

e.p No. 119/2015

25.07.2017

Petitioner in person and Mr. Abdul Waheed, S.I (Legal) for the respondents present. File has been requisitioned for to-day. Representative of the respondents submitted application for release of salary of the respondents alongwith pay slip of the petitioner according to which order of this Tribunal has been complied with. The petitioner is fully satisfied and submitted application for withdrawal of the instant execution petition.

In view of the above, salaries of respondents attached on 19.01.2017 are released and the petition is ~~dismissed as withdrawn.~~ *filed as duly executed.*

File be consigned to the record room.

[Signature]
Chairman

ANNOUNCED
25.07.2017

18.05.2017


Counsel for the petitioner and Addl. AG for the respondents present. The respondents through application dated 16.05.2017 have informed that the instant execution petition is pending adjudication before this Tribunal for implementation of the judgment dated 10.03.2015 passed in service appeal no. 1244/2013. CPLA was filed by the respondents in the Supreme Court of Pakistan, which according to the report of District Police Officer, Torghar was dismissed on 30.03.2017. The case of payment of back benefits of pay etc has been submitted in the office of DAO, Torghar vide token no. 2010 dated 03.05.2017. They have requested that pay of the respondents already attached may be released. As respondents exhibited ingrained defiance in provisional implementation of above judgment hence, they became victim of their own conduct. Request for release of salary carries no weight but taking lenient view of the case, salary of respondent no. 1 (PPO Khyber Pakhtunkhwa) is released. However, all respondents are directed to ensure that appellant gets arrears of pay etc without further loss of time. To come up for implementation report on 25-08-17 before S.B.


(Ahmad Hassan)
Member

Execution Petition No: 119/2015
M. Yousaf vs Govt

24.11.2016

Petitioner in person and Mr. Mir Afzal, SI (Legal) alongwith Mst. Bushra Bibi, Government Pleader for the respondents present. Orders of the Tribunal are not implementing despite repeated directions including last opportunity. Neither the restraint order of the august Supreme Court of Pakistan produced nor judgment of the Tribunal implemented. This court is left with no option but to attach the salary of respondent No. 4 at the first instance with a notice to the respondents to comply with the directions of this Tribunal otherwise coersive measures will be adopted against them. To come up for proper implementation report on 19.01.2017 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

19.01.2017

Petitioner in person and Mr. Abdul Waheed, Sub Inspector (Legal) for the respondents present. Order of the court has not been implemented despite attachment of salary of respondent No. 4. Representative of the respondents present failed in court to put forth plausible reasons; leaving this court with no option but to attach salaries of respondents No. 1 to 3 as well. Therefore, salaries of respondents 1 to 3 are also attached alongwith salary of respondent No. 4. In case the respondents failed to comply with the orders of the court till next date then further coercive measures in the shape of confinement in civil prison may also be taken into account against them. To come up for implementation report on 18.05.2017 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

26.02.2016

Petitioner in person, M/S Iqbal Hussain, Inspector and Ali Muhammad, Senior Clerk alongwith Addl: A.G for respondents present. Requested for adjournment. Adjourned for implementation report to 29.4.2016 before S.B.


Member

29.4.2016


Petitioner in person and Mr. Mir Afzal, SI (Legal) for the respondents present. Requested for adjournment as the appeal is pending before the august Supreme Court of Pakistan. Directed to submit either the restraint order or provisionally implement judgment of the Tribunal subject to final decision of the august Supreme Court of Pakistan. The case pertains to territorial limits of Hazara Division. To come up for further proceedings on 18.08.2016 at camp court, Abbottabad.


Chairman

18.08.2016

Petitioner in person and Mr. Mir Afzal S.I (Legal) alongwith Mr. Muhammad Bilal, GP for the respondents present. Restraint order not produced nor judgment of the Tribunal provisionally implemented. Last opportunity granted. The respondents shall either to produce restraint order or implement the judgment subject to final decision of the august Supreme Court of Pakistan. To come up for compliance report on 24.11.2016 before S.B at camp court, Abbottabad.

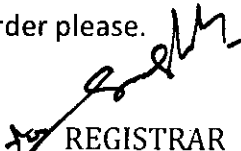


26.02.2016


Chairman
Camp court, A/Abad.

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 119/2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.10.2015	<p>The Execution Petition submitted by Mr. Muhammad Yousaf through Mr. Khlaled Rehman , 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-	29.10.2015	<p>This Execution Petition be put up before S. Bench on <u>29-10-15</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Petitioner with counsel present. Notice be issued to respondents for 26.2.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. _____/2015

IN

Service Appeal No. 1244 /2013


Muhammad Yousaf Petitioner

VERSUS

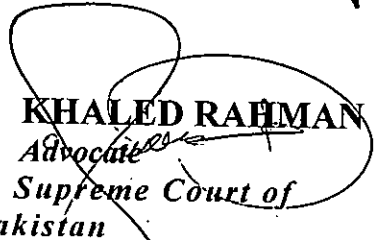
The PPO KPK and others.....Respondents

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S.No.	Description of Documents	Date	Annexure	Pages
1.	Execution Petition with Affidavit			1-3
2.	Judgment of the Hon'ble Tribunal	10.03.2015	A	4-7
3.	Wakalat Nama			


Petitioner

Through


KHALED RAHMAN
Advocate
Supreme Court of
Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458
Cell # 0345-9337312

Dated: 12/06/2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 119 /2015

IN

Service Appeal No. 1244 /2013

K.W.F PROVINCE
Service Tribunal
Diary No. 1215
Dated 16-10-2015

Muhammad Yousaf,
Constable No.403, Police Lines,
District Tor Ghar Petitioner

Versus

1. The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police,
Hazara Region, Abbottabad.
3. The District Police Officer,
District Mansehra.
4. The District Police Officer,
District Tor Ghar..... Respondents

Execution Petition for directing the Respondents to implement the judgment of the Hon'ble Tribunal dated 10.03.2015 passed in Service Appeal No.1244/2013.

Respectfully Sheweth,

1. That petitioner had filed Service Appeal No.1244/2013 which was accepted by the Hon'ble Tribunal vide Judgment dated 10.03.2015. (*Annex:-A*) directing as follows:

“6. We have heard arguments of the learned counsel for the parties at length and have also gone through the record carefully particularly in the light of Provision of Section 3-A of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. This cannot be disputed that the appellant in the instant case was never convicted in the criminal case. We have gone through the BBA Confirmation order dated 21.03.2011 as well as acquittal order dated 22.09.2012 available on record delivered by the learned Criminal Court as a result of which, we are of the firm opinion that criminal case worked out against the appellant vide FIR No.265 dated 07.03.2011 U/S 9 CNSA was a false case. This being so, the question would be as to why the appellant was proceeded against on the basis of false FIR, muchless for any conviction of the appellant in such FIR, so that the provision of Section 3-A of Khyber Pakhtunkhwa Removal From Ser vice (Special Powers) Ordinance, 2000 would have been applied. This may also be added here that except said FIR there is no further allegation against the appellant for the impugned proceedings. This may also be observed that the impugned order bears ambiguity wherein the period has not been specified and seems to be in conflict with the requirement of Rule-29 of Fundamental Rules.

7. For the said reasons the appeal is accepted and the impugned order dated 07.08.2013 is set aside. Parties are left to bear their own costs. File be consigned to the record.”

2. That after obtaining attested copy of the order, the petitioner approached the Respondents for implementation of the judgment by delivering attested copies to them but so far the judgment has

not been implemented.

3. That at the time of order the representatives of the Respondents were available and they were fully in the knowledge of the order but inspite of the same they failed to honour the clear directions of this Hon'ble Tribunal which amounts to the violation of the lawful orders.

It is, therefore, humbly prayed that Execution proceedings may kindly be initiated against the Respondents for implementation of the judgment of the Hon'ble Tribunal.

Through

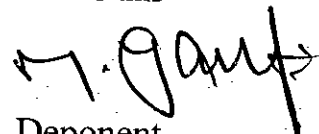
Petitioner


Khaled Rahman,
Advocate, Peshawar

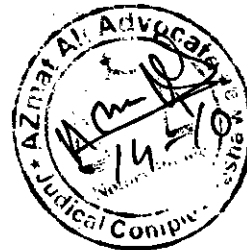
Dated: 18/06/2015

Affidavit

I, Muhammad Yousaf, Constable No.403, Police Lines, District Tor Ghar, do hereby affirm and declare on oath that the contents of this Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


Deponent

ATTESTED



Annex A

4



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	10.03.2015	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Service Appeal No. 1244/2013 Muhammad Yousaf Versus Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc.</p> <p><u>PIR BAKHSH SHAH</u>:- Appellant with counsel (Mr. Khalid Rahman, Advocate) and Mr. Ziaullah, Government Pleader with Akhlaq Hussain, Inspector (Legal) for the respondents present.</p>
		<p>2. Appellant Muhammad Yousaf was issued charge sheet and statement of allegation on 31.3.2011 on the charge of his involvement in case FIR No. 265 dated 07.3.2011 u/s 9 CNSA registered in Police Station City Mansehra as a result whereof disciplinary proceedings were initiated against him. The competent authority vide his order dated 18.05.2011 dismissed the appellant from service under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000. Subsequently his departmental appeal dated 31.05.2011 was partially allowed and the major penalty of "dismissal from service" was reduced into as follows:-</p> <p align="center">"reduction in pay as time pay scale constable"</p> <p>Feeling aggrieved, the appellant filed the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974</p>

ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

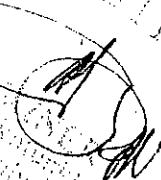
Attested to be True Copy

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3. Arguments heard and record perused.

4. It was submitted by the learned counsel for the appellant that the case FIR No. 265 dated 07.3.2011 U/S 9 CNSA P.S City Mansehra was a baseless and concocted case, therefore, the appellant was quite wrongly punished on the basis of this case. In this respect it was stressed that the appellant in fact had recovered 40 Kgs narcotics in the jurisdiction of P.S Cantt. Mansehra, vide FIR No. 119 dated 03.4.2009 for which reason the concerned DSP was annoyed and in retaliation it resulted into this concocted case against the appellant. The learned counsel for the appellant stressed that as the case against the appellant was baseless, therefore, his BBA was confirmed vide order dated 21.3.2011 of the learned Addl. Sessions Judge-II Mansehra followed by judgment of acquittal dated 22.09.2012. It was further submitted that the punishment awarded to the appellant was not warranted by law and the procedure adopted against him was also against the law and rules as the appellant was not given opportunity to cross examine the witnesses of the enquiry nor opportunity of personal hearing was afforded to him. It was further stated that no show cause notice was given to the appellant. Reliance was placed on 2009-PLC (C.S)19, 2009-SCMR-615, 2012-PLC(C.S)166, and PLD 2010 Supreme Court-65. It was also stressed that the penalty awarded by the appellate authority is not according to law having no specified time.

ATTESTED


 Attested by
 [Signature]
 [Signature]

5. Conversely, the learned Government Pleader submitted that the appeal is not within time and that departmental proceedings cannot be quashed for acquittal in the criminal proceedings.

6. We have heard arguments of the learned counsel for the parties at length and have also gone through the record carefully particularly in the light of provision of Section 3-A of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. This cannot be disputed that the appellant in the instant case was never convicted in the criminal case. We have gone through the BBA confirmation order dated 21.3.2011 as well as acquittal dated 22.9.2012 available on record delivered by the learned criminal court as a result of which, we are of the firm opinion that the criminal case worked out against the appellant vide FIR No. 265 dated 07.3.2011 U/S 9 CNSA was a false case. This being so, the question would be as to why the appellant was proceeded against on the basis of a false FIR, much less for any conviction of the appellant in such FIR, so that the provision of Section 3-A of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000 would have been applied. This may also be added here that except said FIR there is no further allegations against the appellant for the impugned proceedings. This may also be observed that the impugned order bears ambiguity wherein the period has not been

ATTESTED

EXA
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

**Attested to be
True Copy**

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specified and seems to be in conflict with the requirement of Rule-29 of Fundamental Rules.

7. For the said reasons, the appeal is accepted and the impugned order dated 07.08.2013 is set aside. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
10.03.2015.

Mr. Farid Bahadur Ghosh,
Member
Mr. Abdul Latif
Member

Certified to be true copy

EMANZAI
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date 10-3-2015
1600

10
31-3-2015
31-3-2015

Attested to be
True Copy

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 2040 /ST

Dated 5 /12 /2016

To

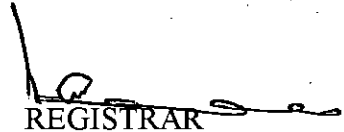
The D.A.O,
Tor Ghar.

Subject: -

ORDER.

I am directed to forward herewith a certified copy of order dated 24.11.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. _____/ST

Dated _____/2016

To,

1. The District Police Officer,
Peshawar.
2. The District Police Officer,
Mardan.
3. The District Police Officer,
Charsadda.
4. The District Police Officer,
Swabi.
5. The District Police Officer,
Malakand.
6. The District Police Officer,
Swat.
7. The District Police Officer,
Dir Upper.
8. The District Police Officer,
Dir Lower.
9. The District Police Officer,
Chitral.
10. The District Police Officer,
Haripur.
11. The District Police Officer,
Abbottabad.
12. The District Police Officer,
Maneshra.
13. The District Police Officer,
Batagram.
14. The District Police Officer,
Kohistan.
15. The District Police Officer,
Torghar.
16. The District Police Officer,
Kohat.
17. The District Police Officer,
Karak.
18. The District Police Officer,
Bannu.
19. The District Police Officer,
Tank.
20. The District Police Officer,
Hangu.
21. The District Police Officer,
Lakki Marwat.
22. The District Police Officer,
D.I.Khan.
23. The District Police Officer,
Nowshera.

Subject:- APPEAL NO. [REDACTED] RIFFAT ALI VS POLICE DEPARTMENT.

Sir,

I am directed to forward herewith a certified copy of judgement dated 25.8.2016 passed by this Tribunal in the subject appeal for compliance and further necessary report thereof may also be sent to this Tribunal for perusal of Hon'ble Chairman.


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Encl: As above.