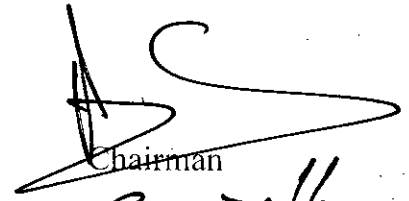


EP 110/15

29.07.2016

Counsel for thje petitioner and Mr. Ijaz Hussain, SI (Legal) for the respondents present. Counsel for the petitioner informed the Tribunal that judgment has been implemented. Hence the petition is filed. File be consigned to the record room.



Chairman
29.07.16.

ANNOUNCED

29.07.2016

13.11.2015

Counsel for the petitioner and Mr. Hayat Muhammad, Reader to DSP alongwith Addl: A.G for respondents present. To come up for implementation report on 12.2.2016 before S.B.


CHAIRMAN

12.02.2016

Mr. Zar Taj Anwar, Advocate on behalf of counsel for the petitioner and Mr. Wisal Ahmed, Inspector (legal) alongwith Addl: A.G for respondents present. Produced copy of office order dated 8.1.2016 conditionally reinstated the petitioner in service. Since counsel for the petitioner is not in attendance. Seeks adjournment. ²¹⁻²⁻²⁰¹⁶ Adjourned to 15.4.2016 before S.B.


Chairman

15.4.2016




Petitioner with counsel and Addl. AG for the respondents present. Learned counsel for the petitioner requested for adjournment as conditional order of reinstatement has been made. To come up for further proceedings on 29.07.2016.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 110 /2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/09/2015	<p style="text-align: center;">The Execution Petition submitted by Mr. Javed Khan through Sajid Amin Advocate, may be entered in the relevant Register and put up to the Court for further order please.</p> <p style="text-align: right;">  REGISTRAR </p> <p style="text-align: center;">This Execution Petition be put up before Final Bench <u>I</u></p> <p>On <u>22-9-15</u></p> <p style="text-align: right;">  CHAIRMAN </p>
3	22.09.2015	<p style="text-align: center;">Petitioner with counsel present. Notice be issued to the respondents for 13.11.2015 before S.B.</p> <p style="text-align: right;">  Chairman </p>

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

N.W.F. Province
Service Tribunal

Diary No. 1007

Date 10/08/15

In the matter of
Appeal No. 1430/2013
Decided on 07.08.2015

Javeed Khan, Ex-Assistant Sub Inspector District Police, Nowshera.
(Applicant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, Nowshera.

(Respondents)

Application for the implementation of the Judgment and Order dated 07.08.2015 of this Honourable Tribunal.

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 07.08.2015.
2. That vide judgment and order dated 07.08.2015, this Honourable Tribunal while partially accepting the appeal of the appellant, reinstated him into service by converting his major penalty of dismissal from service into minor penalty of stoppage of two increments for two years. The operating Para of the Judgment and order dated 21.02.2013, is reproduced below:

“ In the circumstances, the Tribunal deems it appropriate to interfere in the case by converting the major penalty of dismissal from service into minor penalty of withholding of two increments for three years. The appellant is reinstated into service and the intervening period is treated as leave of the kind due..... ”

(Copy of the Judgment and order dated 07.08.2015, is attached)

3. That the respondents are bound to implement the Judgment of this Honourable Tribunal to reinstate the applicant and treat his intervening period as leave of the kind due.
4. That after judgment and order of this Honourable Tribunal, the applicant is continuously approaching the respondents for the implementation of the judgment dated 07.08.2015, however they remained reluctant to implement the judgment.
5. That the respondents are legally bound to implement the judgment of this Honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the judgment and order dated 07.08.2015 of this Honourable Tribunal be implemented in its true letter and spirit.


Applicant

Through


SAHD AMIN
Advocate Peshawar.

AFFIDAVIT

I, **Javeed Khan, Ex-Assistant Sub Inspector District Police, Nowshera**, 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 and that nothing has been kept back or concealed from this Honourable Tribunal.


Deponent

ATTES TED



3



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	07.08.2015	<p><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</u></p> <p>Appeal No. 1430/2013</p> <p>Javed Khan Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>ABDUL LATIF, MEMBER.</u>- Appellant with counsel (Mr. Sajid Amin, Advocate) and Government Pleader (Mr. Muhammad Jan) with Wisal Khan, Inspector (Legal) for the respondents present.</p> <p>2. The instant appeal has been filed by Mr. Javed Khan, Assistant Sub Inspector under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 23.08.2013 whereby the appellant had been awarded major punishment of dismissal from service against which his departmental appeal had been rejected vide order dated 02.10.2013. The appellant prayed that impugned orders may be set aside and he may be reinstated into service with all back benefits.</p> <p>2. Facts giving rise to the instant appeal are that the appellant was enlisted as Constable in Police Department in 1987. He got promotion and was lastly promoted as Asstt. Sub</p>

ATTENDED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

(Handwritten signature)

4

Inspector in the year, 2009. That while posted as Incharge Police Post Town (P.S Kalan) Nowshera he was proceeded against for alleged illegal confinement of one Mati-ur-Rehman against whom locals of the area had lodged complaint for using his house for immoral activities. That an enquiry was conducted against him where he was not fully associated, no show cause notice was issued to him and no personal hearing was given to him before imposition of major penalty of dismissal from service. His departmental appeal against the said penalty was rejected, hence the instant appeal.

3. The learned counsel for the appellant argued that the appellant was not treated in accordance with law. The enquiry proceedings were conducted in a partial manner, the appellant was not fully associated with the enquiry. The statements of witnesses were never obtained in the presence of the appellant, nor was the appellant allowed any opportunity of cross examination. Thus the whole proceedings were defective in the eyes of law. He further argued that appellant had not been allowed opportunity of personal hearing before awarding him the major punishment, he was not served with show cause notice and findings of enquiry were not provided to him. Moreover, the enquiry was conducted in a hurried manner in time span of six days, so much so that he was not given proper opportunity of defence and the enquiry officer based his findings on surmises and conjectures. That entire service career of 25 years long service of the appellant was

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

spotless which was not considered before inflicting the punishment on him. He also argued that on representation/mercy petition of the appellant further enquiry was conducted and the enquiry officer submitted his findings on 20.2.2014 which clearly supported the plea taken by the appellant and it was held therein that "after perusal of the previous enquiry it was found that the enquiry committee did not bother to summon the complainant party (elders of Mohallah Shaheed Abad) against Mati-ur-Rehman and to record their statements, cross examined them as the photocopy of their complaint is attached with the previous enquiry. Furthermore, no final show cause notice was issued to the defaulter official EX-ASI Javed Khan to explain his position...." The said report was however, not considered on the ground that there was no provision of second appeal in the rules.

4. The learned Government Pleader while resisting the appeal argued that all codal formalities such as serving of charge sheet, statement of allegations and conduct of proper enquiry were fulfilled before imposition of the major penalty upon the appellant. The order of dismissal was passed by the competent authority and appeal of the appellant was rejected after due process of law. He prayed that the appeal being devoid of merits may be dismissed.

5. Arguments of the learned counsels for the parties heard and record perused.

ATTESTED

K. H. Khan
 District
 Service
 Registrar

5

6. From perusal of the record it transpired that proper opportunity of defence was not provided to the appellant, he was not allowed to cross examine the witnesses against him nor was he facilitated to produce witnesses in his defence, Moreover, he was not provided opportunity of personal hearing before imposition on him the major penalty of dismissal. It also transpired that penalty awarded to him was not commensurate to the quantum of offence of the appellant.

7. In the circumstances, the Tribunal deems it appropriate to interfere in the case by converting the major penalty of dismissal from service of the appellant into minor penalty of withholding of two increments for three years. The appellant is reinstated in service and the intervening period is treated as leave of the kind due. No orders as to costs. File be consigned to the record.

Sdy Abdul Aziz,
Member
Sdy Mir Bahar Khan,
Member

ANNOUNCED
07.08.2015.

Certified to be a true copy
EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Transmittal of File to 8-9-2015
Number of Pages 1600
Copying Fee 10
Stamp 2
FBI 12
Name of File
Date of Completion 8-9-2015
Date of Delivery of Copy 8-9-2015

POWER OF ATTORNEY

In the Court of Chief Justice Chaudhry

Fahim Raza
Fahim Raza

} For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

P.P.O and others

} Defendant
} Respondent
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____

Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Sajid Amin my true and lawful attorney, for me in my name and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits, Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court; if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____ the _____ day to _____ the year _____

Executant/Executants _____
Accepted subject to the terms regarding fee _____

Accepted
Sajid Amin
Sajid Amin

Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 24, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 1430/2013
Decided on 07.08.2015

Javeed Khan, Ex-Assistant Sub Inspector District Police, Nowshera.
(Applicant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
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(Copy of the Judgment and order dated 07.08.2015, is attached)

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Applicant

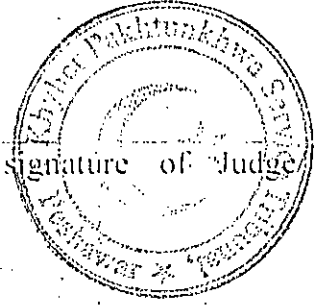
Through

SAJID AMIN
Advocate Peshawar.

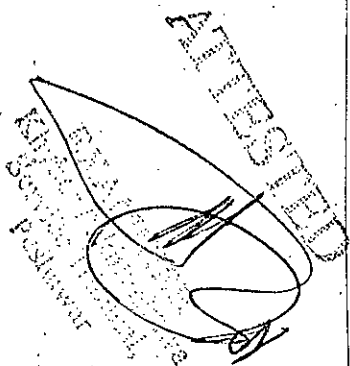
AFFIDAVIT

I, **Javeed Khan, Ex-Assistant Sub Inspector District Police, Nowshera**, 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 and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent



Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge Magistrate
1.	07.08.2015	<p data-bbox="533 774 1390 851" style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p data-bbox="772 876 1102 912" style="text-align: center;">Appeal No. 1430/2013</p> <p data-bbox="533 945 1390 1021" style="text-align: center;">Javed Khan Versus The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.</p> <p data-bbox="632 1065 815 1100" style="text-align: center;"><u>JUDGMENT</u></p> <p data-bbox="533 1141 1390 1421"> <u>ABDUL LATIF, MEMBER.</u>- Appellant with counsel (Mr. Sajid Amin, Advocate) and Government Pleader (Mr. Muhammad Jan) with Wisal Khan, Inspector (Legal) for the respondents present. </p> <p data-bbox="533 1498 1390 2175"> 2. The instant appeal has been filed by Mr. Javed Khan, Assistant Sub Inspector under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 23.08.2013 whereby the appellant had been awarded major punishment of dismissal from service against which his departmental appeal had been rejected vide order dated 02.10.2013. The appellant prayed that impugned orders may be set aside and he may be reinstated into service with all back benefits. </p> <p data-bbox="533 2211 1390 2405"> 2. Facts giving rise to the instant appeal are that the appellant was enlisted as Constable in Police Department in 1987. He got promotion and was lastly promoted as Asstt. Sub </p>



Inspector in the year, 2009. That while posted as Incharge Police Post Town (P.S. Kalan) Nowshera he was proceeded against for alleged illegal confinement of one Mati-ur-Rehman against whom locals of the area had lodged complaint for using his house for immoral activities. That an enquiry was conducted against him where he was not fully associated, no show cause notice was issued to him and no personal hearing was given to him before imposition of major penalty of dismissal from service. His departmental appeal against the said penalty was rejected, hence the instant appeal.

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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ATTESTED

Signature
 Date
 Place

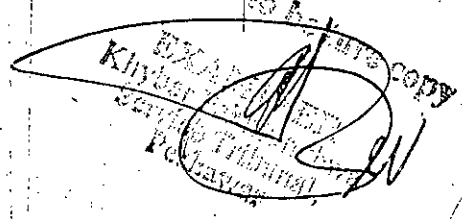
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Sd/- Abdul Qateef
 Member
Sd/- Mr. Bahar Gul
 Member

ANNOUNCED
 07.08.2015.

Certified to be a true copy



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