# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

In the matter of Appeal No. 714/2018

Fazal Hadi ASI No. 747/P CCP, Peshawar...... (Appellant)

#### VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and others. (Respondents)

# **REJOINDER ON BEHALF OF THE APPELLANT**

Respectfully submitted:

The appellant submit his rejoinder as under:

#### **Preliminary Objections:**

- 1. That the present appeal is well within time.
- 2. That all the necessary parties are included in the appeal.
- 3. That the appellant has came to this court with clean hands.
- 4. That the appellant got cause of action against the respondents.
- 5. That no rule of estoppel applies to present appeal.
- 6. That the appellant has not concealed any thing from this Hon;able Tribunal.
- 7. That the appellant has locus standi and got cause of action to file the instant appeal and is maintainable in its present form.

#### Facts of the Case:

1. Contents of para 1 of the appeal are correct hence no comments.

- 2. Contents of para 2 needs no comments. More over the service record shows that the appellant has performed his duty honestly and without any complaint till date.
- 3. Contents of para 3 needs no comments.
- 4. Contents of para 4 needs no comments.
- 5. Contents of para 5 needs no comments. Furthermore the relevant record is attached with the service appeal.
- 7. Contents of para 7 needs no comments. Further more the relevant record is attached with the service appeal.
  - 8. Contents of para 8 needs no comments. Further more the relevant record is attached with the service appeal.
- 9. Contents of para 9 is incorrect hence denied. It is pertinent to point out that presently there is no separate promotion rules in the different branches of the Police Department, nor the respondents have created different cadre for appellant or framed separate rules for the appellant.
- 10. Contents of para 10 needs no comments.
- 11. Contents of para 11 needs no comments.
- 12. Contents of para 12 is incorrect hence denied, and that of the appeal is correct.
- 13. Contents of para 13 is incorrect hence denied, and that of the appeal is correct.

#### **Grounds of Appeal:**

- i. Para A of the appeal is correct, the appellant have not been treated in accordance with law, his rights secured and guaranteed under the law are badly violated.
- ii. Para B of the appeal is correct.
- iii. Para C of the appeal is correct.

- iv. Para D of the appeal is correct.
- v. Para E of the appeal is correct.
- vi. Para F of the appeal is correct.
- vii. That the appellant seeks the permission of this honorable tribunal to rely on additional grounds at the hearing of this appeal.

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It is, therefore, prayed that the appeal of the appellant may be accepted as prayed for.

Appellant

Through

ZARTAJ ANWAR Advocate Peshawar

# AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

#### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

#### Service Appeal No. 714/2018.

Fazal hadi ASI No. 747/P of CCP, Peshawar......Appellant.

#### <u>VERSUS.</u>

- 1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2. AIG/Establishment CPO, Peshawar.
- 3. DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
- 4. Capital City Police Officer, Peshawar......Respondents.

Reply on behalf of Respondents No. 1, 2, 3 & 4.

Respectfully Sheweth:-

#### 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 not come to this court with clean hands.
- 4. That the appellant has no cause of action.
- 5. That the appellant is estopped by his own conduct to file the instant appeal.
- 6. That the appellant concealed the material facts from Honorable Tribunal.
- 7. That the appellant has got no locus standi and cause of action to file the instant appeal.

#### FACTS:-

- 1- Para relates to record hence needs no comments.
- 2- Para No. 2 is for the appellant to prove.
- 3- Para No. 3 is admitted correct.
- 4- Para No. 4 is legal, hence no comments.
- 5- Para No. 5 relates to record, hence needs no comments.
- 6- Para No. 6 is incorrect. In fact the appellant along with others were promoted to the rank of officiating Sub Inspector vide Notification No.3682/EC dated 24.07.2015: Later on it came to light that the promotion of appellants were made against the vacancies created and sanctioned for Traffic Warden Service cadre. Therefore, in pursuance of the decision made in 18<sup>th</sup> police Policy Board, the promotion order of appellant was cancelled vide order dated 04.09.2015.(copy of 18<sup>th</sup> Policy board decision annexed as "A")
- 7- Para No. 7 is incorrect. In fact the appellant along with others were promoted to the rank of officiating Sub Inspector vide Notification No.3682/EC dated 24.07.2015. Later on it came to light that the promotion of appellants were made against the vacancies created and sanctioned for Traffic Warden Service cadre. Therefore, in pursuance of

the decision made in 18<sup>th</sup> police Policy Board, the promotion order of appellant was cancelled vide order dated 04.09.2015.

- 8- Para No. 8 pertains to record.
- 9- Para No.9 is incorrect. In fact Traffic Warden is a separate Establishment, and appellant alongwith his other colleagues were not entitled for promotion against the sanctioned seats of other establishment i.e. Traffic Warden, therefore their promotion order being unlawfully passed on the vacant seats of other unit was cancelled vide order Endst: No. 16570/EC-I dated 04.09.2015 in pursuance of 18<sup>th</sup> Police Policy Board (PPB) meeting held on 13.08.2015 in the best interest of the department.(cancellation order as annexed "B")
- 10-Para No. 10 is incorrect. The order dated 24.11.2015 passed by the Hon'able High Court does not fall within jurisdiction of High Court therefore it was challenged before the Apex Court, by filing CPLA through Law Department. The Supreme Court of Pakistan subsequently vide judgment dated 26.01.2018 set aside order of the Hon'ble High Court , converted the petition into departmental appeal and remanded back to respondent department with the direction to decide the same in one month.
- 11- Para No. 11 is correct as per record.
- 12- Para is incorrect. The appeal was decided within stipulated period of one month and their appeal was rejected vide order dated 21.02.2018 by respondent department. (Copy annexed)
- 13- Para No. 13 is incorrect. Order issued on 04.09.2015 was lawful and based on genuine grounds.

GROUNDS:-

- A- Incorrect. The appellant was treated as per law/rules, no provision of law has been violated.
- B- Incorrect. Para already explained in above paras, and no right of appellant has been violated.
- C- Incorrect. As already explained in the above para that traffic warden is a separate establishment functioning under the command of DIG/Traffic and promotion over the vacant posts of warden was inadvertently made which after due deliberation was later on cancelled vide order dated 04.09.2015 by the respondent department.
- D- Para is repetition of Para C.

E- Incorrect. The appellant was provided full opportunity of personal hearing.

F- Incorrect. The appellant was legally treated as per law and rules.

G- That respondent may also be allowed to advance any additional ground at the time of hearing of the appeal.

# PRAYERS:-

It is therefore most humbly prayed that in light of above facts, submissions the appeal of the appellant devoid of merits, legal footing may be set aside/ dismissed.

Provincial Police Officer,

Khyber Pakhtunkhwa, Peshawar.

Deputy Inspector General of Police, Hqrs: KhyberPakhtunkhwa, Pcshawar.

Capital City Police Officer, Peshawar.

AIG Establishment, Khyber Pakhtunkhwa,Peshawar.

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 714/2018.

Fazal hadi ASI No. 747/P of CCP, Peshawar.....Appellant.

<u>VERSUS.</u>

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

2. AIG/Establishment CPO, Peshawar.

3. DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.

4. Capital City Police Officer, Peshawar......Respondents.

#### AFFIDAVIT.

We respondents 1, 2, 3 and 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

Provincial Police Officer. Khyber Pakhtunkhwa, Peshawar.

Deputy Inspector General of Police, Hqrs:KhyberPakhtunkhwa,Peshawar.

Capital City Police Officer, Peshawar/

IG F blishment, KhyberPakhtunkhwa,Peshawar.



#### OFFICE OF THE INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA Central Police Office, Peshawar

dated Peshawar, the 2/12018. No. 6/3\_/Legal  $\frac{311}{21 - 02 - 0.18}$ 

# ORDER

This order is passed in compliance with judgment of the Honorable Supreme Court of Pakistan dated 26.01.2018, passed in Civil Petition No. 34-P/2016, titled Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others Versus Muhammad Israr and others. The brief, yet relevant, facts of the case are that Muhammad Israr and 138 others Assistant Sub-Inspectors (names mentioned in the memo of Writ Petition / representation) of Police of District Peshawar (hereinafter referred to as appellants) were promoted to the rank of officiating Sub-Inspector vide Notification No. 3685/EC dated 24.07.2015 of Capital City Police Officer, Peshawar. Later on it came to light that the promotion of appellants were made against the vacancies created and sanctioned for Traffic Warden Service of alien cadre. Therefore, in pursuance of the decision made in 18<sup>th</sup> Police Policy, Board, the promotion order of appellant was cancelled vide order of Capital City Police Officer, Peshawar dated 04.09.2015.

The appellants filed Writ Petition No. 3113-P/2015 before the Honorable Peshawar High Court Peshawar against the cancellation of their promotion orders. The Writ Petition was contested on the ground that the appellant were promoted against the vacancies exclusively created for Traffic Warden Service and the matter relates to terms and conditions of service and the appellants have approached wrong forum. However, the Honorable High Court accepted the petition vide order dated 24.11.2015.

Civil Petition was lodged against the judgment of the Peshawar High Court Peshawar before the Honorable Supreme Court of Pakistan and the Honorable Court allowed the petition and the impugned judgment of Honorable High Court Peshawar was set aside. However, on the request of respondents / appellants the Honorable Courts directed that the Writ Petition filed by the appellants may be treated as departmental appeal and the department may decide the representation of the appellants within a period of 01 month.

On receipt of the order of the Honorable Court, the relevant record was thoroughly examined which revealed that the impugned promotions of appellants were made against the vacancies of the Traffic Warden Service which was amounting to out of turn promotion. The Honorable Supreme Court of Pakistan has issued clear directions with regard to stoppage of out of turn promotion. The promotion of appellants against the vacancies of alien cadre were correctly cancelled by the Capital City Police Officer, Peshawar. There is no force and merit in the representations of appellants, and their prayer is not tenable, hence the representation is rejected.

Addl: Inspector General of Police HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/\_\_\_\_\_/18

Copy of the above is forwarded to the Capital City Police Officer, Peshawar with reference to his office memo No. 216/LB dated 06.02.2018, for service of the copy of the order on the appellants.

Addl: Inspector General of Police HQrs: Khyber Pakhtunkhwa, Peshawar.

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#### OFFICE OF THE CAPITAL CITY POLICE OFFICER, PESHAWAR.

/2015,

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Phone No.091-9210641 Fax No.0919212597 /EC-I, dated Peshawar the

ORDER,

In pursuance of 18th Police Policy Board Meeting held on 13.08.2015 duly approved by Inspector General of Police Khyber Pakhtunkhwa, Peshawar issued vide DIG/HQrs: Letter Endst: No.1598-1650/PA/DIG/HQrs:, dated 28.08.2015 & AIG Establishment, Khyber Pakhtunkhwa, Peshawar Letter No.2404/E-II, dated 31.08.2015, the promotion Notification of 139 promoted Offg: Sub Inspectors Issued vide this office Notification No.13685-13706/EC-I, dated 24.47.2015 is hereby cancelled.

10571-94 /EC-1, No,

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(Mub‡rak Zeb)PSP Capital city Police Officer, Þeshawar.Ø

to the:-

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Copy of above is forwarded for information and necessary action

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. Inspector General of Police, NH & Motorway Police, Islamabad. Addi: Inspector General of Police, Investigation KPK, Peshawar. Addi: Inspector General of Police, Special Branch KPK, Addl: Inspector General of Police, Elite Force KPK, Peshawar.

Deputy Inspector General of Police, CTD KPK, Peshawar.

Deputy Inspector General of Police, MArdan Region. Commandant Police Training College Hangu.

Commandant CPC, university Campus, Peshawar.

ୢୖ୲ଡ଼ୖ Director Anti-Corruption Establishment KPK.

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SSsP/Operation, Investigation & Traffic, Peshawar, The Senior Superintendent of Police, Logistic Headqaurter, Sector-H/11, Islamabad. District Police Officers Charsadda & Nowshera. 13.

EC-II, PO, ASICC & Computer Cell.

18.12.2019

Örder

Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Ikhtiar Ali, Inspector and Mr. M. Raziq, Reader for respondents present. Arguments heard and record perused.

This appeal is also dismissed of as per detailed judgment of today placed on file in service appeal no. 683/2018 titled "Abdul Jalal Khan -vs- Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar and four others." Parties are left to bear their own cost. File be consigned to the record room.

Announced: 18:12.2019

Ahmad Hassan) Member

(Muhammad Hamid Mughal) Member المنظرين المن و المنتجة مع المنتجة . المحققة المنتجة المحقومة المقاهمات

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Ikhtiar Ali Inspector present. Arguments heard. To come up for order on 18.12.2019 before D.B.

Member

6.12.201

Member

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il T 02.10.2019

Clerk to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Aziz Shah Reader for the respondents present. Representative of the respondent department submitted reply of the amended appeal, which is placed on file. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance. Adjourned. To come up for rejoinder/further proceedings on 09.10.2019 before D.B.

(Hussain Shah) Member

(Muhammad Hamid Mughal) Member

28.10.2019

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned AAG seeks adjournment. Adjourn. To come up for arguments on 11.11.2019 before D.B.



Member

11.11.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present and seeks adjournment to furnish documents/standing order relevant for the purpose of disposal of the present service appeal.

It appeared that AG Office vetted the comments of respondents without caring for availability of relevant documents. Malik Habib DSP (Legal) representative of the respondent department absent. He be summoned with direction to furnish relevant recruitment promotion criteria of Traffic Wardens. Adjourn. To come up for further proceedings/arguments on 16.12.2019 before D.B.



Member

#### 15.10.2018

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondent present. Due to general strike of the bar, the case is adjourned. To come up on 01.11.2018 before D.B



Member

01.11.2018

Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 20.12.2018 before D.B.

20.12.2018

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the Hon'ble Peshawar High Court. Adjourned. To come up for arguments alongwith connected appeals on 15.02.2019 before

D.B. Shah) Member

(Muhammad Amin Khan Kundi) Member

#### 15.02.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file and also requested for adjournment. Adjourned. To come up for arguments on 22.03.2019 before D.B

(Hussain Shah) Member

(Muhammad Amin Khan Kundi : Member

20.07.2018

Clerk to counsel for the appellant and Mr. Sardar Shaukat Hayat learned Additional Advocate General alongwith Mr. Aziz Reader present. Written reply not submitted. Representative of the respondents seeks time to file written reply/comments. Granted by way of last chance. To come up for written reply/comments on 03.08.2018 before S.B

**Nember** 

#### 03.08.2018

Neither appellant nor his counsel present. Mr. Aziz Shah, Reader alongwith Mr. Kabriullah Khattak, Addl: AG for respondents present. Written reply not submitted. Representative of the respondents requested for adjournment. Granted. To come up for written reply/comments on 18.09.2018 before S.B.

Chairman

Member

#### \18.09.2018

Neither appellant nor his counsel present. Mr. Aziz Shah, Reader alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply submitted. Case to come up for written arguments on 15.10.2018 before D.B.

#### 04.06.2018

Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant argued inter-alia that service appeal of identical nature bearing No. 677/2018 has already been admitted for regular hearing and this Tribunal has also granted status-quo in the said service appeal.

Points raised need consideration. Admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee with 10 days, thereafter notices be issued to the respondents for written/comments. To come up for written reply/comments on 07.06.2018 before S.B. Annexed with the present appeal is an application for interim relief. Notice of the said application be also given to the respondent department for the date fixed. Status-quo be maintained till the date fixed.

#### 07.06.2018

Appellant Deposited Security & Process Fee Clerk of the counsel for appellant and Addl. AG for respondents present. Security and process fee not deposited. Clerk of the counsel for appellant requested for further time to deposit security and process fee. Request accepted by way of last chance. Five days given to deposit security and process fee. Thereafter notices be issued to the respondents for written reply/comments on 28.06.2018 before S.B. Status-quo be maintained till the date fixed.

Member

Member

#### 28.06.2018

Clerk of the counsel for appellant present. Mr. Muhammad Jan, DDA for the respondents presents. Written reply not submitted on behalf of respondents. Requested for adjournment. Granted. To come up for written reply/comments on 20.09.2018 before S.B. Status quo be maintained till the date fixed.

Member

Form-A

# FORMOF ORDERSHEET

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Court of

Case No.

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# 725/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28/05/2018	The appeal of Mr. Wisal Khan presented today by Mr.
		Zartaj Anwar Advocate may be entered in the Institution
		Register and put up to the Worthy Chairman for proper order
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# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Amended Appeal No. /2019

Fazal Hadi ASI No.747/P CCP, Peshawar.....

# (Appellant)

(Respondents)

# Govt of Khyber Pakhtunkhwa through chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar and others.

VERSUS

#### INDEX

#### S# **Description of Documents** Annexure Page # Service Appeal along with affidavit 1 1-5 2 Addresses of Parties 6 3 Application along with affidavit 7-8 4 Copy of the rules А 9-14 Copies of the writ petition and 5 В 15-18 judgment dated 13.05.2015 6 Copy of the notification dated С 19-22 24.307.2015 7 copies of the letter dated D & E 3-24 31.08.2015 and notification dated. 04.09.2015 Copy of the writ petition and 8 F & G d5-50 Judgment dated 24.11.2015 9 Copy of the Judgment dated Η 51 26.01.2018 Copy of the order dated 21.02.2018 10 Ι 12-53 11 Other Documents Shar 5 12 Vakalatnama

Through

Appellant

ZARTAJ ANWAR

Advocate Peshawar

### **<u>BEFORE THE KHYBER PAKHTUNKHWA</u>** <u>SERVICE TRIBUNAL, PESHAWAR</u>

Amended Appeal No.\_\_\_/2019

#### Fazal Hadi ASI No.747/P CCP, Peshawar.....

#### VERSUS

- 1. Govt of Khyber Pakhtunkhwa through chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 3. A.I.G/ Establishment central Police Office, Peshawar.
- 4. D.I.G Headquarters, Khyber Pakhtunkhwa Peshawar.
- 5. Capital City Police Officer, Peshawar.

#### (Respondents)

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(Appellant)

Amended Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act. 1974, against the order dated 04.09.2015, whereby the promotion notification dated 24.07.2015, of the appellant has been cancelled / withdrawn. against which his Departmental appeal has been rejected on 21.02.2018 communicated on 22.03.2019.

#### Prayer in Appeal: -

On acceptance of this appeal the order dated 04.09.2015, may please be set-aside and the appellant may be allow to continue his duties as Sub inspector as duly considered and promoted by the competent authority by full filling all the legal and codal formalities vide order dated 24.07.2015 which was also publish in the official Gazette, the appellant may also be held entitled for <u>full consequential and</u> back benefits of service.

#### **Respectfully Submitted:**

1. That the appellant was initially enlisted as Constable in the Police department and are the regular employee of Khyber Pakhtunkhwa police under the administration control of the Capital City Police, Peshawar.

1. 1.

- 2. That ever since his appointment, the appellant had performed his duties as assigned to him with zeal and devotion and there was no complaint whatsoever regarding his performance. It is pertinent to mention here that during the entire service, the performance of the appellant remained commendable, he traced and arrested criminals who were required to the Police in some high profile cases, besides this during the roar of militancy, he always remained in the front line against the militants and demonstrated exceptional performance, gallantry and devotion beyond the call of duty. His performance was also appreciated by the High Ups.
- That there are two categories of police officers performing duties, the first category consists of the police officers promoted from the rank of constable and reached to the status of confirmed ASI of police, while the second category are the police officers who were directly appointed as probationer
   ASI through Public Service Commission.
- 4. That Chapter XIII of Police Rules, 1934 deal with the promotion of the police officers from one rank to the other. Rule XIII (10) deals with the promotion to the post of Sub inspector. Similarly under Rule XIII (10) list (E) is prepared consisting of confirmed ASI, who were consider eligible for promotion to the posts of Sub inspector. (Copy of the rules are attached as annexure A)
- 5. That some of the employees of the police department filed writ petition no 3652/2014, wherein they have sought directions to the respondents to finalize the seniority list of direct / promotee assistant sub inspectors. The writ petition was disposed off vide judgment and order dated 13.05.2015. (Copies of the writ petition and judgment dated 13.05.2015 are attached as annexure B)

- 6. That the appellant was considered and placed at the top of the seniority list and thus was eligible to be promoted to the post of Sub inspector.
- 7. That the name of the appellant along with other colleagues were placed before the Departmental Promotion Committee for promotion to the rank of officiating Sub inspector, the Departmental Promotion Committee in its meeting held on 17.07.2015considered them and when found fit were recommended for promotion vide notification dated 24.07.2015 with immediate effect. (Copy of the notification dated 24.307.2015 are attached as annexure C)
- 8. That the notification dated 24.07.2015 of the promotion of the appellant and other employees were duly implemented and has taken its effect.
- 9. That it is pertinent to mention that there are no separate promotion rules in the different branches of the police department, throughout the officers from regular police are transferred to Traffic Branch etc. However the respondents vide letter dated 31.08.2015 while referring to minutes of the meeting of the 18<sup>th</sup> Police Policy Board meeting held on 13.08.2015 it was directed that the promotions of Sun inspectors should be immediately cancelled allegedly that these seat/ post belong to Traffic Wardens. Accordingly the respondents quite illegally and without lawful authority cancelled vide notification dated 04.09.2015 the promotion notification dated 24.07.2015 of the appellant as sub inspector. (copies of the letter dated 31.08.2015 and notification dated 04.09.2015 are attached as annexure D & E)
- 10. That the appellant along with other colleagues approached the Peshawar High Court Peshawar by filling Writ Petition No. 3113-P/2015 which was after hearing allowed by this Hon;able Court vide judgment and order <u>dated 24.11.2015</u>. (Copy of the writ petition and Judgment dated 24.11.2015 are attached as annexure F & G)
- 11. That the respondents filed C P. NO. 34-p/2016 before the August Supreme Court of Pakistan against the same Judgment which was allowed vide Judgment and order dated 26.01.2018 and the petition was converted to departmental appeal and was sent to the respondent department. (Copy of the Judgment dated 26.01.2018 are attached as annexure H )

- 12.That the writ petition was converted to departmental appeal on 26.01.2018 to the appellate authority, and the same has been rejected vide order dated 21.02.2018 communicated on 22.03.2019 during proceedings in this Hon;able Tribunal.(Copy of the order dated 21.02.2018 is attached as annexure I)
- 13. That the impugned Order/ notification dated 04.09.2015, is illegal unlawful against law and facts and without lawful authority, hence liable to be set aside inter alia on the following grounds :

#### **GROUNDS** :

- A. That the appellant has not been treated in accordance with law and his rights secured and guaranteed under the law have been violated.
- B. That the appellant was fit and eligible, was rightly been promoted as sub inspector, the order whereby the promotion of the appellant has been cancelled is illegal unlawful without lawful authority and of no legal effect.
- C. That the letter dated 31.08.2015 is violative of the police rules 1934, therefore no separate promotion rules in the traffic branch of the police department, therefore, cancelling the promotion of the appellant allegedly on the ground that these post belong to the traffic warden, is illegal and against the record.
- D. That the letter dated 31.08.2015 is self contradictory, that at present traffic branch has not been declare as separate cadre in the police department, similarly the respondents have yet to frame rules for forming separate rules for the traffic wardens.
- E. That the appellant has not provided with right of hearing before cancelling the promotion orders.
- F. That the law provides a separate mode for withdrawing the promotion of the regular employee as instant case no such mode has been adopted, therefore, order cancelling the promotion of the appellant is legally not sustainable.

G. That the appellant seeks the permission of this Honorable Court to rely on additional grounds at the hearing of this Appeal.

> It is therefore prayed that on acceptance of this service appeal the order dated 04.09.2015, may please be set-aside and the appellant may be allow to continue his duties as Sub inspector as duly considered and promoted by the competent authority by full filling all the legal and codal formalities vide order dated 24.07.2015 which was also publish in the official Gazette, the appellant may also be held entitled for full consequential and back benefits of service.

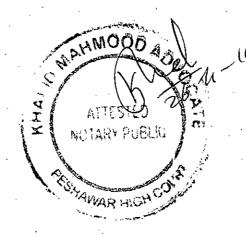
ppellant

Through

ZARTAJ ANWAR Advocate Peshawar

#### AFFIDAVIT

I, Fazal Hadi ASI No.747/P CCP, *Khyber Pakhtunkhwa*, Peshawar do hereby solemnly affirm and declare that the contents of the above **Amended Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Court.



Depoment Hadi

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

Amended Appeal No. /2019

## Fazal Hadi ASI No.747/P CCP, Peshawar.....

#### VERSUS

Govt of Khyber Pakhtunkhwa through chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar and others.

#### (Respondents)

(Appellant)

#### **ADDRESSES OF PARTIES**

#### Appellant:

Fazal Hadi ASI No.747/P CCP, Peshawar.....

#### Respondents:

- 1. Govt of Khyber Pakhtunkhwa through chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 3. A.I.G/ Establishment central Police Office, Peshawar.
- 4. D.I.G Headquarters, Khyber Pakhtunkhwa Peshawar.
- 5. Capital City Police Officer, Peshawar.

# Appellant

Through

ZARTAJ ANWAR Advocate Peshawar

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Amended Appeal No.\_\_\_/2019

Fazal Hadi ASI No.747/P CCP, Peshawar.....

# (Appellant)

# VERSUS

Govt of Khyber Pakhtunkhwa through chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar and others.

#### (Respondents)

Application for restraining the respondents from giving effect to the order dated 04.09.2015 and filling the post of sub inspector by maintain status quo till <u>the decision of the appeal.</u>

#### Respectfully Submitted:

- 1. That the applicant has filed today the above noted service appeal in this Honourable tribunal in which no date is fixed so far.
- 2. That the facts and ground mentioned in the service appeal may also be read as integral part of this application.
- 3. That the applicant has got a good prima facie case and there is likelihood of it success.
- 4. That the applicant would be exposed to great hard ship and inconvenience in case the respondents are not restrained from giving effect to the order dated 04.09.2015 and filling the post of sub inspector.
- 5. That it will also serve the interest of justice if respondents are restrained from taking any action against the applicants and status is maintained till the final disposal of the service appeal.

It is, therefore, humbly prayed that on acceptance of this application the respondents may please be restrained from giving effect to the order dated 04.09.2015 and filling the post of sub inspector and status quo may kindly be maintain till the final decision of the Appeal.

pplicant/Appellant

Through

ZARTAJ ANWAR

Advocate Peshawar

# AFFIDAVIT

I, Fazal Hadi ASI No.747/P CCP, *Khyber Pakhtunkhwa*, Peshawar do hereby solemnly affirm and declare that the contents of the above Application are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Court.



Deponent ledu

Polici		TTMENT. ONG RO	DLL OF	THE I	6	FORCE	2 OF 'T		12.41 ( DVE D15	· ·	(HA	LF SHEE	T. OF		II II		TRICT	. XII.	
Contraindutte	Name and parentage.	Date of enlistment.	Caste	Age on colistment.	Heig	(h) Inches.	(a) Village.	(b) Police Station.	(c) District.	Tarticular marks.		Delail of past service priv cattering constabulary	Trunutions and reluctive		Date and cause of le	ks giving ref erial No. in th	punishment awarded.	APPOINTMENTS AND ENROLMENTS.	
carries of His Exclinacy the Governor.	13-3. Power to make promotions among gazetted and enrolled police officers, -(1) The power to make promotions among gazetted effects and from non-	officer competent to withhold an increment in the time-scale concerned. In the case of azgranty and sub-inspectors the sanction of the inspector-General and Deputy Inspector-General, respectively is required.	increments shall be granted or withheid, by a formal order in each case, by the head of the office concerned. When an efficiency bering placed at any stagets in a time-track, it shall be passed only on the authority of a specific order, by an	The case of inspectors, starting with inspectors and incrementary starting of the start book in the case of constables and incrementary sub-inspectors and in the case of inspectors and in the case of inspectors and in the case of the start	13-2. Power to grant incrementsIncrements of pay to all upper and inverses to diministry be granted, when due, by Soperintendents provided that an increment may be withheld as a formal punishment in recordence with the	No acival selection shall be made without carefal examination of charac- ter rolls.	Entry in or removal from A, B, C, D or E list shall be recerted in the order book and in the character roll of the police officer concerned. These lists are normal rolls of those officers whose admission to them has been authorized.	General as presentioned in sub-rule 13.15 (1) and will regulate promotion to the rank of inspector.	Alconstables and to the ranks of mean constables and assured repertor. List E that be maintained in the office of Deputy Inspectors. General as presented in mi-rule 13:10 (1) and will regulate promotion to the rank of	Lists A, B, Cand D, shall be maintained in each district as prescribed in rules 136 167, 13.8 and 13.9 and will regulate promotion to the selection grade	(3) For the purposes of regulating promotion zenzyst encolled police officer six promotion lists - A, B, C, D, B and F will be maistained.	the responsibilities of upper subordinate rank, should receive accelerated pro- motion so as to reach that rank as soon as they have passed the courses pre- scribed for, and been tested and given practical interranks of constable and head constable	will be contrasted with the independent conduct of investigations or the inde- pendent charge of a police station or similar unit. It is necessary therefore that will charge if constables, having the attributes necessary for bearing	(1) Under the present constitution of the police force no lower subording ::	each case. When the qualifications of two offens are otherwise equal, the senior shall be promoted. This rule does not affent increments within a dimension.		Y a 1)1. Prenotion from one rank to avoider(1) Promotion frame one re-r	CHAPTER XIII. Promotions	L HXMMH

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(2) Deputy Inspectors-General and the Assistant Inspector-General, Government Railway Police, shall make promotions to the rank of Inspector. The Inspector-General, who main aims promotion list "F"-vide Police Rule 13-15, of Sub-Inspectors and Sergeacits, will notify the Deputy Inspector-General of a Range or the Assistant Inspector-General, Government Railway Police when a substative in the rank of Inspector is to be filled by an officer under his control.

Substantive promotions to the rank of sub-inspector and assistant subinspector shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police. Deputy Inspectors-General of Ranges, who maintain promotion lists 'D' and 'E' for these two ranks in the case of District Police will notify the Superintendent of Police of a district when a vacancy in either rank is to be filled by an officer in his district.

Promotions to the rack of head constable shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police.

(3) The seniority of inspectors, sergeants, sub-inspectors and assistant subinspectors is shown in the list printed annually under the orders of the Inspector-General. Seniority of head constables in districts will be recorded in form to 88 (1).

#### COMMENTS

Punjab Police Rules, 1934, rule 13.3-A Government Servant (Police)-Reversion-Promotion List C-Reservation from officiating position to substantive post-Does not amount to reduction in rank-petitioner revered but not awarded any major punishment-Major punishment not having been awarded petitioner's name, held, could not be removed from promotion list -'C'-Constitution of Pakistan (1962), Art. 98.

The reversion from the officialing position to substantive post does not amount to reduction in rank.

Since the petitioner's rank was not reduced by his reversion to the rank of foot-constable, therefore, he was not awarded any major punishment which could be a bar to admission or retention of his name in list 'C' (P. 35)-A. (Taj Mohammed vs. The Superinterdent of Police Rabim Yar Khan and 3 others, -(PLD 1973 Baghud-ul-Jadid p. 30).

13-4. Power to make officiating promations.—(1) Officiating promotions to the rank of inspector shall be made by Deputy Inspector-General of ranges and the Assistant Inspector-General, Government Railway Police. If the flow of promotion is unevenly destributed amongst ranges, the Inspector-General of Police shall make suitable transfers of sub-inspectors on the promotion list from one range to another.

(2) Officiating promotion to the rank of sub-inspector and assistant subinspector shall be made by Superintendents of Police and Assistant Superinrendent, Government Railway Police. If the flow of promotion is unevenly distributed among districts, the Deputy. Inspector-General shall make suitable transfers of assistant sub-inspectors and head constables on the promotions lists :from one district to another.

(3) All promotions concerning upper subordinates made under this rule eshall be published in the *Police Gazette*, and notification by Superintendents shall be sent in through the Deputy Inspector-General, who shall have the power to revise such orders on recording reasons in each case. If any Superintendent thas not enough men on lists D and E in his district to fill temporary appointments in either rank, which he is required to make, he shall apply to the Deputy Enspector-General for a man from another district. PROMOTION

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13-5. Promotion to the selection grade of constables.—(1) No constable shall be promoted to the selection grade of constables unless he is (a) physically up to the required standard (sub-rule 12.16 (1), (b) can read and write simple Urdu sentences and English numerals and (c) has a character toll clear of any entry carrying a moral stigma. Condition (a) can be relaxed by Superintendents of Police for good reasons to be recorded and conditions (b) and (c) can be relaxed by Deputy Inspector-General and the Assistant Inspector-General, Government Railway Police.

(2) Men who possess the essential qualifications prescribed in sub-rule (1) shall be removed as vacancies occur according to their order of making on the following system :-

(a) Education :		• '	
F.A. or higher		5 marks	. '
Marticulation	•••	3 marks	
Non-matriculation but above primary		2 marks	
(b) Courses passed -		-	•
(i) Lower School	•••	5 marks	
(ii) Drill at Police Training School		3 marks	
(iii) Traffic (by an approved standard)	•••	2 marks	
(Iv) Finger Print	••••	2 marks-	•
(v) 1st or 2nd in recruits' examination		l mark	
(vl) St. John's Ambulance 1st Aid Course		1 mark	
(vil) Armourer's Course	• •••	2 marks.	
(c) Professional ability-	•.	•	
·····		. •	

Up to a maximum of 10 marks

(d) Character-

Up to a maximum of to marks,

(3) Full marks under (c) and (d) in sub-rule (2) shall not be given to a constable with less than ten years service Marking under (c) shall be estimated by commendation certificates and other proofs of special ability in detective. work, disguising, intelligence duty and the like.

Illustrution.—A, who has passed the First Arts Examination; is 1st in his: recruits course, has passed traffic and finger priot courses, has three years' service and has learnt the work of assistant police station clerk, might have 16 marks. B, a semi-illiterete constable of 24 years' service with 18 commendation certificates, a clear roll; and established reliability in shadowing work, might have 22 marks gained under (c) and (d) only.

(4) Notwithstanding the marking system described in sub-rule (2), menposted to onerous and responsible duty, such as instructors, permanent traffic staff, clerical appointments at police stations and head-quarters, secret service and central investigating agency duty, may be given temporary promotion to the selection grade. Men promoted solely on these grounds shall be reverted to the time-scale at any time if they fail to give satisfaction on the duty for which they have been promoted or removed from such duty for a period exceeding three months.

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(5) Constables of and above the Matriculation standard of education and having exceptional family claims may be promoted to the selection grade immediately on passing their recruits course with credit, notwithstanding the marking system described in sub-rule (2). Direct appointments to this grade are made in accordance with rule 12 10-A.

(6) A sheet in Form 13.5 (6) shall be attached to the character roll of every constable for maintaining the marking system prescribed in this rule.

(7) Promotion to the selection grade shall be on probation for three years and constables so promoted may be reverted without formal departmental proceedings within three years of their such promotion if they fail to maintain an exemplary standard of conduct and efficiency. Such reversions shall be freely made.

(8) Removal from the selection grade after once being confirmed in it involves formal proceedings. In the case of a selection grade constable who, on being sentenced judicially to'a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, is not dismissed under Police Rule 15-2(2) the normal minimum departmental punishment shall be reduction to the time scale. Similarly, in the case of a selection grade conqualifications for which promotion has been given, the normal minimum punishment shall be reduction to the time scale.

13-6. List A. Promotion to the selection grade of constables.—List A (in Form 13-6) shall be maintained by each Superintendent of Police, under his own personal supervision, of constables eligible under rule 13.5 for promotion to the selection grade of constables. The number of names in the list shall not exceed .20 yer cent of the establishment of the grade in the district.

13-7. List B. Selection of candidates for admission to courses at the Police Training School.—List B (in Form 13-7) shall also be maintained by each Superintendent of Police and shall be divided into two parts :—

(1) Selection grade constables considered suitable as candidates for the-Lower Second course at the Police Training School.

(2) Constables (selection or time scale) considered suitable for drill and other special courses at the Police Training School.

Selection shall be made from this list as vacancies occur for admission to the courses concerned at the Police Training School, provided that no constable shall be considered eligible for any such course until the entry of his name in list 'B' has been approved by the Deputy Inspector-General of the Range. Ordinary replority in ageshall be given prior consideration in making such selections, irrespective of the date of admission to the list, and care must be taken that a constable borne on the list is not allowed to become over age for admission to the school before bring selected. The restrictions on admission to the lower school - course and Instructors' courses at the Police Training School limit the conditions for admission to List B, No cons able shall be admitted to that list whose age is such that he cained in the no mal case be sent to the Training School before be attains the age of 30 years. No constable, who has failed to qualify at the Training School, shall be re-admitted to the list unless the Superintendent and '. the Principal of the School are in agreement that he is deserving of another chance of qualifying in the course ; in the event of disagreement as to such a. case the Deputy Inspector-General shall decide.

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#### COMMENTS

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No. S.O. (H) 1 (1)-4/72. -In exercise of the powers conferred by section 46of the Police Act, 1861 (Act of 1861), the <u>Governor of Baluchistan</u> is pleased to direct that in the Punjab Police Rules, 1934, in their application to the province of Baluchistan, following further amendment shall be made, namely :--

In rule 13.7, for the figure "(30)" appearing between the words attains theage of and word "years," the figure "33" shall be substituted.

13-8...List C. Promotion to head constables...(1) In each district a list shall, be maintained in card index form [Form 13.8(1)] of all constables who have: passed the Lower School Course at Phillaur and are considered eligible for promotion to head constable. A card shall be prepared for each constableadmitted to the list and shall contain his marking under sub-rule 13.5 (2), and notes by the Superintendent bimself, or furnished by gazetted officers under whom the constable has worked, on his qualifications and character. The list shall be kept confidentially by the Superintendent and shall be scrutinized and approved by the Deputy Inspector-General of Police at his annual inspection.

(2) Promotions to head constable shall be made in accordance with the principle described in sub-rules 13-1 (1) and (2). The date of admission to List: C shall not be material, but the order of merit in which examinations have been passed shall be taken into consideration in comparing qualifications. In cases, where other qualifications are equal, seniority in the police force shall be the deciding factor. Selection grade constables who have not passed the Lower School Course at the Police Training School but are otherwise considered suitable may, with the approval of the Deputy Inspector-General, be promoted tohead constable up to a maximum of ten per cent of vacancies.

13-8A. Disgaulification for admission to or retention in Lists A, B or C.— (1) The infliction of any major punishment shall be a bar to admission to or retention in lists A, B or C, provided that (a) for special reasons to be recorded. by the Superintendent in each case, and subject to confirmation by the Deputy Inspector-General, this disqualification may be waived and (b) after six months' continuous good conduct in the case of censure or confinement to quarters or on expiry of the period of reduction in the case of reduction for a specified period, a constable may be re-admitted at the discretion of the Superintendent.

(2) Gazetted officers shall look out for, and encourage their inspectors, and sub-inspectors to bring to notice, constables who, by reason of their general. character and ability or of special acts, are suited for inclusion in lists A, B or-C, and shall, after satisfying themselves by necessary enquiries, make suitablerecommendations to the Superintendent.

13-9. List D. Promotion to assistant sub-inspectors.—(1) A list shall be maintained in each district in carn index Form 13-9 (1) of those head constables who have passed the lower school course and the intermediate school course at the Police Training School and are approved by the Deputy Inspector-General inspector. No head constable shall be admitted to this list who is not thorougbly efficient in all branches of the duties of a constable and head constableand of established integrity.

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(2) Officiating promotion to the rank of assistant sub-inspector shall bemade from the list prescribed in sub-rule (1), as far as possible in rotation so as. to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the: principles described in rule 13-1, and officiating promotion shall be made in. accordance with sub-rule 13-4 (2).

(3) Half-yearly reports in Form 13.9 (3) on all head constables in this list: shall be furnished on the 15th March and the 15th September to the Deputy-Inspector-General.

13-10. List E. Promotion to sub-inspectors.—(1) A list of all assistant subinspectors, who have been approved by the Deputy Inspector-General as fit fortrial in independent charge of a police station, or for specialist posts on the establishment of sub-inspectors, shall be maintained in card index form by each Deputy Inspector-General. Officiating promotions of short duration shall, ordinarily be made within the district concerned (vide sub-rule 13-4 (2), but vacancies of long duration may be filled by the promotion of any eligible manin the range at the discretion of the Deputy Inspector-General. Half-yearly reports on all men entered in the list maintained under this rule shall be furnished in form No. 13-9 (3) by the 15th October, in addition to the annual report to be: submitted by the 15th Jacuary in accordance with Police Rule 13-17 (1).

(2) No assistant sub-inspector shall be confirmed in a substantive vacancy in ineranization inspector unless he has been tested for at least a year as an officiating sub-inspector in independent charge of a police station in a district. other than that in which his home is situated.

13-11. Publication of List E in the Police Gazette.—List E of each rangeshall be published annually in Police Gazette. Additions to the list may be: made at any time by Deputy Inspector-Grneral but all such additions and the removal of all names under sub-rule 13-12 (2) shall be published in the Gazette by special notification. Names shall be entered in the list in order according to the date of admission, length of police service deciding the relative position of assistant sub-inspectors admitted on the same date.

13-12. Method of filling temporary vacancies in the rank of sub-inspector.— (1) In filling temporary vacancies in the rank of sub-inspector the object shall be to test all men on list E as fully as possible in independent charges. The order in which names occur in the list should be disregarded, the opportunities of officiating in the higher rank being distributed as evenly as possible. An assistant sub-inspector officiating as a sub-inspector should ordinarily continue: so to officiate for the duration of the vacancy, and should not be reverted merely because another assistant sub-inspector senior to him is not officiating. This principle with however, be modified if in any case its observance would result in a thoroughly competent man being deprived by a man markedly his junior of. an officiating appointment of more than 8 months' duration.

(2) The conduct and efficiency of men on lists D and E shall be at all timeswatched with special care. Any officer, who, whether in his substantive rank or while officiating as an assistant sub-inspector or sub-inspector, is guilty of grave misconduct of a nature reflecting upon his character or fitness for responsibility, or who shows either by specific acts or by his record as a whole, that he is unft for promotion to higher rank shall be reported to the Deputy Inspector-Generali for removal from list D or list E, as the case may be. In interpreting this rule discrimination shall be shown between faults which are capable of elimination by experience and further training, and those which indicate definite incompetence and defects of character. Officers whose names have been removed from either list D dr list E may be restored by order of the Deputy Inspector-General in recognition of subsequent work or conduct of outstanding merit.

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[3] [3]. Control by Deputy Inspector-General. - Apart from the special requirements of the foregoing rules required to pay special attention or revision of orders, Deputy Inspector-General are required to pay special attention at their inspections to the working of lists A, B, C and D by Superintendents; they have authority to remove any name which they consider has been improperly admitted, and to give such orders as may be expedient in respect of the methods of selection and the tests applied.

[]-94. Promotions to and in the selection grades of sub-inspector.-(1) Promotion to the various selection grades of sub-inspectors shall be made by Superintendents of Police and the Assistant Superintendent, Government Railway Police, as vacancies in the sanctioned establishment of such appointments occur in accordance with the principle laid down in rule 13.1.

(2) No sub-inspector shall be considered eligible for promotion to a selection grade unless he has at least eight years' approved service as an upper subordinate, of which at least five shall have been in the rank of sub-inspector, and unless he is thoroughly efficient and competent to held charge of a police station of first class importance. No sub-inspector who has been punished by reduction, stoppage of increment, or forfeiture of approved service for increment, shall be eligible for promotion to a selection grade, "Exceptions to this rule may be made only with the ametion of the Inspector-General in recognition of distinguished service and exemplary conduct.

(3) Sub-Inspectors promoted to the 4th selection grade shall be ca. probation for one year and may be reverted without formal departmental proceedings within the period of their probation if they fail to maintain an exemplary standard of conduct and efficiency.

13-15. List F Promotion to Inspectors -(1) Recommendations ca babalf of Strgeants and Sub Inspectors considered fit for promotion to the razic of Inspector shall be submitted with their annual confidential reports on the 15th January each year to Deputy Inspectors General by Superintendents of Pelme in form 13.15 (1). Recommendations on behalf of Sergeants and Sci-Inspectors -employed in the Government Railway Police will be sent direct to Es Isspector-General of Police by the Assistant Inspector-General, Government, Railway Police, in the same form and not later than October each year. The Deputy Inspector-General shall decided, after seeing the officers recommended, and in consideration of their records, and his own knowledge of them, whether to endorse the recommendations of Superintendents of Police and forward them to the Inspector-General. He will keep a copy of any recommendation so forward-.ed in the personal, file of the officer ; if he decides not to endorse a recommendation, he shall retain the original in the officer's personal file and send a copy of this own order on it to the Superintendent concerned. Deputy Inspectors-General -shall finally submit recommendations to the Inspector-General as soon as they are satisfied as to the fitness of officers recommended, but in to case later than October each year.

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(2) Such of the officers recommended as the Inspector-General may consider suitable shall be admitted to promotion list 'F' [Form 13.15 (2)] which will, however, not be published. Deputy Inspector-General shall be informed, and shall in turn inform the Superintendents concerned, of the names of those whohave been admitted to the List; similar information will be sent to the Assistaut Inspector-Geneal, Government Railway Police.

The original personal files of Sub-Inspectors admitted to the list shall betransferred to the Inspector-General after duplicates have been prepared for relention in the office of the Deputy Inspector-General by the Assistant Inspector-General, Government Railway Police, as required by rule 12.38 (1). Copies of. all subsequent annual confidential reports prepared in form 13-17 in respect both of Sergeants and Sub-Inspectors admitted to the list will, on return by the: Inspector-General in accordance with rule 13.17 (1), be recorded by Deputy. Inspector-General or the Assistant Inspector-General or the Assistant Inspector-General, Government Railway Police, with the duplicate personal files of theofficers concerned. Copies of all catries ordered to be made in personal filesothers than annual confidential reports will be forwarded to the Inspector-General as soon as made for record with the original personal files; all such. copies shall be attested by the Deputy Inspector-General or the Assistant Inspector-General, Government Railway Police, personally.

(3) When submitting recommendations for the entry of fresh names in List: F, Deputy Inspectors-General and the Assistant Inspector-General, Government: Railway Police, will at the same time submit specific recommendations (which used not be accompanied by detailed confidential reports) as to the retention or removal of officers already admitted to the list. On receipt of these recom-mendations, the Inspector-General will review the Provincial List, and passorders regarding he retention or exclusion of names, at the same time communicating his decision to the Deputy Inspectors-General and the Assistants Inspector-General, Government Railway Police.

(4) Seniority in list 'F' will be in accordance with the date of entry in that: list. Sub-Inspectors admitted to list 'F' on the same date will be placed in that: list in order according to their date of permanent promotion to selection grade, and if the date of permanent promotion to selection grade is the case of two ormore Sub-Inspectors admitted to list 'F' on one and the same date then according to date of permanent promotion to time-scale. Sergeants will be shown inlist 'F' according to the date of entry in the list. When, however, two or more: Sergeants are admitted to list 'F' on the same date, their names will be shown 10. order of seniority among themselves.

13-16. Promotion to the rank of Inspector .- (1) Substantive vacancies in therank of Inspector, same those which are specially designated for the appointment: of probationers, shall be filled by promotion of officers from list 'F' selected' according to the principles laid down in rule 13-1. Sergeants are eligible forpromotion in the appointments reserved for Buropean Inspectors,

(2) Temporary vacancies in the rank of inspector shall be filled by theofficiating promotion of officers on 'F' list by the authorities empowered by rule-13.4 to make the appointment. Such officiating promotions shall be made in accordance with the principles laid down in sub-rule 13-12 (1) in the case of E: list, and the second part of that rule shill, mutatis mutandis, govern the scrutiny -of the work of F list officers and the removal from that list of the names of thoses whose are found unfit for the rank of inspector.

(3) No officer whose name is not on Flist shall be appointed to officiate as sizspector without the special sagetion of the laspector General. When no officer a on F list available in the range for a vacanet which the Deputy Inspector-General is required to fill, application shall be made to the Inspector-General to appoint

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13-17. Annual Confidential Reports .- (!) Superintendents shall prepare and submit annually to the Deputy Inspector-General, after obtaining the District Blagistrate's remarks thereon, reports in familiarian 13:17 on the working of all Upper Subordinates serving under them. These reports shall be submitted to reach the Deputy Inspector-General on or before 1812 January.

Deputy Inspector-General and the Assistant Inspector-General, Government 'Railway Police, will add their own remarks and retain reports on Assistant Sub-Inspectors and Sub-Inspectors who are not on List 'F' in their own offices. Reports on all Inspectors, Sab-Inspectors on List 'F' and Sergeants will be forwarded by Deputy Inspectors-General and Assistant Inspectors-General, Government Railway Police, 10 as to reach the Inspector-General on or before the 15th February; In the cases of Indian Inspectors of the General Line, Sub-Inspectors on list 'F and all Sugrants, Deputy Inspector-General and Assistant Inspector-General, Government Railway Point, will attach with each report so submitted a duplicate copy thereof. Any remarks recorded by the Inspector-General on the original report will be copied in his office on to the duplicate prior to the latter for record with the diplicate personal file maintained in

(2) Reports shall be of three kinds, A, B and C, and shall be marked æs such 🚈

A reports :- Reports in which for special reasons it is recommended that proziotion be ziven irresperive of seniority.

B reports :-- Reports is which it is reco-manded that promotion be given in the ordinary course of seminity.

C reports :-- Reports in which it is recommended that the officer be passed over for promotion or that the taking of departmental action

on general grounds of inefferency or unsatisfactory conduct be In 'A' and 'C' reports detailed reasons must be given for the recommenda-

tions made.

The purport of All 'C' reports shall be communicated to the officers concerned at a personal interview or, if this is not possible, in writing. Written acknowledgments shall be taken and attained to their personal files. In communicating such reports, the instructions contained in paragraph 7 of Puojab Government Consolidated Circular No. I shall be followed, Ordinarily, the submission of two successive 'C' reports regarding an officer will result automatically in the institution of depertmental proceedings against him on such charge

(3) Superintendents shall submit ennually to the Deputy Inspector-General by the 15th January confidental reports ja for 13:17-A on the Working of all gazetied officers serving under them. Depart laspectors General will add their own remarks and forward the reports to reach the Inspector Grateral on or

Chap. XIII

THE POLICE RULES. 1934

The gist of adverse reports shall be communicated in writing to the concerned subject to the conditions specified in paragraph 7 of Punjab. Government Consolidated Circular No. 1 and their acknowledgment shall be taken and attached to their personal files.

(4) The names and designation of the officers writing reports shall invariably the typed or written in block letters below their signatures.

(5) Reporting Officers shall comment generally on the way in which the officer has carried out his various duties during the year and shall give an estimate of his personality, character and abilities, including detective powers and ability to conduct prosecutions. The report shall contain an opinion on any point specially required at any particular time, e.g., fitness to pass an efficiency bar. Particular mention shall be made of the officer's relations with his fellow-officers and the general public and of his honestly.

13-18. Probationary period of promotion.—All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether the officer should be confirmed or reverted. While on probation officers may be reverted without departmental proceedings. Such reversion shall not be considered reduction for the purpose of rule 16'4.

This rule shall not apply to constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules 13-14.

13-19. Special promotion to recipients of the King's Pollce and Fire Service Medal and the Indian Pollce Medal....(1) A constable receiving the award of the King's Police and Fire Service Medal shall be promoted in the first substantive vacancy of head constable within occurs in the district in which he is serving subsequent to the award of the medal being gazetted.

(2) A constable a awarded the Indian Police Medal shall, if not already in the selection grade, be promoted to that grade on probation as prescribed in rule 14.5 (7).

FORM No. 13.5 (6). 7. Sheet for maintenance of marking system. POLICE DEPARTMENT. -DISTRICT. Constable No. ..... Name ..... Date of enrolment ..... A. EDUCATION :-........... B. COURSES PASSED .---(1) (2) ..... (3) ..... (I) .....
(2) ..... (3) ..... (4) ..... D. CHARACTER :---Total Initials of gazetted officer and date ...... Onerous and responsible duties to y which posted (vide sub-rule 13.5 (4).

(I).		
(2)		
(3)		•••••
	-	

Nort-Marka ellotted under heads C and D according to the principles duscribed in sub-rule 13.5 (3) shall be added to or reduced as occasion arises, each change being initialled and dated by a gazetted officer,

, tie /

Yol. If 🗋

KINIBA 1 BEFORE THE PESHAWAR HIGH COURT WritPetition 🔿 746/P ASI, CCP, Abdus Sattar B. No. 1. -Peshawar. Fazal Hadi No. 747/P ASI, CCP, Peshawar, 2. 3. Manzoor Khan, 748/ASI Opertaion Room, CPO, Peshawar. Tahir Ali Khan No. 749/P ASI, Charsadda. 4. 5. Bismillah Jan No. 750/P ASI, Charsadda. Imran Ullah No. 751/P ASI, Charsadda. 6. Wisal Khan No. 753/P ASI, Nowshera. 👘 7. Muhammad Arif Khan No. 754/P ASI, CCP, 8. Peshawar. No. 755/P ASI, CCP, Muhmmad Úmer 9. Peshawar. Masood Khan No. 756/P ASI, INvistigation 10. Wing, Peshawar. Muhammad Tahir5 No. 757/P ASI, AIG Legal, 11. CPO, Peshawar AFtab Khan NO. 758/P ASI, AIG Legal, 12. Peshawar. Rehmat Ullah No. 759/P ASI, Charsadda. i3. Afzal Gul No. 760/P ASI, CCP, Peshawar. 14. 1 8 MAY 1015 Riaz Ahmed No. 761/P ASI, CCP, Peshawar. 15. Afzaal Khan No. 766/P ASI, CCP, Peshawar. 16. 100 Ihsan Ullah No. 767/P ASI, CCP, Peshawar. 17. 18. Naveed Gul No. 768/P ASI, Charsadda. ecentric Bahar Ali No. 769/P ASI, Charsadda. 19. 03 068 200 Muhmmad ARshad No. 770/P ASI, CCP, 20. Poshawár. Asif Khan No. 771/P ASI, Charsadda. 21. Muhammad Rafig 772/P ASI, CCF, Peshawar. 22.1 Tehsin Ullah No. 773/P ASI, CCP, Peshawar. 23. ATTIGETER

<b>5</b>	angan ke si di Kin	16
(	24,	Laiq Zada 774/P ASI, CCP, Peshawar.
	25.	
	26.	
ς.	27.	Akhter Hussain No. 278/P ASt, CCP, Poshawars, 19
	.н.	Alzaz Alam Khan Khalll No. 783/P ASI, CCP,
	20	Peshawar,
	29. 30.	Imtiaz Ahmed No. 784/P ASI, CCP, Peshawar.
	31.	Asif All Khan No. 785/P ASI, CCP, Peshawar.
	32.	Saleem Khan No. 786/P ASI, CCP, Peshawar.
•	33.	Inam Ullah No. 787/P ASI, CCP, Peshawar. Muhmmad Asif Khan No. 788/P ASI, CCP,
÷ *		Peshawar.
-	34.	Ayub Khan No. 789/P ASI, CCP, Peshawar.
and and	35,	Qazi Muhmmad Arlf No. 790/P ASI, CCP,
		Peshawar.
	3.6.	Mumtaz Khan No. 791/P ASI, CCP, Peshawar.
7	37.	Bllal Hussain No. 792/P ASI, CCP, Peshawar.
	38.	Abdullah Jalal Khan No. 793/P ASI, CCP,
		Peshawar.
	39.	Muhmmad Mubarak Zaib Gul No. 794/P ASI,
	10,	CCP, Peshawar.
		Saeed Jan No. 795/P ASI, CCP, Peshawar,
		Muhammad Ishfaq No. 796/ P ASI, Charsadda Perhawar High Cour Ahmed Ullah Khan No. 797/P ASI, CCP, 18 MAY 2015
		Peshawar,
4.	3. 1	Muhammad Waqas Yousuf No. 798/P ASI,
		Nowshera.
44	4. 1	Auhmmad Ayaz No. 799/P.ASI, Nowshera.
45		lamoon Rashid No. 800/P ASI, CCP, Deputy Revi
		eshawar.
46		dil Sayèd No. 801/P ASI, Nowshera.
47		yed Asgher Khan No. 802/P ASI, Nowshera.
48	3. N	oman Knan No. 803/P ASI, CCP, Peshawar, Petitionans
•		Versus
1.	<sup>°</sup> Cł	nief Capital City Police Officer, KP, Reshawa

JUDGMENTSHEET IN THE PESHAWAR HIGH COURT, PESHAWAR JUDICIAL DEPARTMENT 10P No. 3659

20*0* Ц

JUDGMENT

Date of hearing Petitioner<u>} [-]</u> aadu PC. 6 Respondent <u>C</u> Janie 10th

NISAR HUSSAIN KHAN, J.- Petilioners seek issuance of an appropriate writ directing the authority to finalize seniority list of the direct/promotee Assistant Sub Inspectors and then promotion to the rank of Sub Inspectors be made on the basis of seniority-cum-fitness.

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2. In essence grievance of petitioners is that they were directly appointed as Assistant Sub Inspectors through prescribed procedure of Selection on the recommendation of the Public Service Commission in the year 2010 and later on confirmed on 13.8.2014 on completion of probationary period. At the same time, there are promotee Assistant Sub Inspectors. Petitioners are legitimately

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expecting their promotion according to the seniority list which has not been prepared as yet while meeting of the Departmental Promotion Committee is scheduled to be held in near future but in the absence of seniority list, petitioners would be deprived of their consideration.

3. Respondents in their comments have contradicted the stance of petitioners on factual and legal planes. However, on the preceding date, respondents through learned AAG were directed to finalize the seniority list and provide the same before the Court. Today, the seniority list attested by DSP (Legal) CCP, Peshawar, has been furnished, in view of which petitioners' grievance has been redressed. Respondents shall circulate the said seniority list amongst all the ASIs on which they may take legal course, if they have any grievance and thereafter may approach the proper forum against any final order. This petition is disposed of accordingly. Machine

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resentation nte Given Fo ate of Delivery of Copy.

JUDG

POLICE DEPTT:

SHAWAR

FOR PUBLICATION IN THE KHYDER PAKI; TUNKHWA, POLICE GAZETTE PART-IL ORDERS BY THE CAPITAL CITY POLICE OFFICER KHYBER PAKHTUNKHWA, PESHAWAR.

ANINEXIC

#### NOTIFIC TION.

# Dated <u>24</u> /07. /2015.

No. 365 JEC-I, PROMOTION TO THE RANK OF OFFG: SI:- As approved by the Departmer Promotion Committee meeting held on 07-07-2015 the following Confirmed "E" list ASIs of Cap City Police, Peshawar are hereby promoted to the rask of Offg: Sub-Inspectors with immediate eff Their promotion will take effect from the date they actually take over 1

charge of their higher responsibilities at their new place of posting.

•		Late as a Posting
S# .	Rank, Name & No.	Place of Posting.
1.	ASI Muhamamd Israr No.506/NSR	СТО КРК
2.	ASI Muhammad Sher No.1561	CCP, Peshawar
3.	ASI Bahar Ahmad No. 1129/P	Charsadda/Upper College Course
4.	ASI Jamshid Khan No. 1163/P	Nowshera/Upper College Course
5,	ASI Inayat ur Rehman No. 1168/P	Nowshera
6.	ASI Muhammad Alam No. 11S1/P	Nowshera
7.	ASI Masood Jan No. 584/P	Charsadda
8,	ASI Hidayat Ullah No. 1148/P	Charsadda
9.	ASI Murad Ali No. 1329/P	Charsadda
10.	. ASI Muhammad Iqbal No.1218/P	CCP, Peshawar
11.	ASI Muhammad Gul No.1219/P	Special Branch
12.	ASI Sartaj No. 12/P	CCP, Peshawar
13.	ASI Ghulam Hussaln No.1221/P	Special Branch
14.	ASI Hayat Gul No.1222/P	Special Branch.
15.	ASI Humayun Khan No.1223/P	Traffic, Peshawar
16.	ASI Fida Muhammad No.1224/P	CCP, Peshawar
17.		Traffic, Peshawar
18.	ASI Khalid Khan No. 1227/P	CCP, Peshawar
19,	ASI Hamid Rauf/Khan No.1228/P	Special Branch
20,	ASI Sartaj Khan No.1229/P	CCP, Peshawai
21.	ASI Wasif ur Rehman No.1230/P	Traffic, Poshawar
22.	ASI Şardar Hussaln No.1231/P	
23.	ASI-Farld Khan No.1232/P	CCP, Peshawar
24.	ASI Tehseen Ullah No.1233/P	CCP, Peshawar
25.	ASI Yasin Gul No.1224/P	Traffic, Pesnawar
26.	ASI Atta Ullah No.3/P SI on ACB.	Reader SSP/Opt:
27.	ASI Sajjad Ahmed No.1236/P	CCP, Peshawar
28.	ASI Wajid Ali No.1237/P	
29,	ASI Khial Muhammad No.1238/P	Anti-corruption Islamabad Police
30.	ASI Jawad Hussaln No.1240/P	CCP, Peshawar
31.	ASI Rikhmeen No.1239/P	
32.	ASI Jehan Zeb No.1241/P	Special Branch
33, .	ASI Abdul Wall No.1242/P	Traffic, Peshawar
34,	ASI Nowsherawan No.1243/P	CCP, Peshawar
35.	ASI Zahir Shah No.1244/P	CCP, Peshawar
36.	ASI Momin Shah No.1245/P	Traffic, Peshawar.
37.	ASI Yahya Jan No.1246/P	Traffic, Peshawar
38	ASI.Saif UllaH-No.1247/P	CCP, Peshawar

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39	ASI Iftikhar Ahmer No. 1246/P	CCP, Peshawar
40	······	CCP, Peshawar
41		CCP, Peshawar
42		CCP, Peshawar
43		CCP, Peshawar
44		Traific, Peshawar
45		CCP/ Traffic, Peshawar
46		CCP, Peshawar
47.		CPC, Peshawar
48.		CCP, Peshawar
49.		CCP, Peshawar
50.		CCP, Peshawar
51.		CCP, Peshawar
52.		Special Branch
53.		CCP/Traffic Peshawar
54.		Traffic, Peshawar
55.		CCP, Peshawar
55.		Elite Force KPK
57.		Traffic, Peshawar
57.	• •	
		CCP, Peshawar
59,		CCP, Peshawar.
60.		CCP, Peshawar
61.		CCP, Peshawar
62.		Traffic, Peshawar
63,		Special Branch
64.	ASI Falak Taj No.12 <sup>+3</sup> /P	CCP, Peshawar
65.	ASI Murad Ali No.12 '4/P	CCP, Peshawar
66.	ASI Sajjad All No.1275/P	CCP, Peshawar
67.	ASI Khan Muhamma I No.1276/P	CCP, Peshawar
68.	ASI Bakhtlar Khan No.1278/P	CCP, Peshawar
69.	ASI Shaukat Khan Ni:.1280/P	CCP, Peshawar
70.	ASI Mukhtiar No.128 /P	CCP, Peshawar
71,	ASI Mushtaq No.128:/P	CCP, Peshawar
72.	ASI Mukamil Shah No. 1283/P	CCP, Peshawar
73.	ASI Muhammad Taric No.1284/P	CCP, Peshawar
74.	ASI Jamshald No.12E5/P	CCP, Peshawar
75.	ASI Shakir Ullah No.1 286/P	CCP, Peshawar
76.	ASI Sultan Sher No.1287/P	. CCP, Peshawar
77.	ASI Bakht Saeed No.: 288/P	CCP, Peshawar
78.	AŞI Jan Badshah No1 289/P	Special Branch
79.	ASI Shakar Ghayas N 1290/P	CCP, Peshawar
60.	ASI Shahid Rehman No.1291/P	Motorway Police
81.	ASI Javed Khan No.12 92/P	Cup, Peshawar
82.	ASI Laig Shah No.129 J/P	CCP, Peshawar
83.	ASI Zulfigar No. 1294/ 3	CCP, Peshawar
.84,	ASI Hassan All No.125 5/P	CCP, Peshawar
85.	ASI Fazal Razig No.12 /6/P	CPO/Operation Room
	ASI Muhammd Saced No.1297/P	
87,	ASI Wall Khan No. 129:4/P	CCP, Peshawar
80. ,	ASI Irfan Ullah No.1293/P	CCP, Peshawar

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Notification

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	ASI S, Mir Abu-ul Hassan No.1300/P		CCP, Peshawar
69.	ASI S. MIT ADU-UI HUSSAN NO. 2007		Traffic, Peshawar
90.	ASI Maaz Ullah No. 1301/P		Charsadda
91.	ASI Iftikhar Ali No.1302/P		PTC Hangu
92.	ASI Abdullah Jan No. 1303/P		Traffic, Peshawar
93,	ASI Zulfigar All No.1304/P		Traffic, Peshawar
94.	ASI Alamgir No. 1305/P		CCP, Peshawar
95.	ASI Muhammad Usman No.956/ 1328/P	· · · · · · ·	CCP, Peshawar
. 96.	ASI Shah Jehan No.1307/P		CCP, Peshawar
97.	ASI Iqbal Shah No.1308/P		CCP, Peshawar
98.	ASI Ajmal Khan No. 1309/P		CCP, Peshawar
. 99.	ASI Malook Jan No.1310/P		Traffic, Peshawar
100	ASI Muhammad Iqbal No.1311/P		Traffic, Peshawar
101			CCP, Peshawar
102	ASI Farid Gul No. 1318/P		CGP, Peshawar
103	ASI Misal Khan No.1319/P		CCP, Peshawar
104	ASI Muhammad Aftab No. 1320/P		CCP, Peshawar
105	1327/2		CCP, Peshawar
106	1273/P	· · ·	PTC Hangu
107			CCP, Peshawar
108		<u> </u>	Elite Force KPK
105		·	Elite Force KPK
110			AIG Legal: Branch: CPO
111			Operation: Room CPO
112			CCP, Peshawar
113	3. ASI Masood Khan No. 756/P		AIG Legal Branch CPO
114	ASI Muhammad Tahir No. 757/P		CCP, Peshawar
113			Charsadda
116			Elite Force KPK
117			CCP, Peshawar
118			Charsadda
119			CCP, Peshawar
120		<u></u>	
121		,,,	
122	ASI Rehmat Ullah Jan No. 759/P	• •	Charsadda
123	ASI Riaz Ahmad No. 761/P		CCP, Peshawar
124			CCP, Peshawar
125			CCP, Peshawar
		, <u></u> _	Charsadda
126	770/0		CCP, Peshawar
127			Charsadda
128		, <u></u>	CCP, Peshawar
1.29			CCP, Peshawar
130 131			Charsadda
131			CCP, Peshawar
· L			CCP, Peshawar
133		,	CCP, Peshawar
134			CCP, Peshawar
135			CCP, Peshawar
136			CCP, Peshawar
137.			CCP, Peshawar
136.	ASI Imtiaz Ahmad No. 784/P		

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139. ASI Saeed Jan No. 795/P

CCP, Peshawar

Their posting will be issued s sparately.

The following ASIs have been deferred from promotion to the rank of offg: SIs reason mentioned against their names:-

5#	Rank, Name, & No	Place c	Reason
	•	posting .	
2.	ASI Dawa Noor No. 1111/P (SI on ACB)	Traffic, Feshawar	Deferred from promotion to the rank of ofing to non availability of ACR-2012/4 m.
2.	ASI Khaista Khan No.1279/P	CCP, Pes tawar	Deferred from promotion to the rank of off to non availability of ACR 2014.
3,	ASI Izzat Khan No.1306/P	Traffic, Peshawar	Deferred from promotion to the rank of offi- to non availability of ACR 2014.
4	ASI Naveed Gul No.768/P	Nowshera	Deferred from promotion to the rank of office to non availability of ACR 2014 and also ab
5.	ASI Tehseen Ullah No.773/P	CCP, Pesh iwar	Deferred from promotion to the rank of offc to non availability of ACR 2014.

CAPITAL, CITY POLICE OFFICER, A PESHAWAR. Min.

# No. 13686-1370 Fec-1, dated Poshawarthe, 24-7 - 12015.

the:-		Copy of above is forwarded for information and necessary action i
• •	1.	Inspector General of Police Khyber Pakhtunkhwa, Peshawar, With request that the newly promoted Offg: SIs of CCP, Peshawar now deputation to the District:/units mentioned against each may be
•	$r \sim r_{\rm e}$	repatriated to CCP, Pesha war for further posting at Traffic, Warder system please.
	2. 3.	Inspector General of Police, NH & Motorway Police Islamabad. Addl: Inspector General of Police Investigation, KPK, Peshawar.
	4,	Addi: Inspector General of Police Special Branch, KPK, Peshawar,
	5. 6.	Addi: Inspector General of Police Elite Force KPK, Peshawar. Deputy Inspector General of Police CTD KPK, Peshawar.
	7. 1	Deputy Inspector General of Police Mardan Region.
	· 8. 9.	Commandant Police Trainir 3 College Hangu. Commandant CPC Universit 7 Campus, Peshawar.
	10. 11.	Director Anti Corruption Establishment KPK.
	12.	SSsP/Operations, Investigation & Traffic, Peshawar, The Senior Superintendent of Police, Logistic Headquarter,
	' 13. 14.	Sector-H/11, Islamabad.
•	15.	District Police Officers, Nowshera & Charsadda EC-II, PO & AS.
•		

NINIE

OFFICE OF THE INSPECTOR GENERAL OF POLICE, KHYBER PAKHTUNKHWA CENTRAL POLICE OFFICE, PESHAWAR.

The Capital City Police Officer, Peshawar.

To.

Subject:- <u>Minutes of the 18<sup>th</sup> Police Policy Board meeting held on 13<sup>th</sup> August 2015.</u> Please refer to Minutes of PPB-18, vide Endst No. 1598-1650/PA, dated 28.08.2015.

During the PPB meeting; it was unanimously agreed that a separate standing order may be issued for streamlining the affairs of Traffic Wardens that will address issues such as selection, deputation, training and promotion etc. of Traffic Wardens. The Board decided that till permanent recruitment of traffic wardens, seats will be filled temporary deputations. However, they will not get promoted on the seats sanctioned for traffic wardens nor will claim seniority if they are posted on a senior rank in traffic warden. On repatriation to parent district, they will be repatriated in their substantive ranks.

2. The Board took serious note of the recent promotions of SIs by CCPO on the posts of Traffic Wardens. They Board directed that since these seats belong to the traffic wardens, these promotions should be cancelled with immediate effect.

3. It is therefore, requested that action about Para-2 above of PPB may be taken forthwith and report be communicated to this office please.

L MOMAND) AIG/Establishment, For Provincial Police Officer, Khyber Pakhfunkhwa, Peshawa

2403-4 Copy to the:-

DIG HQrs, Khyber Pakhtunkhwa, Peshawar.
PSO to IGP, Khyber Pakhtunkhwa, Peshawar.

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<u>\_\_\_\_\_\_</u>\_\_\_\_

OFFICE OF THE CAPITAL CITY POLICE OFFICER, PESHAWAR. Phone No.091-9210641 Fax No.0919212597

#### ORDER.

/EC-I, dated Peshawar the

In pursuance of 18th Police Policy Board Meeting held on 13.08.2015 duly approved by Inspector General of Police Khyber Pakhtunkhwa, Peshawar issued vide DIG/HQrs: Letter Endst: No.1598-1650/PA/DIG/HQrs:, dated Peshawar Letter Khyber Pakhtunkhwa, 28.08.2015 & AIG Establishment, No.2404/E-II, dated 31.08.2015, the promotion Notification of 139 promoted Offg: Sub-Inspectors issued vide this office Notification No.13685-13706/EC-I, dated 24.07.2015 is hereby cancelled.

(Mubarak Zeb)PSP Capital city Police Officer, Peshawar g

No. 165 71-94 /EC-I;

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Copy of above is forwarded for information and necessary action

to the:-

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. Inspector General of Police, NH & Motorway Police, Islamabad. Addl: Inspector General of Police, Investigation KPK, Peshawar, Addl: Inspector General of Police, Special Branch KPK, Peshawar. Addi: Inspector General of Police, Elite Force KPK, Peshawar. Deputy Inspector General of Police, CTD KPK, Peshawar. Deputy Inspector General of Police, MArdan Region. Commandant Police Training College Hangu. Commandant CPC, university Campus, Peshawar.

Director Anti-Corruption Establishment KPK.

SSsP/Operation, Investigation & Traffic, Peshawar.

11: The Senior Superintendent of Police, Logistic Headqaurter, 12. Sector-H/11, Islamabad.

- District Police Officers Charsadda & Nowshera.
- EC-II, PO, AS CC & Computer Cell.

EFORE THE PESHAWAR HIGH COURT, PE

# W.P.No. 3113- 2015

NMEXIT

Muhammad Israr, ASI No.506/NSR, CTD KPK. 1. Muhammad Sher, ASI No.1561, CPP, Peshawar. 2. Bahar Ahmad, ASI No.1129/p, Charsadda/ Upper з. College Course. Jamshid Khan, ASI No.1163/P, Nowshera/ Upper 4. College Course Inayat-ur-Rehman, ASI No.1168/P, Nowshera. 5. Muhammad Alam, ASI No.1181/P Nowshera. 6. Masood Jan, ASI No.584/P, Charsadda 7. Hidayat Ullah, ASI No.1148/P, Charsadda 8.: Murad Ali, ASI No.1329/P, Charsadda 9. Muhammad Iqbal, ASI No.1218/P, CCP, Peshawar 10. Muhammad Gul, ASI No.1219/P, Special Branch 11. Sartaj, ASI No.12/P, CCP, Peshawar 12. Ghulam Hussain, ASI No. 1221/P, Special Branch 13. Hayat Gul, ASI No.1222/P, Special Branch 14. Humayun Khan, ASI No.1223/P, Traffic, Peshawar 15. Fida Muhammad, ASI No.1224/P, CCP, Peshawar 16. Subhan Ullah, ASI No.1225/P, Traffic, Peshawar 17. Khalid Khan, ASI No.1227/P, CCP, Peshawar 18. Hamid Rauf Khan, ASI No.1228/P, Special Branch 19. Sartaj Khan, ASI No.1229/P, CCP, Peshawar 20. Wasif-ur-Rehman, ASI No.1230/P, Traffic, Peshawar 21. Sardar Hussain, ASI No. 1231/P, CTD KPK 22. Farid Khan, ASi No.1232/P, CCP, Peshawar 23: Tehseen Ullah, ASI No.1233/P, CCP, Peshawar 24.

09 SEN 2015

EXAMINER Pashawar High Court 2 0 DEC 2018

Yasin Gul, ASI No.1224/P, Traffic, Peshawar 25. Atta Ullah, ASI No.3/P SI on ACB, Reader SSP/ Opt; 26. Sajjad Ahmed, ASI No.1236/P, CCP, Peshawar 27. Wajid Ali, ASI No.1237/P, CCP, Peshawar 28. Khial Muhammad, ASI No.1238/P, Anti-corruption 29. Jawad Hussain, ASI No.1240/P, Islamabad Police 30. Rikhmeen, ASI No.1239/P, CCP, Peshawar 31. Jehan Zeb, ASI No.1241/P, Special Brach 32. Abdul Wali, ASI No.1242/P, Traffic, Peshawar 33. Nowsherawan, ASI No.1243/P, CCP, Peshawar 34. Zahir Shah, ASI No.1244/P, CCP Peshawar 35. Momin Shah, ASI No.1245/P, Traffic Peshawar 36. Yahya Jan, ASI No.1246/P, Traffic Peshawar 37. Saif Ullah, ASI No.1247/P, CCP, Peshawar 38. Iftikhar Ahmed, ASI No.1248/P, CCP, Peshawar 39. Ijaz Ullah, ASI No.1249/P, CCP, Peshawar 40. Noor Saeed, ASI No.1251/P, CCP, Peshawar 41. Muhammad Riaz, ASI No.1252/P, CCP, Peshawar 42. Haji Rehman, ASI No.1253/P, CCP, Peshawar 43. Siraj, ASI No.1254/P, Traffic, Peshawar 44. Nasim Akbar, ASI No.1255/P, CCP/ Traffic, Peshawar 45. Qaim Khan, ASI No.1256/P, CCP, Peshawar 46. Bakht Munir, ASI No.1257/P, CCP, Peshawar 47. Shamshad Ali, ASI No.1258/P, CCP, Peshawar 48. Gul Muhammad, ASI No.1259/P, CCP, Peshawar 49. Qayyum Dad, ASI No.1260/P, CCP, Peshawar 50. Khalid Khan, ASI No.1261/P, CCP, Peshawar 51. Jehangir Khan, ASI No.1262, Special Branch 52. Sher Alam, ASI No.1263/P, CCP/ Traffic, Peshawar 53. Ihsan-ul-Haq, ASI No.1264/P, Traffic, Peshawar 54. Hashmat Khan, ASI No.1265/P, CCP, Peshawar 55. Wajid Ali, ASI No.473, Elite Force KPK 56.

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Muslim Khan, ASI No.1266/P, Traffic, Peshawar Nasif-ur-Rehman, ASI No.1267/P, CCP, Peshawar 58. Tariq Niaz, ASI No.1268/P, CCP, Peshawar 59. Aurang Zeb, ASI No.1269/P, CCF, Peshawar 60. Gul Jalal, ASI No.1270/P, CCP, Peshawar 61. Javid Akhtar, ASI No.1271/P, Traffic Peshawar 62. Tila Muhammad, ASI No.1272/P, Special Branch 63. Falak Taj, ASI No.1273/P, CCP, Peshawar 64. Murad Ali, ASI No.1274/P, CCP, Peshawar 65. Sajjad Ali, ASI No.1275/P, CCP, Peshawar 66. Khan Muhammad, ASI No.1276/P, CCP, Peshawar 67. Bakhtiar Khan, ASI No.1278/P, CCP, Peshawar 68. Shaukat Khan, ASI No.1280/P, CCP, Peshawar 69. Mukhtiar, ASI No.1281/P, CCP, Peshawar 70. Mushtaq ASI No.1282/P, CCP, Peshawar 71. Mukamil Shah, ASI No.1283/P, CCP, Peshawar 72. Muhammad Tariq, ASI No.1284/P, CCP, Peshawar 73. Jamshaid, ASI No.1285/P, CCP, Peshawar 74. Shakir Ullah, ASI No.1286/P, CCP, Peshawar 75. Sultan Sher, ASI No.1287/P, CCP, Peshawar 76. Bakht Saeed, ASI No.1288/P, CCP, Peshawar 77. Jan Badshah, ASI No. 1289/P, Special Branch 78. Shakar Ghayas, ASI No.1290/P, CCP, Peshawar 79. Shahid Rehman, ASI No.1291/P, Motorway Police 80. Javed Khan, ASI No.1292/P, CCP, Peshawar 81. Laiq Shah, ASI No.1293/P, CCP, Peshawar 82. Zulfiqar, ASI No.1294/P, CCP, Peshawar 83. Hassan Ali, ASI No.1295/, CCP, Peshawar P 84. Fazal Raziq, ASI No.1296/P, CPO/ Operation Room 85. Muhammad Saeed, ASI No.1297/P, CTD KPK 86. Wali Khan, ASI No.1298/P, CCP, Peshawar 87. Irfan Ullah, ASI No.1299/P, CCP, Peshawar 88.

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S.Mir Abu-ul-Hassan, ASI No.1300/P, CCP, Peshawar 89. Maaz Ullah, ASI No.1301/P, Traffic, Peshawar 90. Iftikhar Ali, ASI No.1302/P, Charsadda 91. Abdullah Jan, ASI No.1303/P, PTC Hangu 92. Zulftigar Ali, ASI No.1304/P, Traffic, Peshawar 93. Alamgir, ASI No.1305/P, Traffic, Peshawar 94. NO.956/1328/P, CCP. Usman, ASI Muhammad 95. Peshawar Shah Jehan, ASI No.1307/P, CCP, Peshawar 96. Iqbal Shah, ASI No.1309/P, CCP, Peshawar 97. Ajmal Khan, ASI No.1309/P, CCP, Peshawar 98. Malook Jan, ASI No.1310/P, CCP, Peshawar 99. Muhammad Iqbal, ASI No.1311/P, Traffic, Peshawar 100. Munawar Khan, ASI No.1313/P (SI on ACB), Traffic, 101. Peshawar Farid Gul, ASI No.1318/P, CCP, Peshawar 102. 103. Misal Khan, ASI No.1319/P, CCP, Peshawar 104. Muhammad Aftab, ASI No.1320/P, CCP, Peshawar Ilyas Khan, ASI No.1321/P, CCP, Peshawar 105. Muhammad Riaz, ASI No.1322/P, CCP, Peshawar 106. Muhammad Javed, ASI No.1323/P, PTC Hangu 107. Qazi Nisar Ahmad, ASI No.1325/P, CCP, Peshawar 108. 109. Abdus Sattar, ASI No.746/P, Élite Force KPK 110. Fazal Hadi, PASI No.747/P, Elite Force, KPK 111. Aftab Khan, ASI No.758/P, AIG Legal Branch CPO 112. Manzoor Khan, ASI No.748/P, Operation Room CPO

113. Masood Khan, ASI No.756/P, CCP, Peshawar

114. Muhammad Tahir, ASI No.757/P, AIG Legal Branch CPO

115. Muhammad Umer, ASI No.755/P, CCP, Peshawar

116. Tahir Ali, ASI No.749/P, Charsadda

117. Wisal Khan, ASI No.753/P, Elite Force KPK

118. Afzal Gul, ASI No.760/P, CCP, Peshawar

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1	. r19	. Bismillah Jan, ASI No.750/P, Charsadda
•	120.	. Muhammad Arif, ASI No.754/P, CCP, Peshawar.
. •	121.	. Imran Ullah, ASI No.751/P, Charsadda
	122.	. Rehmat Ullah Jan, ASI No.759/P, Charsadda
•	123.	Riaz Ahmad, ASI No.761/P, CCP, Peshawar
•	124.	Afzal Khan, ASI No.766/P, CCP, Peshawar
	125.	Ihsan Ullah, ASI No.767/P, CCP, Peshawar
	126.	Bahar Ali, ASI No.769/P, Charsadda
	127.	Muhammad Arshid, ASI No.770/P, CCP, Peshawar
•	128,	Asif Khan, ASI No.771/P, Charsadda
	129.	Muhammad Rafqiue, ASI No.772/P, CCP, Peshawar
•	130.	Laiq Zada, ASI No.774/P, CCP, Peshawar
	131.	Irfan Ullah, ASI No.776/P, Charsadda
	132.	Wajid Khan, ASI No.777/P, CCP, Peshawar
•	133.	Akhtar Hussain, ASI No.778/P, CCP, Peshawar
•	134.	Ahmad Ullah Khan, ASi No.797/P, CCP, Peshawar
•	135.	Abdullah Jalal Khan, ASI No.793/P, CCP, Peshawar
	136.	Nauman Khan, ASI No.803/P, CCP, Peshawar
	137.	M. Mubarak Zeb Gul, ASI No.794/P, CCP, Peshawar
	138.	Imtiaz Ahmad, ASI No.784/P, CCP, Peshawar
•	139.	Saeed Jan, ASI No.795/P, CCP, Peshawar

.....Petitioners

#### Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar

2. Inspector General, Khyber Pakhtunkhwa, Peshawar

- 3. A.I.G/ Establishment Central Police Office, Peshawar.
- 4. D.I.G Headquarters, Khyber Pakhtunkhwa, Peshawar.
- 5. Capital City Police Officer, Peshawar

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Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

## <u> Prayer in Writ Petition:-</u>

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On acceptance of this writ petition an appropriate writ petition may please be issued declaring the petitioners as fit to hold the rank of Sub-Inspector, was duly considered by the Departmental Promotion Committee and validly promoted vide Notification dated 24.07.2015: The letter dated 31.08.2015, whereby direction were issued for the cancellation of the promotion of the petitioners and order dated 04.09.2015, whereby the promotion Notification dated 24.07.2015 is cancelled, is illegal, unlawful, without lawful authority and of no legal effect. The petitioners have even right to continue in the rank of Sub-Inspector, OR

Any other remedy deemed proper in the circumstances of the case and not specifically asked for may also be granted.

Respectfully Sheweth;

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2.

That the petitioners are the Regular Employees of the K.P Police serving under the administration control of the Capital City Police, Peshawar.

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That there are two categories of the petitioners for the Police Officers performing duties, the first-

category are consists of the police officers promoted from the Rank of Constable and reached to the status of confirmed ASI of Police, while the second category are the police officers who were directly appointed as probationer ASI through Public Service Commission.

3.`

4.

That Chapter-XIII of the Police Rules, 1934 deals with the promotion of the Police Officer from one rank to the other. Rule-XIII (10) deal with the promotion to the post of Sub-Inspector. Similarly under Rule-XIII (10) list (E) is prepared consisting of confirmed ASI, who were consider eligible for promotion to the posts of Sub-Inspectors. (Copy of the Rules/ Chapter-XIII is attached as Annexure "A")

That recently some of the employees' of the Police Department have filed W.P.No.3652-P/2014, wherein they have sought the direction to the respondents to finalize the seniority list of direct/ promotee/ Assistant Sub Inspector. The writ petition was disposed-off vide judgment and order dated produced. when the respondents 13.05.2015, seniority list-(E) List ASI's of Capital City Police, Peshawar as it stood on 31.03.2015. (Copies of the judgment and order dated 13.05.2015 and service ity list dated 31.03.2015 are attached as Annexure "B".&

That the petitioners were placed at the top of the seniority list and thus were considered eligible to be promoted to the post of Sub-Inspector.

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"C")

That the names of the petitioners were placed before the Departmental Promotion Committee for promotion to the rank of officiating Sub-Inspector, the Departmental Promotion Committee in its meeting held on 17.07.2015 considered them and when found fit were recommended for promotion. Accordingly vide Notification dated 24.07.2015 the petitioners were promoted to the rank of officiating Sub-Inspector with immediate effect. (Copy of Notification dated 24.07.2015 is attached as Annexure "D")

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That the Notification of promotion of the petitioners was implemented and has taken its effect.

That it is pertinent to point out here that presently there are no separate promotion rules in the different branches of the Police Department, throughout the officers from Regular Police are transferred to Traffic Branch etc. However, vide letter dated 31.08.2015 referring to minutes of the 18<sup>th</sup> Police Policy Board Meeting held on 13.08.2015, it as directed that the promotions of SI's should be immediately cancelled allegedly that these seat belong to traffic worden's. Accordingly vide Notification dated 04.09.2015 the promotion Notification dated 24.07.2015 of the petitioners as officiating .Sub-Inspector is cancelled. (Copies of letters dated 31.08.2015 and 04.09.2015 are attached as Annexure "E" & "F")

That since the respondents have questioned their promotion primilarly regarding their fitness for

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promoting, as such having adequate remedy available in law is constrain to invoke the Constitutional jurisdiction of this Hon'ble Court, infer alia, on the following grounds:-

#### GROUNDS

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F.

A. That the petitioners have not been treated in accordance with law, hence their rights secured and guaranteed under the law and Constitution have been recklessly violated.

B. That the petitioners were fit and eligible, were rightly promoted as Sub-Inspectors, the order whereby the promotion of the petitioners has been cancelled, is illegal, unlawful, without lawful authority and of no legal effect.

- C. That the letter dated 31.08.2015 is violative of the Police Rules 1934, therefore, no separate promotion rules in the Traffic Branch of the Police Department, therefore, cancelling the promotion of the petitioners allegedly on the ground that these post belongs to the Traffic Warden, is illegal and against the record.
  - That the letter dated 31.08.2015 is self contradictory, that at present traffic branch has not been declare as separate cadre in the Police Department. Similarly the respondents have yet to frame Rules for forming separate rules for the Traffic Warden's.

That the petitioners are not provided with right of hearing before cancelling the promotion order.

That the law provide a separate mode for withdrawing the promotion of the Regular

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Employees as instant case no such mode has been adopted, therefore, order cancelling the promotion of the petitioners is legally not sustainable.

That the petitioners seek permission of this Hon'ble Court to relay on additional grounds at the time of hearing of this petition.

It is, therefore, requested that on acceptance of this writ petition an appropriate writ petition may please be issued as prayed for. OR

Any other remedy deemed proper in the circumstances of the case and not specifically asked fro may also be granted.

## INTERIM RELIEF

That the respondents may please be restrained from giving effect to the order dated 04.09.2015 and filling the post of Sub-Inspectors till the decision of titled writ petition

Through

**IJAZ ANWAR** Advocate, Peshawar

Petitioners

<u>CERTIFICATE:</u> Certified as per information furnished by petitioner that no such like writ petition has earlier been filed before this Hon'ble Court.

Advocate

### LIST OF BOOKS:

- 1) Constitution of Islamic Republic of Pakistan, 1973.
- 2) Law books as per need.

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Judgment. BEFORE PESHAWAR HIGH COUR PESHAWAR.

Judicial Department.

Writ Petition No. 3113-P of 2015.

Muhammad Israr, ASI & others......petitioners.

Govt. of Khyber Pakhtunkhwa & others......Respondents.

WAQAR AHMAD SETH, J:- Muhammad Israr, ASI &

138 others have invoked the writ jurisdiction of this Court, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayers:-

> "That on acceptance of this writ petition an appropriate writ may please be issued declaring the petitioners as fit to hold the rank of Sub-Inspector, was duly considered by the Departmental Selection Committee and validly promoted vide notification dated 24.07.2015. The letter dated 31.08.2015, whereby directions were issued for the cancellation of the promotion of the petitioners and order dated

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04:09.2015, whereby the promotion notification dated 24.07.2015 in cancelled, is illegal, unlawful, without lawful authority and of no legal effect. The petitioners have even right to continue in the rank of sub-Inspector".

The averments made by the petitioners in the petition are that, the petitioners herein are of two categories. first category are consisting of those police officers who are promoted from the rank of Constables and reached to the status of confirmed ASI's, while the second category are the police officers, who were directly appointed as ASI's by the Khyber Pakhtunkhwa, Public Service Commission. It is averred in the petition that prior to the instant writ petition a writ petition bearing No. 3652-P of 2014 was filed, wherein direction was sought to finalize the seniority list of the direct / promotee Assistant Sub Inspector and then promotion to the rank of Sub-Inspector on the basis of seniority cum-fitness was asked, which was disposed of on furnishing the said seniority list prepared under Rule-XIII (10) list (E) and according to the said list, petitioners were placed at the top of the seniority list, and thus were considered eligible for promotion to the post of Sub-Inspector; that on 17.07.2015, the meeting of Departmental

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Promotion Committee was held wherein petitioners were promoted to the rank of officiating Sub-Inspector and accordingly notification dated 24.07.2015 was issued. It is further averred that at present there are no separate promotion rules in the different branches of police department, the officer from regular police are transferred to traffic police etc, but vide impugned letter dated 31.08.2015, referring to minutes of the 18<sup>th</sup> Police Policy Board Meeting dated 13.08.2015, it was directed that the promotion of SI's should be cancelled immediately as, these posts belongs to traffic wardens, so vide impugned notification dated 04.09.2015, the promotion notification dated 24.07.2015 was cancelled.

3. Petitioners feeling aggrieved from the actions of respondents and having no other adequate and efficacious remedy have knocked the door of this Court through the petition in hand.

4. Comments were called from respondents, which they furnished, wherein they stated that the Departmental Promotion Committee had wrongly made recommendations for promotion of petitioners to the rank of SI, against the vacancies exclusively sanctioned and reserved for newly created Traffic

TTESTED XAMINER nawar High Court 20 DEC 2016Wardens Service unit of Police. Police Policy Board took notice of promotion of petitioners made against wrong post and decided that the promotion order shall be rescinded; that promotion against vacancies sanctioned and allotted to Traffic Warden Service confer no right on petitioners. It is well settled principle of law that wrong and void orders do not create any right. Further stated that Traffic Wardens Service was recently

introduced, and Provincial Government accorded sanction of creation of separate strength for the said unit of Police. Respondent No.2 has promulgated standing order No. 5/2015 for regulating the recruitment and promotion of Traffic Warden Services Officer, therefore, the competent authorities correctly made decision of cancellation of the promotion of petitioners

made against the vacancies of Traffic Warden Service.

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5. We have heard learned counsel for the parties and available record perused with their valuable assistance.

6. Record is suggestive that being fit, competent and eligible for promotion, petitioners were duly considered and promoted vide promotion order dated 24.07.2015, as officiating Sub-Inspectors by the Departmental Promotion Committee. Respondents have not grudged their promotion on their eligibility, competency, fitness or otherwise. The notification dated 24.07.2015, whereby petitioners were promoted to the rank of officiating Sub-Inspector, with immediate effect was

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also published in the police gazette part-II. The grievance started with a letter No. 2402-E III dated 31.08.2015, which in fact are the minutes of the 18<sup>th</sup> Police Policy Board meeting held on 13.08.2015 and for the purposes of petitioner's case, the

relevant portion i.e paragraph 2 & 3 reads as under:-

2. "The Board took serious note of the recent promotions of SIs by CCPO on the posts of Traffic Wardens. They Board directed that since these seats belong to the traffic warden, these promotions should be cancelled with immediate effect.

3. It is therefore, requested that action about Para-2 of PPB may be taken forthwith and report be communicated to this office please.

The above referred orders / directions of the

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alleged Police Policy Board was implemented vide order No.

16570 / EC-I dated, Peshawar 04.09.2015, issued by CCPO,

Peshawar, which reads as under:-

"In pursuance of 18<sup>th</sup> Police Policy Board Meeting held on 13.08.2015 duly approved by Inspector Khyber Police : General ... of Peshawar issued Pakhtunkhwa, vide DIG / HQrs; Letter Endst: No. 1598-1650 / PA DIG / HQrs; dated 28.08.2015 & AIG Establishment, Khyber Pakhtunkhwa, Peshawar dated 2404/E-II, Letter No. promotion the 31.08.2015, Notification of 139 promoted Offg: Sub-Inspectors issued vide this office Notification No. 13706/EC-I, is hereby 24.07.2015 dated cancelled".

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8. The Police Policy Board, who issued the directions and in reference to those directions the subsequent order dated 4.9.2015, was issued, figures nowhere in the law. Learned counsel for the respondents / AAG alongwith departmental representative present in the court, was time and again directed to show that under what authority of law the Police Policy Board has been constituted and what are their functions, especially in reference to the Departmental Promotions Orders issued by the duly constituted Promotion Committee, but failed to produce so. We have gone through the Police Laws: of

Pakistan, but nowhere could locate the said Police Policy Board

TTESTED EXAMINER Hawar High Court 2 0 DEC 2016 and its functions or powers. On the face of it the impugned order / directions dated 31.8.2015 of Police Policy Board & subsequent order of Capital City Police Officer, Peshawar dated 04.09.2015 are void ab initio as the same are not issued on the directions and on behalf of competent authority or lawful

authority.

9. The void order as defined by Corpus Juris Secundum, in (Vol. 92 PP-1021-1024) is "Expression void in the strict or accurate sense means "absolute null" that is to say incapable of rectification or confirmation and of no effect whatever". The Supreme Court of Pakistan in the case of <u>Chief</u>

Settlement Commissioner v Raja Muhammad Fazil Khan

(PLJ 1975 SC 15) defined a void order as follows:-

As order is to be treated as void only when it is made by a court, tribunal or other authority which has no jurisdiction either as regards the subject matter, the pecuniary value or the territorial limits when the dispute arise. Such an order would amount to usurpation of power unwarranted by law and accordingly it would be nullity".

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EXAMINER hawar High Court 20 DEC 2016 10. A void order was that order, which was passed by an authority not competent to pass it and in the instant case, when the Police Policy Board nowhere figures in the Administration Authority of the police department then its directions are prima facie void ab initio and are of no lawful authority, thus, the subsequent order dated 4.9:2015 of Capital City Police Officer, Peshawar, regarding cancellation of earlier promotion order are also of no effect. In the case of <u>Moulana</u> <u>Atta ur Rehman Vs Al-Haji Sardar Umer Farooq and other</u> reported in PLD 2008 SC 663 (b) it has been held as under:-

> "---When the basic order is without lawful authority and void ab initio, then the entire superstructure raised thereon falls on the ground automatically".

Again in the case of Mustafa Lakhani Vs Pakistan

Defence Officer Housing Authority, Karachi, reported in 2008 SCMR, 661 (b) it has been held:-

> "---Subsequent orders passed on basis of void order---Legal effect stated. If on the basis of a void order subsequent orders have been passed either by the same authority or by other authorities, the whole series of such orders together with

ATTESTED EXAMINER Pashawar High Court 2.0 DEC 2016

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the posts of Traffic Wardens, whereas, a glance over the promotion order would show that in all 139 ASI's were promoted as officiating Sub-Inspectors out of which only 17 have been posted against the traffic post, which even otherwise are inter-transferable, hence the reasons given for withdrawal / cancellation is not legal nor lawful.

13. Learned counsel for the respondents strongly objected to the maintainability of writ petition in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973; the non availing of departmental remedy / alternate remedy by way of departmental appeal and that officiating Sub Inspectors promotion do not confer a right as the same promotion was officiating only.

14. The plea of officiating promotion is not correct because in the police hierarchy there is a cadre of officiating Sub Inspectors from the "E" list of ASI's and the officiating is not in the sense as is otherwise used in the civil servant promotions. As regarding the objections of maintainability of writ petition and the cancellation of promotion, as per learned AAG, pertains to terms and conditions of service, therefore, the

TESTED XAMINER War High Court 20 DEC 2016

petitioners being civil servants were supposed to have

the superstructure of rights and obligations built upon them, must unless some statue or principle or

unless some statue or principle or law recognizing as legal the change position of the parties is in operation, would fail to the ground, because such orders have as little legal foundation as the void order".

In the Police Department, right from Police Rules,
 1934, Khyber Pakhtunkhwa, Police Rules, 1975, Police Order,
 2002 and all the relevant provision of departmental law / rules /

regulations for promotion purposes, the Departmental Promotion Committee is the relevant and competent for the purpose of promotions and as such the same authority has the powers to rescind / withdraw or cancel the same, therefore, where under the rules, regulations and policy have been framed for regulating promotions, any breach or deviation from them

for malafide reasons or due to arbitrary act of the competent authority would entitled an aggrieved employee to challenge the same in the Court of law. Reliance in this respect is place on

PLD 2003 SC 175 (d).

12. The perusal of impugned directions dated 31.8.2015 would reveal that the reasons for cancellation of promotions of the petitioners was that, they were promoted on

TESTED KAMINER Iwar High Court 2 0 DEC 2016 challenged the impugned orders before Service Tribunal under Section 4 of the Khyber Pakhtunkhwa, Service Tribunal Act, 1974, by availing first the remedy of departmental appeal, which even otherwise, was mandatory before filing the writ petition by way of alternate remedy by relying on <u>PLD 1997</u> <u>SC 351, 1990 SCIMR, 1238, 2015 SCMR, 253, 2002 SCMR</u>

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# 549 and 2002 PLC (CS) 244.

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MINER In High Court 15. We have given our anxious consideration to the proposition and are of the view that an appeal under section 4 of the Service Tribunal Act, 1974, lies against an order passed by a "Departmental Authority" in respect of any of the terms and conditions of service and in the explanation given to the said section 4 the word "Departmental Authority" means an authority other than a tribunal, which is "competent" to make an order in respect of any of the terms and conditions of civil servant. In the instant case as pointed out earlier, that the impugned orders / directions issued by Police Policy Board are void, of no lawful authority as the Police Policy Board is not a Departmental Authority as defined in the section ibid. Same is the condition for departmental representation. Since the

impugned orders are of no lawful authority or even no authority.

of the department for the purpose of promotions, service discipline etc hence without availing the departmental remedy writ is competent and maintainable. In the case of <u>Collector of</u> <u>Custom Valuation and another Vs Karachi Bulk storage</u> and terminals Ltd, reported in <u>2007 SCMR 1357, (a)</u> it has 1.10

been held that:-

"---Art. 199----Constitutional petition before High Court----Maintainability ---Impugned order found to be illegal, contrary to law or void ab initio----Remedies under departmental hierarchy, non-availing of----Aggrieved party in such case would be entitled to invoke constitutional jurisdiction of High Court".

16. In such like cases, as the present one where an order has been passed by an authority whose existence is doubtful alongwith powers and functions, not explained anywhere, then the availability of adequate remedy would not be an absolute bar against the exercise of constitutional be an absolute bar against the exercise of constitutional jurisdiction of this Court. In exceptional cases, like the present one, this Court can entertain the constitutional petition directly,

therefore, the objection in this regard is spurned. Even

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otherwise, the High Court was competent to interfere such provision of law in exercise of constitutional jurisdiction where the competency of the authority is in question. In the case of Farzand Raza Naqvi and 5 others Vs Muhammad Din and others, reported in 2004 SCMR, 400, it has been held that "if an order impugned is a void order or it has been passed without lawful jurisdiction, the non availing of alternate remedy of appeal against such order would not bar High Court to proceed in constitutional jurisdiction and declare such orders as without lawful authority, rule that High Court should not entertain constitutional petition and adjudicate the matter in a constitutional jurisdiction in which remedy of appeal, review or revision is applicable, under the statute, is not an absolute rule and in exceptional cases, the strict observations of the rule that extra ordinary remedy of constitutional petition cannot be availed in matter in which relief being sought under Article 199 of the Constitution could be granted by way of appeal, review or revision may cause in justice in substance, therefore, application of such rule would defend on facts and circumstances of each case".

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Likewise, in similar situation the Apex Court in the case

of Brig Muhammad Bashir Vs Abdul Karim and others

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reported in PLD 2004 SC 271, (d) has held that:

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199-Constitutional "---Art. jurisdiction of High Court, exercise o---Principles object and scope---Articles 199 of the Constitution easts an obligations on High Court to act in aid of law, protect the the of citizens within rights framework of the Constitution against infringement or law and the Executive constitution by rational strike Authorities. а compromise and a fair balance between the rights of citizens and auctions of State functionaries, claimed to be in the larger interest power is Society-Such of conferred on High Court, under the Constitution and is to be exercised Constitutional subject to limitations--Provision of Art. 199 of the Constitution is intended to enable High Court to control executive so as to bring it in the law--with conformity Whenever the executive acts in violation of law, an appropriate order can be granted which can relieve the citizens of the effects of action-Relief can be illegal granted to the citizens of the country under Art. 199 of the Constitutions, against infringement of any provisions of law or of the Constitutions as it is an omnibus Article---If the citizens of the deprived of the country are guarantee given to them under the constitution, illegally or not in accordance with law, then provision

of Art. 199 of the constitution can always be invoked for redressconsideration. in Paramount constitutional exercise jurisdiction is to foster justice and right a wrong---So long as statutory bodies and Executive Authorities act without fraud and bona fides within the powers conferred on them by the statue, the judiciary cannot interfere with them---Ample power is vested in High Court to issue directions to an Executive Authority when such an Authority is not exercising its power bona fide for the purpose contemplated by or is influenced by law the irrelevant and extraneous considerations-Where a statutory functionary acts mala fide or in a oppressive : unjust and partial, manner, High Court in exercise of. its constitutional jurisdiction has ample power to grant relief to the aggrieved party".

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17. Lastly learned AAG while relying on 2013 SCMR, 1752, contended that perpetual rights cannot be claimed on an illegal order, therefore, the authority cancelled the promotion orders of the petitioners and the same cannot be granted as of right. Indeed, perpetual rights cannot be claimed on an illegal order, but in the instant case, the order of promotion dated 24.07.2015 is quite legal and lawful, because

the same has been issued with the approval by of Departmental Promotion Committee, by the Competent Authority and nowhere in the confinents, so filed by the respondents and arguments at bar, they have contended that petitioners were neither fit nor eligible for promotion, rather it has been proved on record that the cancellation order is of no lawful acthority and a void order. The principle of locus poenitentiae could be invoked by competent authority till the time the decisive stage was not reached. In the instant case it is established that the orders were conveyed and acted upon, the said orders were even published in the gazette part-II and petitioners have reported to their place of posting as well, then a valuable right have accrued to the petitioners and as such they cannot be deprived of vested right by the authority, in view of which this writ petition is allowed as prayed for. Petitioners are decimed to

be promoted from the date of their promotion order dated

24.07.2015

Announced <u>24<sup>th</sup> November, 2015</u>. Tariq Khan,

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Respondential

APPRIL LOTZ LIZERT UN PARASTICA PRESENT: MR. JUSTICE MILLI SLOUB DELLE. MR. JUSTICE UMAR ATA BLODIN MR. JUSTICE LIAZ UL MISAN

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Muhnonmad Iszar & others

For the Petitioner(s): Mirifand Yound Ouresta, Act Ho Janangir Khan, SJ, FTC Hange

For Respondents 1,2,7: Mr. Marred Akrise, ASC. Other Respondents  $N_{\rm R}$ 

Date of Hearing:

25.01.2018 ORDER TREES

MIAN SAOIB MISSIC CJ Learned courses Respondents No.1. 2 and 7 states that he has no objection if the impugned judgment is set aside in the terms noted an department is directed to dettie the appeal representation if switting a private for a manife

imprience indemention act aside those wer his with petition be see to the department as an appeal or rexessuration under the la Learned Additional Advocate General, Kayber Pakternuliona elec states that he has no objection to that clients in the legot of the above, this petition is converted who appeal and a source and in

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OFFICE OF THE ANNER INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA Central Police Office, Peshawar 59

No. 613\_/Legal

# $\frac{1}{1 \text{ dated Peshawar, the } \frac{31}{2} \frac{2}{2018}}$ $\frac{311}{21 - 02 - 0.18}$

#### <u>ORDER</u>

This order is passed in compliance with judgment of the Honorable Supreme Court of Pakistan dated 26.01.2018, passed in Civil Petition No. 34-P/2016, titled Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar and others Versus Muhammad Israr and others. The brief, yet relevant, facts of the case are that Muhammad Israr and 138 others Assistant Sub-Inspectors (names mentioned in the memo of Writ Petition / representation) of Police of District Peshawar (hereinafter referred to as appellants) were promoted to the rank of officiating Sub-Inspector vide Notification No. 3685/EC dated 24.07.2015 of Capital City Police Officer, Peshawar. Later on it came to light that the promotion of appellants were made against the vacancies created and sanctioned for Traffic Warden Service of alien cadre. Therefore, in pursuance of the decision made in 18<sup>th</sup> Police Policy Board, the promotion order of appellant was cancelled vide order of Capital City Police Officer, Peshawar dated 04.09.2015.

The appellants filed Writ Petition No. 3113-P/2015 before the Honorable Peshawar High Court Peshawar against the cancellation of their promotion orders. The Writ Petition was contested on the ground that the appellant were promoted against the vacancies exclusively created for Traffic Warden Service and the matter relates to terms and conditions of service and the appellants have approached wrong forum. However, the Honorable High Court accepted the petition vide order dated 24.11.2015.

Civil Petition was lodged against the judgment of the Peshawar High Court Peshawar before the Honorable Supreme Court of Pakistan and the Honorable Court allowed the petition and the impugned judgment of Honorable High Court Peshawar was set aside. However, on the request of respondents / appellants the Honorable Courts directed that the Writ Petition filed by the appellants may be treated as departmental appeal and the department may decide the representation of the appellants within a period of 01 month.



On receipt of the order of the Honorable Court, the relevant record was thoroughly examined which revealed that the impugned promotions of appellants were made against the vacancies of the Traffic Warden Service which was amounting to out of turn promotion. The Honorable Supreme Court of Pakistan has issued clear directions with regard to stoppage of out of turn promotion. The promotion of appellants against the vacancies of alien cadre were correctly cancelled by the Capital City Police Officer, Peshawar. There is no force and merit in the representations of appellants, and their prayer is not tenable, hence the representation is rejected.

Addl: Inspector General of Police HQrs:

Addl: Inspector General of Police HQIS: Khyber Pakhtunkhwa, Peshawar.

No. S/\_\_\_\_\_/18

Copy of the above is forwarded to the Capital City Police Officer, Peshawar with reference to his office memo No. 216/LB dated 06.02.2018, for service of the copy of the order on the appellants.

> Addl: Inspector General of Police HQrs: Khyber Pakhtunkhwa, Peshawar.

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. <u>7/4</u>/2018

Fazal Hadi, ASI No. 747/P, Traffic Warden Khyber Pakhtunkhwa Peshawar.

#### VERSUS

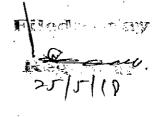
- 1. Govt of Khyber Pakhtunkhwa through chief Secretary Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
- 2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 3. A.I.G/ Establishment central Police Office, Peshawar.
- 4. D.I.G Headquarters, Khyber Pakhtunkhwa Peshawar.
- 5. Capital City Police Officer, Peshawar.

### (Respondents)

(Appellant)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 04.09.2015, whereby the promotion notification dated 24.07.2015, of the appellant has been cancelled / withdrawn, against which his Departmental appeal has not been responded despite the lapse of 90 days Statutory Period.

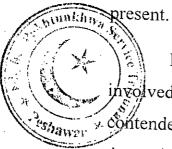
#### Prayer in Appeal: -



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On acceptance of this appeal the order dated 04.09.2015, may please be set-aside and the appellant may be allow to continue duties as Sub inspector as duly his considered and promoted by the competent authority by full filling all the legal and codal formalities vide order dated 24.07.2015 which was also publish in the official Gazette, the appellant may also be held entitled for full consequential and back benefits of service.

22.03.2019 Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Muhammad Raziq, H.C for the respondents



During the course of arguments while stating facts involved in the appeal in hand, learned counsel for the appellant contended that the respondent-department failed to decide the departmental appeal of appellant as required through the order

passed by the apex court on 26.01.2018.

The learned DDA stated that the requisite decision on departmental appeal was duly made on 21.02.2018 and the appeal stood rejected. The said fact was noted in the comments submitted by respondents in the appeal in hand, however, the order so passed was not questioned in the appeal.

Learned counsel for the appellant on the other hand stated that the mentioning of rejection of departmental appeal was though made part of the reply by the respondents, however, a copy of the order was never annexed therein. He added that the contents of order of rejection are not before the Tribunal even today. Similarly, the appellant is ignorant of the said contents as he was never conveyed the same.

Learned DDA provided today a copy of the decision, upon departmental appeal passed on 21.02.2018 to the appellant whereupon his learned counsel requested for permission to submit an amended appeal also questioning the legal validity of order ibid.

In the facts and circumstances of the case, the appellant is allowed to submit amended appeal within a fortnight subject to all just exceptions.

Chairman

Adjourned to 26.04.2019 before the D.B.

Member

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In the Court of Somuer The Ker Ker	Efin
Fajul Hall	}For }Plaintiff }Appellant
VERSUS	}Petitioner }Complainant
CSATE & LOPK	<b>}Defendant</b> <pre>}Respondent }Accused</pre>
Appeal/Revision/Suit/Application/Petition/Case No Fixed	of}

I/W, the undersigned, do hereby nominate and appoint

ZARTAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employee any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

**PROVIDED** always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel of his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof	I/we have hereto signed at		
the	_day to	_the year	
Executant/Executants	·	Re	and have
Accepted subject to the terms re	egarding fee	1	

Zartaj Anw

Advocate High Courts ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT FR-3- 4. Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Canu Ph.091-5272154 Mobile-0331-9399185 BC-10-9851 CNIC:17301-1610454-5