

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Execution Petition No. 72/2021

Date of institution 19.02.2021

SCANNED
KFST
Peshawar

Fazi-e-Amin, Ex-Assistant Grade Clerk, Special Branch, Khyber
Pakhtunkhwa Peshawar.

VERSUS

The Provincial Police Officer, Government of Khyber Pakhtunkhwa
Peshawar and 02 others.

ORDER
03.01.2023

Petitioner alongwith his counsel namely Syed Noman Ali Bukhari,
Advocate, present. Mr. Muhammad Suleman, Head Constable
alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for
the respondents present.

Learned counsel for the petitioner stated at the bar that the
judgment under execution has been implemented, therefore,
execution petition in hand may be filed being implemented. In this
respect, written endorsement of learned counsel for the petitioner
obtained at margin of order sheet.

In view of the above, the Execution Petition in hand stands filed
being implemented. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED
03.01.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


The department issued order with all Backdrafts
therefor Petitioner not pursue the execution
Petitioner, therefore requested the same may
be forth. 9/1/23

03.10.2022

Petitioner alongwith counsel present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Ayaz Khan, S.I (Legal) for the respondents present.

Learned counsel for the appellant stated at the bar and argued the application for restoration of the Execution Petition on the ground that implementation report in the form of order dated 30.06.2021 shows that the petitioner has been reinstated in service with immediate effect. She contended that the petitioner was required to have been reinstated in service w.e.f. 15.01.2019.

Since the implementation report (order dated 30.06.2021) is not in accordance with the judgment of Service Tribunal dated 21.01.2021 (all back benefits as prayed for in Service Appeal No. 1146/2019 have been allowed) therefore, the original execution petition consigned to the record vide order dated 08.07.2021, is restored to its original number. To come up for proper implementation report on 29.11.2022 before S.B.


(Mian Muhammad)
Member (E)

29th Nov, 2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl; AG for respondents present.

Although on 03.10.2022 the learned Member (Executive) had ordered restoration of the execution petition once filed because the order was implemented as per the order sheet consigning the execution petition, yet, the learned counsel has to assist the court regarding the maintainability of the application for restoration on merits. For the purpose learned counsel seeks some time to assist the court. To come up on 03.01.2023 before S.B.


(Kalim Arshad Khan)
Chairman

SCANNED
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EP 72/2021

, *Fazal-e-Amin vs Govt*

08.07.2021

Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Shah Hussain, Junior Clerk for the respondents present.

Representative of the respondents has submitted copy of order dated 30.06.2021, whereby the petitioner has been conditionally reinstated subject till final outcome of CPLA. Copy of order dated 30.06.,2021 placed on file.

In view of the above, the present execution petition is filed and consigned to record room. However, the petitioner shall be at liberty to seek the restoration of this Petition in case the judgment of this Tribunal is maintained by the August Supreme Court of Pakistan and any benefit accrued to him in the judgment remained unfulfilled.

**SCANNED
KPST
Peshawar**


Chairman

15.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 10.06.2021 for the same as before.



Reader

10.06.2021

Petitioner in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Suleman H.C for the respondents present.

Representative of the respondents submitted reply to execution petition. In the reply it has been mentioned that the respondent department has filed CPLA before the August Supreme Court of Pakistan. If the CPLA has been filed and the judgment has not been suspended, then the respondents are under obligation to implement the judgment, subject to decision of CPLA by the August Supreme Court of Pakistan. Respondents are, therefore, directed to issue an order towards implementation of the judgment subject to decision of CPLA by the Apex Court. To come up report in compliance on 08.07.2021 before S.B.



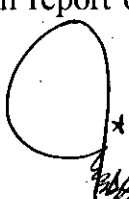


Chairman

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 72 /2021

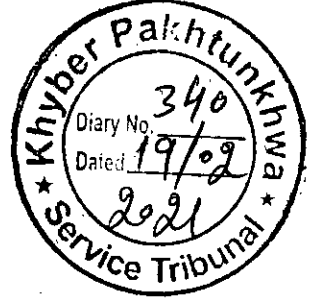
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19.02.2021	<p>The Execution Petition submitted by Mr. Fazl-e-Amin through Syed Noman Ali Bukhari Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This Execution Petition be put up before S. Bench on...<u>12/03/21</u>....</p> <p style="text-align: right;"> CHAIRMAN</p>
12.03.2021		<p>Petitioner in person present. Addl: AG for respondent present.</p> <p>Implementation report not submitted. Notices be issued to the respondents for submission of Implementation report on <u>15</u>.04.2021 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

1

Execution Petition No. 72 /2021
In Service Appeal No.1146/2019

SCANNED
KPST
Peshawar



Fazl-e-Amin, Ex-Assistant Grade Clerk,
Special Branch, KP Peshawar.

PETITIONER

VERSUS

1. The Provincial Police Officer, Govt of KP Peshawar.
2. The Deputy Inspector general of Police, Special Branch, KP Peshawar.
3. The SSP/ Admin Special Branch, KP Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED: 21.01.2021 OF THIS
HONORABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the applicant/appellant filed Service Appeal No.1146/2019 in this august Tribunal against the order dated 15.01.2019.
2. That the said appeal was finally heard by the Honorable Tribunal on 21.01.2021 and the Honorable Tribunal was kind enough to accept the appeal of the appellant as prayed for. **(Copy of judgment is attached as Annexure-A).**
3. That the appellant also filed application to respondents for the implementation of judgment. The respondents were totally failed in taking any action regarded the Hon'able Tribunal Judgment dated 21.01.2021.

4. That in-action and not fulfilling formal requirements by the respondent after passing the judgment of this august Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to pass formal appropriate order.
6. That the petitioner has having no other remedy to file this Execution Petition.

It is, therefore, most humbly prayed that the respondents may be directed to obey the judgment dated 21.01.2021 of this august Tribunal in letter and spirit. Any other remedy, which this august Tribunal deems fit and appropriate that, may also be awarded in favor of applicant/petitioner.

APPLICANT/PETITIONER
Fazal-e-Amin

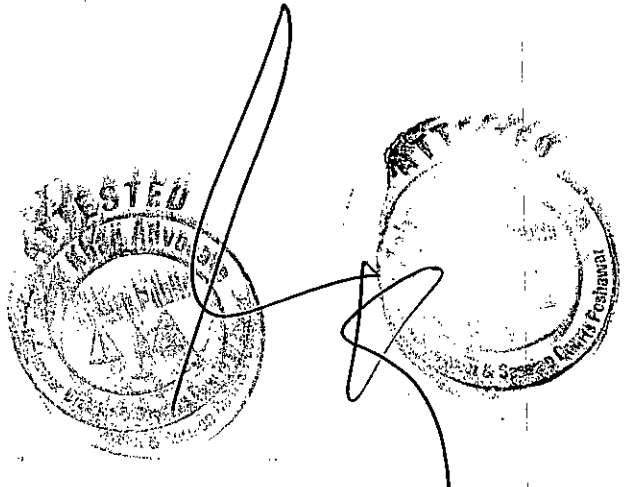
THROUGH:

(SYED NOMAN ALI BUKHARI)
Advocate, High Court
Peshawar.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

DEPONENT



3

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Amended Service Appeal No. 1146/2019

Date of Institution ... 16.09.2019

Date of Decision ... 21.01.2021



Fazal-e-Amin, Ex-Assistant Grade Clerk, Special Branch, Khyber Pakhtunkhwa,
Peshawar. ... (Appellant)

VERSUS

The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar and
two others. ... (Respondents)

Present:

SYED NOMAN ALI BUKHARI,
Advocate

--- For Appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. HAMID FAROOQ DURRANI,
MR. MIAN MUHAMMAD

--- CHAIRMAN
--- MEMBER (Executive)

JUDGEMENT.

HAMID FAROOQ DURRANI, CHAIRMAN:- Syed Noman Ali Bukhari,

Advocate submitted Wakalatnama in his favour executed by the appellant. Made
part of the record.

02. The appellant is aggrieved from order dated 15.01.2019 issued by the
respondent No.2/ Deputy Inspector General of Police, Special Branch, Khyber
Pakhtunkhwa Peshawar. His departmental appeal, preferred before the respondent
No.1 was not responded to.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

03. We have heard the learned counsel for the appellant, learned Assistant Advocate General on behalf of the respondents and have also gone through the available record.

04. At the outset, learned counsel for the appellant referred to the impugned order dated 15.01.2019 and stated that the Deputy Inspector General of Police, Special Branch, Peshawar/ respondent No.2 was not a competent officer, for the purpose of discipline, in the cases of ministerial staff of police. Referring to Section-44 of the Khyber Pakhtunkhwa Police Act, 2017 it was contended that only the Provincial Police Officer was the competent authority to pass such orders. The impugned order was, therefore, void and could not sustain.

Learned Assistant Advocate General opposed the argument of learned counsel for the appellant and contended that by virtue of notification dated 28.12.2015, the Regional Police Officer was delegated the powers of disciplinary action against ministerial staff. In his view, the appellant was rightly proceeded against and awarded major penalty of compulsorily retirement by the Deputy Inspector General of Police, Special Branch.

05. It is a matter of record that the appellant was issued charge sheet for misconduct detailed therein on 18.10.2018. The exercise was under taken by SSP/Admin Special Branch, Khyber Pakhtunkhwa, Peshawar while on the other hand, the impugned order dated 15.01.2019 was passed by the DIG, Special Branch.

Reading Section-44 of Khyber Pakhtunkhwa Police Act, 2017 in juxtaposition to the

ATTESTED

statement of allegations as well as the impugned order, it becomes clear that neither the competent authority/ Provincial Police officer, issued the charge sheet nor the

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

impugned order was passed by him. It shall be useful to reproduce hereunder the

relevant part of Statute ibid:-

Ministerial staff etc.--(1) Subject to rules, Provincial Police Officer, may appoint ministerial staff and other employees to assist the Police.

(2) Any person employed under sub-section (1) shall be under the direction and control of Provincial Police Officer.

(3) The powers of direction and control referred to in sub-section(2) shall include the powers of discipline and dismissal.

(4) Subject to rules, Provincial Police Officer, may delegate his powers and authority under this section to an officer of appropriate rank.

In the circumstances of the case and in view of the above noted provision of law, we have no other option but to hold that the impugned order was *corum-non-judice* for all intents and purposes. Having been issued by an incompetent official/officer it can only be termed as void ab-initio. At the cost of repetition, it is noted that the Provincial Police Officer was the only competent authority for the purpose of case in hand. The respondents could not produce any instrument regarding delegation of powers of PPO, as provided by the law *ibid* in favour of some other officer. The notification dated 28.12.2015, as relied upon by learned Assistant Advocate General, was undeniably issued in the year 2015, much before the coming into force of Khyber Pakhtunkhwa Police Act, 2017.

06. For what has been noted above, the appeal in hand is allowed as prayed for. The parties shall, however, bear their respective costs. File be consigned to the record room.

ANNOUNCED
21.01.2021

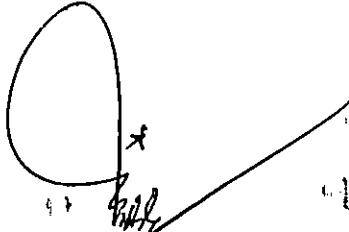

(HAMID FAROOQ DURRANI)
CHAIRMAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(MIAN MUHAMMAD)
MEMBER(E)

Date of Presentation of Application 22-1-21
Number of Words 18-1600
Copying Fee 18-
Urgent 4-
Total 22-
Name of Copyiest 0
Date of Completion of Copy 22-1-21
Date of Delivery of Copy 22-1-21

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	21.01.2021	<p><u>Present.</u></p> <p>Syed Noiman Ali Bukhari, ... For Appellant Advocates</p> <p>Mr. Muhammad Riaz Khan Painsdakhel, ... For respondents Assistant Advocate General</p> <p>Vide our detailed judgment of today consisting of three pages placed on file, the appeal in hand is allowed as prayed for. The parties shall, however, bear their respective costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 21.01.2021</p> <p> (Mian Muhammad) Member(E)</p> <p> Chairman</p>

Home

VAKALATNAMA

NO. _____ /20

IN THE COURT OF KP Service Tribunal, Aden

Fazal-e-Amir

Appellant
Petitioner
Plaintiff

VERSUS

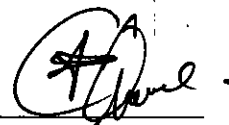
PPO etc

Respondent (s)
Defendants (s)

I/WE Fazal-e-Amir

do hereby appoint and constitute the **SYED NOMAN ALI BUKHARI Advocate High Court** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and all proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE _____ /20



(CLIENT)

ACCEPTED


**SYED NOMAN ALI BUKHARI
ADVOCATE HIGH COURT**

BEFORE THE KHBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 72/2021

In

Service Appeal No. 1146/2019

Fazal-e-Amin.....(Petitioner)

Versus

Provincial Police Officer KPK and others.....(Respondents)


Subject:- COMMENTS BY RESPONDENTS.

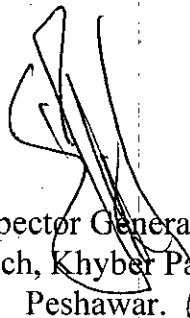
Respondents very humbly submit implementation report as follows:-

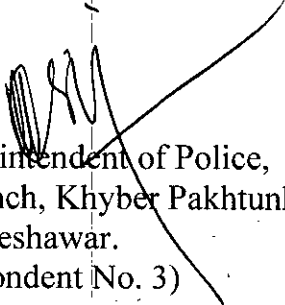
1. Correct to the extent that the appellant filed the above cited Service Appeal before this Hon'ble Tribunal against his Compulsory Retirement order from Service.
2. Correct to the extent that Service Appeal of appellant was accepted vide order dated 21.01.2021.
3. Incorrect, the respondent department has filed CPLA through Advocate on record before Supreme Court of Pakistan against the judgment of this Hon'ble Tribunal which is still pending and no date of hearing has been fixed so far despite submission of early hearing request. Appellant will be treated subject to outcome of CPLA.
4. Incorrect, the judgment of Hon'ble Tribunal dated 21.01.2021 has been assailed by filing CPLA in the Hon'ble Supreme Court of Pakistan which is still pending.
5. Incorrect, the petitioner/appellant is wrongly contending for implementation of the judgment as respondents have legal right of appeal and lodged CPLA in time before Supreme Court of Pakistan against the impugned judgment of Service Tribunal. Therefore, the Execution Petition is premature and not maintainable.
6. Irrelevant and misleading. Appeal is the basic right of respondent department. Petitioner will be treated subject to Rule and directions of Apex court.

It is therefore requested that the execution petition may kindly be dismissed with costs being meritless please.

It is therefore requested that the execution petition may kindly be dismissed with costs being meritless please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)


Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)


Senior Superintendent of Police,
Admn, Special Branch, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)

BEFORE THE KHBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 72/2021

In

Service Appeal No. 1146/2019

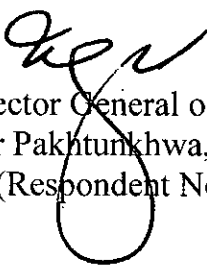
Fazal-e-Amin Ex-Assistant Grade Clérk, Special Branch, KP, Peshawar (Petitioner)

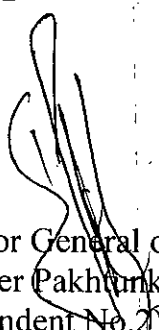
Versus

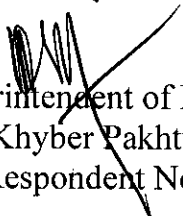
Provincial Police Officer KPK and others.....(Respondents)

AUTHORITY LETTER

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc. pertaining to the appeal through the Government Pleader.


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)


Senior Superintendent of Police, Admin
Special Branch, Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

BEFORE THE KHBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 72/2021

In

Service Appeal No. 1146/2019

Fazal-e-Amin Ex-Assistant Grade Clerk, Special Branch, KP, Peshawar (Petitioner)

Versus

Provincial Police Officer KPK and others.....(Respondents)

AFFIDAVIT

I, Muhammad Asif DSP Legal Special Branch, Khyber Pakhtunkhwa Peshawar do here by solemnly affirm on oath that the contents of enclosed application on behalf of respondents for vacation of status quo order are correct to the best my knowledge and belief. Nothing has been concealed from this Hon'ble Tribunal.

Deponent



Muhammad Asif
DSP/Legal
17301-3746129-3

ORDER

This order is passed in compliance with the Judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 21.01.2021 passed in Service Appeal No. 1146/2019 filed by Fazal-e-Amin Ex-Assistant Grade Clerk (hereinafter referred as accused official) against impugned Order of Compulsory Retirement from Service under the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules 2011 vide Order dated 15.01.2019. Facts in brief leading to the instant departmental action of imposing Major Punishment of Compulsory Retirement from service against the accused official are as follows:-

A fake/bogus letter was sent to NADRA vide letter No. 9105/Security dated 22.05.2018 by this establishment wherein an Afghan Waris Khan s/o Haji Anar Gul was declared illegally as Pakistani National while the verification process was at that time in progress at Field Office AGO City Peshawar. The said dispatch number was deliberately left blank in the dispatch register while the reference of the fake/bogus letter was mentioned in Dak book. The signature of supervisory Officer i.e SP Intelligence was obtained fraudulently on the said fake/bogus letter and the accused official was posted as Record Keeper ASB Section/SB (Now VB-1).

Proper departmental proceedings were initiated under ibid Rules by issuing Charge Sheet and Statement of Allegations against the accused official. Mr. Muhammad Irshad SP/JIT, Special Branch was appointed as Enquiry Officer to probe into the matter. The Enquiry Officer after conduct of detailed enquiry, found the accused official guilty of misconduct within the meaning of ibid Rules. The competent authority after perusal of the enquiry imposed Major Punishment of Compulsory Retirement from Service upon the accused official under ibid Rules vide Order dated 15.01.2019. Where after, the accused official filed Appeal to Worthy Inspector General of Police, Khyber Pakhtunkhwa but was filed by the competent authority on 27.08.2019 being badly time barred. Later on, the accused official filed Service Appeal No. 1146/2019 in Khyber Pakhtunkhwa Service Tribunal which was accordingly allowed/accepted and the impugned Order dated 15.01.2019 was set aside being coram-non-judice and the accused official is reinstated into Service.

Department approached law department for lodging appeal/CPLA wherein the Scrutiny Committee headed by Secretary Law approved the case hence CPLA against the impugned Judgment/ Order has been filed by this establishment in the August Supreme Court of Pakistan.

In the meanwhile, accused official filed Execution Petition No. 72/2021 in Service Appeal No. 1146 of 2019 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar for implementation of the judgement. Case was fixed for hearing on 10.06.2021 wherein the Hon'ble Tribunal was pressing hard and directed for implementation of the Judgment with the following remarks passed:-

"If the CPLA has been filed and the judgment has not been suspended, then the respondents are under obligation to implement the judgment, subject to decision of CPLA by the August Supreme Court of Pakistan. Respondent are, therefore directed to issue an Order towards implementation of the judgment subject to decision of CPLA by the Apex Court. To come up report in compliance on 08.07.2021 before S.B."

Proper guidance was sought from CPO vide letter No. 740/Legal/SB dated 18.06.2021 and the competent authority directed to implement the judgment dated 21.01.2021 conditionally and provisionally subject to outcome of CPLA vide letter No. 5707/Legal dated 23.06.2021.

As the Hon'ble Tribunal is pressing hard and directed for implementation of the Judgment and to come up for report in compliance on 08.07.2021 therefore, the judgment has become final and there is no other option but to implement the judgment hence is provisionally implemented and Fazal-e-Amin Ex-Assistant Grade Clerk is re-instated in service with immediate effect. Further the accused official shall submit proper affidavit on stamp paper that he will return the payment made to him if CPLA was accepted.

Deputy Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

No. 4847 54/EB
Copy of the above is forwarded to all concerned.

, dated, the Peshawar 30/06/2021