

Order Sheet  
IN THE FEDERAL SERVICE TRIBUNAL, LAHORE

M.P. No. 219/2024 in  
Appeal No.302(L)/2022

*Muhammad Asghar..... versus.....NH & MP*

06.08.2024:

Before: **Mr. Justice (R) Rooh-ul-Amin Khan, Chairman  
Ch. Muhammad Amin Javed, and  
Mr. Imtiaz Ahmad Khan, Members.**

Present: Mr. Allah Nawaz Khosa, Advocate for the  
petitioners/appellants  
Mr. Faisal Abbas Ranjha, AAG for the Respondents  
alongwith Mr. Muhammad Arshad, DSR (Legal),  
Mr. Muhammad Altaf, Inspector (Legal) and Mr. Fareed,  
Inspector (Legal) as D.Rs.

The instant Misc. Petition has filed under the provision of Section 12(2) CPC, on the ground that the main judgement dated 15.01.2024, was rendered in favour of the appellant, wherein Review Petition Nos. 04 to 08 & 29/2024, were filed by the respondent-department, which was dismissed in-limine by one Member of the Bench, whereas accepted by the other. Therefore, in contemplation of Section 3-A(2)(b) of the Service Tribunals Act, 1973, the matter was placed before the Chairman as Referee Judge, who accepted the review petition and set aside the impugned judgement under review by fixing the main appeal for rehearing before the larger Bench comprising of two Members from FST, Camp Office, Lahore and one from the Principal seat FST, Islamabad. Learned counsel for the appellant vividly argued that the judgement under review had created a vested right in favour of appellant, therefore, it was necessary to provide him an opportunity of hearing, most particularly in case of acceptance of review petition.

Record divulges that the review petition was heard in-limine, wherein both the Members of the Bench dissented on points of merits. However, the Referee Judge while concurring with the view of Member-II, accepted the review petition without hearing the appellant/ applicant or his counsel in case of allowing the review, this court should have at least issue

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notice to appellant. The Learned A.A.G., present in the court alongwith the officials of the respondent-department when controverted with the whole situation, they argued that Review Petition has been decided, wherein the judgement passed in the main appeal was set aside, with the direction to the parties to re-argue the case on merits, therefore, any order on the instant M.P. will serve no purpose, rather would be a futile effort to re-hear the review petition.

We have perused the record, wherefrom, it is manifest, that while accepting the Review Petition the notices were not issued to the appellant/ applicant as such they were condemned unheard. The mistake occurred during the proceedings is floating on surface of record, which needs rectification and correction, hence this application is **allowed**. The order dated 26.03.2024, regarding acceptance of review by the worthy Member Mr. Imtiaz Ahmad Khan and order dated 15.07.2024, passed by the Chairman, FST, are recalled. The review shall be deemed pending and shall be re-fixed before three Members Bench just after summer vacations.

Adjourned to 30.09.2024.

*Sd.*  
CHAIRMAN

*Sd.*  
MEMBER

*Sd.*  
MEMBER



Certified to be a true copy

*BN*  
Assistant Registrar  
Federal Service Tribunal  
Lahore

1/1/2024



BEFORE THE HONORABLE Bench FEDERAL  
SERVICE TRIBUNAL Lahore

Application No. MP 219 /24

In Review Petition No. 04 /2024 in Appeal No.  
302(L)-2022

In re:

National High & Motorway Police. VS Muhammad  
Asghar etc.

MUHAMMAD ASGHAR(J-2390) S/o Muhammad  
Saleem , R/o Climaxabad Mohallah Irsal Colony,  
Dhaly ,Gujranwala.

.... **Petitioner**

**VERSUS**

1. **Inspector General of Police**, National Highways and  
Motorway Police, G11/1, Islamabad.
2. Assistant Inspector General (HRM), National  
Highways and Motorway Police, G11/1, Islamabad

.... **Respondents**

PETITION UNDER SECTION 12(2) CPC FOR SETTING  
ASIDE THE DATED 15/07/2024 PASSED BY THIS  
HONORABLE COURT IN CM NO.04/2024 OF  
302(L)2022

**Respectfully Sheweth:-**

1. That briefly stated, the facts of the case are that  
the service appeal No.302(L) of 2022 filed by the  
petitioner was allowed on 15-01-2024 by this

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May be registered as M.P  
as an objection case and  
be placed before Hon'ble  
Bench along with main case  
in Highways & Road for 06-08-24.  
Also prepare brief note in it  
Reader  
15/08/24




Honorable Tribunal. A copy of the order dated 15-01-2024 is annexed hereto as **Annexure-A**.

2. That the respondent department, through fraud and misrepresentation, **simultaneously filed a review petition and a Civil Petition for Leave to Appeal (CPLA) before the August Supreme Court**. A copy of the CPLA is annexed hereto as **Annexure-B**.
3. That while the application for the implementation of the order dated 15-01-2024 was pending before the Lahore Bench, during the hearing on 29-07-2024, the counsel for the petitioner highlighted the department's misrepresentation. It was noted that the department had simultaneously filed a review petition and a CPLA before the Supreme Court. To evade the consequences of their fraudulent conduct, **the representative of the department made a statement before the court indicating that the department would withdraw the review petition**. A copy of the order dated 29-07-2024 is annexed hereto as **Annexure-C**.
4. That the department, by fraudulent means and misrepresentation, succeeded in obtaining the order dated 15-07-2024 from this Honorable Court **without affording the present petitioner the opportunity to be heard**.
5. That the order dated 15/07/2024 is liable to be set aside on the following amongst other:

**GROUND**

- i. That the review has been allowed by this Honorable Court without affording the

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petitioner a hearing or issuing notice to the petitioner, contrary to the mandate of Order XLVII, Rule 2 of the Code of Civil Procedure, 1908. The relevant rule is reproduced as under: -

(2) **Application where granted.** Where the Court is of opinion that the application for review should be granted, it shall grant the same,

Provided that

(a) **no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and**

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation

ii. That according to Order XLVII of the Code of Civil Procedure, 1908, a review is not maintainable if the right of appeal has been availed by the party. The relevant portion of Order XLVII, Rule 1 is reproduced as under:

**:-Application for review of judgment.** (1) Any person considering himself aggrieved.

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by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, by a decree or order from which no appeal is allowed, or by a decision on a reference from a Court of Small Causes,

- iii. That while the application for C.M. No.127/2024 for implementation of the order dated 15-01-2024 was pending before the Lahore Bench, and during the hearing on 29-07-2024, the counsel for the petitioner highlighted the department's misrepresentation, noting that the department had simultaneously filed a review petition and a CPLA before the Supreme Court. To evade the consequences of fraud, the department's representative made a statement before the court indicating that the department would withdraw the review petition.
- iv. That the aforementioned facts clearly reveal that the impugned order dated 15.07.2024 the result of misrepresentation, fraud, and concealment of facts, and hence, the same is liable to be set aside on this sole ground.
- v. That the respondents concealed material facts about this matter and obtained the

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decree through fraud and misrepresentation.

- vi. That if the impugned order dated 15-07-2024 is not set aside, the petitioner shall suffer irreparable loss and injury.

### P R A Y E R

Under the circumstances mentioned above, it is most respectfully prayed that the impugned order dated 15-07-2024, passed by this Honorable Court, having been obtained by fraud and misrepresentation as stated hereinabove, may kindly be set aside. It is further prayed that the main order dated 15-01-2024 of the main appeal be restored in the supreme interest of justice.

It is further prayed that the impugned order dated 15-07-2024 may kindly be suspended until the final decision of the titled application.

Any other relief which this Honorable Court deems fit and proper in the circumstances may also be awarded.

*By Asghar*  
Petitioner

Through

Dated: /07/2024

**Allah Nawaz Khan Khosa**

Advocate High Court

3/A Queens Road, Behind queens

Centre, Mozanag, Lahore

Cell:0333-6073636



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*SW*  
Assistant Registrar  
Federal Service Tribunal