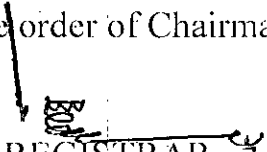


FORM OF ORDER SHEET

Court of _____

Case No. - 547/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/03/2023	<p>The appeal of Mr. Shah Miran resubmitted today by Uzma Syed Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

appeal of Mr. Shah Miran son of Nasir Khan Ex-Constable No. 360 Police Lines Karak received today i.e. on 07.03.2023 is incomplete on the following score which is returned to the co Counsel for the appellat for completion and resubmission within 15 days.

The dates mentioned in the memo of appeal are not matching with the dates of documents attached.

No. 907 /S.T,

Dt. 08-08 /2023

Uzma Syed Adv.
High Court at Peshawar.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Sis,

objection No 1 remove & resubmitted.

Uz
13-3-2023

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 547 /2023

Shah Miran

V/S

Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	----	1-6
2.	Copy of Judgment	-A-	07-10
3.	copy of reinstatement order	-B -	11
4.	Copy of departmental appeal	-C-	12
5.	Vakalat Nama	-----	13

APPELLANT
Shah Miran

THROUGH:

(UZMA SYED)
&

SYED NOMAN ALI BUKHARI
ADVOCATES, HIGH COURT

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 317 /2023

Shah Miran, S/o Nasir Khan Ex-Constable NO. 360
Police Lines Karak.

(APPELLANT)

VERSUS

1. The Provincial Police Officer/Inspector General of Police,
2. The Regional Police Officer, Kohat Region, Kohat.
3. The Khyber Pakhtunkhwa, Peshawar.
4. The District Police Officer, Karak.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 26/04/2022, WHEREBY THE APPELLANT WAS REINSTATED INTO SERVICE BUT BACK BENEFITS OF INTERVENING PERIOD WAS DENIED ORALLY W.E.FROM 21.03.2017 TO 26.04.2022.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, IMPUGNED ORDER DATED ~~26/4/2022~~ MAY KINDLY BE MODIFIED TO THE EXTENT OF BACK BENEFITS OF INTERVENING PERIOD W.E.FROM 21.03.2017 TO 26.04.2022. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, IS AWARDED IN FAVOR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That appellant being serving as Constable in Police Department was charged for absence from duty and was ultimately dismissed, vide order dated 21.03.2017.
2. That the appellant was, however, re-instated vide judgment of this Hon'ble Tribunal dated 18.03.2019, with the direction to undertake fresh departmental proceedings according to law.
3. That in de-novo proceedings the appellant met the fate of dismissal, once again. That feeling aggrieved the petitioner/appellant after fulfilling all legal formalities filed appeal against orders dated 29.07.201 & 31.05.2019.
4. That the Hon'ble Tribunal after thorough scrutiny of 21.01.2022 as under:- facts and record held on "As far as absence of the appellant is concerned, we have observed that his absence was not so long, which does not constitute cross misconduct, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence the punishment awarded to appellant was very harsh. Reliance is placed on 2006 SCMR 1120. In view of the foregoing discussion, the instant appeal is partially accepted. The impugned order dated 29.07.2019 and 31.05.2019 are set aside and major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. **(Copy of judgment is attached as annexure A).**
5. That after the said order through O.B No.222 dated 26.04.2022 learned DPO, Karak, re-instated the appellant. **(Copy of order is attached as annexed B).**
6. That the said judgment is in field and the appellant is re-instated, but the respondents orally refused to grant back benefits to the appellant.
7. That the respondents want to re-open a litigation and are advising the appellant to file another appeal before the high forum without any lawful justification.
8. That thereafter, appellant filed departmental appeal for back benefits of the intervening period w,e, from **21.03.2017 TO 26.04.2022** leaving the intervening period un-decided but orally denied to the appellant. The appellant being feeling aggrieved filing the instant service appeal on the following grounds. **Copy of departmental appeal attached as Annexure-C**

GROUNDS:

- A. That the impugned orders dated 26.04.2022 is against the law, rules and material on record, therefore liable to be modified to the extent of intervening period .
- B. That once the order of the re-instatement has been passed by this Hon'ble Tribunal and only minor penalty of stoppage of increment for only one year has been passed the respondents have no authority to stop the back benefits of intervening period of the appellant.
- C. That according superior court judgment when the appellant was re-instead in to service, the Grant of back benefits is right and refusal is exception in appellant remained Gain fully during that period. So the appellant is entitled to all back benefits according to superior court judgment and latest judgment of this Hon'able Tribunal titled as "Muhammad Noman Vs Police Deptt:".
- D. That the period appellant remained out of service, it is fault of the department not of the appellant, so the any irregularities committed by the department not held the appellant responsible according to superior courts judgment.
- E. That if the grievance of the appellant is not resolved then the appellant will face huge financial loss even it will affect the pension of the appellant.
- F. That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.
- G. That,has the appellant was not applied not gainfully intervening period therefore keeping in view the judgment reported of Honorable Supreme Court reported as 2007 PLC (C.S) Page#346 the appellant is entitled to all salaries and emoluments removed in the intervening period.
- H. That the relevant authorities restrain the appellant from performance of duty due there improper exercise of official power, therefore, the appellant cannot be deprived from his legal right of salary.
- I. That another case reported as 2007 SCMR Page # 855 the Honorable Supreme Court of Pakistan his held that the grant of service back benefits to an employed who has been illegally kept away from employment is the rule and the denial of such benefits to such a reinstated employee is an exception on the proof of such

a person having remained gainfully employed during such period. As the appellant has already furnished affidavit to the competent authority regarding not remained gainfully employed therefore the appellant is also entitle to back benefits.

- J. That the department references the rule 19 of the leave rules 1981 in impugned order which was not applicable to the appellant. Further it is added that in rule 19 of the leave rules 1981 use exception means it is applicable to those who remains absent not beyond his control and not applicable to those where circumstances beyond his control. So the appellant is entitled for the salary of period during which remains absent due to illness beyond his control.
- K. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT
Shah Miran

THROUGH:

(UZMA SYED)
&

SYED NOMAN ALI BUKHARI
ADVOCATES, HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Shah Miran

V/S

Police Deptt

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE:
3. Any other case law as per need.

**(UZMA SYED)
ADVOCATE HIGH COURT**

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Shah Miran

V/S

Police Deptt

AFFIDAVIT

I, Shah Miran, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.

DEPONENT

Shah Miran

(A) (7)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1066/2019

Date of Institution ... 20.08.2019

Date of Decision ... 21.01.2022

Shah Miran S/o Nasir Khan, Ex-Constable No. 360 Police Lines Karak.
(Appellant)

VERSUS

Provincial Police Officer/ Inspector General of Police Khyber Pakhtunkhwa
Peshawar and others. (Respondents)

Shahid Qayyum Khattak,
Advocate ... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

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

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Constable in Police Department, was proceeded against on the charges of absence/registration of FIR against him and was ultimately dismissed from service vide order dated 21-03-2017. Feeling aggrieved, the appellant filed departmental appeal followed by Service Appeal No 367/2017, which was decided vide judgment dated 18-03-2019 and the appellant was re-instated in service, leaving the respondents at liberty to undertake departmental proceedings in accordance with law. Because of de-novo proceedings, the appellant was again dismissed from service vide order dated 31-05-2019. Feeling aggrieved, the appellant filed departmental appeal dated 19-06-2019, which was rejected vide order dated 29-07-2019, hence the instant service

appeal with prayers that the impugned orders dated 29-07-2019 and 31-05-2019 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 impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the appellant has been dismissed from service on account of registration of FIR against him and now the appellant has been acquitted of the criminal charges vide judgment dated 06-01-2018, hence there remains no ground to maintain the penalty so awarded; that this honorable tribunal had ordered for a regular inquiry in accordance with law, but the appellant was not afforded appropriate opportunity to defend himself, hence he was condemned unheard.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was dismissed from service on the charges of absence as well as registration of FIR against him; that the appellant was a habitual absentee, for which he was penalized in past as well but he did not mend his way and habitually absented himself under various pretext; that the appellant was associated with disciplinary proceedings in de-novo inquiry and was afforded reasonable opportunity of defense but the appellant failed to prove his innocence; that the appellant was acquitted of the criminal charges but it is a well settled legal proposition that criminal and department proceedings can run side by side without affecting each other; that as per departmental proceedings, the appellant was found guilty of misconduct, hence was again awarded with major punishment of dismissal from service.

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

05. Record reveals that the appellant was proceeded against on two counts i.e. absence from duty for some days and registration of FIR against him. Since the appellant has been acquitted of the criminal charges by the competent court of law vide judgment dated 06-01-2018. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste.


06. It otherwise, was obligatory upon the respondent that the appellant being involved in a criminal case was required to be suspended from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was

found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations; and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

07. As far as absence of the appellant is concerned, we have observed that his absence was not so long, which does not constitute gross misconduct, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. In view of the foregoing discussion, the instant appeal is partially accepted. The impugned order dated 29-07-2019 and 31-05-2019 are set aside and major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
21.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

(S) (B) (11)

ORDER

In the pursuance of the Khyber Pakhtunkhwa, Service Tribunal, Peshawar judgment dated 21.01.2022, in Service Appeal No. 1066/2019 received vide his office letter No. 877/ST dated 07.04.2022 & from the approval of W/IGP KP Peshawar letter No. 1956/Legal dated 08.04.2022, the instant appeal is partially accepted by the Service Tribunal Khyber Pakhtunkhwa Peshawar and the punishment awarded to Ex-Constable Shah Miran No. 360 in shape of "Dismissal from Service" vide this office OB. No. 254 dated 31.05.2019 & rejected by the RPO Kohat vide order announced dated 10.07.2019 under the Endst. No. 6784/EC dated 29.07.2019 are set aside and major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year.

Therefore, the order is hereby implemented on the directions of the honourable Service Tribunal, Khyber Pakhtunkhwa Peshawar and on the approval of CPO, Ex-Constable Shah Miran is hereby reinstated into service as per Judgment announced dated 21.01.2022. He is allotted constabulary No. 354.

OB. No. 222
Dated 26/04 /2022

District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 1935-37 /EC, dated Karak the 28/04 /2022

Copy of above is submitted for-favour of information to:

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar w/r to his office letter No. 1956/Legal dated 08.04.2022.
2. The Registrar, Service Tribunal KP Peshawar vide letter quoted above.
3. Pay Officer/ SRC for necessary action.

District Police Officer, Karak

The District Police Officer
Karak.

(A) (C) (12)

Subject: AN APPLICATION FOR GRANT OF BACK BENEFITS.

Respected Sir,

With due respect, applicant very humbly submit as follows.

1. That applicant was dismissed from services vide order dated 31/03/2017, however, the appeal No. 367/2017 of applicant was accepted vide judgment dated 18/03/2019. And department was allowed for department was allowed for de-novo enquiry proceedings.
2. That applicant was re-instated in service and was again dismissed from service order dated 31/05/2019 and the departmental appeal was rejected vide order dated 29/07/2019 and appellant filed second service appeal No. 1066/2019 which was accepted vide order dated 21/01/2022.
3. That your good office issued re-instatement order of applicant vide OB No. 222 dated 26/04/2022 with no order of grant of back benefits.
4. That applicant dismissal order dated 29/07/2019 and order passed in departmental appeal dated 31/05/2019 never set aside by the Service Tribunal and the earlier order of dismissal from service was passed dated 21/03/2017 was already set aside by the Service Tribunal vide judgment dated 18/03/2019 passed in Service Appeal No. 367 / 2017.
5. That applicant was compulsory ousted from service and applicant had not joined any other job during the intervening period. The expenses of long litigation and defence of criminal charge and departmental action has entangled applicant in debt.
6. That the dismissal from service order has been set aside, therefore, applicant is entitled for grant of back benefits including monthly pay and increments with effect from 21/03/2017 and obliged.

1654
MRA

Mr
Forwarded
McL
20-111
10-05-2022

Your obediently

Shah Miran
Constable No. 354 10/5/22
District, Karak.

Mr, Forwarded files
By: Super. of Police
Karak

K.P. Service Tribunal, Faisalabad

2023ء منجانب

بشہادہ عیدنا بنام

لوا لیس

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

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

آن مقام *Faisalabad* کیلئے عظیمی سید ایمنہ نعمان ابی علیہ السلام

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے جانشین کے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

2023ء

3

ماہ

المرقوم

واہ العبد

د

العبد