

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Appeal No. 170/2018

Date of institution ... 19.01.2018

Date of decision 03.12.2019

Arshad Khan son of Mukaram Khan R/O Matta Mughal Khel, Shabqadar,
Charsadda, Ex-Constable No. 1568 FRP, Peshawar. ... (Appellant)

Versus

Deputy Commandant, FRP Peshawar and two others. (Respondents)

Present

Arbab Saiful Kamal,
Advocate

... For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General,

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. MUHAMMAD AMIN KHAN KUNDI,

... CHAIRMAN
... MEMBER.JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

Instant judgment is proposed to disposed of also Service Appeals No. 171/2018 (Salim Khan Vs. Deputy Commandant FRP Peshawar and two others) and No. 172/2018 (Munir Khan Versus Deputy Commandant, FRP Peshawar and two others), as the facts and prayer of appellants are similar in all the appeals.

2. The facts, as gatherable from record, are that the appellants were appointed as Constables in the Police Department on 23.04.2002. They were consequently sent for training at PTC Hangu and, on return there-from, were waiting for their respective postings. On 02.4.2003, the appellants were discharged from service apparently on the grounds that their recruitment was



illegal and fraudulent. Departmental representations were submitted by the appellants but to no avail. Resultantly, service appeals were preferred by them before this Tribunal which were decided on 11.10.2011, through common judgment handed down in Appeal No. 889/2010. The appeals were allowed and by setting aside the impugned order dated 02.04.2003 the appellants were required to be appointed against available vacancies of constable. The respondents challenged the judgment of the Tribunal through Civil Appeals No. 631 to 633 of 2012 before the Apex Court. August Supreme Court of Pakistan disposed of the appeals with some modification in the findings of the Tribunal. Consequently, an order was issued by respondent No. 1/Deputy Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa on 20.07.2016 declaring the appellants ineligible and unfit for fresh recruitment as constables owing to the fact that they did not fulfill the criteria of recruitment as required under the Police Rules, 1934. There-against, the appeals in hand have been preferred.

3. Learned counsel for the appellants as well as learned Addl. Advocate General on behalf of the respondents heard and available record gone through.

It was the argument of learned counsel for the appellants that the impugned order dated 20.07.2016 was not in accordance with the judgment of this Tribunal passed in appeals in the first round, as well as, the order of Apex Court dated 09.02.2016. He contended that the eligibility and fitness of appellants for recruitment as Constable was to be considered from the date of advertisement and not the current date at the time of passing of impugned order. It was further contended that similarly placed persons were allowed the relief by this Tribunal through a common judgment delivered in Appeal No. 1197/2003, therefore, the appellants were entitled for same treatment and appointment as constables. Learned counsel referred to judgments reported as

2000-SCMR-75/669, 2016-PLC(C.S)682, 2005-SCMR-85 and 2006-SCMR-678 in support of his arguments.

Learned Addl. AG, on the other hand, argued that appeals in hand were not maintainable and were badly barred by time in view of the fact that the departmental appeals were submitted by the appellants on 18.08.2016, while the service appeals in hand were preferred on 19.01.2018. In the event of indecision of departmental appeals the appellants were obligated to have preferred service appeals within ninety days, which they failed to do. He also referred to Rule 12.15 of Police Rules, 1934 and stated that the appellants did not fulfill the minimum requisite criteria in terms of age, height and chest measurements. The impugned order dated 20.07.2016 was rightly passed, it was contended. Reliance was placed on 2013-SCMR-911.

4. In order to appreciate the merits of appeals in hand, it shall be useful to reproduce the contents of paragraph 8 contained in the judgment passed in appeal No. 889/2010 by this Tribunal. The same read as:-

"In view of the above the impugned order dated 02.04.2003 is set aside to the extent of appellant and the respondents are directed to appoint the appellant against any of available vacancies of constable, in case there is no vacancy available at present, he may be appointed as and when occurred in the department. The appeal is accepted in the above terms."

The matter went before the Apex Court and was decided in the following terms:-

"We have heard the arguments of the learned ASCs for both the parties and perused the material placed on record. At this stage, learned Addl. Advocate General on behalf of the appellants submits that he will be satisfied for the disposal of these appeals in terms of paragraph No. 8 of the impugned judgment but

subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of Constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly, these appeals are disposed of in the above terms."
(Underlining is applied).

It becomes abundantly clear from the above reproduction that the judgment earned by the appellants was modified, with the consent of learned Addl. Advocate General appearing on behalf of the respondents in order to include the underlined portion of the order. Needless to iterate that the conditions for recruitment were to be applied at the time of consideration of appellants for appointment against available vacancies.

5. In the above noted backdrop, the impugned order dated 20.07.2016 aptly suggests that it was passed in accordance with the dictum of the Apex Court. In pursuance to the order dated 09.02.2016, a committee was constituted to examine the qualification and eligibility for fresh appointment of appellants as constables. The committee found that the appellant Arshad Khan was deficient in height and was also over-aged by more than seven years. Appellant Munir Khan was also found deficient in height and was over-aged by more than five years at the time of judgment of this Tribunal dated 11.10.2011. Similarly, the appellant Salim Khan, having been born in the year 1979, was over-aged by more than seven years. Consequently, all the appellants were found unfit for fresh recruitment. In the circumstances, we find no exception to the impugned order.

6. We have also considered the case-law relied upon by learned counsel for the appellants and are of the view that owing to the modification in the impugned order, the appellants are not entitled to any benefit. In the circumstances, we find no exception to the impugned order.

judgment of this Tribunal by the Apex Court none of the cited judgments were attracted to the appeals in hand. Similarly, the judgment in Service Appeal No. 1197/2003, referred to by learned counsel with respect to his contention regarding similar treatment to the appellants, could not to be fallen back upon because, as per available record, it was neither modified nor confirmed by the higher forum.

It is also pertinent to note that the argument of learned AAG regarding delay in submission of instant appeals carries weight in view of the available record. It is also worth-noting that the maintainability of appeals in hand is also under the cloud owing to the provisions contained in Rule 23 of Khyber Pakhtunkhwa Service Tribunals Rules, 1974.

7. As a result of the contents hereinabove, the appeals in hand are dismissed.

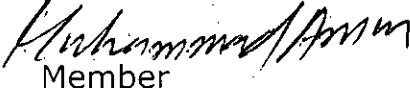

The parties are, however, left to bear their respective costs. File be consigned to the record.

(HAMID FAROOQ DURRANI)
Chairman
(MUHAMMAD AMIN KHAN KUNDI)
Member

ANNOUNCED
03.12.2019

(HAMID FAROOQ DURRANI)
Chairman

ANNOUNCED
03.12.2019

S.No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	03.12.2019	<p style="text-align: center;"><u>Present</u></p> <p>Arbab Saiful Kamal, Advocate ... For appellant</p> <p>Mr. Kabirullah Khattak,, Addl. Advocate General ... For respondents</p> <p>Vide our detailed judgment, the appeal in hand is dismissed.</p> <p>Parties are, however, left to bear their respective costs. File be consigned to the record.</p> <p style="text-align: center;">  Member </p> <p style="text-align: center;">  Chairman </p> <p><u>ANNOUNCED</u> 03.12.2019</p>

18.07.2019 Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for the respondent present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 18.09.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

18.09.2019 Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.10.2019 before D.B.


Member


Member

28.10.2019 Miss. Uzma, Advocate on behalf of learned counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant has gone to Islamabad. Mr. Riaz Ahmad Paindakheji, Assistant AG for the respondents also present. Adjourned to 03.12.2019 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

05.04.2019

Counsel for the appellant and Mr. Muhammad Riaz Painsdakhel, Asstt AG for respondents present.

Replication to the written reply of respondents submitted on behalf of the appellant which is placed on record. Learned counsel for the appellant requests for adjournment due to over occupation before the Honourable High Court.

To come up for arguments on 27.05.2019 before the D.B.


Member


Chairman

27.05.2019

Appellant in person and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Due to general strike on the call of Bar Council, learned counsel for the appellant is no in attendance. Adjourned. To come up for arguments on 18.07.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24.12.2018

Mr. Saadullah Khan, Advocate for appellant and Addl. AG alongwith Ihsanullah, H.C for the respondents present.

Reply on behalf of the respondents has been submitted. To come for arguments before the D.B-II on 20.02.2019. The appellant may submit rejoinder within a fortnight, if so advised.


Chairman

20.02.2019

Clerk to counsel for the appellant and Mr. Muhammad Jan learned DDA for the respondents present. Clerk to counsel for the appellant requests for adjournment as learned counsel for the appellant is not available today. Adjourn. To come up for arguments on 05.04.2019 before D.B


Member


Chairman

02.08.2018

Miss. Uzma Syed, Advocate appeared on behalf counsel for the appellant. Mr. Ihsanullah, ASI alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Representative of the respondents made a request for adjournment. Granted. To come up for written reply/comments on 12.09.2018 before S.B.


Chairman

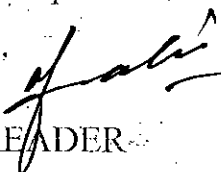
11.09.2018

Since 12th September 2018 has been declared as public holiday, by the Provincial Government on account of 1st Mukharram-ul-Haram, therefore the case is adjourned to 06.11.2018 for reply before S.B.


Chairman

06.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.


READER

seven years eight months and six days till the date of said judgment i.e 11.10.2011 and not eligible for fresh appointment. Learned counsel for the appellant further contended that the respondent-department was required to consider the date of the appellant at the time when he was initially recruited and not at the time of the said judgment dated 11.10.2011 therefore, the impugned order is illegal and liable to be set-aside.

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 30.04.2018 before S.B.

Appellant Deposited
Security & Process Fee

MA
(Muhammad Amin Khan Kundi)
Member

30.04.2018

None present on behalf of appellant. Learned Addl: AG for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 27.06.2018 before S.B.

J
Reader

27.06.2018

Junior counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 02.08.2018 before S.B.

Member

13.03.2018




Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Constable in Frontier Reserve Police vide order dated 23.07.2002 after observing all codal formalities, however, he was discharged from service by the competent authority vide order dated 20.04.2003. It was further contended that the appellant filed service appeal against the discharged order which was partially accepted vide judgment dated 11.10.2011 and the respondents were directed to appoint the appellant against any of available vacancy of constable, In case no vacancy is available at present, he may be appointed as and when occurred in the department. It was further contended that the respondents filed CPLA in august Supreme Court of Pakistan against the Tribunal judgment and after hearing the arguments the apex court disposed of the appeal of the respondent-department vide judgment dated 09.02.2016 and it was observed by the apex court in the concluding para that the learned Additional Advocate General on behalf of the appellant submitted that he will be satisfied for the disposal of the appeal in terms of paragraph No. 8 of the impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancy of constable such consideration will be subject to the fulfillment of requisite qualification and eligibility therefore, to this proposal the learned ASC for the respondents had no objection and accordingly the appeal was disposed of in the above terms. Learned counsel for the appellant further contended that the respondent-department again passed the impugned order dated 20.07.2016 regarding the present appellant alongwith two other namely Saleem Khan and Munir Khan but it was observed by the respondent-department in the impugned order that the appellant ~~Saleem~~^{Arshad} Khan was found deficient in height as well as overage by

M. Amin
13.3.2018

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 170/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/02/2018	<p>The appeal of Mr. Arshad Khan resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	08/02/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/02/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	19.02.2018	<p>Junior counsel for the appellant present and seeks adjournment as his senior counsel is not in attendance today. Adjourned. To come up for preliminary hearing on 13.03.2018 before S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member</p>

The appeal of Mr. Arshad Khan son of Mukaram Khan Ex-Constable No. 1568 FRP Peshawar received today i.e. on 19.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of discharge order mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures-B, C and F of the appeal are missing.
- 3- Copy of departmental appeal against the order dated 20.7.2016 mentioned in para-5 of the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Memorandum of appeal may be got signed by the appellant.
- 5- Annexures of the appeal may be flagged.
- 6- Annexures of the appeal may be attested.
- 7- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal which may be placed on it.

No. 142 /S.T,

Dt. 22/01 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv.

Six

Re-submitted after a plea.

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BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 170/2018

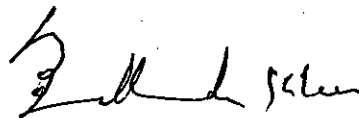
Arshad Khan versus Deputy Commandant & Others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-3
2.	Appeal No. 1928/10 with enclosures	"A"	4-10
3.	Judgment of Tribunal, 11-10-2010	"B"	11-13
4.	CPLA/Judgment of SC, 09-02-2016	"C"	14-19
5.	Order of refusal dated 20-07-2016	"D"	20-21
6.	Representation dated 18-08-2016	"E"	22-23
7.	Similar Judgment	"F"	24-33

Appellant

Through



Saadullah Khan Marwat
Advocate
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676
0311-9266609

Dated 17-01-2018

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 170/2018Khyber Pakhtunkhwa
Service TribunalDiary No. 66Dated 19-1-2018

Arshad Khan S/O Mukaram Khan,
R/o Matta Mughal Khel, Shabqadar,
Charsadda , Ex-Constable.

No. 1568 FRP, Peshawar Appellant

VERSUS

1. Deputy Commandant, FRP, Peshawar.
2. Commandant FRP, KP, Peshawar.
3. Inspector General of Police,
KP, Peshawar. Respondents

⇨<=>⇨<=>⇨<=>⇨<=>⇨

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OFFICE ORDER NO. 5823-26/EC,
DATED 20-07-2016 OF R. NO. 1, WHEREBY
APPELLANT WAS NOT RECRUITED / RESTORED AS
CONSTABLE:**

⇨<=>⇨<=>⇨<=>⇨<=>⇨

Filed to-day

Registrar

19/1/18

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-

1. That after observing the due codel formalities by advertising numerous posts of Constables, appellant was enlisted as such vide order dated 23-04-2002. After qualifying training from PTC, Hangu, appellant was returned qualified personnel's to Police Line Peshawar and was waiting for posting when on 02-04-2003, he was discharged from service. Against the said order, representation was filed on 30-04-2003 to the appellate authority but of no avail.
2. That A. No. 1928/2010 was filed before the hon'ble Tribunal along with other similarly placed personnel's numbering in dozens which came up for hearing on 11-10-2010 with direction to respondents to appoint appellant against any available vacancy instead of using

Re-submitted to-day
and filed.

Registrar

6/2/18

word "reinstatement" because in other similar Appeal's, all the personnel's were reinstated in services. (Copy as Annex "A")

3. That against the aforesaid judgment of the hon'ble Tribunal, the department filed CPLA before the apex Supreme Court of Pakistan which came up for hearing on 09-02-2016 by maintaining the judgment of the hon'ble Tribunal. (Copies as Annex "B" & "C")
4. That the judgment of the apex court was remitted to the department by the appellant for compliance but the same was not honored and decided on 20-07-2016 without any relief. This order was not addressed to appellant as is evident from the same, so the same was got on personal level from the office of respondents on 20-12-2017. (Copy as Annex "D")
5. That against the aforesaid order dated 20-07-2016 of the Authority, appellant filed representation before R. No. 02 for reinstatement in service which met dead response till date. (Copy as Annex "E")
6. That similar question of Law & facts have already been decided by this hon'ble Tribunal which was upheld by the apex court. (Copy as Annex "F")

Hence this appeal, inter alia, on the following grounds:-

GROUND S

- a. That at the time of filing of appeal before the hon'ble Tribunal, no lacuna was ever in the field but due to the passage of time, some deficiencies came into force.
- b. That co-employees of appellant, being similarly and equally placed, are/were enjoying the fruits of the service, while appellant is still fighting for his right since 02-04-2003.
- c. That in other judgments, the hon'ble Tribunal used the word "reinstatement" while in the judgments in hand, word "appointment" is used which created some complication. Even then the department was legally bound to appoint / reinstate appellant at his former post.

- d. That since 02-04-2003, dozens of fresh advertisements were made by the department for appointment of constables. Appellant was liable to be adjusted at the post, being skilled hand.
- e. That the respondents mis-handled the case of appellant, so he is entitled for reinstatement in service since 02-04-2003 with all consequential benefits.
- f. That appellant was already appointed as Constable after observing the due codel formalities, so at this stage he does not seek fresh appointment as Constable.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned order dated 20-07-2016 of the respondents be set aside and appellant be reinstated in service with effect from 02-04-2003 with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Asnaq

Appellant

Through

Saadullah Khan

Saadullah Khan Marwat

Arbab Saif-ul-Kamal

Arbab Saif-ul-Kamal
Advocates,

Dated 17-01-2018

A

4

BEFORE THE KHYBER PUKHTUN KHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 1928/2010

Arshad Khan S/O Mukararm Khan,
R/O Matta Mughal Khel, Charsadda
Ex.C.No.1568 FRP, Peshawar. Appellant

Versus

1. Deputy Commandant,
Frontier Reserve Police,
Peshawar.
2. Commandant,
Frontier Reserve Police,
N.W.F.P, Peshawar.
3. Inspector Genera of Police,
N.W.F.P, Peshawar. Respondents

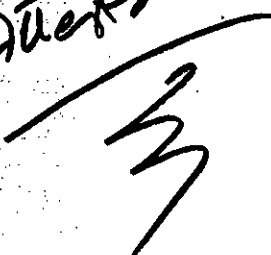
<=> ⇄ <=> ⇄ <=> ⇄ <=> ⇄ <=>

**APPEAL AGAINST ORDER NO.1495-1504 DATED
02.04.2003 OF RESPONDENT NO.1, WHEREBY
APPELLANT WAS DISCHARGED FROM SERVICE
FROM THE DATE OF INITIAL APPOINTMENT
FOR NO REASON.**

<=> ⇄ <=> ⇄ <=> ⇄ <=> ⇄ <=>

Respectfully Sheweth:

1. That on 27.12.2001, numerous posts for appointment of Constables in Frontier Reserve Police (FRP) were advertised by the Commandant FRP in Daily Newspaper, "AAJ". (Copy as annex "A").

Arshad


2. That appellant applied to the same and on 07.01.2002, physical/ running/ written test and interview was conducted, which was qualified by the him alongwith hundreds other candidates.
3. That after completing of the due codal formalities, appellant was enlisted as Constable vide order dated 23.04.2002. (Copy as annex "B").
4. That thereafter, appellant was deputed to Training Center, Hangu and got the requisite training and back brought to Police Line for posting.
5. That appellant was waiting for posting when all of a sudden and without any reason and justification, he was discharged from service from the date of his initial recruitment vide order dated 02.04.2003. The name of appellant stands at S.No.32. (Copy as annex "C").
6. That soon after the discharge of appellant from service, the Department advertised numerous posts of Constables for recruitment thousands in number and nearly 600 Constables were recruited. (Copy as annex "D").
7. That on 30.04.2003, appellant submitted representation before the authority, which was not decided so far. (Copy as annex "E").
8. That here it would be not out of place to mention that in the year, 1988, the said force was brought into regular force to be dealt with services of the employees under the Police Rules. (Copy as annex "F").

9. That as per the impugned order dated 02.04.2003 and similar other order dated 12.03.2003, wherein hundreds of the Constables were discharged from services, assailed the aforesaid orders in appeals before this Honourable Tribunal, which were accepted vide various judgments of the Honourable Tribunal. (Copies as annex "G").
10. That after availing of the requisite remedy, appellant approaches this Honourable Tribunal for relief, inter alia, on the following grounds;

GROUND S:

- A. That the impugned order was passed in utter disregard of law and rules on the subject, hence liable to be set aside.
- B. That the impugned order was passed in 2003, yet the services of appellant were discharged from the date of his initial recruitment i.e. 2002, while under the law, no order can be given retrospective effect.
- C. That before passing of the impugned order, neither appellant was served with any notice to explain his position nor any inquiry into the matter was conducted, so the impugned order has no legal effect and is void-ab-initio.
- D. That the Department recruited nearly 500 Constables alongwith appellant on merit. Only 100/150 Constables were discharged from services. Rest were left over and are still serving the force, so appellant was discriminated.

- E. That as is evident from the second advertisement dated 18.10.2003, the Department bore vacant vacancies numbering in thousands and appellant could be easily adjusted without discharging him from service.
- F. That not only the impugned order, but similar other order was declared illegal by this Honourable Tribunal as well as by Apex Supreme Court in plethora of judgments, so appellant also deserves the same treatment.
- G. That the impugned order is illegal, improper, unjust, with malafide, discriminatory, without lawful authority and against the natural justice, hence untenable.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned office order dated 02.04.2003 of respondent No.1 be set aside and appellant be reinstated in service with all back benefits.

Ashraf

Appellant

Through

Saadullah Khan

Saadullah Khan Marwat
Advocate,

Dated: 29.09.2010

ENLISTMENT ORDER.

Candidate Mr. Ashard Khan
S/o. Maharajam Khan resident of Vill: Matta Manghal Kelial
Police Station Shabqadur Teh: CHA Dist: Charsadda
enlisted as Constable in BPS-5 i.e (Rs. 2100-100-5100) w.e. from 23-4-02
and allotted Constabulary No. 1568

He is enlisted merely on temporary basis and his service would be liable in to terminate any time without any notice under Police Rules 12-21.

Height 5 - 6 Chest 33 - 34 1/2
Age 24 1/2 Education 10th
Dt: of Birth 6 - 2 - 1978

OB NO. _____
DATED 23/4/2002.

Account kept 21/6/02

M. Jaleel
COMMANDANT,
FRONTIER RESERVE POLICE NWRP,
PESHAWAR.

Ashard
Signature

The Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar

Subject:- APPEAL AGAINST ORDER DATED 2-4-2003 OF THE DEPUTY
COMMANDANT, FRP WHEREBY I WAS DISCHARGED FROM SERVICE
FROM THE DATE OF RECRUITMENT FOR NO REASON
RETROSPECTIVELY.

Respected Sir,

1. That I was appointed as constable by the competent Authority after advertisement of the posts, Submission of application and observing all the codal formalities of the law/rules.
2. That I was hen allotted Constabulary Number and deputy for training to TC/RTC, Kohat. All of a sudden, I was discharged from service from the date of appointment vide order dated 2-4-2003
3. That the impugned order is without any reason, show cause notice, with alafide and against the rules beside inquiry and without any complaint.
4. That without any reason and justification, the authority expelled me from services in dozen which confronted me with social and economic embarrassment.
5. That the impugned order is fainted with ulterior motive and is with retrospective effect which is null and void in the eyes of law.

It is, therefore, most humbly requested that the impugned order dated 2-4-2003 be set aside and I be reinstated in service with all back benefits.

Arshad

Name: Arshad Khan
F/Name: Mukarram Khan
R/O: Matta Mughal Khel
District Charsadda

Dated: 30-4-2003

Arshad
Arshad

B

11

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL



Appeal No. 889/2010.

Date of Institution. 30.04.2010
Date of Decision 11.10.2010

Munir Khan S/O Rab Nawaz Khan, R/O Katozai,
Shahbqadar, Charsadda Ex=C.No.1296 FRP, Peshawar. (Appellant)

VERSUS

1. Deputy Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Inspector General of Police, Peshawar. (Respondents)

APPEAL AGAINST ORDER NO. 1495-1504/OSI DATED 2.4.2003
OF RESPONDENT NO.1 WHEREBY APPELLANT WAS
DISCHARGE FROM SERVICE FROM THE DATE OF INITIAL
APPOINTMENT FOR NO REASON.

MR. SAADULLAH KHAN MARWAT, Advocate	For appellant.
MR. ARSHAD ALAM, Addl. Government Pleader,	For respondents.
SYED MANZOOR ALI SHAH	MEMBER
MR. KHALID HUSSAIN	MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER.- This appeal has been filed by
Munir Khan, appellant against the order dated 2.4.2003 of respondent No.1, whereby he was
discharged from service,

2. Brief facts as narrated in the memo. of appeal are that numerous posts of
Constable had been advertised for appointment in Frontier Reserve Police in Daily
Nespaper "Aaj" dated 27.12.2001. The appellant applied on 7.1.2002 and after observing all
the codal formalities, he was enlisted as Constable vide order dated 23.7.2002. The appellant
was deputed to PFC Hangu and got the requisite training. He while waiting for posting in
Police Lines, Peshawar, had been discharged from service from the date of his initial
recruitment, vide order dated 2.4.2003. Feeling aggrieved, the appellant submitted
representation before respondent No. 2 on 30.4.2003, which elicited no response till date,
hence this appeal.

Notices were issued to the respondents. They filed their written reply and

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the appellant was enlisted in Police Department by the competent authority and undergone requisite training and received monthly salaries for more than 11 months. He further argued that no charge sheet/statement of allegation was issued to the appellant nor proper enquiry was conducted. Even show cause notice was not issued to him, which were mandatory under the law. Counsel for the appellant pointed out that the department advertised numerous vacancies of constables, just after removal of the appellant from service and instead of recruiting new constables, the respondents should have adjusted the appellant being trained. The learned counsel stated that if there were some lapses in selection of appellant, it was the responsibility of the respondents for which the appellant could not be penalized. On the point of limitation, the learned counsel for the appellant stated that vide judgment dated 16.11.2005, cases of 38 colleagues of the appellant have been decided by this Tribunal, the impugned orders were set aside and the respondents were directed to reinstate them in service from the date of their removal from service. In case there were no vacancies available, they should be adjusted on first available vacancies as and when occurred. So, the appellant is also entitled to the same treatment as per 1996-SCMR-1185.

6. The learned Government Pleader, on the other hand, argued that the appellant was discharged from service on 2.4.2003, against which the appellant filed departmental appeal on 30.4.2003, and the present appeal has been filed on 30.4.2010, which is hopelessly time barred. On factual side, it has been stated that the appellant was discharged from service on the ground that he had been recruited illegally and fraudulently and action has also been taken against the defaulting officers/officials of the department. He further argued that the appellant was not confirmed and under Rule 12.21 of Police Rules, 1934 there was no need of conducting departmental proceedings. He requested that the appeal may be dismissed.

7. The Tribunal observes that no charge sheet/statement of allegations had been served upon the appellant nor the appellant was given proper opportunity of defence, which were mandatory under the law. Since cases of other colleagues of the appellant, aggrieved from the same impugned order, have been decided by this Tribunal in their favour vide consolidated judgment dated 16.11.2005 in service appeal No. 1197/2003, the appellant is also entitled to the same treatment in the light of authority referred by the counsel for the appellant.

In view of the above, the impugned order dated 2.4.2003 is set aside to the extent of appellant and the respondents are directed to appoint the appellant against any of available vacancies of constable. He may be appointed.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

9. This order will also dispose of other connected appeals No. 1076/2010, Salim Khan and Appeal No. 1928/2010, Arshad Khan, in the same manner, involving common question of law and facts.

10. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
11.10.2011

[Signature]
(KHALID HUSSAIN)
MEMBER

[Signature]
(SYED MANZOOR ALI SHAH)
MEMBER

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EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 17-10-2011
Number of Words 1200
Copying Fee 8-00
Urgent 8-00
Total 8-00
Name of Copyist [Signature]
Date of Completion of Copy 4-11-2011
Date of Delivery of Copy 4-11-2011

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C 14

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2011

- 1- Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar
- 2- Deputy Commandant Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar
- 3- Inspector General of Police (Now Provincial Police
Officer KPK, Peshawar

-----**PETITIONERS**

VERSUS

Arshad Khan s/o Mukaram Khan
R/O Matta Mughal Khel, Charsadda
Ex-Constable No. 1568 FRP, Peshawar

-----**RESPONDENT**

PETITION FOR LEAVE TO APPEAL UNDER
ARTICLES 212 (3) OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973
AGAINST THE JUDGMENT OF LEARNED KPK
SERVICE TRIBUNAL, PESHAWAR IN SERVICE
APPEAL NO. 1928/2010 DATED 11-10-2011.

RESPECTFULLY SHEWETH

- 1- The substantial questions of law of public importance and grounds, inter alia, which fall for determination of this august Court are as under:-

Arshad
2/3

- A. Whether the impugned judgment of learned Service Tribunal suffers from legal and factual infirmities and requires interference by this august Court?
- B. Whether the appeal of the respondent was barred by time and learned Service Tribunal without condoning the delay, could entertain the appeal of the respondent?
- C. Whether the appointment of the respondent was not the result of fraud, misrepresentation and irregularity was committed in his appointment?
- D. Whether the respondent was unconfirmed and enquiry etc was mandatory in the removal of the respondent under Rule 12.21 Police Rules 1934?
- E. Whether the law on the subject was not correctly construed by the learned Service Tribunal?
- F. Whether the criminal case against the respondent was not sufficient ground fro his dismissal from service?
- G. Whether the willful absence of the respondent was not strong evidence against the respondent to sustain his dismissal from service and the Ld. Service Tribunal has not failed to take this fact into consideration?

H. Whether the respondent had informed the petitioners about the ground of his absence since from the date of Commission of the offence by him or arrest by the Police and the Ld. Service Tribunal has not failed to consider this fault of the respondent?

I. Whether the impugned judgment of the Ld. Service Tribunal is not the out come of the misreading or non reading of evidence?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

- 1- That Petitioner No.1 advertised some posts of Constables on 27-12-2001 and the respondent applied for the same.
- 2- That respondent appeared in test interview for the above said post whereas the respondent did not qualified the requisite score for merit as required by the petitioner.
- 3- That the respondent was appointed illegally by the Acting Superintendent of Police, FRP Peshawar rang with the connivance of Mr. Umar Daraz Khan Ex-RI FRP/HQrs. Peshawar and Muhammad Tahir SI Ex-OSI FRP/HQrs Peshawar.

4- That the petitioner has taken action against them and awarded punishment to all concerned officers/officials and the respondent was discharged from service.

5- That the respondent neither filed any application for reinstatement nor departmental appeal before the petitioner and filed time barred Service Appeal before the KPK Service Tribunal which was accepted.

6- That the petitioners seek leave to appeal against the judgment of Ld. KPK Service Tribunal, Peshawar dated 11-10-2011 in Service Appeal No. 1928/2010.

It is, therefore, humbly prayed that leave to appeal may graciously be granted against the judgment of the Hon'ble Service Tribunal, Peshawar in KPK, Service Appeal NO. 1928/2010, dated 11-10-2011.

(Mian Shaukat Hussain)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, Service Tribunal Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE

Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEALS NO.631 TO 633 OF 2012

(Against the judgment dated 11.10.2011 of the KPK Service Tribunal, Peshawar passed in Service Appeals No.889, 1076 and 1928 of 2010)

Commandant Frontier Reserve Police, KPK Peshawar etc.

... Appellants
(in all cases)

VERSUS

- 1. Munir Khan
- 2. Salim Khan
- 3. Arshad Khan

(in C.A.631/2012)
(in C.A.632/2012)
(in C.A.633/2012)

... Respondent

For the Appellant: Mr. Waqar Ahmed Khan, Addl.A.G. KPK
(in all cases)

For the Respondents: Mr. Muhammad Nasir Mahfooz, AOR/ASC
(in all cases)

Date of Hearing: 09.02.2016

ORDER

ANWAR ZAHEER JAMALI, CJ:- We have heard the arguments of the learned ASCs for both the parties and perused the material placed on record. At this stage, learned Additional Advocate General on behalf of the appellants submits that he will be satisfied for the disposal of these appeals in terms of paragraph No.8 of the impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of Constables, such consideration will be subject to fulfillment of requisite qualification and eligibility.

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Court Associate
Supreme Court of Pakistan
Islamabad

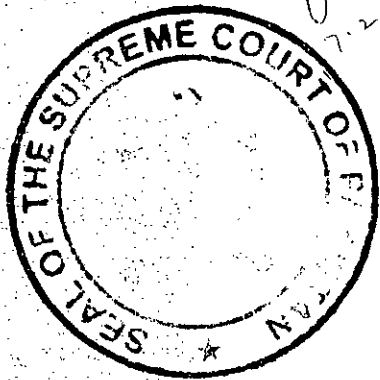
To this proposal the learned ASC for the respondents has no objection. Accordingly, these appeals are disposed of in the above terms.

Sd/- Anwar Zaheer Jamali, HCJ
Sd/- Mian Saqib Nisar, J
Sd/- Ejaz Afzal Khan, J
Sd/- Mushir Alam, J
Sd/- Manzoor Ahmad Malik, J

Certified to be True Copy

Waqas Naseer
20/2/16
Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad, the
09th February, 2016
Not Approved For Reporting
Waqas Naseer/*



GR No: 1238/16 Civil/Criminal
Date of Presentation: 11-2-16
No. of Pages: 60
No. of Exhibits: 60
Reason: 60
Date of Judgment: 3-2-16
Date of Appeal: 8-2-16
Date of Disposal: 20-2-16
Compared by: 1-3-16
Received by:

Attested
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ORDER

In pursuance the judgment dated 09.02.2016 of the Honorable Apex Court of Pakistan, this order is hereby passed to dispose of the judgment of Honorable Supreme Court of Pakistan dated 09.02.2016 in CA No.631, 632, 633 of 2012 regarding to fresh appointment of Ex-recruit constables Arshid Khan, Munir Khan and Saleem Khan of FRP/HQrs Peshawar.

Brief facts of the case are that Ex-recruit constables Arshid Khan, Munir Khan and Saleem Khan of FRP/HQrs Peshawar, discharged from service on 02.04.2003, due to non availability of vacancies.

Feeling aggrieved they filed the service appeal before the Service Tribunal Peshawar, against the order of their discharge from service, which were decided in their favour vide judgment dated 11.10.2011.

Subsequently this department filed CPLA in the Apex Court of Pakistan against the judgment of KPK Service Tribunal, Peshawar. The case was fixed for hearing on 09.02.2016 in the Larger Bench, Supreme Court of Pakistan at Islamabad, the Honorable august Court has been disposed of the case with the following terms:-

We have heard the arguments of the learned ASCs for both parties and perused the material pleaded on record. At that stage, learned Additional advocate General on behalf of the appellant submits that he will be satisfied of the disposal of these appeals in terms of paragraph No.8 of impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly these appeals are disposed of in the above terms.

Thereafter the case was forwarded to CPO for further necessary action, which returned by CPO to this office vide CPO memo 539/Legal dated 09.03.2015 with directions that according to the judgment of Supreme Court of Pakistan the above named Ex-officials will be considered for fresh appointment against the available vacancies of constables. Such consideration will be subject to fulfillment of requisite qualification and eligibility.

In the light of the directions of CPO, a committee comprising on DSP/HQ, SI/Legal & OSI FRP, was constituted to examine/consider the requisite qualification and eligibility for fresh appointment of the above Ex-officials and after fulfillment the due codal formalities submit their report.

After due deliberation the committee submitted report, that all the Ex-officials concerned were appeared before the committee except the Ex-official Saleem Khan (reportedly he is bring abroad) which detail produced as bellow:-

S.N	Name	Father Name	Education	Hight & Chest	D/O Birth
0					
1	Arshad Khan	Mukaram Khan	10 th	5 Feet 6 ¾ Inch	06-02-1978
2	Munir Khan	Rabnawaz	10 th	5 Feet 5 Inch	06-12-1981

Arshad Khan


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3.	Saleem Khan	Zait Ullah	10 th	Bring abroad	10-04-1979
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Keeping in view the above facts the committee after consideration come to the conclusion that the Ex-official mentioned at serial No.1 is found deficient in hight and as well as averaged by 7 Years, 8 Months and 6 Days and similarly Ex-Official mentioned at serial No.2 is also found deficient in hight & chest and as well as averaged by 05 Years, 08 Months and 05 Days till to the judgment of service tribunal dated 11.10.2011, therefore, both the Ex-officials are not eligible for fresh appointment.

The Ex-Official Saleem Khan exist at serial No.3 is reportedly bring abroad, but however his father namely Ziat Ullah S/O Rahmat Ullah R/o Mandizai Shabqadar District Charsadda was called to appear before the Committee concerned on behalf of his son. Subsequently he appeared before the committee and produced the photo Copies of CNIC, SSC certificate alongwith domicile certificate of his son and stated that his son is bring abroad for labor. In this regard his statement was recorded. According to CNIC of the said Official, his date of birth is mentioned as 10-04-1979, therefor, he is also found averaged by 7 years 6 months and 10 days till the date of said judgment i.e. 11.10.2011 and not eligible for fresh appointment as Constable, besides he is also bring abroad.

Keeping in view the facts stated above and perused the material pleased on record all of them are neither eligible/nor fit for fresh recruitment as constables as they are not fulfilling the basic criteria for recruitment provided by Police Rules 12-15.


 Deputy Commandant,
 Frontier Reserve Police
 OIC Khyber Pakhtunkhwa, Peshawar

5823-26
 No. _____/EC, dated Peshawar the 20/07/2016.

Copy of above is forwarded to the:-

1. Commandant FRP/KPK, Peshawar for faour of information.
2. All concerned.


 A. A. A.

خدمتِ خلیفہ کمانڈنٹ صاحب فرسٹیر ریزرو پولیس کے پی ایٹا اور

اپیل پر خلاف حکم مورخہ 20/7/16 جاری کردہ
ڈیپٹی کمانڈنٹ ایف اے آر پی ایٹا اور جسکی رو سے
ماسٹیلڈن کو بحال کرنے سے انکار کیا گیا۔

خبا عالی

۱۔ یہ تمام اعداد اسمیوں کی مشہوری کے بعد ماسٹیلڈن نے پولیس کانسٹیبل کوئی کیلئے
درخواست گزار کی اور مجوزہ طریقہ کار اپنانے کے بعد ماسٹیلڈن کو سال 2003 میں بحال کیا گیا۔

۲۔ یہ کہ بعد ازاں ماسٹیلڈن کو ٹریننگ کیلئے کوہاٹ ٹریننگ سنٹر بھیجا گیا۔ جسکی تکمیل
کے بعد ماسٹیلڈن کو واپس ٹھوسٹنگ کیلئے پولیس میڈ کوآرڈر ایف اے آر پی ایٹا کی۔ لیکن پھر کس ویم
کے مورخہ 2-4-03 کو سرسوں سے ہر طرفی کارڈر جاری کیا گیا۔

۳۔ یہ کہ نہ صرف ماسٹیلڈن بلکہ تقریباً چھ سو (600) کنسٹیبلان کی ہر طرفی کے بعد ماسٹیلڈن
نے بحالی پر ملازمتی قلم نام اپیل گزارا۔ جسکی خاص شہوانی نہ ہو کہ سرسوں ٹریننگ میں
اپیل کا دلہر کیس۔ جو مورخہ 10.11.03 کو منظور ہوئیں۔ اور حکم کو ہدایت ہوئی کہ اسے
بحال کیا جائے۔

۴۔ یہاں اس امر کی وضاحت ضروری ہے کہ ماسٹیلڈن پہلے سے مجوزہ طریقہ کار کے
بعد بحال ہوا تھا۔ جسکی بحالی ضروری تھی، نہ کہ فرسٹیر ہوئی۔

۵۔ یہ کہ حکم نے سپریم کورٹ میں اپیل دائر کی جو کہ مزکورہ بالا ٹریننگ میں
فیسلے پر منتج ہوا۔ اور ٹریننگ کے بعد میں کوئی تبدیلی نہیں کی۔

۶۔ یہ کہ حکم نے مورخہ 20-7-16 کو حکم جاری کیا کہ ماسٹیلڈن کو فرسٹیر
نہیں کیا جاسکتا ہے۔ کیونکہ اب وہ زراہ العمر ہو چکے ہیں۔

۶۔ ہم سائیلڈن کے ساتھ تقریباً چھ سو (600) کینٹیلڈن کو ٹورس سے لطف
کئے گئے تھے۔ جنہوں نے روس ٹریڈنگ کمپنی میں اپنی دائر ٹرکے بحال ہو گئے ہیں
اور اب وہ ڈیوٹیوں سر انجام دے رہے ہیں۔

۷۔ ہم سائیلڈن کا ٹیس فرینٹ ہوتی کا ٹیس تھا بلکہ بحالی کا تھا، اور سال 2003ء
میں نہ تو زائد لکھ تھا۔ اور نہ ہی کسی دیگر کمی کا شکار تھا۔

۸۔ ہم سائیلڈن کے ساتھ جو تھی کردہ کینٹیلڈن نہ صرف اپنے نو ٹریڈنگ کمپنیوں بحال ہو
کئے ہیں بلکہ تمام سابقہ مراعات کے ساتھ ڈیوٹیوں سر انجام دے رہے ہیں۔

۹۔ حکم نمبر 20-7-16 خدو قانون و واقعات سے ملکہ سبھی برائیاں
پر نہیں ہے۔

اسد مایک، سائیلڈن کو تاریخ بروز استغی سے تمام سابقہ مراعات
کے ساتھ بحال کرنے کا حکم صادر فرماویں۔

المرفوع 16-8-18

العارف

- ۱۔ سلیم خان ولد زینت اللہ خان ساکن شہر مندھری حارندہ
- ۲۔ ارشد خان ولد نغم خان ساکن منہ منہل صل حارندہ
- ۳۔ میر خان ولد رفیع خان ساکن کوزی حارندہ

سابقہ کینٹیلڈن ایف اے کے در

اسد مایک
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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1197/2003

Date of institution – 06.11.2003

Date of decision - 16.11.2005



Muhammad Ishaq Ex-constable No. 3496,
Frontier Reserve Police NWFP Peshawar.....(Appellant)

VERSUS

1. Deputy Commandant FRP Peshawar.
2. Commandant FRP Peshawar.
3. Inspector General of Police NWFP Peshawar.....(Respondents)

Mr. Saadullah Khan Marwat, Advocate.....For appellants.
Mr. Zaffar Abbas Mirza, Government Pleader.....For respondents.

ABDUL KARIM QASURIAMEMBER.
GHULAM FAROOQ KHANMEMBER.

JUDGMENT.

ABDUL KARIM QASURIA, MEMBER :- This appeal will dispose of the following identical appeals, as identical questions of law and facts are involved in all these cases. These are service appeals filed by the appellants against the order of Deputy Commandant F.R.P. Peshawar whereby the services of the appellants were terminated and they were discharged from

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MEMBER
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service w.e.f. 17.6.2003. The appellants also prayed that the impugned order may be set aside and they be re-instated in service with full back benefits.

<u>S.No.</u>	<u>Appeal No.</u>	<u>Name of appellant</u>	<u>Versus</u>
1.	152/2004	Khaista Gul	IGP NWFP etc.
2.	666/2003	Mujahid Khan	Commandant FRP etc.
3.	224/2005	Fayaz Ahmad	-do-
4.	95/2005	Gohar Zaman	-do-
5.	97/2005	Ghulam Mustafa	-do-
6.	96/2005	Nazar Ali	-do-
7.	104/2005	Abdul Latif	-do-
8.	103/2005	Fayaz Ahmad	-do-
9.	1349/2003	Raza Muhammad	-do-
10.	100/2005	Shaukat Ali	-do-
11.	93/2005	Sabihullah	-do-
12.	102/2005	Gul wali	-do-
13.	101/2005	Zainur Rehman	-do-
14.	94/2005	Shamsur Rehman	-do-
15.	98/2005	Sanaullah	-do-
16.	99/2005	Azmat Akbar	-do-
17.	118/2005	Irshad Khan	-do-
18.	456/2004	Sanaullah	-do-
19.	1198/2003	Sajid Ali	-do-
20.	455/2004	Azmat Akbar	-do-
21.	667/2003	Tariq Khan	-do-
22.	1202/2003	Roohullah	-do-
23.	1201/2003	Imranullah	-do-
24.	1199/2003	Abid Jan	-do-
25.	668/2003	Suhail Ahmad	-do-
26.	766/2003	Tahirullah	-do-

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27.	1200/2003	M.Saeed Khan	-do-
28.	113/2004	Shah Khalid	-do-
29.	114/2004	Ziaru Rehman	-do-
30.	1365/2003	Sher Wali	-do-
31.	1364/2003	MohtamimKhan	-do-
32.	1363/2003	Shabir Khan	-do-
33.	1362/2003	Niaz Ali	-do-
34.	1353/2003	Roohullah	-do-
35.	1352/2003	Tasbeehullah	-do-
36.	1350/2003	Mohkam Shah	-do-
37.	1351/2003	Riaz Muhammad	-do-

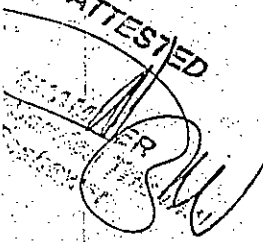
2. Brief facts of the case as narrated in the memo of appeal are that on 27.12.2001 numerous posts were advertised in Daily Newspapers "Aaj" for appointment as constable in the F.R.P, throughout N.W.F.P. The candidates were also directed to submit their applications on 18.10.2003 alongwith their testimonial in the office of Superintendents of Police of their respective Districts. The appellants applied for the posts and as per advertisement, physical test was conducted and qualifying the same, written test and interview was held on 7.1.2002. After completion of all code formalities by the respondents, orders of appointment of appellants were issued on 1.4.2002. The appellants were allotted constabulary numbers and were deputed to the training centers at Kohat and Hangu. After completion of training the appellants were directed to report to the Headquarter Peshawar for posting. Accordingly the appellants made their arrival reports

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 Peshawar

in their respective places of postings. The appellants were discharged from services vide the impugned order dated 17.6.2003 with effect from the date of their initial appointment i.e. 1.4.2002 retrospectively. Feeling aggrieved by the said impugned order dated 17.6.2003, the appellants submitted representation before the Commandant F.R.P. NWFP Peshawar, respondent No. 2 on 8.2.2003 for re-instatement but the same met with deed response. The appellants thereafter, filed this appeal before the Tribunal on 6.11.2003 u/s 4 of the NWFP Service Tribunal Act 1974 against the order dated 17.6.2003 whereby the appellants have been punished and discharged from service.

3. The grounds of appeal are that the impugned order dated 17.6.2003 of respondent No. 1 is against law, equity, justice and utter violation of rules and regulations. The impugned order was passed in total disregard of law, especially by giving retrospective effect. Before passing the said order no show cause notice was issued before "removal from service". Thus the appellants were deprived of the right of proper defence. The impugned order is violative of the principles of natural justice as the appellants have been condemned unheard, therefore, the impugned order is not tenable under any law and is liable to be set aside. The appellants have prayed that they may be re-instated in service with all back benefits.

ATTESTED


4. The respondents were summoned. They appeared through their respective representatives/counsel, submitted written para-wise comments through which they denied the claim of the appellants and defended their action.

5. In reply to the grounds of appeal, the respondents have asserted that the appeal is time barred, the same is bad for non-joinder and mis-joinder of necessary parties, the appellants have no cause of action and have not come to the court with clean hands. On factual side it was contended that the appellants were recruited by Mr. Jalaluddin Khan PDSP (Acting S.P./FRP, Peshawar Range Peshawar) with connivance of Mr. Khurshid Khan SP/FRP/Hqrs, Ex-R.I./FRP/Hqrs, Mr. Umar Daraz Khan DSP/FRP/Hqrs, Ex-R.I./FRP/Hqrs, Mr. Umar Daraz Khan, Inspector Ex-OSI/FRP Hqrs, Muhammad Tahir Khan Ex-OASI/FRP, Hqrs, Malik Zada Khan and others illegally and fraudulently in FRP. Action has been taken against them and they were proceeded departmentally and awarded punishments. The appellants were discharged from service as they were not enlisted through proper procedure by the competent authority. The representations submitted by the appellants were examined and rejected. The enlistment order of the appellants was found illegal, so they were discharged from service. As a consequence, the order of discharge issued by respondent No. 1 is legal and valid. According to police rules 12-21, there was no need of personal enquiry as the service period of the appellants were less than three years. However, no opportunity was required under the law and no other official

8. No action as alleged in the para wise comments, has been taken by the department against Mr. Jalaluddin PDSP/Sr. FRP, Khurshid Khan, DSP, FRP, Hqrs, and other officials. Only Omar Daraz Inspector RI, FRP, Hqrs, was dismissed from service but not in this case. Rather in another case of corruption of FRP land in Shabqadar.

9. Arguments heard and record perused.

10. The learned counsel for the appellants stated that the appellants were enlisted in the police by the competent authority i.e. respondent No. 1, but they have been discharged by the Deputy Commandant FRP, who was junior and subordinate to the Commandant in rank, so the impugned order is without lawful authority. The learned counsel further contended that the appellants also got monthly salaries for more than one year but no such objection was ever raised by the department and Audit Party regarding illegal recruitment. He further argued that as far as rejection of the departmental appeal is concerned, the same is also without any evidence and proof. No order of rejection was ever communicated to the appellants, nor any evidence was produced by the respondent department regarding the rejection of departmental appeal. The learned counsel further contended that apart from the appellant, 400 more constables were recruited in the same manner on the same date but only 40/45 constables were discharged from service while the others are still in service. Even they were not served with any notice but the appellants were made a scape goat and were removed

11/11/1977

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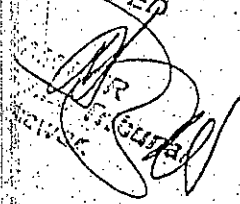
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from service. The learned counsel for the appellants further stated that in some cases reason for non-availability was given but this reason is of no avail to the department because the appellants are civil servants for which procedure for discharge/removal from service is obviously mentioned in the rules. For removal/discharge from service, the respondents were required under the law to have served the appellant with charge sheet/statement of allegations on the appellants and then enquiry into the allegations should have been conducted in the matter. On completion of the enquiry proceedings, aggrieved persons should have been served with a final show cause notice and they should have been provided with the opportunity of personal hearing. All these are mandatory provisions in law but in the instant case no such procedure has been adopted nor any one was served with any notice. To substantiate his arguments, the learned counsel also produced NLR-1996-Service, Page-36. The learned counsel also pointed out that the department advertised numerous vacancies for appointment of constables, just after the discharge/removal of the appellants from service. Instead of recruiting new constables, the appellants should have been adjusted in the best interest of the public. The learned counsel for the appellants contended that if it is to be presumed that the orders of appointment were illegal, but the same were approved and signed by the competent authority which were implemented and have got finality, so the same could not be rescinded in the slipshod manner except re-coursing to law enumerated in the rules. For this act, the poor low paid employees cannot be held responsible and punished as

ESTED


is held by the Hon'ble Supreme Court of Pakistan. The learned counsel for the appellants also relied on SCMR-page-85, SCMR-2004 page-630, PLJ-1997, Page 430 and TRC (Services 685). The learned counsel during the course of arguments has stated that the impugned order was prompted on 17.6.2003 but the same was given retrospective effect whereas under the law and according to the judgments of the Hon'ble Supreme Court of Pakistan, SCMR-2002, Page 1124 and NLR-1993 TD (Service-page-35). No retrospective effect can be given to any order, so on this score too the impugned order is liable to be held as illegal and unjust. Moreover, the respondents have filed to submit the merit list of the candidates.

11. The learned Government Pleader argued that the appellants were discharged from service on the ground that they were recruited fraudulently and illegally and were allotted double constabulary numbers by the then officers/officials of the FRP against whom departmental action has been taken and awarded the impugned punishment. The learned Government Pleader further contended that there was no need of show cause notice/personal hearing according to Police Rules 12-21 as the services of the appellants were less than 3 years. The learned Government Pleader further argued that enlistment order of the appellant was found illegal and the order passed by respondent No. 1 is legal/justified and in accordance with rules.

ATTESTED


12. After hearing the arguments of the learned counsel for the parties and going through the record, it transpires that the impugned order dated 17.6.2003 is illegal, unjust, mala fide, against the law and rules, discriminatory, arbitrary, without lawful authority and natural justice. The Tribunal agrees with the arguments advanced by the learned counsel for the appellants, sets aside the impugned order and re-instate the appellants from the date of their discharge from service. The appellants shall be adjusted forthwith on the available vacancies or if vacancies are not available with the department at present, they shall be adjusted on first available vacancies as and when occurred. The appellants are also exempted from the recruitment procedure as they have already fulfilled the same as well as training. The intervening period from the date of discharge till the adjustment of the appellants be treated as extra ordinary leave without pay. In order as to costs. File be consigned to the record.

ANNOUNCED.

3.11.2005.

(Signature)
 (ABDUL KARIM QASURIA)
 MEMBER.

(Signature)
 (GIULAM FAROOQ KHAN)
 MEMBER.

16/11/05

(Signature)
 Certified to be true copy
 Director, Service Tribunal
 Pakistan

23.11.06
 4000
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(Signature)
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بعد الت جناب سرسٹریٹ بوتل صوبہ سرحد پشاور

منجانب ایڈوائٹ

محکمہ ٹریڈنگ

بنام

زیر دستہ

دعوی اپیل

باعث تحریر اینکہ

مقررہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹم سٹیشن اڈا خان سرحد ایڈوائٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی وکل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دینے جواب دہی اور قبیل دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور مستثنیٰ نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے وکل یا مجزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شاہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و پر جانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درہ پراہو یا بعد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ رکھ دیا کہ سند ہے۔

المترجم

العبد

العبد

العبد

ارباب سید اسماعیل
ایڈوائٹ

سید اللہ خان مروت
ایڈوائٹ

من روایت تار
ایڈوائٹ

Ashraf

BEFORE THE SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 170/2018

Ex Constable ArshadKhanPetitioner.

VERSUS

**1. Addl: IGP/Commandant FRP Khyber
Pakhtunkhwa Peshawar & Others.....Respondents.**

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Para-wise Comments		03
2.	Judgment	A	02
3.	Committee report	B	02
4.			
Total			07

9/9/18
RESPONDENTS

170/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.170/2018.

Arshad Khan S/o Mukaram Khan R/o Matta Mughal Khel, Shabqadar, Charsadda Ex-Constable. No. 1568 FRP Peshawar.....Appellant

VERSUS

1. Deputy Commandant of FRP
Khyber Pakhtunkhwa, Peshawar
2. Commandant of FRP
Khyber Pakhtunkhwa, Peshawar
3. Inspector General of Police
Khyber Pakhtunkhwa, Peshawar..... Respondents.

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Court with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant trying to concealed material facts from this Honorable Tribunal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS

FACTS

RESPECTED SHEWETH:-

1. Incorrect & rejected the appellant was not enlisted as constable by the department accordingly, but he was enlisted by the then RI, OASI & others illegally and fraudulently in FRP. Subsequently all concerned were proceeded on departmentally and awarded suitable punishment. Moreover, the appellant has no locus standi to file departmental appeal.
2. Para No.2, is admitted to the extent that this department feeling aggrieved filed CPLA in the Apex Court of Pakistan against the judgment of Honorable Service Tribunal, Peshawar. The case was fixed for hearing on 09.02.2016 before the Larger Bench, Supreme Court of Pakistan at Islamabad, the Honorable August Court was disposed of the case with the following terms:-
We have heard the arguments of the learned ASCs for both parties and perused the material pleased on record. At that stage, learned Additional advocate General on behalf of the appellant submits that he will be satisfied of the disposal of these appeals in terms of paragraph No.8 of impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly these

appeals are disposed of in the above terms. (Copy of the judgment attached herewith as annexure "A"). Moreover, others officials, who filed Service Appeal within stipulated period were reinstated in service according to the judgment of this Honorable Tribunal.

3. Incorrect & rejected the Apex Court of Pakistan allowed the arguments of learned ASC, i.e the terms of paragraph No.8 of impugned judgment, but subject to condition of qualification & eligibility of the appellants for appointment as constable.
4. Incorrect & rejected the allegations are false and baseless; the judgment of Apex Court of Pakistan was implemented sincerely and with letter in spirit. In this regard a committee was constituted to consider qualification & eligibility of the appellant for appointment as constable. After fulfillment of due codal formalities the committee submitted their report, wherein they stated that the appellant is found deficient in height by $\frac{1}{4}$ Inch, as well as averaged by 7 Years, 8 Months and 6 Days and therefore, not eligible for recruitment as constable.(Copy of committee report is attached herewith as annexure "C") Moreover, the above committee report was thoroughly examined and thereafter a speaking order was passed by the respondent No. 1 and copies of which have already been conveyed to all concerned.
5. Incorrect & rejected the appellant has failed to submit departmental appeal before the appellate authority
6. Incorrect & rejected that the judgment annexed by the appellant with the instant service appeal is not at par with the case of the appellant as he has come to this Honorable Tribunal at very belated stage, which is badly time barred about 15 years. Moreover, the department filed CPLA against the impugned judgment dated 11.10.2010 passed earlier by this Honorable Tribunal, which was disposed of by the august Supreme Court of Pakistan with the directions that to consider the appellant for appointment subject to condition of his qualification and eligibility.

GROUNDS:-

- a. Incorrect & rejected the appellant was considered for appointment as constable in the light of decision of August Supreme Court of Pakistan, but he was not found fit for enlistment as constable in the Police department according to law/rules.
- b. Incorrect & rejected as explained in the preceding Paras of fact the case of the appellant is not at par with the case mentioned by the appellant in the para, as he approached for such relief at very belated stage, which was already refused by apex Court of Pakistan too, vide judgment dated 09.02.2016.
- c. Incorrect, that a suitable decision was passed by this Honorable Tribunal in the case of the appellant by taking lenient view, while otherwise the case of


the appellant was not tenable as the appellant filed Service Appeal at very belated stage, which is badly time barred.

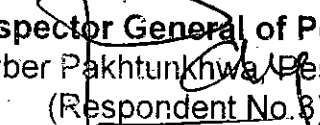
- d. Incorrect & rejected the appellant was recruited by the mafia illegally for their ulterior motive, without adopting the due codal formalities. Subsequently all defaulters concerned were proceeded on departmentally and awarded suitable punishment. Thus, the ab-initio status of the appellant was found illegal and therefore, he did not deserved/entitled for adjustment at the post of constable.
- e. Incorrect & rejected as explained in the preceding Paras the case of the appellant was considered according to the verdict of the Apex Court of Pakistan, to which he was found in eligible as per law/rules.
- f. Incorrect & rejected as the appellant approached to the Honorable Tribunal for reinstatement in service after delay about 08 years, thus he was not entitled for reinstatement in service. Therefore, the Honorable Tribunal correctly passed the order to appoint the appellant afresh. However, the matter was taken up before the August Supreme Court of Pakistan, wherein his fresh appointment was connected subject to condition of eligibility for recruitment as a constable.

g. **PRAYERS:-**

It is therefore, most humbly prayed that in the light of aforesaid facts/submission the service appeal may kindly be dismissed with cost.


Deputy Commandant,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Commandant
Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MANZOOR AHMAD MALIK

CIVIL APPEALS NO.631 TO 633 OF 2012

(Against the judgment dated 11.10.2011 of the KPK
Service Tribunal, Peshawar passed in Service
Appeals No.889, 1076 and 1928 of 2010)

Commandant Frontier Reserve Police, KPK Peshawar etc.

... Appellants
(in all cases)

VERSUS

1. Munir Khan
2. Salim Khan
3. Arshad Khan

(in C.A.631/2012)
(in C.A.632/2012)
(in C.A.633/2012)
... Respondent

For the Appellant: Mr. Waqar Ahmed Khan, Addl.A.G. KPK
(in all cases)

For the Respondents: Mr. Muhammad Nasir Mahfooz, AOR/ASC
(in all cases)

Date of Hearing: 09.02.2016

ORDER

ANWAR ZAHEER JAMALI, CJ:- We have heard the arguments of the learned ASCs for both the parties and perused the material placed on record. At this stage, learned Additional Advocate General on behalf of the appellants submits that he will be satisfied for the disposal of these appeals in terms of paragraph No.8 of the impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of Constables, such consideration will be subject to fulfillment of requisite qualification and eligibility.

ATTESTED

[Signature]
20/2
Court Associate
Supreme Court of Pakistan
Islamabad

Committee Report

4480
27/8/16
KC
Durrani

Sir,

It is submitted that Ex-Recruit Constables Arshid Khan, Munir Khan and Saleem Khan of FRP/HQrs Peshawar, alongwith others were discharged from service on 02.04.2003, due to non availability of vacancies.

Feeling aggrieved the said Ex-Recruit Constables filed the service appeal before the Service Tribunal Peshawar, against the order of their discharge from service, which were decided in their favour vide judgment dated 11.10.2011. (Copy of the judgment attached as annexure "A")

Subsequently this department filed CPLA in the Apex Court of Pakistan against the judgment of KPK Service Tribunal, Peshawar. The case was fixed for hearing on 09.02.2016 in the Larger Bench, Supreme Court of Pakistan at Islamabad, the Honorable august Court has been passed the remarks which re-produced as bellow:-

We have heard the arguments of the learned ASCs for both parties and perused the material pleased on record. At that stage, learned Additional advocate General on behalf of the appellant submits that he will be satisfied of the disposal of these appeals in terms of paragraph No.8 of impugned judgment but subject to the condition that at the time when the respondents will be considered for appointment against the available vacancies of constables, such consideration will be subject to fulfillment of requisite qualification and eligibility. To this proposal the learned ASC for the respondents has no objection. Accordingly these appeals are disposed of in the above terms.

In the light of the decision of the Apex Court of Pakistan, a committee comprising on DSP/HQ, SI/Legal & OSI FRP, was constituted to examine academic documents of the requisite qualification and eligibility for fresh appointment of the appellants.

In pursuance the orders of the High up a meeting of the above committee was held on 18.04.2016 and on 30.05.2016 in the office of DSP/HQ and in this regard all the Ex-officials concerned were appeared before the committee the while Ex-official Saleem Khan failed to have appeared before the committee (reportedly he is bring abroad) which progress/detail produced as bellow:-

S.N	Name	Father Name	Education	Hight & Chest	D/O Birth
1	Arshad Khan	Mukaram Khan	10 th	5 Feet 6 ¼ Inch	06-02-1978
2	Munair Khan	Rabnawaz	10 th	5 Feet 5 Inch	06-12-1981
3	Saleem Khan	Zait Ullah	10 th	Bring abroad	10-04-1979

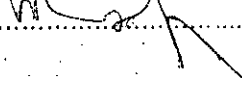
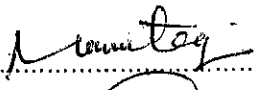
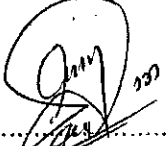
Keeping in view the above facts the committee after due deliberation came to

in height and as well as averaged by 7 Years, 8 Months and 6 Days and similarly Ex-Official mentioned at serial No.2 is also found deficient in height & chest and as well as averaged by 05 Years, 08 Months and 05 Days till to the judgment of service tribunal dated 11.10.2011, therefore, both the Ex-officials are not eligible for fresh appointment.

The Ex-Official Saleem Khan exist at Serial No:3 is reportedly bring abroad, but however his father namely Ziat Ullah S/O Rahmat Ullah R/o Mandizai Shabqadar District Charsadda was called to appear before the Committee concerned along with the academic documents of his Son. Subsequently he appeared before the committee and produced the photo Copies of CNIC, SSC certificate alongwith domicile certificate of his son and stated that his son is bring abroad for labor. In this regard his statement was also recorded which attached herewith as annexure "A". According to CNIC of the said Official, his date of birth is mentioned as 10-04-1979 therefor, he is also found averaged by 7 Years 6 Months and 10 days till the date of said judgment i.e. 11.10.2011 and not alleageable for fresh appointment as Constable.

Keeping in view the above facts, all of them are found not eligible/fit for fresh recruitment as constables as they are not fulfilled the basic criteria for recruitment provided by Police Rules 12-15.

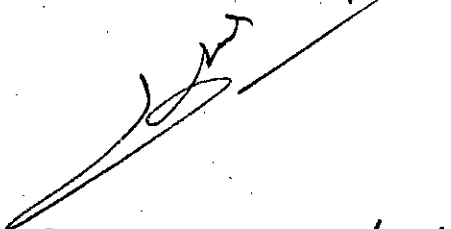
Submitted for order please.

1. DSP, FRP HQ.....
2. SI/Legal.....
3. OSI/FRP.HQ.....

Dy: Commandant, FRP/KP

EC/SI/Legal

write to CPO.


Dy: Commandant

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 170/2018

Arshad Khan

versus

Deputy Commandant & Others

REPLICATION

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why the appeal is time barred, bad for mis and non-joinder of necessary parties, without cause of action, unclean hands, estoppels and concealment of facts

ON FACTS:

1. Not correct. The para of the appeal is correct with documentary proof. Appellant served the department for about 04 years but no such lacuna of the then RI, OASI etc was pointed out.
2. Admitted correct by the respondents regarding filing of appeal, disposal of CPLA by the apex court with direction to adjust / consider appointment against the available vacancy of constable. This fact is admitted correct by the department that other officials who filed appeals were reinstated in service by the hon'ble Tribunal.
3. Not correct. The apex court maintained the judgment of the hon'ble Tribunal with direction to respondents to appoint appellant as and when vacancy becomes available.
4. Not correct. The impugned order 20-07-2016 was not served upon appellant as is evident from the same but got the same from the office of respondents at personal level. The deficiency shown in height of two inch and in chest are of no avail to the respondents as the police department is serving with such deficiencies by many servants. The appellant remained in service and were involved in litigations

before the hon'ble Tribunal as well as before the apex court so no question of overage arises at all.

5. Not correct. Annex "E" is the ample proof regarding representation.
6. Not correct. The para of the appeal is correct regarding acceptance of numerous appeals by the hon'ble Tribunal which judgments were upheld by the apex court annex with the appeal.

GROUND S:

All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are again adopted.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.

Appellant

Through



Saad Ullah Khan Marwat

Advocate,

Dated: 05-04-2019

AFFIDAVIT

I, Arshad Khan appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.



DEPONENT