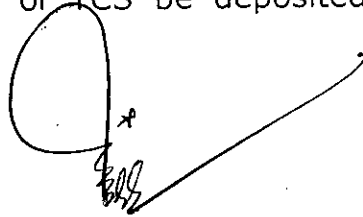


13.09.2022

Mr. Maqsood Ali Khan, Advocate, for the petitioner present. Notice be issued to the respondents through TCS and to come up for reply as well as arguments on 29.11.2022 before the D.B. Original record be requisitioned for the date fixed. The expenses of TCS be deposited by the petitioner within three days.



(Mian Muhammad)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

29.11.2022

Due to rush of work. This case has been deleted. To come up for the same as before on 21.02.2023.

Cy. J.
Reader.

21.02.2023

Bench is incomplete, therefore, case is adjourned to 07.04.2023 for the same as before.




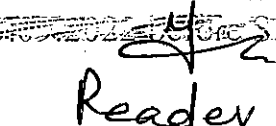
Reader

5

Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 440/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	01.08.2022	<p>The application for restoration of petition u/s 12 (2) CPC in service appeal no. 547/2013 presented today by Mr. Maqsood Ali Khattak Advocate, may be entered in the relevant register. This restoration application is entrusted to S. Bench to be put up there on <u>02-08-2022</u></p> <p style="text-align: right;"> REGISTRAR</p>
2	27-08-2022	<p>Learned member (E) on leave Therefore case is adjourned for to 13-9-2022 for preliminary hearing on 13-9-2022 by Reader</p> <p style="text-align: right;"> Reader</p> <p style="text-align: right;">(Member (E)) Member (E)</p>

SCANNED
KPST
Kashmir

BEFORE THE HONOURABLE SERVICE TRIBUNAL

R/A No: 440/2022 PESHAWAR

CM:- Petition 12(2)Cpc. No _____ /

CM _____ /2022

**SCANNED
KPST
Peshawar**

Nisar Ahmad vs Asad Mahmood etc

SUBJECT APPLICATION FOR RESTORATION OF U/S 12(2)

CPC.1908 PETITION

Respectfully Sheweth,

1. That the above caption petition is dismissed in default by this honourable tribunal on dated 26/7/2022.
2. That on last date of hearing the Petitioner three cases namely. (i) Nisar Ahmad Vs Asad Mahmood, (ii) Touheed Khan Vs Asad Mahmood (iii) Tariq Iqbal vs Abdul Hai Khan was fixed before this honourable Tribunal.
3. That the honourable Chairman started query about the Petitioners at the time of arguments that "who is aggrieved amongst the Petitioners from the orders passed by this Honourable Tribunal, who was party to the main Appeal and who's were not Party made party by Appellant (Abdul Hai Khan)" etc.
4. That on dated 27.06.2022 during course of arguments about mentioned query of the honourable Chairman of this service tribunal the leaned counsel Mr. Zakir Ullah has raised objection that he is representing one of the Respondent (Asad Mahmood), in today he did not possess the case file and his case was fixed for 29/06/2022 and he having no such information about case has been change from 29.06.2022 to 27.06.2022, while the litigant Abdul Hai Khan has also informed to honourable tribunal that for today his counsel is not in attendance, so on the pretext the above this honourable court has adjourned all the mentioned Petition for 27.07.2022.

5. That through is restoration Application Applicant counsel want high light his possession before this honourable Tribunal and also asserted some problem which faces by me at the time of practicing before this honourable tribunal it is not the first time that my cases have been dismissed many but such situation is not affordable to me, because this type of dismiss in default orders and also create negative impact on my practice and also damage my reputation towards my client. Further stated that my client having service life entrust is attached with their cases he considered that counsel fail to resecure his entrust.
6. That I hope that the honourable chairman will take some effective step to stop such like practice which is start by the staff of this honourable tribunal.
7. That this restoration Application is within time, no legal hurdle stand/exist restoration of this petition and nothing has been concealed from this honourable Court.

Prayer: - It is therefore humbly prayed that may kindly accept the present Application and issue direction for restoration of the Captioned 12(2) Cpc. 1908 Application.

Deponent

Through

Maqsood Ali
Maqsood Ali

Affidavit

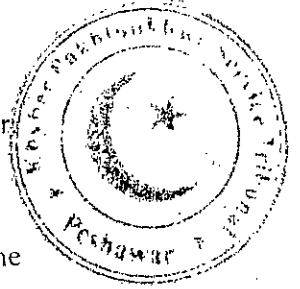
I, Maqsood Ali Advocate Affirm on oath that, each para of this Petition is true to the best of knowledge and believe and nothing has been conceal from this honorable tribunal



Deponent

Maqsood Ali

26th July, 2022



1. Nobody is present on behalf of the petitioner Respondent alongwith his counsel present.

2. There is nobody present on behalf of the petitioner and it is 20 past 1st O'clock. Called for several times but no one appeared on behalf of the petitioner's side. Learned counsel for the respondent present and when confronted with the situation that previously the case was adjourned because of note Reader, he submitted there was no concept of issuance notices to the parties and their counsel when the previous date was changed due to note Reader and it was the duty of the parties to confirm the date from the Reader of the Court, especially when the petitioner had been attended through counsel. He insisted that the Tribunal should proceed under Rule-19 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. This application is, therefore, dismissed in default. Consign.

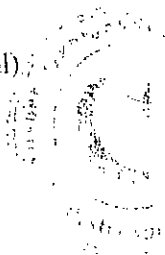
3. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of July, 2022.

SD/-

(Salah Ud Din)
Member(Judicial)

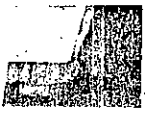
SD/-

(Kalim Arshad.Khan)
Chairman



ASSTANT CLERK
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

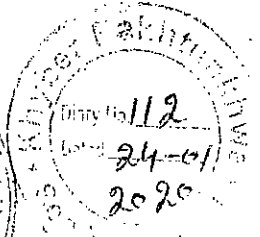
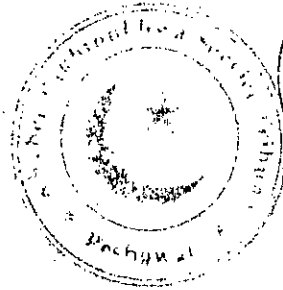
Date of the application *27-7-2022*
Name of the applicant *Bo*
Name of the respondent *10/-*
Name of the petitioner *10/-*
Date of the hearing *29-7-2022*
Date of the judgment *29-7-2022*



①

**BEFORE THE HONORABLE SERVICE
TRIBUNAL PESHAWAR**

CM No. 32/2020
in
CM No.302/2018



Applicants: Nisar Ahmad and others

Vs.

Respondent: AsadMehmood

Application for restoration of Petition (the "Petition") filed Misc.302/2018 under s.12(2) CPC by the Applicants, wherein, the Judgment and the Decree dated 15/05/2015 in the Appeal No.547/2013 (the "Appeal") titled '*AsadMehmood v NasirDurrani and others*' passed by the Learned Service Tribunal Peshawar in favor of the Respondent has been challenged.

Most Respectfully Submitted That,

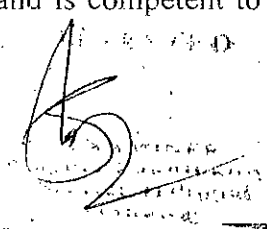
1. The Applicants filed the Petition under section 12(2) CPC challenging the Judgment and Decree in the Appeal passed by the Learned Service Tribunal Peshawar in favor of the Respondent infringing the valid and legal rights of the Applicants pending its execution vide the Execution Petition No.168/2016 (the "Execution Petition").
2. That applicants was attended the hearing with the learned member Mr. Amin Kundion the month April and then the next date of hearing has noted for dated 29/11/2019 but when the Counsel of applicants has attend the mentioned date of hearing then the learned member of this honourable tribunal has informed that Applicants Counsel Court then

2

the honourable member of the tribunal has informed that the Application U/s 12(2) Cpc was dismissed in default on dated 28 May 2018 and then on dated 29/11/2019 the Counsel of applicants got Knowledge of the fact applied for obtaining attested copies of the orders of dismissal in default.

That after filling application for requisition of certified copy of the mentioned orders time in again the counsel of Applicants has asked for order but the office has sought further time but they failed to do so then the Counsel of applicant has informed the honourable Chairman of the Tribunal and the on next Monday dated 13/1/2020 the office has handed over the certified copy of dismissal in default Order.

3. Respondent has badly failed in establishing a *prima facie* case in his favor and the Appeal and the Execution Petition is liable to be dismissed on numerous legal and factual grounds.
4. The balance of convenience strictly lies in favor of the Applicants who despite being necessary parties to the case have not been impleaded in the Appeal and the Execution Petition in bad faith by the Respondent.
5. Substantive rights of the Applicants are in issue in the Petition decided in *absentia* of the Applicants and they would suffer irreparable losses if the interim relief sought through this Application is not granted.
6. The contents of the Petition may kindly be considered an integral part of this Application.
7. The Applicants are filing this Application through Counsel Mr. Maqsood Ali Advocate High Court who is duly authorized via a power of attorney and is competent to file



3

this Application on the Applicant's behalf and is acquainted with the facts of the case which he can depose on oath.

Applicants

Through

Saud Khan

Barrister Saud Khan

Lincoln's Lawyers and Consultants
2nd Floor, Bilal Market, Phase-1,
Hayatabad, Peshawar.

Mobile: 0334-051-0334

Phone: 091-500-2487

saud1792@yahoo.com

Affidavit

I, Maqsood Ali Advocate High Court, attorney of the Applicants, declare on oath that the contents of this Application are true and correct to the best of my knowledge and belief.

M. al

Deponent

Maqsood Ali Khattak
Advocate High Court

ATTESTED



Date of Affidavit: 27-7-22
Number of Words: 15/200
Number of Pages: 15/-
Number of Exhibits: 15/-
Date of Deposition: 28/7/22
Date of Delivery: 28/7/22

Certified to be true copy
By: *[Signature]*
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

26th July, 2022

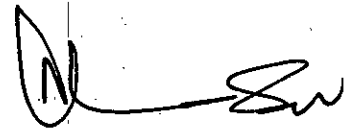
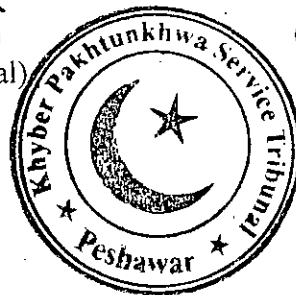
1. Nobody is present on behalf of the petitioner. Respondent alongwith his counsel present.

2. There is nobody present on behalf of the petitioner and it is 20 past 1'Oclock. Called for several times but no one appeared on behalf of the petitioner's side. Learned counsel for the respondent present and when confronted with the situation that previously the case was adjourned because of note Reader, he submitted there was no concept of issuance notices to the parties and their counsel when the previous date was changed due to note Reader and it was the duty of the parties to confirm the date from the Reader of the Court, especially when the petitioner had been attended through counsel. He insisted that the Tribunal should proceed under Rule-19 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. This application is, therefore, dismissed in default. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26th day of July, 2022.*



(Salah Ud Din)
Member(Judicial)



(Kalim Arshad Khan)
Chairman

25.01.2022

Clerk of the learned counsel for the petitioner present. (Mr. Asad Mehmood) respondent in person present. Mr. Kabir Ullah Khattak Additional Advocate General also present.

Respondent requested for time to submit reply. Last chance. To come up for reply and arguments on petition before the D.B on 09.03.2022.

[Faded and illegible text, possibly a stamp or header]

(Rozina Rehman),
Member (J)

(Salam-Ud-Din)
Member (J)

Chairman

9-3-22 due to Retirement of the Honble
Chairman the case is adjourned to
come up for the same as before on
29-4-22

[Handwritten signature]
Redden

22nd April, 2022

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents and Mr. Rizwan Ullah Advocate for respondent No.1 present. Counsel for respondents No.1 submits that the contesting respondent was given date 29th June 2022, but also fixed for today and requests for adjournment. Adjourned. To come up for reply and arguments on 12.05.2022 before D.B.

[Handwritten signature]

(Mian Muhammad)
Member (E)

[Handwritten signature]

Chairman

12-5-22

Proper DB not available the case is
adjourned on 26-7-22

[Handwritten signature]
Redden

29.06.2021

Petitioners present through counsel. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Counsel for respondent present.

Parties made request for adjournment. Adjourned. To come up on 06.10.2021 before D.B.



(Rozina Rehman)
Member(J)

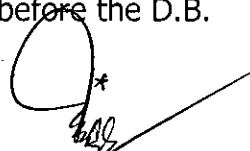


Chairman

06.10.2021

Counsel for the petitioners and respondent (Asad Mahmood) in person present. Mr. Muhammad Adeel Butt, Addl. AG also present.

Respondent seek time to furnish reply to instant petition. To come up for reply and arguments on petition on 16.12.2021 before the D.B.



(Mian Muhammad)
Member(Executive)

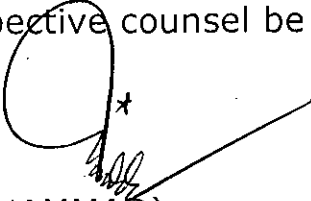


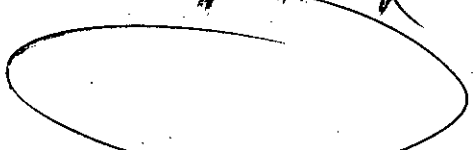
Chairman

05.01.2021

Mr. Maqsood Ali, Advocate, for petitioner is present. No one on behalf of respondent is present at the moment i.e 11:15 A.M.

Learned counsel for petitioner submitted that another petition submitted under section 12(2) Captioned Toheed Versus Asad Mehmood, is pending adjudication in this Tribunal in which next (date) of hearing is fixed as 29.03.2021, therefore, he requested that the instant petition may be fixed alongwith referred to petition so that the issue involved is decided by a single judgment. The request so made is appropriate and is accepted. The present petition is adjourned to 29.03.2021 and be fixed with the referred to petition. In the meanwhile respondents and his respective counsel be noticed for the date fixed.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

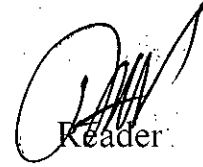
29.03.2021

The concerned D.B is not available today, therefore, the appeal is adjourned to 29.06.2021 for the same.


Reader

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 10.06.2020 before D.B.


Reader

10.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 24.08.2020 before D.B.


Reader

24.08.2020


Due to summer vacation case to come up for the same on 28.10.2020 before D.B.


Reader

28.10.2020

Appellant in person and Asstt. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 05.01.2021 for hearing before the D.B.


(Atiq-ur-Rehman Wazir)
Member



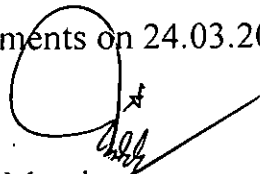
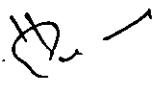

Chairman

Form-A

FORM OF ORDER SHEET

Court of _____

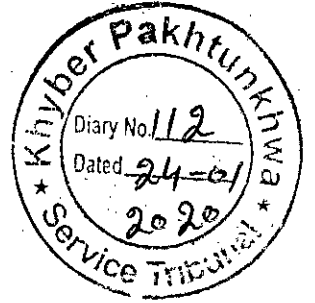
Restoration Application No. 32/2020

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	24.01.2020	<p>The application for restoration of 12(2) Petition No.302/2018 submitted by Mr. Saud Khan Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;">  REGISTRAR <u>24/01/2020</u> </p>
2		<p>This restoration application is entrusted to D. Bench to be put up there on <u>21/02/2020</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>
	21.02.2020	<p>Learned counsel for the petitioner present. Notices be issued to the respondents for submission of written reply on restoration of 12(2) application. To come up for written reply/ arguments on 24.03.2020 before D.B.</p> <p style="text-align: center;">  Member </p> <p style="text-align: right;">  Member </p>

①

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

CM No. 32/2020
in
CM No.302/2018



Applicants: Nisar Ahmad and others

Vs.

Respondent: AsadMehmood

Application for restoration of Petition (the “Petition”) filed Misc.302/2018 under s.12(2) CPC by the Applicants, wherein, the Judgment and the Decree dated 15/05/2015 in the Appeal No.547/2013 (the “Appeal”) titled ‘*AsadMehmood v NasirDurrani and others*’ passed by the Learned Service Tribunal Peshawar in favor of the Respondent has been challenged.

Most Respectfully Submitted That,

1. The Applicants filed the Petition under section 12(2) CPC challenging the Judgment and Decree in the Appeal passed by the Learned Service Tribunal Peshawar in favor of the Respondent infringing the valid and legal rights of the Applicants pending its execution vide the Execution Petition No.168/2016 (the “Execution Petition”).
2. That applicants was attended the hearing with the learned member Mr. Amin Kundion the month April and then the next date of hearing has noted for dated 29/11/2019 but when the Counsel of applicants has attend the mentioned date of hearing then the learned member of this honourable tribunal has informed that Applicants Counsel Court then

the honourable member of the tribunal has informed that the Application U/s 12(2) Cpc was dismissed in default on dated 28 May 2018 and then on dated 29/11/2019 the Counsel of applicants got Knowledge of the fact applied for obtaining attested copies of the orders of dismissal in default.

That after filling application for requisition of certified copy of the mentioned orders time in again the counsel of Applicants has asked for order but the office has sought further time but they failed to do so then the Counsel of applicant has informed the honourable Chairman of the Tribunal and the on next Monday dated 13/1/2020 the office has handed over the certified copy of dismissal in default Order.

3. Respondent has badly failed in establishing a *prima facie* case in his favor and the Appeal and the Execution Petition is liable to be dismissed on numerous legal and factual grounds.
4. The balance of convenience strictly lies in favor of the Applicants who despite being necessary parties to the case have not been impleaded in the Appeal and the Execution Petition in bad faith by the Respondent.
5. Substantive rights of the Applicants are in issue in the Petition decided in *absentia* of the Applicants and they would suffer irreparable losses if the interim relief sought through this Application is not granted.
6. The contents of the Petition may kindly be considered an integral part of this Application.
7. The Applicants are filing this Application through Counsel Mr. Maqsood Ali Advocate High Court who is duly authorized via a power of attorney and is competent to file

this Application on the Applicant's behalf and is acquainted with the facts of the case which he can depose on oath.

Applicants

Through

Saud Khan

Barrister Saud Khan

Lincoln's Lawyers and Consultants
2nd Floor, Bilal Market, Phase-1,
Hayatabad, Peshawar.

Mobile: 0334-051-0334

Phone: 091-500-2487

saud1792@yahoo.com

Affidavit

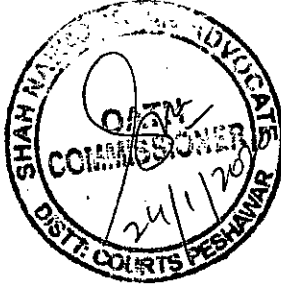
I, Maqsood Ali Advocate High Court, attorney of the Applicants, declare on oath that the contents of this Application are true and correct to the best of my knowledge and belief.

M. ali

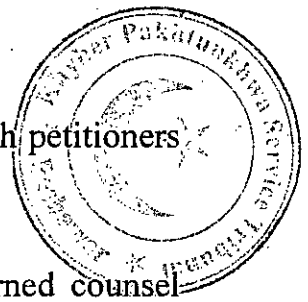
Deponent

Maqsood Ali Khattak
Advocate High Court

ATTESTED



4



26.02.2019

Counsel for the petitioners alongwith petitioners No. 1 & 2 present. Nemo for respondent.

Notice be issued to respondent/learned counsel for 02.05.2019. Adjourned for further proceedings before the D.B.


Member


Chairman

02.05.2019

Mr. Muhammad Jan learned Deputy District Attorney present. Petitioners and their counsel is not in attendance. Notice be issued to the petitioners as well as their counsel for 28.05.2019. Adjourn. To come up for further proceedings on the date fixed before D.B.

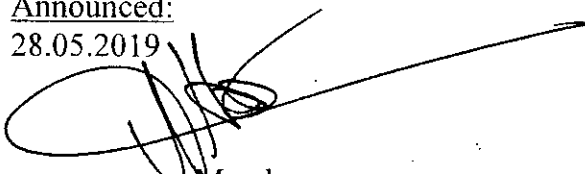

Member


Member


28.05.2019

None for the petitioners present. Counsel for the respondent present. Called for several times but no one appeared on behalf of the petitioners, therefore, the application in hand is hereby dismissed in default. File be consigned to the record room.

Announced:
28.05.2019


Member


Member




Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

5

FORM OF ORDERSHEET

Court of _____

Misc. Application No. 302 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27/09/2018	<p>As per direction of the Worthy Chairman in Execution Petition No. 168/2016 vide order sheet dated 26.9.2018, notices be issued to respondents for the date already fixed i.e. 07.11.2018 for further proceedings.</p> <p style="text-align: right;"> REGISTRAR</p>
	26.12.2018	<p>Petitioners absent. Respondents with counsel present. Notices be issued to the petitioners for the date 13.02.2019. Adjourn. To come up for further proceedings on the date fixed before S.B.</p> <p style="text-align: right;"> Member</p>
	13.02.2019	<p>Petitioners No.1 & 2 with counsel present. Learned counsel for the respondents present. Reply of the respondents is available on file. Adjourn. To come up for further proceedings/arguments on 26.02.2019 before D.B.</p> <p style="text-align: right;"> Member</p>

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(6)

**BEFORE THE HONORABLE
KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**

PESHAWAR
Misc. Application No-302/2018

- ✓ 1. **Nisar Ahmad**
Senior Superintendent Police – Investigations CCP
CPO, Peshawar.
- ✓ 2. **Tariq Habib**
Senior Superintendent Police – CTD
CPO, Peshawar.
3. **Tariq Iqbal**
Superintendent Police – School of Investigation
CPO, Peshawar.
4. **Waqar Ahmad**
Superintendent Police – CTD
CPO, Peshawar.
5. **Samad Khan**
Deputy Superintendent Police – Investigations
CPO, Peshawar.
6. **Arshad Khan**
Deputy Superintendent Police – Investigations
CPO, Peshawar.
7. **Tahir Dawar**
Deputy Superintendent Police – Faqirabad
CPO, Peshawar.
8. **Abdus Salam Khalid**
Deputy Superintendent Police – University Town
CPO, Peshawar.
9. **Alamzeb Khan**
Deputy Superintendent Police – Investigation
CPO, Peshawar.
10. **Ateeq Shah**
Deputy Superintendent Police – City
CPO, Peshawar.
11. **Rasheed Iqbal**
Deputy Superintendent Police – CTD
CPO, Peshawar.
12. **Naseer Ali**
Deputy Superintendent Police – CTD
CPO, Peshawar.

Versus

Asad Mehmood
Deputy Superintendent Police – CTD
CPO, Peshawar.

ATTESTED

(Applicants)

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Respondent)

Application under Section 12(2) read with Section 151 of CPC with all enabling laws for setting aside the decree dated 15.05.2015 obtained by the Respondent fraudulently, through misrepresentation of facts and law, non-impleadment of necessary parties, and without locus standi.

⑦

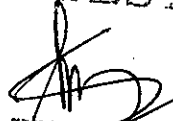
Most Respectfully Submitted,

1. The Applicants are residents of Peshawar currently serving as police officers of assorted ranks in various departments of Khyber Pakhtunkhwa Police ("KP Police") with their lien attached to the Capital Police Office ("CPO"), Peshawar.
2. The Respondent is a resident of Peshawar and currently serving as District Superintendent Police ("DSP") at the Counter-terrorism Department of KP Police with his lien attached to the CPO, Peshawar.
3. The Respondent filed an Appeal No.547/2013 ("the Appeal") before this Honorable Tribunal for the purpose of inseting his name in the bottom of List E ("the Seniority List"), which records of sub-inspectors of KP Police, of 1998 instead of 2004. The Appeal was wrongly decreed in favor of the Respondent on 15/05/2015 ("the Decree"). Subsequently, Execution Petition No.168/2016 ("the Execution") was filed for enforcement of the Decree which is presently pending before this Honorable Tribunal.

(Annexure-1: Copy of the Decree)

4. To the Applicants' utter shock and dismay, they were apprised of the Decree and Execution recently on the information intimated to them by their fellow department officers.
5. The Applicants are compelled to file the instant Application as the Respondent has obtained the Decree through fraud, misrepresentation of law and facts, and without any locus standi.
6. In granting the Decree, the Honorable Tribunal came to an erroneous conclusion due to misrepresentation of facts and law after intentionally being misled by the Respondent vis-à-vis material facts of the case and the statute applicable to the issue at hand. The Honorable Tribunal, upon being maliciously misguided by the Respondent, fallaciously directed the KP Police Department to resolve

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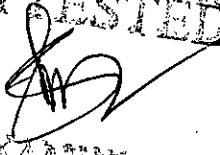

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

the issue in the light of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules 1989 ("CSR 1989") despite the fact that the CSR 1989 are extraneous to the Respondent's case. The Respondent's case can only be decided in the light of Police Rules 1934, which, being special law, has an overriding effect on the CSR 1989. The Respondent, prompted by his own ulterior motives, intentionally did not draw the Honorable Tribunal's attention to the Police Rules 1934. Instead, he urged for resolving issue under the provisions of CSR 1989, which is not applicable to the facts in issue.

- 7. Consequently, the direction in the Decree to the Department for deciding the case in accordance with the CSR 1989 is devoid of legal applicability and therefore a nullity which cannot be executed.
- 8. More nefariously, the Respondent deluded the Honorable Tribunal through fraud and misrepresentation of facts by not arraying the Applicants who are senior to the Respondent by virtue of their names being higher than the Respondent in the Seniority List. Hence, the Applicants are patently and incontrovertibly necessary parties in the Appeal and their valuable bona fide and legal rights are directly affected by the Decree and the Execution.

(Annexure-2: Copy of Seniority List)

- 9. Likewise, under the Police Rules 1934, the Deputy Inspector General ("DIG") is solely empowered with discretion to maintain and amend the Seniority List in addition to possessing the discretionary authority vis-à-vis promotion to the rank of sub-inspector. The Respondent has further acted in bad faith by not impleading in the Appeal, the DIG who was so authorized and at the time responsible for including his name in the Seniority List of 2004.
- 10. The Respondent's entire case in the Appeal was grounded on challenging an order ("the Order") passed by the Capital City Police Office ("the CCPO"), which proclaimed inclusion of the Respondent in the bottom of List E w.e.f. 09/02/2004. Extraordinarily, the CCPO

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 Member Peshawar
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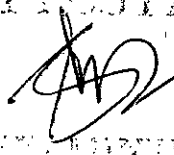
has not been arrayed as a party to the Appeal despite the Order being passed by that very office. These furtive and underhanded acts of not impleading the Applicants, the DIG concerned, and the CCPO as necessary parties have vitiated the entire proceedings of the Appeal and render the Decree void, illegal and liable to be set aside

(Annexure-3: Copy of the Order)

11. Subsequently, the Respondent filed an application before the Departmental Promotion Committee ("DPC") for incorporation of his name at the bottom of Seniority List of 1998 on the premise of the Decree. On 27/07/2016 in a meeting ("the Meeting"), having regard to the relevant law and the directions given in the Decree, the DPC concluded that the Respondent's name could only be included in the Seniority List upon qualifying the prescribed criteria appurtenant to sub-inspectors under the Police Rules 1934. The Respondent became eligible for inclusion in the Seniority List upon fulfilling the prescribed criteria in 2004. Resultantly, his name has been validly inserted in the bottom of Seniority List of 2004 w.e.f 09/02/2004 and cannot be legally infixed in any anterior list.

(Annexure-4: Copy of minutes of the Meeting)

12. The Respondent, despite maintaining a professional working relationship with the Applicants and operating in the same vicinity as them, willfully omitted to implead a single one of them or the DIG and CCPO concerned as necessary parties in the Appeal. The non-impleadment was a malevolent act of fraud and misrepresentation by the Respondent who has, by a mala fide abuse of position, approached this Honorable Tribunal in order to inequitably and illegally secure personal gains over fellow officers by deliberately omitting to array the aforementioned.
13. The Applicants, by virtue of the Decree, are being stripped of their inherent rights and condemned unheard in breach of the established principle audi alteram partem and Constitutional right to fair trial.

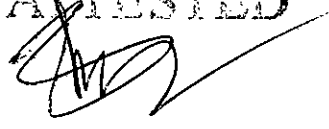
ATTESTED

Khyber Pakhtunkhwa
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Peshawar

- 14. It is paramount in the interests of justice, that the legal rights and privileges of the Applicants are protected by granting them a full and fair opportunity to present their cases in order to allow the Honorable Tribunal to establish a flawless opinion and reach a consummate decision based on germane facts and law. Pursuing the alternative will be a flagrant contravention of the Applicants' intrinsic right to fair trial and put the Applicants in a grimly unfair position, by illegally divesting them of their vested and indelible rights and privileges without even affording them a single opportunity of being heard, and instead endowing them on the Respondent.

- 15. In the light of the foregoing, it is manifest that the Decree warrants an annulment, as not only has the Respondent approached the Honorable Tribunal with unclean hands and acted fraudulently by deliberately not impleading the Applicants and the concerned DIG and CCPO as necessary parties in the Appeal, but he has also obtained the Decree through misrepresentation of law by averring that CSR 1989 are applicable in the instant case instead of Police Rules 1934, which has resulted in a resoundingly fractured decision marred by misreading of facts and misapplication of law.

- 16. The Applicants reserve the right, with due permission, to present further grounds and arguments verbally, or in writing, and to present further evidence to prove their case.

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Prayer: In view of the submissions above, it is therefore most humbly prayed that:

- (A) the Decree may kindly be set aside on the ground of being obtained through fraud and misrepresentation of facts and law, misapplication of law, and non-impleadment of the Applicants and the concerned DIG and CCPO as necessary parties; and
- (B) a direction be made with effect to decide the case on merits after arraying the Applicants and the CCPO as necessary parties; and
- (C) the Honorable Tribunal grant any other relief to the Applicants it deems just and appropriate in the circumstances of the case.

Nisar Khan
5877 timesig
A. Saad Khan
ARSHAD KHAN

Waqar Ahmed
 Applicants **WAQAR AHMED**
 Through

S
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Barrister Saud Khan
 12, K-3, Phase-III, Hayatabad, Peshawar
 Phone 5817132, 5818446, Mobile: 03340510334
 Email: saud1792@yahoo.com
www.isaacclaw.org

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[Signature]
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 Service Tribunal,
 Peshawar

Date of Presentation of Application 29-11-2018
 Number of Words 1600
 Copying Fee 1800
 Urgent _____
 Total 1800
 Name of Applicant [Signature]
 Date of Completion of Copy 13-01-2020
 Date of Delivery of Copy 13-01-2020



Before The Khyber Pakhtunkhwa Service Tribunal Peshawar.

In ref: to Execution Petition No. 168 /2016
In
Service Appeal No. 547 /2013.

Khyber Pakhtunkhwa
Service Tribunal at

Diary No. 928

Dated 6-9-16

Asad Mehmood, Inspector Police, presently working as DSP (Police) and posted at Directorate of Counter Terrorism (DCT) Special Branch (SB) Khyber Pakhtunkhwa Peshawar.....APPELLANT/PETITIONER.

VERSUS



- 1). Nasir Khan Durrani, the Provincial Police Officer Khyber Pakhtunkhwa, Central Police Office (CPO) Peshawar.
- 2). Mian Muhammad Asif, the Additional Inspector General of Police/HQrs: Khyber Pakhtunkhwa, Police Line Peshawar.
- 3). Salah-Ud-Din Khan, the Deputy Inspector General of Police Directorate of Counter Terrorism (DCT) Special Branch (SB) Khyber Pakhtunkhwa Peshawar. 4. C.C.P.O., Peshawar.....RESPONDENTS.

vide order sheet dated 26-09-2018

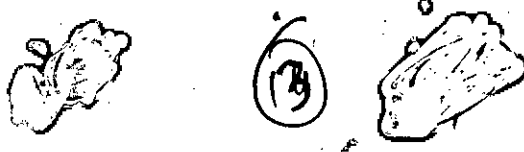
Execution petition for the implementation of the judgment/ orders passed by this august Tribunal in Service Appeal No. 547/2013 decided on 15-05-2015, titled above and to initiate contempt proceedings against the delinquent respondents who, deliberately and intentionally have not yet complied with the orders sura and they be asked accordingly to ensure

the early implementation thereof.

RESPECTFULLY SHEWETH:-

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[Signature]
MINISTER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


That the appellant/petitioner had preferred service appeal No. 547/2013 before this august Tribunal praying therein his due seniority from the date of his transfer from the province of Baluchistan to this province with all allied benefits. The service appeal was, however finally allowed in favour of the appellant/petitioner dated 15-05-2015 with the following directions/orders.



"For the reason stated above, the Tribunal is of the considered view to remit this appeal to the respondent department to decide the same in the light of Rule-8(2) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rule 1989 and to give the appellant his due/deserving place in the seniority list. The appeal is allowed accordingly. Parties are left to bear their own costs. File be consigned to record room." (Copy of the orders dated 15-05-2015 is annexure "A").

- 1) That the respondents while reluctant to give the requisite effect to the orders/ direction passed by this august Tribunal dated 15-05-2015 in its true letter and spirit and thus in order just to make eye-wash of this august Tribunal, the petitioner is made to shuttle between one authority and the other as such his case was differed once again vide direction/decision of the committee dated 18-05-2016. (Copy of the decision is annexure "B").
- 2) That as per observation and direction of this august Tribunal the respondents have not yet looked into the matter and thus the well elaborated and well transparent precious orders have been violated at the cast of favoritism by not doing fair play.
- 3) That the petitioner after availing the precious order passed by this august Tribunal dated 15-05-2015, approached the respondents and requested to redress his grievances on sympathetic and humanitarian grounds in the light of the well elaborated and well transparent precious orders and finally his efforts ended in a smoke when the stipulated period was elapsed and thus the petitioner is kept hanging high and dry.
- 4) That the respondents while throwing back the well transparent direction and precious orders passed by this august Tribunal dated 15-05-2015, has pushed the petitioner in a closed street and thus committed a gross illegality which comes within the ambit of the contempt of court.
- 5) That while being succeeded to get the well transparent direction and precious orders passed by this august Tribunal dated 15-05-2015, the petitioner has accrued a vested and valuable right and violation thereof will hit by the

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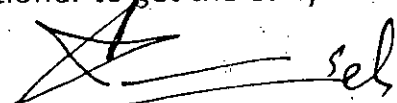

ATTORNEY
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



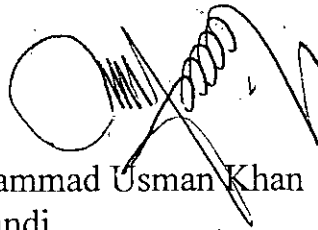
command of the Constitution and by doing so the respondents have exposed themselves to the penal section of the Contempt of Court Ordinance.

- 6) That the respondents have never bothered to do fair play in the matter of due Seniority of the appellant/petitioner in accordance with law and in exercise of colorful authority have often misused their power by enjoying their own innovation and monopoly and the precious orders passed by this august Tribunal dated 15-05-2015 was not yet implemented and the petitioner was just kept in between two fires.
- 7) That U/S article 204 of the constitution of the Islamic Republic of Pakistan 1973 read with section 3 & 4 of the contempt of court ordinance 2003; this august Tribunal has the jurisdiction and power to punish a contemptnor.
- 8) That further submissions will be advanced at the time of hearing the petitioner at the bar.

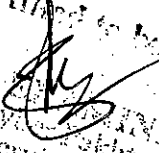
It is therefore humbly prayed that on acceptance of this petition the respondents may be asked with iron hands as to why the petitioner is still deprived of his valuable rights and they further be directed to ensure the early implementation thereof accordingly enabling the petitioner to get the early redressal of his grievances.


APPELLANT/PETITIONER.

Through;


Muhammad Usman Khan
Turlandi
Advocate Peshawar.

Dated; - 09/09/2016

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

OFFICE: Flat # C-1 Haji Murad Plaza Dalazak Road Peshawar City

Cell#: 0333-9153699/03005895841

Date of Birth 02-12-27
Place of Birth
County
Usual Residence
Telephone
Name
Date of Issue 12-12-27
Date of Expiration 12-12-27

29.11.2019

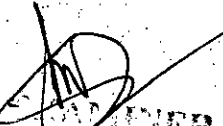
Petitioner with counsel present. Mr. Usman Ghani, District Attorney
alongwith Mr. Gulzad, ASI(CTD) for respondents present.



02. Learned counsel for the petitioner argued that vide judgment dated 15.05.2015, case of the petitioner was remitted to the respondents to pass necessary orders, as a sequel to the directions contained in para-9. As the respondents refused to act according to the dictates of the judgment referred to above, which compelled the petitioner to file execution petition in this Tribunal. He further clarified that vide letter dated 09.11.2016 the plea of the appellant was regretted. The main stance of the respondents was that case of the petitioner would be dealt with under Rule-13.10(2) of Police Rules 1934 and Rule-8(2) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 was not applicable. As he was serving in Motorway Police, therefore, he could not be confirmed in time. Learned counsel for the petitioner also emphasised that he did not get posting in Motorway Police on his own but was posted by the respondents. Therefore, it seemed illogical and irrational to dislodge his claim on this account.

03. Moreover, judgment referred to above was not challenged by the respondents in the august Supreme Court of Pakistan thus it attained finality and now only option available was its implementation in letter in spirit. He further invited attention to para-4 of the judgment under implementation, wherein one Zulfiqar Jadoon also transferred from Baluchistan to Khyber Pakhtunkhwa alongwith the petitioner was given due seniority. The treatment meted out to the petitioner was arbitrary and discriminatory. To support his assertions, he placed reliance on case law reported as 2002 SCMR 71 and 2011 PLC(CS) 07,

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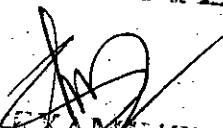

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Service Tribunal,
Peshawar

Article-25 of the Constitution enshrined equity of citizens. To groups person similarly placed could not be treated differently---Dictates of law, justice and equity required exercise of powers by all concerned to advance the cause of justice and not to thwart it (2002 SCMR 71).

Art. 25---Equality before law---Principles---Equality before law, was the basic concept of Islam and that concept had been borrowed by English, American and European Constitutions from Islam---Two similarly placed persons could not be treated differently---Principle of equality before law and prohibition of discrimination between the similarly placed persons, was the essence of rule of law-Even selective, discriminatory and distinctive treatment by the Government was also prohibited---Two similarly and equally placed persons, could not be treated differently(2011 PLC (C.S) 07).

04. Learned District Attorney repelled the assertions of learned counsel for the petitioner by banking of letter dated 09.11.2016 and opined that the present execution petition was not maintainable. He further stated that if the petitioner was aggrieved of the said order he was at liberty to have agitated his legitimate grievances through the available channels for redressal. In addition to above, he further contended that vide para-9 of the judgment in question his appeal was not accepted but remitted to the respondents and was accordingly decided.
05. Judgment handed down by this Tribunal on 15.05.2015 is yet to be implemented by the respondents. Through para-9 of the said judgment directions were given to the respondents to decide the case of the petitioner in the light of Rule-8(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 by assigning due position in the seniority list. After a lapse of more than one year, the respondents vide letter dated 09.11.2016 turned down his claim mainly on two grounds. Firstly, being an employee of Police Force his case was required to be dealt with under Rule-13.10 (2) of Police Rules 1934, as

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Khyber Pakhtunkhwa
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such Rule-8(2) of (Appointment Promotion and Transfer) Rules 1989 was not applicable in the case in hand. His confirmation as S.I. was not processed in time due to posting in Motorway Police. The petitioner was held responsible for the fault of respondents. This interpretation was naïve, whimsical, non-sensical, illogical and arbitrary attempt to thwart/frustrate the process of implementation. It is brought to the notice of the respondents that if they were not in agreement with the contents of the judgment rendered by this Tribunal, an option was available in the shape of filing CPLA in the august Supreme Court of Pakistan. As they failed to act swiftly, resultantly, the aforementioned judgment, attained finality and was required to be implemented in toto. The only remedy available with the respondents is to implement it in letter and spirit. Even Rule-13.10(2) of Police Rules 1934 goes against the respondents. The relevant provision is reproduced below for ready reference:

“No Assistant Sub-Inspector shall be confirmed in a substantive vacancy in the rank of Sub-Inspector unless he has been tested for at least a year as an officiating sub-inspector in independent charge of a police station in a district other than that in which his home is situated.”

06. It is imperative that the onus of posting as SHO lies on the respondents, then why an employee should be penalized for an action which was beyond his control? We all know the practical mechanics of posting of SHOs. Had the respondents acted according to merit, fairness and in a transparent manner then this explanation could carry some weight. This Tribunal in numerous judgments rendered in various service appeals ruled that stance of the respondents was against the spirit of rules and thus lacked backing of laws.

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 Khyber Pakhtunkhwa
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07. Attention of the respondents is invited to the case of one Zulfiqar Jadoon who alongwith the petitioner also come from Baluchistan and was assigned due seniority. On the other hand treatment meted out to the appellant was highly discriminatory, arbitrary and against the principles of natural justice. It is regretted that the respondents indulged in cherry picking in sheer violation of Article-25 of the Constitution 1973 and elaborately explained in case law reported as 2002 SCMR 71 and 2011 PLC (C.S) 07.

08. Foregoing in view, the present execution petition is accepted and the respondents are directed to give seniority to the petitioner from the due date. Implementation report to this effect should be submitted within fortnight, positively. In case the respondents failed to submit the report, the law will take its course. To come up for further proceedings on 31.01.2020 before S.B.

(Ahmad Hassan)
Member

Certified to be true copy

 Member
 Service Tribunal
 Faisalabad

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 Total 20/-
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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Nisar Ahmad (DSP)

Versus

Asad Mahmood (DSP) etc.



..... Petitioner

..... Respondents

Application under Section 5 of Limitation Act, 1908
and Article 187 of the Islamic Republic of Pakistan,
1973 for Condonation of Delay

Respectfully Sheweth,

The Applicant humbly submits as under:-

1. That Applicant is filing the accompanied Petition before this Honourable Court and the facts and grounds mentioned in the Petition may kindly be considered as an integral part of this Application.
2. That as the law of limitation is an artificial mode conceived to terminate justiciable disputes; the instant case involved the infringement of very fundamental rights of the Applicant and if the said delay has not been condoned Applicant will suffer irreparable loss.
3. That whereby material evidence had been discredited contrary to the principals duly protected by law, in such circumstances delay would only mean to a mere technicality.
4. That the entire perspective of the case amounts to be truthful, cogent, convincing, and confidence inspiring. In such circumstances, any contention with regards to delay would amount to a mere hindrance in the interest of justice.

*Part of the case
is filed in the court
file.
Good
23/6/2020*

Reader

5. That it is trite law that the contention of limitation cannot be made a ground for denying the Applicant Constitutional and Fundamental rights of fair trial and due process. It has been consistent view of the apex Court of Pakistan that decisions of cases on merits always to be encouraged instead of non-suiting litigants on technical reasons including grounds of limitation as per Judgments of the Supreme Court reported in PLD 2003 SC 724, 2003 PLC (CS) 796, 2004 PLC 1014.

6. It is, respectfully prayed that the instant Application may graciously be accepted and the delay in filing of the restoration Petition may please be condoned in the interest of Justice and the main 12(2) Petition may please be decided on merits and mere technicalities be avoided.

Any other relief deems appropriate in the circumstances may please also be granted.

Applicant

Through

M. Ali
Maqsood Ali
AHC

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

In Re:
Service Appeal No:- _____/2020

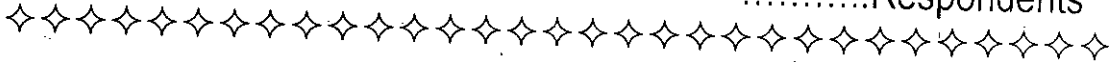
Nisar Ahmad (DSP)

Versus

Asad Mahmood (DSP) etc

..... Petitioner

..... Respondents



AFFIDAVIT

I, Maqsood Ali Advocate High Court, Peshawar (Counsel for petitioner) as per instruction of my client do hereby solemnly affirm and declare on oath that the contents of this accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

M. ali

ADVOCATE

CNIC No:-

Cell No:- 0333 9874248

Meh
23-6-2020
UNO High Court Peshawar
Commissioner
Oath
Mehmood Advocate