

EP 243/17

09.04.2019

Petitioner in person and Addl. AG alongwith Habib Khan, Inspector (Legal) for the appellant present.

In pursuance to order dated 09.01.2019, the representative of respondents has produced corrigendum dated 28.01.2019 through which the reinstatement order of petitioner has been made effective from the date of dismissal i.e. 10.05.2016. The appellant has affirmed his joining of duty.

In the circumstances the execution proceedings in hand appear to have reached logical conclusion. The same are, therefore, consigned. The petitioner shall, however, be at liberty to have the proceedings restored in case any portion of his grievance remained un-satisfied.


Chairman

ANNOUNCED
09.04.2019

09.01.2019

Counsel for petitioner and Addl. AG alongwith Habib Khan Inspector legal for the respondents present.

Learned counsel for the petitioner states that the order passed by respondents on 24.04.2018, though required reinstatement of petitioner, but with immediate effect and conditional to the outcome of proceedings in CPLA at the Apex Court. For the time being the petitioner does not grudge the said condition, however, the reinstatement with immediate effect i.e. 24.04.2018 is not in line with the judgment of this Tribunal under implementation as the order impugned therein requiring dismissal of appellant from service was set at naught. In his view, the petitioner/appellant should have been reinstated from the date the order impugned in the appeal was passed i.e. 10.05.2016.

Prima facie, the order of reinstatement dated 24.04.2018 is erroneous to the extent of its applicability with immediate effect. The representative of respondents shall produce corrigendum/correct order on the next date wherein the error is removed in accordance with judgment under implementation. To come up on 04.03.2019 before S.B


Chairman

04.03.2019

Learned counsel for the petitioner present and seeks adjournment. Adjourn. To come up for further proceedings on 09.04.2019 before S.B


Member

E.P No. 243/2017

04.10.2018

Petitioner in person present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Farman Gul, S.I for the respondents present. Implementation report submitted, which is placed on record. Petitioner requested for adjournment to examine the same. Adjourned. To come up for further proceedings on 20.11.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

20.11.2018

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Farmani Gul, S.I for the respondents present. Respondent-department has submitted implementation report on the previous date. Today learned counsel for the petitioner expressed that he has objection on the same therefore, to come up for objection petition and arguments on the same on 09.01.2019 before S.B.


Muhammad Amin Khan Kundi
Member

CORRIGENDUM

This office order issued vide Endst: No. 1182-83/EC, dated 24.04.2018 wherein Constable Bakht Zada No. 350 was re-instated in service with immediate effect i.e from 24.04.2018. The reinstatement order of aforesaid Constable be considered from the date of dismissal i.e 10.05.2016 as per order issued from the Service Tribunal Peshawar.


**CHIEF TRAFFIC OFFICER,
PESHAWAR.**

No. ~~303~~⁰⁷/EC, dated Peshawar the 28/01/2019.

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

1. SP Hqr: City Traffic Police, Peshawar.
2. Inspector Legal City Traffic Police, Peshawar.
3. SRC-II, OSI and PO City Traffic Police, Peshawar.



29.03.2018

Petitioner with counsel and Addl. AG alongwith Farmani Gul, S.I for the respondents present. Requested for adjournment. Last opportunity is given for implementation report. To come up for implementation report on 02.05.2018 before S.B.


Chairman

02.05.2018

Petitioner in person and Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 24.07.2018.


Reader


24.07.2018

Learned counsel for the petitioner and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the petitioner seeks adjournment. Adjourned. To come up for implementation report on 29.08.2018 before S.B


Member

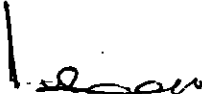



29.08.2018

Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG seeks further adjournment. Adjourned. To come up for implementation report on 04.10.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

FORM OF ORDER SHEET

Execution Petition No. 243/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	18.12.2017	<p>The Execution Petition of Mr. Bakhtzada submitted to-day by Mr. Taimur Ali Khan 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 18/12/17</p>
2-	22/12/17.	<p>This Execution Petition be put up before S. Bench on- <u>29/12</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	29.12.2017	<p>Clerk of the counsel for the petitioner present and Adl: AG present. Notice be issued to the respondents for implementation report positively, on 20.02.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member (E)</p>
	20.02.2018	<p>Counsel for the petitioner present and Mr. Muhammad Jan, DDA alongwith Bashir S.I (Legal) for official respondents present. Implementation report not submitted. Representative of the respondent department is directed to submit implementation report on the next date of hearing. To come up for implementation report on 29.03.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Execution Petition No. 243 /2017
In Service Appeal No.701/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1094

Dated 18/12/2017

Bakhtzada, Ex-Constable No.350,
R/O Shakh No.6 District & Tehsil Charsadda.

PETITIONER

VERSUS

1. The Provincial Police officer, KPK, Peshawar.
2. The Capital City Police Officer, Peshawar.
3. The senior Superintendent of Police, Traffic, Peshawar.

RESPONDENTS

.....

**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 30.10.2017 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**

.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No. 701/2017 against the orders dated 13.06.2016, whereby the departmental appeal of the appellant against the order dated 10.05.2016 wherein, penalty of dismissal from service has been imposed upon appellant has been rejected for no good grounds.
2. The appeal was finally heard by this august Tribunal on 30.10.2017 and the august Tribunal was kind enough to accept the appeal and reinstate the appellant into service. (Copy of judgment dated 30.310.2017 is attached as Annexure-A)
3. That the appellant filed application for the implementation of judgment of this august Tribunal and waited for more than one months to implement the judgment dated 30.10.2017 of this Honourable Tribunal, but the departmental authority did not take any action on the judgment dated 30.10.2017 till date.

4. That in-action and not fulfilling formal requirements by the department 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 department is legally bound to obey the judgment dated 30.10.2017 of this Honourable Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition.

It is, therefore, most humbly prayed that the department may be directed to implement the judgment dated 30.10.2017 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 favour of petitioner.



PETITIONER
Bakhtzada

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT:

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.



DEPONENT

ATTESTED
Oath Commissioner
Zahoor Khan Advocate
Distt: Court Peshawar

18 DEC. 2017

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.



APPEAL NO. 701/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 684

Dated 30-6-2016

Bakhtzada, Ex- Constable No. 350,

R/O Shakh No.6, District & Tehsil Charsadda.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Capital City Police, Officer, Peshawar.
3. The Senior Superintendent of Police, Traffic, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 13.06.2016, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 10.05.2016, WHEREIN, PENALTY OF DISMISSAL FROM SERVICE HAS BEEN IMPOSED UPON APPELLANT HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

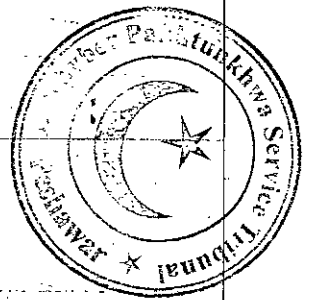
THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 13.06.2016 AND 10.05.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. AND ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day
Registrar
30/6/16.

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4



Sr. No

Date of order/proceedings

Order or other proceedings with signature of Judge or Magistrate

1

2

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 701/2016

Date of Institution ... 30.06.2016
Date of Decision ... 30.10.2017

Bakhtzada, Ex-Constable No. 350,
R/O Shakh No. 6, District & Tehsil Charsadda.

Appellant

Versus

1. The Provincial Police Officer, KPK, Peshawar.
2. The Capital City Police, Officer, Peshawar.
3. The Senior Superintendent of Police, Traffic, Peshawar.

Respondents

JUDGMENT

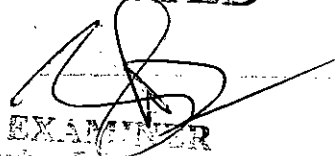
30.10.2017

MUHAMMAD HAMID MUGHAL, MEMBER: - Learned

counsel for the appellant present. Learned District Attorney on behalf of the official respondents present.

2. The appellant has filed the present appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and made impugned order dated 10.05.2016 of respondent No. 3 whereby the appellant was awarded major penalty of Dismissal from Service on the ground of absence from duty. The appellant has also challenged order dated 13.06.2016 whereby the departmental appeal of the appellant was rejected by the respondent No. 2.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Hamid

3. Learned counsel for the appellant argued that he impugned order of dismissal of service is illegal and void. Further argued that the impugned order was issued without observing the codal formalities and is also harsh. Further argued that vide the impugned order, the competent authority has also regularized the absence period of appellant as leave without pay hence the impugned order of dismissal from service is not tenable in the eyes of law hence liable to be struck down.

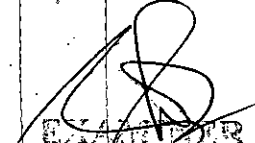
4. As against that learned District Attorney while opposing the present appeal argued that the appellant remained willfully absent without any application or permission and codal formalities were also completed, as such the impugned orders do not warrant any interference.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 10.05.2016 would show that the competent authority (respondent No. 3) while awarding the major punishment of dismissal of service on the charge of absence from duties, also treated the period of absence of appellant as leave without pay. The concluding para of the impugned order dated 10.05.2016 is reproduced as under:-

Keeping in view recommendation of the enquiry officer as well as his previous service record and verbal explanation to the undersigned, I am of the opinion that he is a habitual absentee; therefore, he is awarded major punishment of dismissal from service under the Khyber Pakhtunkhwa Police Rules 1975 with immediate effect. His absence period is treated as leave without pay.

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

7. The authority while passing the order of dismissal of the

Date of Delivery of Copy: 24/11/17
 Name of Applicant: 24/11/17
 Total: 12
 Urgent: 2
 Copying Fee: 10
 Number of Affidavits: 1680
 Date of Presentation of Affidavits: 24/11/17

Certified to be true copy
 I, [Signature]
 Secretary
 District Court
 Islamabad



80/- Enkebab Khan,
 Member

80/- M. Hammad Mughal,
 Member

30.10.2017
 Hammad Mughal
 to the record room.

appellant from duty, treated on the ground of absence from duty, hence the period of absence of the appellant as leave without pay, hence by regularizing the absence period, the very ground has vanished on which the appellant had been proceeded against. When appellant was treated on leave without pay then he could not have been considered absent. In this regard judgment of august Supreme Court of Pakistan titled LAHORE DEVELOPMENT AUTHORITY and others---Petitioners Versus MUHAMMAD NADEEM KACHILOO and another---Respondents (2006 S C M R 434) may be quoted as a reference. Consequently the present appeal is accepted and the impugned orders to the extent of punishment of Dismissal of appellant from service are set aside and resultantly the appellant is reinstated. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned

8

قیمت 50	 	16449
ایڈوکیٹ: <u>تمہور علی خان</u>	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر:		
رابطہ نمبر:		

بعدالت جناب:

مخانب: <u>محبت زارادہ</u>	دعویٰ نمبر:
محبت زارادہ بنام محکمہ پولیس	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے تمہور علی خان کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:

مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

ORDER.

The Constable Bakht Zada No. 350 who was awarded major punishment of dismissal from service vide this office endst: No. 431-35/PA, dated 10.05.2016. He filed a petition in Service Tribunal Peshawar who set aside the aforesaid punishment order of this unit and ordered re-instatement of Constable Bakht Zada No. 350.

2. Consequent upon the decision of Hon'able Service Tribunal Peshawar vide judgment order No. 701/2016, dated 30.10.2017, Constable Bakht Zada No. 350 is hereby re-instated conditionally and the intervening period be treated as leave of the kind due with immediate effect until the CPLA, filed by Police Department in apex court, is decided.


**SENIOR SUPERINTENDENT OF POLICE,
TRAFFIC, PESHAWAR**

No. 1182-83/EC, dated Peshawar the 24 /04/2018.

Copy for necessary action to the:-

1. SP Hqr: Traffic Peshawar.
2. SRC-II, OSI, PO Traffic Peshawar.

303-18
11-7-18