

28.12.2017

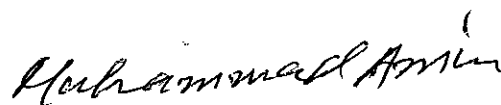
Counsel for the petitioner present and Addl: AG for the respondent present. Learned Addl: AG submitted the office order dated 26.12.2017 wherein the petitioner has been provisionally reinstated in service from 13.04.2015 till the decision of CPLA in the apex Court. Placed on file. To come up for further proceedings on 15.02.2018 before S.B.


(Gul Zeb Khan)
Member (E)

15.02.2018

Petitioner with counsel present. Mr. Usman Ghani, District Attorney alongwith Muhammad Sheraz, Head Constable for the respondents also present. On the previous date implementation report was submitted therefore, this execution petition is disposed of accordingly. File be consigned to the record room.

ANNOUNCED
15.02.2018


(Muhammad Amin Khan Kundi)
Member (J)

E.P No. 111/2015 , *Fayaz Ali vs Govt*

22.11.2017

Petitioner with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Muqadar Khan, Inspector (legal) and Mr. Akbar Hussain, S.I (legal) for the respondents also present. Learned counsel for the petitioner contended that the service appeal of the petitioner was accepted on 13.04.2015 and it was directed by the Tribunal to the department to reinstate the petitioner on his previous position. It was further contended by the learned counsel for the petitioner that the department was required to reinstate the petitioner from 13.04.2015 i.e the date of passing of judgment but the respondents have reinstated the appellant vide order dated 19.05.2016 therefore, requested that the respondents be directed to reinstate the appellant from the date of judgment i.e 13.04.2015. It was further contended by learned counsel for the petitioner that petitioner does not want to press the benefits of leave of the kind due on the ground that the said benefits has already been given to the petitioner.

On the other hand, learned District Attorney opposed the contention of the learned counsel for the petitioner and contended that the order dated 19.05.2016 was correctly passed by the respondents.

Record reveals that the respondents have reinstated the petitioner in service provisionally subject to the conclusion of CPLA vide order dated 19.05.2016, whereas the Tribunal has directed the respondents vide judgment dated 13.04.2015 to reinstate the appellant on the previous position, therefore, the respondents are directed to reinstate the petitioner provisionally in service from 13.04.2015 subject to the decision of CPLA. To come up for implementation report on 28.12.2017 before S.B.

MA
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

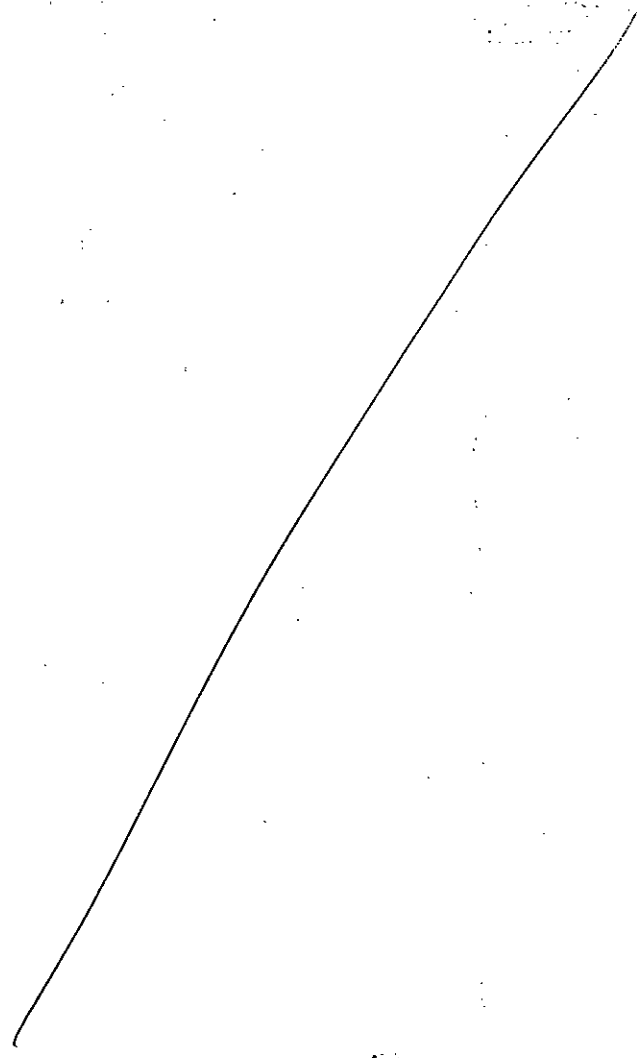
29.09.2017

Learned Additional Advocate General for the respondents present, seeks adjournment. Adjourned. To come up for arguments on 03.11.2017 before S.B. [Signature] Member (Judicial)

3.11.2017

Petitioner in person and Addl. AG for the respondents present. Petitioner seeks time. To come up for further proceedings on 22.11.2017 before S.B.

[Signature]
Chairman



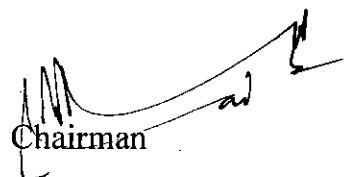
EP Fayaz Ali

28.07.2017

Petitioner with counsel and Asstt. AG alongwith Javed Iqbal, Inspector (Legal) for the respondents present. The learned counsel for the appellant requested the Tribunal that this Contempt of Court Petition was filed by the petitioner under wrong impression and it should be converted to Execution Petition. In the ends of justice the present COC Petition is converted to Execution Petition. Entries be made in the relevant registers.

The learned counsel for the petitioner argued that though the petitioner was reinstated in service but from 19.05.2016 and he should have been reinstated from the date of his removal from service and that the intervening period according to judgment of this Tribunal should have been treated as leave of the kind due.

The learned AAG on the other hand argued that the reason for issuance of reinstatement order of the petitioner on 19.05.2016 was that he never reported to the department for duty before that date and that is why his reinstatement order was passed from a later date. Whereas the petitioner is of the view that he after receiving certified copy of the judgment dated 13.04.2015 had reported the department for duty. To come up for arguments on these points on 29.09.2017 before S.B.


Chairman



Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar



Dated 26 / 12 / 2017

No. _____ /EF

ORDER

In continuation of this office order No. 7285-90/EF, dated 19.05.2016 and in compliance with the judgement of Khyber Pakhtunkhwa Service Tribunal dated 22.11.2017 passed in Service Appeal No. 289/2012 titled Fayaz Ali versus Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar, Constable Fayaz Ali No. 4017/69/EF, who was on deputation to this unit, now serving in CCP Peshawar, is provisionally re-instated in service from 13.04.2015 till the decision of CPLA in the apex court.

(MUHAMMAD HUSSAIN) P.S.P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

26/12/17

No. 20084-89 /EF

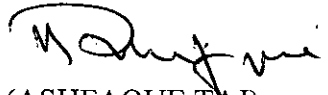
Copy of above is forwarded for information and necessary action to the:-

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police, Elite Force HQrs: Peshawar
3. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar
5. EC/SRC/OHC Elite Force Khyber Pakhtunkhwa Peshawar

C.O.C No. 111/2015

24.02.2017

Petitioner with counsel and Mr. Javed Iqbal, Inspector (legal) alongwith Mr. Muhammad Adeel Butt, Additional AG for respondent present. No proper implementation report is submitted today. The representative informed the Tribunal that the same is in process. The respondent is directed to positively submit implementation report strictly in accordance with the judgment of this Tribunal in its letter and spirit on or before next date. To come up for implementation report on 07.04.2017 before S.B.


(ASHFAQUE TAJ)
MEMBER

07.04.2017

Petitioner with counsel and Addl:AG alongwith Mr. Javid Iqbal, DSP(Legal) for respondents present. Representative of the respondents submitted reply in response to COC. The appellant is directed to submit undertaking that he will return back benefits in case CPLA of the respondents is accepted. To come up for further proceedings on 19.05.2017 before S.B.


(Ahmad Hassan)
Member

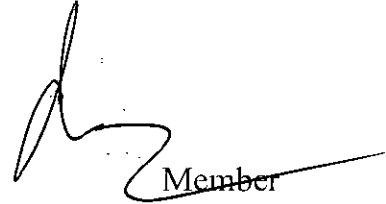
19.05.2017

Petitioner with counsel and Addl:AG alongwith Mr. Javid Iqbal, Inspector (legal) for respondents present. Counsel for the appellant requested for adjournment to submit undertaking that he will return back benefits in case CPLA of the respondents is accepted. Request accepted. To come up for further proceedings on 28.07.2017 before S.B.


(Ahmad Hassan)
Member

14.10.2016


Petitioner alongwith counsel and Addl. AG alongwith Javed Iqbal, Inspector for the respondents present. Learned Addl. AG requested for adjournment. Request accepted. To come up for implementation report on 30.12.2016 before S.B.



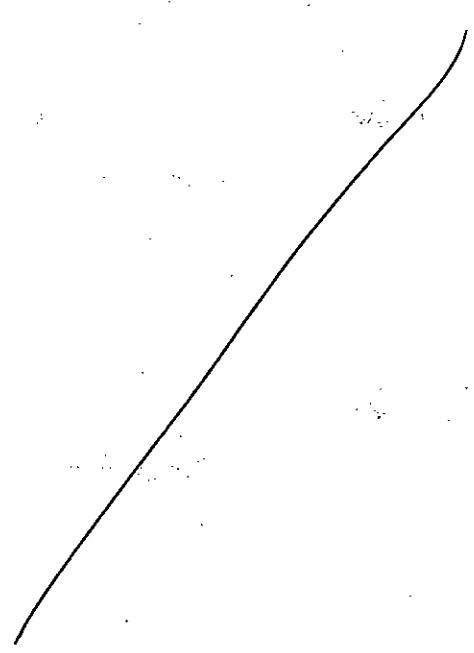
Member

30.12.2016

Petitioner with counsel and Mr. Javed Iqbal, Inspector Legal alongwith Addl. AG for the respondents present. Learned AAG requested for adjournment as the respondents have not issued orders restoring the petitioner in service from the date of removal by treating the intervening period i.e. from the date of removal till date of judgment dated 13.04.2015 as leave of the kind due and by converting the penalty into stoppage of one annual increment for one year. To come up for implementation report on 24.2.2017 before S.B.



Chairman



26.10.2015

Applicant in person present. Notices to respondents be issued for 29.01.2016 before S.B.


Chairman

29.1.2016

Petitioner in person and Mr. Javed Iqbal, Inspector (legal) alongwith Addl. AG for respondents present. To come up for implementation report on 1.4.2016 before S.B.


Chairman

01.4.2016

Petitioner in person and Mr. Javed Iqbal, Inspector (Legal) alongwith Addl. AG for the respondents present. The learned Addl. AG informed the Tribunal that CPLA has been moved against judgment of the Tribunal. Directed to produce the restraint order or judgment be provisionally implemented subject to final outcome of the august Supreme Court of Pakistan. To come up for implementation report/stay order on 03.6.2016 before S.B.


Chairman

03.06.2016




Petitioner in person and Mr. Javed Iqbal, Inspector (Legal) alongwith Addl. AG for the respondents present. Order of reinstatement of the petitioner dated 19.05.2016 submitted. Petitioner requested for adjournment to consult his counsel. To come up for further proceedings on 14.10.2016.


Chairman

FORM-A
FORM OF ORDER SHEET

Court _____

Case No. 111

	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.10.2015	<p>The Contempt of Court Application of Mr. Fayaz Ali submitted by him to-day, may be entered in the relevant register and put up to the Worthy Chairman for further order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case be put up before the court of S.B for further proceedings on <u>15-10-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	15.10.2015	<p>Since 15.10.2015 has been declared as public holiday on account of 1st Muharram-ul-Haram, therefore, case is adjourned to <u>26-10-15</u> for the same.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE KHYBER PAKHTOON KHWA SERVICES TRIBUNAL PESHAWAR

IN RE: SERVICE APPEAL NO.289/2012

A.W.F. PROVINCE
Service Tribunal
Diary No. 1070-3
Dated 1-10-13

Payaz Ali.....VS...Deputy Commandant Elite Force
KPK Peshawar.

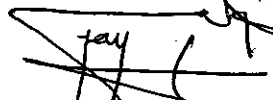
APPLICATION FOR INITATING CONTEMPT OF COURT
PROCEEDINGS AGAINST THE RESPONDENTS AS THEY
FAILED TO IMPLEMENT THE ORDER/JUDGEMENT OF THIS
HONOURABLE TRIBUNAL.

Respectfully Sheweth:-

1. That in the above titled case and order/judgement in favour of the petitioner has been passed by this Honourable Tribunal. (Copy of the judgement is attached).
2. That the respondents were properly served the respondents defendants, but so far they failed to implement the judgement of this Honourable Tribunal as sufficient long time has been passed.
3. That the act of the respondents is based on malafide intention just to spoil the legal rights of the petitioner for which they are duty bound to implement the order of this Honourable Tribunal.
4. That the petitioner has got no other adequate and speedy remedy except to file the instant petition for further legal proceedings.
5. That the salaries and wages are the basic legal and fundamental rights in light of the said judgement.

It is, therefore, humbly prayed that on acceptance of this application contempt of court proceedings may very graciously be initiated against the respondents and they be directed to implement the judgement of this Honourable Tribunal.

Petitioner,


(FAYAZ ALI)

1/10/015

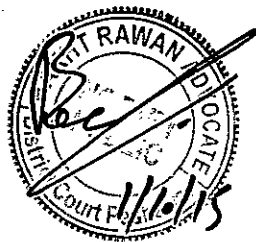
DATED; -01.10.2015.

NO.572 E ALI AT FORCE.

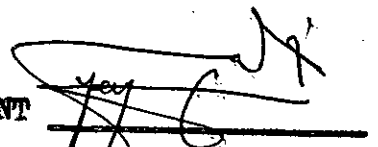
AFFIDAVIT

I, Fayaz Ali son of Muhammad Ali resident of Shaheen Muslim Town Phanu Road Nowbahar Colony No.2 Peshawar do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge and belief.

ATTESTED



DEPONENT


1/10/015

Sr. No 1
Date of order/proceedings 2

Order or other proceedings with signature of Magistrate



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 289/2012.
Fayaz Ali Versus Deputy Commandant, Elite Force, KPK,
Peshawar, etc.

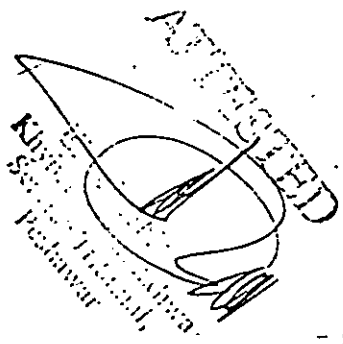
JUDGMENT

13.04.2015

PIR BAKHSH SHAH, MEMBER Appellant

with counsel (Fazal Shah Mohmand Advocate) and Mr. Muhammad Adeel Butt, Addl. A.G with Javed Iqbal, Inspector (Legal) for the respondents present.

2. Appellant Fayaz Ali, EX-Constable No. 572 of Elite Force, Khyber Pakhtunkhwa, Peshawar was removed from service by the competent authority vide his order dated 07.12.2011 and his departmental appeal was also rejected by vide appellate authority order dated 20.12.2011, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.



3. The grounds for departmental action taken against the appellant are that the appellant while being deputed for special duty on the night between 9th & 10th June, 2010, at 23.30 PM, he allotted SMG Rifle No. 461655 alongwith 4 magazines and which he returned back but with change in it of small bolt with a local made bolt. According to memo: of appeal, the appellant joined


7. It was submitted by the learned counsel for the appellant that the appellant is innocent who fell prey to the trap because the bolt was already changed but he committed the only negligence that he accepted rifle

Police Department as Constable on 22.7.2008. On 09.6.2010, the appellant alongwith Constables Khan Alam, Sajid Alam, Majid and Basit under the command of ASI Gul Muhammad were deputed for special duty. It is not denied that the rifle in question had been issued to the appellant but according to the appellant that there-after return from special duty in hours of early morning when they wanted to deposit their rifles in Koth, none of the rifle of his colleagues was checked and when his rifle was thoroughly checked by Incharge of the Koth who alleged that the small dark bolt of the rifle had been changed and replaced by a country made bolt. Resultantly, the Koth Incharge reported the matter vide D.D No. 15 dated 10.5.2015. A fact finding enquiry dated 30.6.2010 by the DSP Headquarter namely Ali Haider Khan was conducted.

The charge sheet was issued and regular enquiry was conducted by the DSP Headquarter who submitted his enquiry report dated 07.12.2010. Show cause notice was issued to the appellant to which he submitted his reply. Finally the impugned order dated 07.12.2011 was passed and the appellant was removed from service.

5. Written reply of the respondents is also available on record wherein it has been replied that the appellant was found guilty therefore, he was properly removed from service.

6. Arguments heard. Record perused.

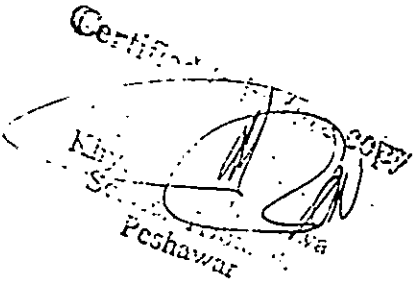
ATTESTED


to reinstate the appellant on his previous position. His
major penalty of removal from service is converted into
minor penalty of stoppage of one annual increment for one
year. The intervening period be treated as leave of the kind
due. Parties are left to bear their own costs. File be
consigned to the record room.

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13.4.2015

Edy M. B. Khan
Member
Edy Abdul Latif
Member



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Date

23.4.2015
23.4.2015

BEFORE THE KHYBER PAKHTOON KHWA SERVICES TRIBUNAL PESHAWAR

IN RE: SERVICE APPEAL NO. 289/2012

Fayaz Ali.....VS...Deputy Commandant Elite Force
KPK Peshawar.

APPLICATION FOR INITIATING CONTEMPT OF COURT
PROCEEDINGS AGAINST THE RESPONDENTS AS THEY
FAILED TO IMPLEMENT THE ORDER/JUDGEMENT OF THIS
HONOURABLE TRIBUNAL.

Respectfully Sheweth:-

1. That in the above titled case and order/judgement in favour of the petitioner has been passed by this Honourable Tribunal. (Copy of the judgement is attached).
2. That the respondents were properly served the respondents defendants, but so far they failed to implement the judgement of this Honourable Tribunal as sufficient long time has been passed.
3. That the act of the respondents is based on mala fide intention just to spoil the legal rights of the petitioner for which they are duty bound to implement the order of this Honourable Tribunal.
4. That the petitioner has got no other adequate and speedy remedy except to file the instant petition for further legal proceedings.
5. That the salaries and wages are the basic legal and fundamental rights in light of the said judgement.

It is, therefore, humbly prayed that on acceptance of this application contempt of court proceedings may very graciously be initiated against the respondents and they be directed to implement the judgement of this Honourable Tribunal.

DATED; -01.10.2015.

Petitioner,

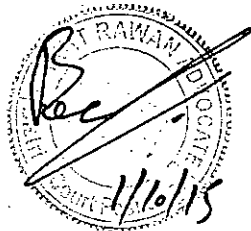
(FAYAZ ALI)

1/10/015

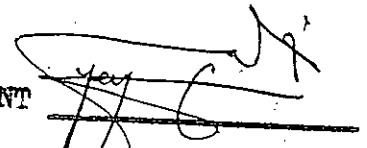
NO.572 & ALI AT FORCE.

AFFIDAVIT

I, Fayas Ali son of Muhammad Ali resident of Shaheen Muslim Town Phanu Road Nowbahar Colony No.2 Peshawar do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct to the best of my knowledge and belief.



DEPONENT


1/10/015

Sr. No. Date of
order
proceeding.

Order or other proceedings with signature of Judge/
Magistrate.



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 289/2012.
Fayuz Ali Versus Deputy Commandant, Elite Force, KPK,
Peshawar etc.

JUDGMENT

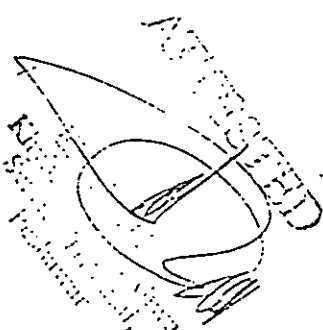
13.01.2015

PIR BAKHSII SHAH, MEMBER- Appellant

with counsel (Fazal Shah Mohmand Advocate) and Mr.
Muhammad Adeel Butt, Addl. A.G with Javed Iqbal,
Inspector (Legal) for the respondents present.

2. Appellant Fayuz Ali, Ex-Constable No. 572 of
Elite Force, Khyber Pakhtunkhwa, Peshawar was removed
from service by the competent authority vide his order
dated 07.12.2011 and his departmental appeal was also
rejected by vide appellate authority order dated
20.12.2011, hence this appeal under Section 4 of the
Khyber Pakhtunkhwa Service Tribunal Act, 1974.

3. The grounds for departmental action taken
against the appellant are that the appellant while being
deputed for special duty on the night between 9th & 10th
June, 2010 at 23.30 PM, he allotted SMG Rifle No.
461655, alongwith 4 magazines and which he returned
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bolt. According to memo of appeal, the appellant joined



Police Department as Constable on 22.7.2008. On 09.6.2010, the appellant alongwith Constables Khan Alam, Sajid Alam, Majid and Basit under the command of ASI Gul Muhammad were deputed for special duty. It is not denied that the rifle in question had been issued to the appellant but according to the appellant that there-after return from special duty in hours of early morning when they wanted to deposit their rifles in Koth, none of the rifle of his colleagues was checked and when his rifle was thoroughly checked by Incharge of the Koth, he alleged that the small dark bolt of the rifle had been changed and replaced by a country made bolt. Resultantly, the Koth Incharge reported the matter vide D.D No. 15 dated 10.5.2015. A fact finding enquiry dated 30.6.2010 by the DSP Headquarter namely Ali Haider Khan was conducted. The charge sheet was issued and regular enquiry was conducted by the DSP Headquarter who submitted his enquiry report dated 07.12.2010. Show cause notice was issued to the appellant to which he submitted his reply. Finally the impugned order dated 07.12.2011 was passed and the appellant was removed from service.

ATTACHED

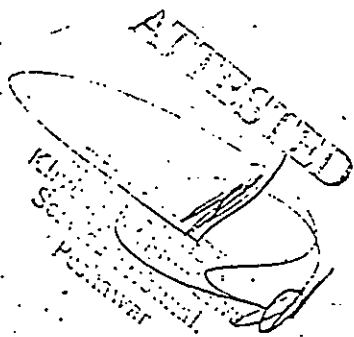

5. Written reply of the respondents is also available on record wherein it has been replied that the appellant was found guilty therefore, he was properly removed from service.

6. Arguments heard. Record perused.

7. It was submitted by the learned counsel for the appellant that the appellant is innocent who fell prey to the trap because the bolt was already changed but he committed the only negligence that he accepted rifle without checking it. That the appellant was going for night duty to a very dangerous area, therefore, this is unthinkable that at the risk of his own life, he would have changed the bolt. He further submitted that no opportunity of defence was provided to the appellant nor the appellant had been personally heard but very harsh penalty was imposed on the appellant which is against the grain of justice and the rules. He requested that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated in service with all back benefits.

8. The appeal was resisted by the learned Addl. Advocate General on the ground that the instant appeal filed on 29.2.2012 against the appellate order dated 20.12.2011 was time barred. He further submitted that all the codal formalities had been complied with; the appellant had been giving full chance of defence and as the appellant had been found guilty, therefore, the impugned orders were properly passed. He requested that the appeal may be dismissed.

9. - The Tribunal heard the learned counsel for the



parties at length and carefully perused the record.

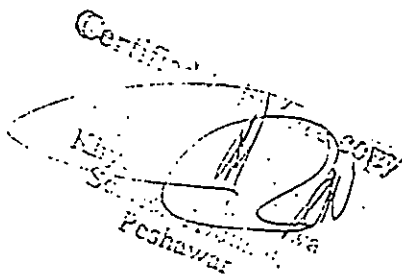
10. Undisputedly, the appellant received rifle for his special duty at night between 9th and 10 June, 2010. The record further shows that the appellant was not alone but accompanied by one ASI and four constables. We, after thoroughly checking the entire record, are of the view that there is no evidence to establish that original bolt had been replaced by the appellant. In fact the appellant received the rifle from Incharge of Koth without checking it on the spot. His colleagues have deposed before the enquiry officer that the appellant detected the fault during his active on duty at the spot when cartridge round was blocked by the rifle. If the appellant had changed the bolt on that night, then he might not have beaten drum of block of the round. We have also perused the regular enquiry report and have come to the conclusion that basis of this report is in fact earlier enquiry report and that during the course of proper enquiry none of the witnesses has been personally summoned. The above situation shows that the appellant committed negligence to the extent that he did not check the rifle at the time of its receipt but there is nothing on record to suggest that the appellant changed the bolt of the rifle. In such a situation, major penalty of removal from service seems to be too harsh. Resultantly, the Tribunal is constrained to set aside the impugned orders dated 07.12.2011 & 20.12.2011 and

ATTESTED

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to reinstate the appellant on his previous position. His
major penalty of removal from service is converted into
minor penalty of stoppage of one annual increment for one
year. The intervening period be treated as leave of the kind
due. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED
13.4.2015



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23.4.2015

Date



Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar




No. 7285-301ES

Dated: 18/05/2016.

ORDER

This order is passed in compliance with judgment of Services Tribunal dated 13.04.2015 passed in Service Appeal No. 2872/2012 titled Faiz Ali versus PPO and others. Fayaz Ali Ex-Constable/appellant is provisionally reinstated in service till the decision of CPLA as the Honorable Services Tribunal is pressing hard for implementation of the judgment.


(JEHANZEB KHAN) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

Copy to the:-

1. Superintendent of Police, Headquarters, Elite Force, Peshawar.
2. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI/Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. OHC/EC/SRC Elite Force, Khyber Pakhtunkhwa, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

COC No. 111/2015

In

Service Appeal No. 289/2012

Fayaz Ali(Petitioner)

Versus

Deputy Commandant Elite Force Khyber Pakhtunkhwa & Others (Respondents)

Subject: **REPLY IN RESPONSE TO COC**

Respected Sir,

Respondent very humbly submits as under:-

1. That the respondents have filed CPLA before the Honorable Supreme Court of Pakistan against the judgement of the Honorable Tribunal, however, the respondent in order to ensure the implementation of the judgement of the Tribunal and to save the interest of the department of prosecution of CPLA, provisionally re-instated in service the petitioner vide order No. 7285-90/EF dated 19.05.2016. Copy enclosed as Annexure A. The petitioner is performing duties and he is regular recipient of monthly salary.
2. That on the receipt of the direction of the Honorable Tribunal dated 24.02.2017, the back benefits of petitioner were calculated and he was asked to submit undertaking that he will return the back benefits, in case of CPLA is accepted. The petitioner flatly refused submission of undertaking.

In view of the above, the respondents have implemented the judgement in true spirit but the petitioner is impeding the implementation. It is, therefore, requested that the COC may be disposed of in the above terms, please.


Deputy Commandant

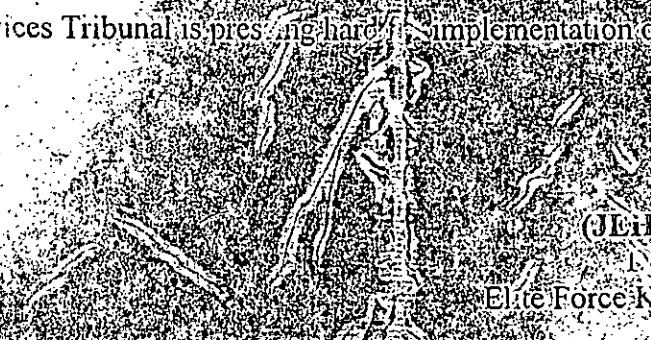
Elite Force Khyber Pakhtunkhwa Peshawar.
(Respondent)

3061

06/04/17

ORDER

This order is passed in compliance with judgment of Services Tribunal dated 04-2015 passed in Service Appeal No: 285/12 titled Faiz Ali versus PPO and others. Faiz Ali Ex-Constable/appellant is provisionally reinstated in service till the decision of CPLA as the Honorable Services Tribunal is pressing hard for implementation of the judgment.



(Signature)
(JEHANZEB KHAN) PSP
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

Copy to the:-

- 1. Superintendent of Police/Head Quarter Elite Force, Peshawar.
- 2. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
- 3. RI/Elite Force, Khyber Pakhtunkhwa, Peshawar.
- 4. OHC/EC/SRC Elite Force, Khyber Pakhtunkhwa, Peshawar.

P.K