

14.07.2016

None present on behalf of the appellant. Mr. Ziaullah, GP for respondents present. Notice be issued to appellant and his counsel for rejoinder and arguments for 24.11.16 before D.B.


MEMBER


MEMBER

24.11.2016

None present for appellant. Mr. Arif Salim, ASI alongwith Assistant AG for respondents present. The court time is about to over but non-appeared on behalf of the appellant nor the appellant was present in person despite issuance of the notice to appellant and his counsel, therefore, the instant appeal is hereby dismissed in default. File be consigned to the record room.

ANNOUNCED:
24.11.2016


(ABDUL-LATIF)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER.

10

15.04.2015

Agent of counsel for the appellant and Addl. A.G for respondents present. Rejoinder not submitted. The appeal is assigned to D.B for rejoinder and final hearing for 26.10.2015.


Chairman

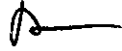
19.04.2015

Agent of counsel for the appellant and Addl. A.G for respondents present.

26.10.2015

Clerk to counsel for the appellant and Mr. Peshawar Khan, H.C alongwith Addl. A.G for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to

6/4/16 for arguments.


Member

06.04.2016

Miss Uzma Syed, Advocate appeared for learned counsel for the appellant and requested for adjournment. She will submit Wakalat Nama for the appellant on the next date. Mr. Arif Saleem, ASI alongwith Mr. Muhammad Jan, GP for respondents present. To come up for rejoinder and arguments on 6-7-16.


Member


Member

06.07.2016

Since 6th July has been declared as public Holiday on account of Eid-ul-Fitar, therefore, the case is adjourned for arguments on 14.07.2016.


Reader

Appeal No. 93/2014
Mr. Anwar Jaffer Khan

6- 13.06.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 20.08.2013, he filed departmental appeal on 18.09.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 17.01.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 11.09.2014.

Appellant Deposited
Security & Process Fee
Rs. 1800/- Bank
Receipt is Attached with File.

Member

7- 13.06.2014

This case be put before the Final Bench for further proceedings.

Chairman

Member

11.9.2014

No one is present on behalf of the appellant. Mian Imtiaz Gul, DSP (Legal) on behalf of respondents with Mr. Kabirullah Khattak, AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments on 13.1.2015.

Chairman

9- 13.01.2015

Counsel for the appellant and Addl. A.G for the respondents present. Written reply received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder on 15.04.2015.

Chairman

12.03.2014

Appellant in person present and requested for adjournment

due to non-availability of his counsel. To come up for preliminary

hearing on 16.04.2014.

Member

16.04.2014

Clerk of counsel for the appellant present and requested for

adjournment due to general strike of the Bar. To come up for

preliminary hearing on 14.05.2014.

Member

14.05.2014

Clerk of counsel for the appellant present and requested for

adjournment. To come up for preliminary hearing on 13.06.2014

Member


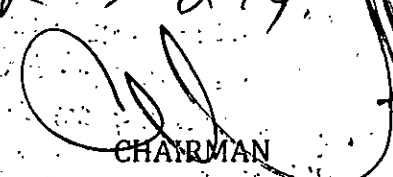
2014

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 93/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/01/2014	<p>The appeal of Mr. Inayat Ullah presented today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;">  REGISTRAR </p>
2	21-1-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>19-3-2014</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 93 / 2014Head Constable Inayat
Ullah

.....Appellant

Versus

The Provincial Police
Officer and others

.....Respondents

INDEX

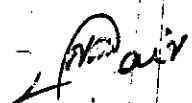
S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1 - 5
2.	Copy of Seniority list		A	6
3.	Copy of Promotion Order	10-05-2007	B	7
4.	Copy of correspondence, wherein vacancy of ASI (Substantive post) has been declared.		C	8 - 10
5.	Copy of Service appeal of Mr. Mashal Khan		D	11 - 17
6.	Copy of comments/reply of respondent No.1 & 2 in service appeal No.578/2012.		E	18 - 20
7.	Copy of Impugned order	20-08-2013	F	21 - 22
8.	Copy of departmental appeal		G	23
9.	Wakalat Nama			24


Appellant

Through


Ashraf Ali Khattak

and


Nawaz Khan Khattak
Advocates, Peshawar

Dated: / 01/2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 93 /2013/

95
17-1-2014

Head Constable Inayat Ullah Khan (MTO) Police Line Kohat
.....Appellant.

Versus

1. The Provincial Police Officer Government of KPK, Peshawar
2. The Regional Police Officer Kohat Range Kohat
3. The District Police Officer, District Kohat.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER OF RESPONDENT NO.2 DATED 20-08-2013 (AND AGAINST WHICH APPELLANT FILED DEPARTMENTAL APEEL WHICH IS STILL PENDING WITHOUT DISPOSAL) WITH PRAY THAT THE SAME MAY KINDLY BE DECLARED AS ILLEGAL, UNLAWFUL, WITHOUT AND LAWFUL AUTHORITY AND SET ASIDE THE SAME AND RESTORE THE APPELLANT ON HIS ORIGINAL POSITION (AS) WITH ALL BACK BENEFITS.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

[Handwritten signature and date]
17/1/14

1. That appellant was enrolled in Police Force in the year 1984 as driver constable. He has got more than 29 years service at his credit with unblemished and clean sheeted conduct record.
2. That appellant was the most senior Head Constable (Annexure-A) in District Kohat, therefore, was promoted

to the post of ASI vide Order dated 10-05-2007(Annexure-B) against substantive vacancy (Annexure-C).

3. That it is pertinent to mention here that one Mr. Mashal Khan (MTS) driver head constable, who was at serial no 11 of the seniority list and presuming himself as aggrieved from the appellant promotion order dated 10-05-2007 assailed the same in the year 2012 before this Honourable Service Tribunal after the lapse of about six years (Annexure-D), wherein respondent No. 1, 2 and 3 have also been made as parties and have also filed written reply (Annexure-E) wherein they defended the appellant's promotion order.
4. That the above discussed appeal has been pending adjudication before this Honourable Tribunal and 31-01-2014 has been fixed for further legal proceeding.
5. That vide order dated 20-08-2013 (Annexure-F) respondent No.2 without any plausible reason and without consulting the record reverted the appellant to the post of Head Constable.
6. That appellant being aggrieved of the impugned order dated 20-08-2013 preferred departmental appeal (Annexure-G), which is still pending without disposal.
7. That appellant, being aggrieved of the impugned order dated 20-08-2013 and acts and actions of Respondents and having no other adequate and efficacious remedy, files this appeal inter-alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant was the senior most Head Constable and was promoted to the rank of Offs: ASI against a substantive vacancy of ASI, therefore, no question of out of turn promotion could be raised and therefore, the impugned order being without legal backing is liable to be set aside.
- B. That every civil servant has legitimate expectancy of rising up in Govt: hierarchy by means of promotion. Appellant got his promotion through the prescribed procedure and on merit, therefore the impugned order is nullity in the eyes of law, equity and justice and therefore, liable to set aside.
- C. That the principle of Locus Poenitentiae also favors the appellant. The promotion Order of the appellant has been issued and made on 10-05-2007, whereas the reversion order has been made on 20-08-2013 i.e after the lapse of about 06 years 03 months and 10 days. On this score as well the impugned order is liable to be set aside.
- D. That the impugned order has been passed in the shape of penalty and that too without any show cause or personal hearing which is against the norms of justice, fair play and equity.
- E. That on one hand respondent No. 1 and 2 defended the promotion order of the appellant as legal and according to law and merits in service appeal No.578/2012, whereas vide impugned order dated 20-08-2013 reverted the appellant to the

post of the Head Constable. Respondent No.1 and 2 could not be legally allowed to approbate and reprobate in the same breath.

- F. That appellant would like to seek the permission of this Honourable Tribunal to advance some more grounds at the time of hearing.

It is therefore humbly prayed that on acceptance of this appeal, this Honourable Tribunal may graciously be pleased to declare the impugned order dated 20-08-2013 as illegal, unlawful, void ab initio, without lawful authority and having no legal effect upon the rights of the appellant and set aside the same by restoring the appellant on his original position as ASI with all attached benefits.


Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to appellant.

Through


Appellant


Ashraf Ali Khattak,

and


Nawaz Khan Khattak
Advocate, Peshawar.

Dated: _____ / 01/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2013

Head Constable Inayat Ullah Khan (MTO) Police Line Kohat
.....Appellant.

Versus

The Provincial Police Officer Government of KPK, Peshawar and
others.....Respondents.

Affidavit

I, Head Constable Inayat Ullah Khan (MTO) Police Line Kohat do hereby solemnly affirm on Oath that the contents of the instant service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.


Deponent.



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P. KOHAT

REG. NO. : 0022 9860125

Nov. 21, 2007 01:12

Annex A

POLICE DEPARTMENT

DISTRICT KOHAT

SENIORITY LIST OF M.T STAFF

S/No	Name & Number	Date of Enlistment	Date of posting in M.T	Date of promotion as HC	Appointment
1	HC Inayatullah No. 1061	23/10/1984	23/10/1984	13/11/2001	Constable
2	Faqir Hussain No. 1166	02/06/1985	02/06/1985	-	Constable
3	HC Kalamat Khan No. 243	09/07/1986	09/07/1986	08/03/1999	Driver
4	HC Anwar Khan No. 819	01/10/1986	01/10/1986	28/11/1997	Driver
5	HC Ruzim Khan No. 499	08/10/1986	08/10/1986	08/03/1999	Driver
6	Jarman Khan No. 1209	17/03/1987	17/03/1987	-	V.M
7	Ajab Khan No. 206	14/02/1988	14/02/1988	-	Driver
8	Qasim Khan No. 122	12/12/1981	27/09/1990	26/04/2004	Constable
9	Zahid Khan No. 538	20/12/1990	01/01/1991	-	Driver
10	Mir Qad Ayaz No. 162	01/10/1989	13/05/1991	-	Constable
11	HC Maghal Khan No. 789	27/10/1981	01/06/1991	28/08/1994	Constable
12	HC Munawwar Khan No. 1062	10/11/1981	01/06/1991	13/07/1998	Constable
13	HC Abdur Rashid No. 124	03/01/1983	01/06/1991	04/01/1995	Constable
14	Umar Faraz No. 226	13/01/1991	26/06/1991	-	Driver
15	Hassan Raza No. 839	06/03/1985	24/02/1993	-	Constable
16	Afsar Ali No. 513	28/03/1993	28/03/1993	-	Driver
17	HC Muhammad Rauf No. 775	31/03/1988	12/04/1993	09/03/2002	Constable
18	Muhammad Zaman No. 25	14/01/1982	17/05/1993	-	Constable
19	Naseer Khan No. 227	01/04/1990	22/01/1994	-	Constable
20	Nisar Ahmed No. 866	28/06/1988	16/10/1994	-	Constable
21	Mazhar Ali No. 1147	30/09/1981	23/05/1995	-	Constable
22	Farid Khan No. 145	23/11/1995	23/11/1995	-	V.M
23	Ghufranullah No. 314	09/10/1996	09/10/1996	-	Driver
24	Qasim Ruza No. 577	30/06/1988	31/12/1996	-	Constable
25	Taj Muhammad No. 686	01/07/1990	16/02/1997	-	Constable
26	Sadeequllah No. 1152	05/01/1991	23/02/1998	-	Constable
27	Aftab Ahmed No. 760	11/10/1998	22/10/1998	-	Driver

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Abdullah

Mirza

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B-

POLICE DEPTT:

O R D E R

KOHAT REGION.

Head Constable Driver Inayatullah No. 176 is hereby promoted as Offg: ASI (MTO) with immediate effect vide Offg: ASI. Afsar Khan No. 424 (MTO), has been retired on pension since 1.3.2007. His promotion will take effect from the date he actually assume the charge of his post. On promotion he is posted to Kohat District.

(SALAH UD-DIN KHAN) PSP
Dy: Inspector General of Police,
Kohat Region, Kohat.

OFFICE OF THE DY: INSPECTOR GENERAL OF POLICE, KOHAT REGION.

No. 1173-74 /FC, dated Kohat, the 10-5-2007.

Copy of above is forwarded to the District Police Officer Kohat for information and necessary action with reference to his Memo: No. 3362/OASI dated 7.5.2007. Necessary Gazette Notification may issued accordingly.

2. Asstt: Secret. Region Office, Kohat.

(SALAH UD-DIN) PSP,
Dy: Inspector General of Police,
Kohat Region, Kohat.

SRC LOAS

DPO KOHAT
11/5

CB No. 388

Dated, 14/5/2007

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Annex. C

Phone No. 091-92-0537
Phone No. 091-92-3421

From : The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

- To :
1. The Capital City Police Officer, Peshawar.
 2. The Addl. I. G. Police, Investigation Khyber Pakhtunkhwa Peshawar.
 3. The Addl. I. G. Police Special Branch, Khyber Pakhtunkhwa, Peshawar.
 4. The Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
 5. The D. I. G. Traffic Khyber Pakhtunkhwa, Peshawar.
 6. The D. I. G. Tele Communication Police Khyber Pakhtunkhwa Peshawar.
 7. The D. I. G. DCT Police Khyber Pakhtunkhwa, Peshawar.
 8. The District Police Officers in Khyber Pakhtunkhwa.

No. 222-253/A-3, Dated Peshawar, the 4/01/2013.

Subject: DISTRIBUTION OF MT STAFF:

Memo:

Please refer to CPO notification No. 21094/E-II, dated 26.07.2008 regarding shifting of posts from regular Police to MT strength, which was endorsed to your offices on the subject cited above and to state that the Ex-Provincial Police Officer Khyber Pakhtunkhwa has shifted 472-regular post to MT cadre strength, but the said post was not shifted to MT cadre strength on budget book. Now CPO has requested to Finance Department to shift the regular post to MT cadre. Moreover, some of the posts were sanctioned for MT Staff of Police Department since long, but not shown in the specific cadre of MT in budget book. Now the Finance Department has agreed to shift all these post which was sanctioned for MT Staff.

After checking of CPO and Tele Police record, the total MT strength is 1674 in various ranks from Driver Inspector to Driver Constable, but the Finance Department has shows only 874 MT strength. All the remaining MT strength is mixed up into your regular strength.

You are therefore, requested to depute your MTOs and Pay Officers to visit this office for reconciliation of the sanctioned/existing posts of upper & lower subordinates in your existing sanctioned strength to avoid any complaints against MT Staff for future.

Handwritten notes:
 SITCPO
 for compliance
 [Signature]
 19-1-2013

188
 9/1/2013

Handwritten signature:
 (MUHAMMAD AYUB)
 Budget Officer,
 For Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar.

Handwritten initials:
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OFFICE OF THE PROVINCIAL POLICE OFFICER,
NWFP, PESHAWAR.

DATED PESHAWAR THE 26 / 7 /2008

NOTIFICATION.

No. 21094 /E-II SHIFTING OF POSTS. In exercise of the powers vested in me vide serial No.3 of Appendix "A" of the West Pakistan (Civil Services) Delegation of Powers Rules, 1962; the following (472) posts of Regular Police out of the newly sanctioned (8035) posts are hereby shifted to Motor Transport Sections of their respective districts/units /organizations/institutions with immediate effect.

S/No	District/Unit/Org./Inst.	SI	ASST	HC	Const.	Total
1.	CCP, Peshawar	02	03	42	99	62
2.	Charsadda	01	-	-	11	12
3.	Nowshera	-	01	-	10	11
4.	Mardan	-	-	17	21	14
5.	Swabi	-	01	-	08	09
6.	Swat	-	-	9	27	18
7.	Dir Lower	-	-	27	21	6
8.	Dir Upper	-	-	1	07	08
9.	Chitral	-	-	06	08	02
10.	Bunir	-	-	-	07	07
11.	Shangla	-	-	01	05	06
12.	Kohat ✓	-	01	08	17	10
13.	Hangu	-	-	01	08	09
14.	Karak	-	01	08	11	04
15.	Bannu	-	01	19	29	11
16.	Lakki	-	01	01	10	12
17.	DIKhan	-	01	16	28	13
18.	Tank	-	-	-	09	09
19.	Abbottabad	01	-	07	17	11
20.	Haripur	-	-	-	15	15
21.	Mansehra	-	01	07	08	02
22.	Battagram	-	-	01	09	10
23.	Kohistan	-	01	06	14	09
24.	CPO	-	-	02	02	-
25.	Tele/Pool/VVIPs	-	-	17	23	06
26.	BDS	-	-	02	06	08
27.	Special Branch	-	01	12	16	05
28.	CID/ATS	-	-	01	17	18
29.	Investigation Wing	02	02	09	132	145
30.	Traffic Branch	-	-	04	30	26
31.	PTC Hangu	-	-	04	11	07
32.	PTC Mansehra	-	-	-	01	01
33.	Commandant FRP	-	01	05	11	05
34.	FRP Peshawar	-	-	01	03	04
35.	FRP Kohat	-	-	-	-	-

NOTIFICATION FOR SHIFTING OF HQs, (05.07.08)
SYSTEM-IV

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Annex D

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR

In Re:

Appeal No. _____/2012

Mashal Khan S/O Ayaz Khan
R/O Aba Khel Tehsil & District Lakki
Head Constable No.15 Bomb Disposal
Squad Driver Kohat. Appellant

Versus

1. Inspector General of Police K.P.K, Peshawar/
Provincial Police Officer, K.P.K, Peshawar.
2. Deputy Inspector General of Police Kohat Range
Kohat/ Chief Capital Police, Kohat.
3. District Police Officer, Kohat.
4. Inayatullah ASI, through Line Officer Police Line,
Kohat. Respondents

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APPEAL FROM THE IMPUGNED ORDER
NO.1173-74/FC DATED 10.05.2007
WHEREBY THE RESPONDENT NO.4 WHO
WAS JUNIOR TO THE APPELLANT WAS
PROMOTED AS ASI.

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Respectfully Sheweth:

Precisely, stating the facts of the case out of which the present appeal arises are as under:

1. That the appellant joined police force as Constable on 27.10.1981 and the appellant was promoted as Head Constable on 28.08.1994 and the respondent No.4 on 13.11.2001.
2. That the appellant being holder of driving license was posted to MT Staff Kohat on 01.06.1994.
3. That the respondent No.4, who was junior to the appellant was promoted, as ASI vide office order Endst.No.1113-74/E dated 10.05.2007, ignoring the seniority of the appellant, feeling aggrieved, the appellant submitted his departmental appeal against the aforesaid order before the respondent No.1 & 2, he was given verbal assurance by the respondent No.1 & 2 that his grievance would be redressed, but his request was not considered, hence, feeling aggrieved the appellant filed constitutional petition for issuance of direction to the respondent No.2 to decide his departmental appeal, which was allowed with the direction to the respondents to decide his departmental appeal within one month, vide order

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Respectfully Sheweth:

Precisely, stating the facts of the case out of which the present appeal arises are as under:

1. That the appellant joined police force as Constable on 27.10.1981 and the appellant was promoted as Head Constable on 28.08.1994 and the respondent No.4 on 13.11.2001.
2. That the appellant being holder of driving license was posted to MT Staff Kohat on 01.06.1994.
3. That the respondent No.4, who was junior to the appellant was promoted, as ASI vide office order Endst.No.1113-74/E dated 10.05.2007, ignoring the seniority of the appellant, feeling aggrieved, the appellant submitted his departmental appeal against the aforesaid order before the respondent No.1 & 2, he was given verbal assurance by the respondent No.1 & 2 that his grievance would be redressed, but his request was not considered, hence, feeling aggrieved the appellant filed constitutional petition for issuance of direction to the respondent No.2 to decide his departmental appeal, which was allowed with the direction to the respondents to decide his departmental appeal within one month, vide order

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dated 18.08.2010, which was communicated to the respondents, but till today it has not been decided, hence this appeal, inter alia, on the following grounds;

GROUND S:

- A. That the impugned order dated 10.05.2007, whereby the respondent No.4 was promoted as ASI, ignoring the appellant is illegal, without lawful authority, without jurisdiction, malafide, void-ab-initio, and ineffective upon his rights.
- B. That the appellant is senior to the respondent No.1 in all respects and is eligible to be promoted as ASI, prior to the respondent No.4, he was not given promotion without any reason, therefore, warrants interference.
- C. That the appellant was appointed as Constable on 27.10.1981, promoted as Head Constable on 28.08.1994, the respondent No.1 was recruited as Constable on 23.10.1984 and promoted as Head Constable on 13.11.2007, therefore, promotion of the respondent No.4 as ASI earlier than the appellant is unjustified, warrants interference.
- D. That the appellant possesses heavy driving license and performing his duty as MT Driver, respondent

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No.4 is also performing his duty as such, he was promoted as ASI in violation of police rules and law applicable thereto.

- E. That the respondent No.1 to 3 have not acted in accordance with law by declining promotion to him, which resulted in gross-miscarriage of justice, warrants interference.
- F. That the appellant seeks leave of this Honourable Court to raise/ argue any additional point at the time of arguments.

It is, therefore, prayed that on acceptance of this appeal, the promotion of respondent No.4 vide impugned order No.1173-74/FC dated 10.05.2007 be declared as illegal, without lawful authority, without jurisdiction, malafide, void-ab-initio, contrary to law and the same may be laid to rest and the appellant be promoted w.e.f 10.05.2007 as ASI with all back benefits.

T.C
Appellant
Through

SHAKEEL AHMAD
Advocate, Peshawar

Dated: 03.03.2012

(S) (16)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

In-Re: Service Appeal No. _____ of

Mashal Khan.....Applicant/ Appellant

V E R S U S

I.G.P, KPK & others.....Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the departmental appeal of the applicant/ appellant answered, therefore, the applicant/ appellant filed a constitutional petition for issuance of direction to decide his departmental appeal, the Honourable Court was pleased to issue a direction to respondents to decide his departmental appeal within 30 days vide O.D No.18.10.2010 but the needful was not done, hence this petition.
2. That delaying in filing the petition neither intentionally nor deliberate but as stated above.
3. That the valuable rights of the applicant/ appellant involved, the same would be defeated if the delay in filing the appeal is not condoned.

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It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled appeal may kindly be condoned in the interest of justice.

Through Applicant/ Appellant

Date: __/__/2012

Shakeel Ahmad
Advocate, Peshawar

AFFIDAVIT

I, Mashal Khan S/o Ayaz Khan R/o Al-Khel, Tehsil & District, Lakki, Head Constable No.15, BDS Driver, Kohat, do hereby solemnly affirm and declare on oath that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

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- c. This para is misleading and misconceived. Criteria for posting as constable and driver constable are different. For induction in MT staff besides the prescribed qualification for constable an additional qualification driver constables is also required. The appellant was enrolled as constable in the year 1981 while the respondent No. 4 as constable in the year 1984 and on the same date of his enrollment he was inducted in MT staff because he was having LTV/HTV license. The appellant subsequently after getting driving license in the year 1994 was promoted as Driver Head Constable. The appellant shall not presume that upon induction in MT as helper Constable, he has become senior to the respondent No. 4.
- d. This para is also misleading because the appellant upon getting driving license was promoted to the rank of Driver Head Constable in the year 1994 while respondent was enrolled as constable on 23.10.1984 and inducted in MT on the same date. Thus keeping in view professional qualification of the respondent No. 4 the competent authority has neither violated the law nor rules by declaring the respondent No. 4 senior to the appellant.
- e. Incorrect. By promoting the respondent No. 4 the respondent No. 1 to 3 have committed no miscarriage of justice and thus the lawful orders do not deserve any interference.
- f. This para is legal.

Prayers.

It is therefore prayed that the appeal being badly time barred, misleading/legally misconceived, incompetent and without any legal or factual substance maybe dismissed.

J. C
u

(21)

Annex F

ORDER.

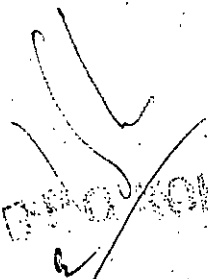
Driver ASI Inayat Ullah of Kohat District Police, who was promoted as Offg: ASI (MTO) by the then DIG, Kohat vide this office Memo: No. 1173-74/EC, dated 10.05.2007 as out of turn, is hereby reverted to his substantive rank of HC as per directions of PPO, KPK, Peshawar vide his office Memo: No. 2359-65/Legal, dated 06.08.2013 with immediate effect.

(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police,
Kohat Region, Kohat.

No. 6279-80/EC, dated Kohat the 20/08 /2013.

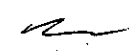
Copy of above is submitted to the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: mentioned above please.

✓ 2. The District Police Officer, Kohat.

SRe/OAS
Per N. A. Khan

DPO KOHAT



(DR. ISHTIAQ AHMAD MARWAT)
Dy: Inspector General of Police,
Kohat Region, Kohat.

T.C


22

Phone No: 9260112.

Fax No: 9260114.

From: - The Dy: Inspector General of Police,
Kohat Region, Kohat.

To: - The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

No. 7827 /EC, Dated Kohat the 3 / 10 /2013.

Subject: - APPEAL AGAINST THE ORDER DATED 20.08.2013
BY DY: INSPECTOR GENERAL OF POLICE, KOHAT
VIDE WHICH THE APPELLANT REVERTED TO THE
RANK OF HC FROM THE RANK OF ASI.

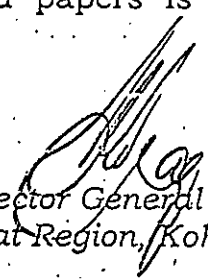
MEMORANDUM.

Kindly refer to the subject cited above.

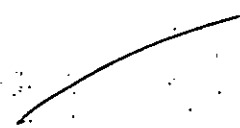
It is submitted that Driver Head Constable Inayat Ullah of Kohat District Police has preferred an appeal, requesting therein for restoration to his rank of ASI.

His appeal alongwith other connected papers is enclosed herewith for favour of perusal please.

No. 1 /EC,


Dy: Inspector General of Police,
Kohat Region, Kohat.

Copy to the District Police Officer, Kohat for information w/r to his office Memo: No. 8115/SRC, dated 07.09.2013.


Dy: Inspector General of Police,
Kohat Region, Kohat.

T.C
2

23

Annex C

Through Proper Channel

BEFORE THE PROVINCIAL POLICE OFFICER, KPK, PESHAWAR

Subject: APPEAL AGAINST THE ORDER DATED 20/08/2013 PASSED BY D.I.G KOHAT RANGE KOHAT VIDE WHICH THE APPELLANT REVERTED TO THE RANK OF H.C. FROM THE RANK OF ASI

Respected Sir,

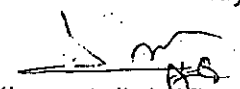
Most humbly the appellant submits the following:

- 1) That the appellant joined Police Department as Constable in the year 1984.
- 2) That having proper driving certificate license services of the appellant transferred to MT Staff and posted as driver constable on 23/10/1984 and thereafter promoted to the Rank of H.C. in the year 2001.
- 3) In the year 2007 promoted to the Rank of ASI against the vacant post in MT, since I was serving as a ASI.
- 4) That vide order dated 20/08/2013 the appellant was reverted to the Rank of H.C on the ground that I was given out of turn promotion.
- 5) That order dated 06/08/2013 issued by CPO regarding out of turn promotion, vide memo No. 2359-65 Legal, having no concern with the issue of out of turn promotion. In fact I was promoted regularly, properly against the vacant vacancy lying in MT staff, being the appellant's names exist at serial No. 1, of the seniority list.
- 6) That order of Reversion is not based on facts and material on record.
- 7) That HC Mashal Khan of District Kohat challenged the appellant's seniority / promotion to the rank of ASI, but his application / appeal were turned down by the Police Department and now his appeal in service tribunal KPK Peshawar and the date is fixed as 12/11/2013.

It is, therefore, requested that the order dated 20/08/2013 may be set-aside and the appellant may be restored to the older position of ASI.

Dated: 18-09-2013

Yours Obediently,


(Inayatullah Khan)
H.C.
Appellant

T.G


بعدالت

Khyber Pakhtunkhwa Service
Tribunal, Peshawar

2 جناب - ایڈمنسٹریٹو
بنام

عنايت اللہ
ڈرائیور ہیڈ کانسٹیبل

۷۵

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر ایڈمنسٹریٹو
پروٹیکشن پولیس آفیسر

آن مقام پشاور کیلئے اشرف علی خان ایڈمنسٹریٹو

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ 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 ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

المرقوم _____ ماہ _____ 2014

Accepted & Affected
Accepted & Affected
Accepted & Affected
Advocate

بمقام

(5)

BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR.

Service appeal No. 93/2014

Inayat Ullah... Appellant.

VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar & others... Respondents.

Respectively Sheweth:-

Parawise comments by respondents are submitted as under:-

Preliminary objections:-

1. That the instant appeal is not maintainable in the present form.
2. That the appellant has got no cause of action.
3. That the appellant is estopped from his own conduct to file the instant appeal.
4. That the appeal is time barred.
5. That the appeal is bad for misjoinder/nonjoinder of necessary parties.

Facts:-

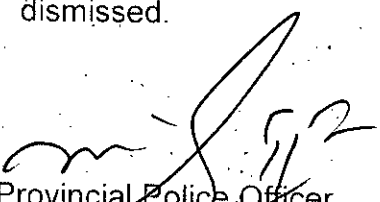
1. Correct to the extent that appellant was appointed as constable on 23.10.1984 in this district Police Kohat. The remaining para is not correct as his service record is not unblemished and clean because he has been awarded some punishment on difference times. His service record is annexed as annexure "A".
2. Correct to the extent that appellant was promoted as officiating ASI/MTO vide office order endst: No. 1173-74/EC dated 10.05.2007 but that order has been withdrawn by respondent No. 2 by issuing his reversion order to the rank of Head Constable vide order endst: No. 6279-80/EC dated 20.08.2013, copy of which is annexed herewith as annexure 'B'.
3. Correct to the extent that Mashal Khan driver Head Constable had challenged the order of promotion of present appellant as ASI before the Honorable Service Tribunal by filing service appeal No. 578/2012 which has been disposed of vide order dated 11.04.2014 by the Honorable Service Tribunal, copy of order is annexed as annexure "C".
4. As stated in above para-3, that service appeal instituted by the said Head Constable Mashal Khan has been disposed of vide order dated 11.04.2014, copy of the order is annexed as annexure 'D'.
5. Incorrect. The impugned order is passed according to law and available record. The order of promotion of appellant to the rank of ASI was made in violation of Rules and was hit by judgment of Honorable Supreme Court of Pakistan regarding out of turn promotion.
6. Correct to the extent that the appellant had preferred a departmental appeal against the order of his reversion.

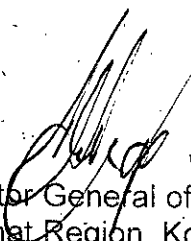
7. Incorrect. The appellant has got no cause of action to file instant appeal and his appeal is liable to be dismissed.

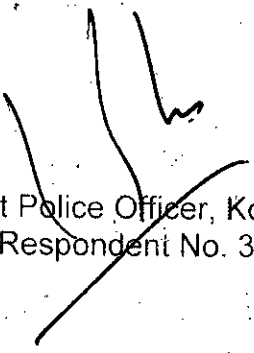
Grounds:-

- a. Incorrect. The respondents have treated the appellant in accordance with law/rules. The promotion of appellant to the rank of ASI was made in violation of Rules, hence he was reverted to his substantive rank of head constable.
- b. Correct to the extent that every civil servant has legitimate expectancy of raising up in govt. hierarchy by means of promotion but on the other hand it is also necessary that promotion is to be made according to rules. Promotion of Police officials is to be made as per procedure laid down in Police rules 13-1. His promotion to the rank of ASI was not made in accordance to Rules, hence he was reverted to his substantive rank of head constable.
- c. Incorrect. The order of promotion of appellant was passed in violation of rules and hence it has got no value in the eyes of law and thus he was reverted to his substantive rank of head constable in the light of judgment of Honorable Supreme Court of Pakistan.
- d. Incorrect. The order was not passed in shape of penalty. That order was passed in compliance with laid down procedure.
- e. Incorrect. In parawise comments to service appeal No. 578/2012 it was mentioned that respondent No. 4 (the present appellant) is senior to the appellant HC Mashal Khan. Promotion cannot be claimed as of right by govt servant.
- f. That the respondent seek permission of this Honorable court to submit any other points at the time of arguments.

In view of the above explanation, it is prayed that appeal of the appellant may be dismissed.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)


Dy: Inspector General of Police,
Kohat Region, Kohat.
(Respondent No. 2)


District Police Officer, Kohat
(Respondent No. 3)

(1)

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

A. T. P. P. No. 546
Dated 17-5-2012

In Re:

Appeal No. 578 /2012

Mashal Khan S/O Ayaz Khan
R/O Aba Khel Tehsil & District Lakki
Head Constable No.15 Bomb Disposal
Squad Driver Kohat. Appellant

Versus

1. Inspector General of Police K.P.K, Peshawar/
Provincial Police Officer, K.P.K, Peshawar.
2. Deputy Inspector General of Police Kohat Range
Kohat/ Chief Capital Police, Kohat.
3. District Police Officer, Kohat.
4. Inayatullah ASI, through Line Officer Police Line,
Kohat. Respondents

*Response No 9
Recd. d. 17/5/12
Etc. Sec. used dated 17/5/12*

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**APPEAL FROM THE IMPUGNED ORDER
NO.1173-74/FC DATED 10.05.2007
WHEREBY THE RESPONDENT NO.4 WHO
WAS JUNIOR TO THE APPELLANT WAS
PROMOTED AS ASI.**

as submitted to-
and filed.

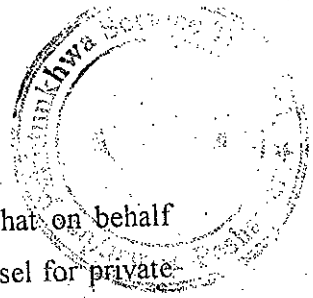
24/5/12

ATTES... ⇄ < = > ⇄ < = > ⇄ < = > ⇄

[Signature]
EXAM...
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

11.4.2014

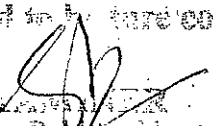
Appellant in person, Mr. Gul Faraz, SI Kohat on behalf official respondents No. 1 to 3 with AAG and counsel for private respondent No. 4 present. The appellant could neither procure attendance of his counsel for assistance of the Tribunal nor could justify the continuation of his appeal after reversion of private respondent No. 4 to his substantive rank of H.C vide order dated 20.8.2013. Since the appellant lodged this appeal as he was aggrieved of the promotion of private respondent No. 4 to the rank of ASI, who, according to the appellant, was junior to him; his appeal has become infructuous after reversion of private respondent No. 4 to his substantive rank of H.C vide the aforesaid order. The appeal is disposed of accordingly, with no order as to costs.



ANNOUNCED
11.4.2014

ed/- Member
sd/- Chairman

Identified to be true copy


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Application 13.6.2014
Number 800
Copying 6-00
Urgent 2-00
Tn 8-00
Rn
Date of receipt of copy 13.6.2014
13.6.2014

BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR.

Service appeal No. 93/2014


Inayat Ullah Appellant.

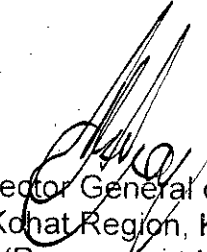
VERSUS

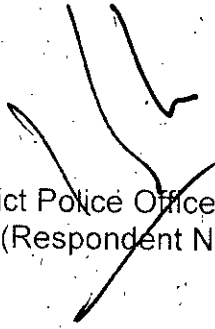
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar & others Respondents.

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Court.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)


Dy: Inspector General of Police,
Kohat Region, Kohat.
(Respondent No. 2)


District Police Officer, Kohat
(Respondent No. 3)

5

BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR.

Service appeal No. 93/2014

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VERSUS

Provincial Police Officer,
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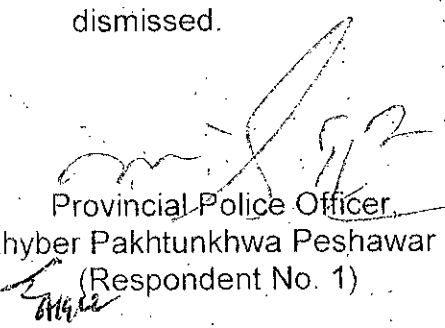
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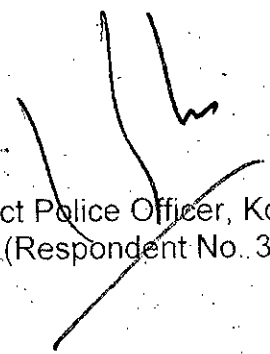
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- In view of the above explanation, it is prayed that appeal of the appellant may be dismissed.


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Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)


Dy. Inspector General of Police,
Kohat Region, Kohat.
(Respondent No. 2)


District Police Officer, Kohat
(Respondent No. 3)

(1)

BEFORE THE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA PESHAWAR

G.W.F. Peshawar
Date: 17-5-2012

In Re:

Appeal No. 578 /2012

Mashal Khan S/O Ayaz Khan
R/O Aba Khel Tehsil & District Lakki
Head Constable No.15 Bomb Disposal
Squad Driver Kohat. Appellant

Versus

1. Inspector General of Police K.P.K, Peshawar/
Provincial Police Officer, K.P.K, Peshawar.
2. Deputy Inspector General of Police Kohat Range
Kohat/ Chief Capital Police, Kohat.
3. District Police Officer, Kohat.
4. Inayatullah ASI, through Line Officer Police Line,
Kohat. Respondents

*Respondent No 4
Should appear
for the vide
order 17/5/12*

*Ex-parte order signed No 4
date 17/5/12*

17/5/12

⇄ < = > ⇄ < = > ⇄ < = > ⇄

**APPEAL FROM THE IMPUGNED ORDER
NO.1173-74/FC DATED 10.05.2007**

**WHEREBY THE RESPONDENT NO 4 WHO
WAS JUNIOR TO THE APPELLANT WAS
PROMOTED AS ASI.**

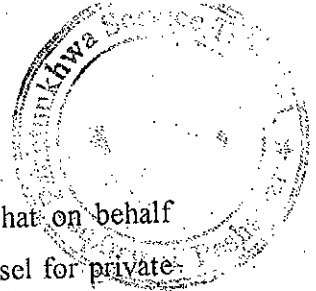
*as submitted in-877
and filed.*

24/5/12

ATTESTED ⇄ < = > ⇄ < = > ⇄ < = > ⇄

EXAM
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

11.4.2014



Appellant in person, Mr. Gul Faraz, SI Kohat on behalf of official respondents No. 1 to 3 with AAG and counsel for private respondent No. 4 present. The appellant could neither procure attendance of his counsel for assistance of the Tribunal nor could justify the continuance of his appeal after reversion of private respondent No. 4 to his substantive rank of H.C vide order dated 20.8.2013. Since the appellant lodged this appeal as he was aggrieved of the promotion of private respondent No. 4 to the rank of ASI, who, according to the appellant, was junior to him, his appeal has become infructuous after reversion of private respondent No. 4 to his substantive rank of H.C vide the aforesaid order. The appeal is disposed of accordingly, with no order as to costs.

ANNOUNCED
11.4.2014

Self- Member Self- Chairman

Scanned to be true copy


Chairman
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Application: 13.6.2014
Number: 800
Copy: 6-00
Urgent: 2-00
Total: 8-00
Date of Disposal: 13.6.2014
13.6.2014

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

Service appeal No. 93/2014

Inayat Ullah Appellant.


VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar & others Respondents.

COUNTER AFFIDAVIT.

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon. Court.


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)


Dy. Inspector General of Police,
Kohat Region, Kohat.
(Respondent No. 2)


District Police Officer, Kohat
(Respondent No. 3)