

application as well as the representation filed within thirty days of decision of the execution petition, wherein the appellant was let at liberty to seek redress from the competent forum, therefore, the appellant cannot be set to be sluggish or indolent. This plea of the appellant's counsel is worth consideration and besides the appeal before the Tribunal was filed within time after making representation by the appellant, therefore, the objection of the learned Additional Advocate General does not sound good.

9. For the reasons above stated, we accept this appeal allowing the appellant back benefits for the period he remained out of service. Costs shall follow the events. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 12th day of September, 2023.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

however, be at liberty to seek remedy before appropriate forum regarding the issue of back benefits in his favour.

8. The appellant was, however, left at liberty to seek remedy before proper forum regarding back benefits. After passage of order on 10.09.2020, in the execution application, the appellant filed an application, to the Regional Police Officer, Malakand at Saidu Sharif, Swat, on 06.10.2020, seeking back benefits for the period he was kept out of service. The said appeal was not responded to within ninety days, compelling the appellant to file this appeal. When the appellant was declared innocent by the enquiry officer in the de-novo enquiry then the appellant ought to have been granted the back benefits for the period, he was kept out of service for none of his fault. Reliance in this regards, has rightly been placed by the learned counsel for the appellant on 2021 SCMR 962 titled "Muhammad Sharif and others-versus-Inspector General of Police, Pubjab, Lahore and others" *wherein it has been held that a civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits.* The learned Additional Advocate General raised only one objection that the impugned order was passed on 08.01.2020 but the appellant had filed departmental appeal on 06.10.2020 thus in view of 2011 SCMR 8 "titled Muhammad Islam-versus- Inspector General of Police, Islamabad and others *wherein it has been held that when the departmental appeal filed by the appellant was barred by time, therefore, the appeal before the Tribunal could not be held to be within time*", the appeal would be barred by time also before the Tribunal. Rebutting this contention of the learned Additional Advocate General, the learned counsel for the appellant submitted that the point involved in this appeal was one of monetary claim for which the appellant had actively been pursuing before the Tribunal and the authorities, which fact is evident from the implementation

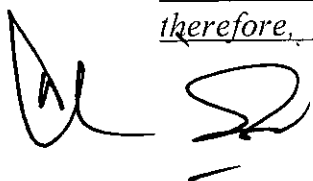
5. Learned Additional Advocate General controverted the arguments advanced by the learned counsel for the appellant and argued that the appellant had been treated in accordance with law and rules. He further argued that the judgment of the Tribunal had been implemented true letter in spirit. Learned Additional Advocate General requested that the appeal might be dismissed.

6. In the earlier round of litigation de-novo enquiry was ordered by the Tribunal and issue of back benefits was left on the result of the enquiry. In the de-novo enquiry although the appellant was exonerated, declaring him as innocent, but the Enquiry Officer had held that as regards the back benefits, the appellant should be given only the benefit of leave due. On receipt of the enquiry report the District Police Officer, vide order dated 08.01.2020, reinstated the appellant but had not passed any order regarding the back benefits rather held as under:-

"In light of the Service Tribunal, Khyber Pakhtunkhwa Peshawar and the findings of the Enquiry Officer of the De-novo Enquiry regarding back benefits the Ex-constable Saeed Khan is hereby re-instated in service and allotted constabulary No. 715 and posted in Police Lines Chitral"

7. The appellant then filed execution application No. 83/2020, which was decided on 10.09.2020 in the following manner:-

"Through the judgment in appeal the petitioner was required to be reinstated in service. Simultaneously, the respondents were allowed to conduct de-novo enquiry in accordance with rules within ninety days from the receipt of copy of judgment. The issue of back benefits in favour of petitioner was made subject to the outcome of denovo enquiry. In view of this aspect of the matter and the contents of order dated 08.01.2020 the implementation of judgment under execution appears to have been completed. The proceedings in hand are, therefore, consigned to record. The petitioner shall,



the direction to conduct enquiry as per law and if de-novo enquiry was not conducted, he would be deemed to have been reinstated in service with all back benefits, yet no enquiry was conducted despite direction; that the appellant was reinstated in service on 08.01.2020 by respondent No.1 but the time spent out of service was counted as leave due in his account; that the appellant filed implementation petition No. 89/2020 which was disposed of on 10.09.2020 with the direction that if appellant was not satisfied with the order, then he would be at liberty to seek remedy before the appropriate forum regarding the issue of back benefits in his favour; that the appellant filed departmental appeal on 06.10.2020, which was not responded, hence, the instant service appeal on 03.02.2023.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

4. Learned counsel for the appellant argued that the appellant had not been treated in accordance with law and rules; that no de-novo enquiry was conducted as per the mandate of law, therefore, the appellant was entitled for all back benefits; that the judgment of the Tribunal was not complied with by the respondents. At the end he requested that on acceptance of the appeal, order dated 08.01.2020 of respondent No.1 might be set aside and the appellant might be held entitled for all back benefits.



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
M.AKBAR KHAN ...MEMBER (Executive)

Service Appeal No.2813/2021

Date of presentation of appeal.....03.02.2021
Dates of Hearing.....12.09.2023
Date of Decision.....12.09.2023

**Saeed khan S/o Faiz Ur Rehman, Constable No. 715, Police Line,
Chitral.....(Appellant)**

Versus

1. **District Police Officer, Chitral.**
2. **Regional Police Officer, Malakand Region, Swat.**
.....(Respondents)

Present:

Arbab Saif Ul Kamal, Advocate.....For appellant.

Mr. Fazal Shah Mohmand,
Additional Advocate General.....For respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
OFFICE ORDER NO. 279-87/E-II, DATED 08.01.2020 OF
RESPONDENT NO.1, WHEREBY APPELLANT WAS
REINSTATED IN SERVICE AND THE TIME SPENT OUT OF
SERVICE WAS COUNTED AS LEAVE DUE IN HIS
ACCOUNT.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the memorandum and grounds of appeal, the appellant was removed from service without conducting any enquiry on the allegation that he was involved in a criminal case of smuggling of alcohol on 19.04.2014 and was served with charge sheet, which was replied; that after acquittal from the criminal charge on 16.08.2016, the appellant filed service appeal No. 1007/2016 on 16.09.2019, which case was accepted on 03.08.2019, with

