtunkhwa.
2. Director General ESSI, Khyber Pakhtunkhwa.

DEPUTY DIRECTOR (HQ)
LOCAL FUND AUDIT
KHYBER PAKHTUNKHWA
PESHAWAR

Muhammad
R. I. D.

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