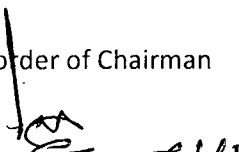


Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 1391/2022 _____


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 23/09/2022 | <p>The appeal of Mr. Zahir-ur-Rehman resubmitted today by Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p> |

The appeal of Mr. Zahir-ur-Rehman Driver/Head Constable Police lines Dir Upper received today i.e. on 02.09.2022 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Memorandum of appeal is unsigned.
- 2- Check list is not attached with the appeal.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Annexures of the appeal may be attested.
- 5- Index of the appeal is incomplete.
- 6- Affidavit is not attested by the Oath Commissioner.
- 7- Copy of seniority list mentioned in para-2 of the memo of appeal is not attached with the appeal which may be placed on it.
- 8- Copy of departmental appeal and letter mentioned in para-4 of the memo of appeal are not attached with the appeal which may be placed on it.
- 9- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 10- 8 more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2510 /S.T,

Dt. 6/9 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Noor Muhammad Khattak Adv. Pesh.

R/Siv That on objection No.7 is that the attached
annexure is Committee Report which mistakenly mentioned
as Seniority list. So, kindly the same may be
consider as Committee Report.

M
9/22/9/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL No. 1391 /2022

ZAHIR UR REHMAN VS POLICE DEPTT:

INDEX

| S. NO. | DOCUMENTS | ANNEXURE | PAGE |
|---------------|---|------------------|-------------|
| 1. | Memo of Appeal with Affidavit | | 1-4 |
| 2. | Copies of the application & appointment order | A & B | 5-6 |
| 3. | Copy of the committee report dated 24.05.2016 | C | 7 |
| 4. | Copy of the Order | D | 8-9 |
| 5. | . Copy of the Departmental Appeal | E | 10 |
| 6. | Copy of Judgment | F | 11-15 |
| 7. | Copy of the Execution Petition and Judgment | G | 16-17 |
| 8. | Copy of the impugned order | H | 18 |
| 9. | Copy of Departmental Appeal | I | 19-21 |
| 10. | Vakalatnama | | 22 |


PETITIONER

THROUGH:


NOOR MUHAMMAD KHATTAK
ADVOCATE

-1-

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

APPEAL NO. _____/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1136

Dated 02/9/2022

Mr. Zahir-ur-Rehman, Driver/ Head Constable,
Police Lines Dir Upper.

.....**APPELLANT**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3- The District Police Officer, Dir Upper.
- 4- Mr. NasibUllah, Head Constable/Driver No.453,
Police Line, Dir Upper.
- 5- Mr. KhaistaRehman, Head Constable/Driver No.17,
Police Line Upper Dir.
- 6- Mr. Muhammad Munir, Head Constable/Driver No.427,
Police Line, Dir Upper.

.....**RESPONDENTS**

**SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE IMPUGNED ORDER DATED 28.12.2021 WHEREBY THE
APPELLANT HAS BEEN PROMOTED WITH IMMEDIATE
EFFECT INSTEAD OF 29.12.2014 AND AGAINST NOT
TAKING ACTION ON THE DEPARTMENTAL APPEAL OF
APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY
DAYS.**

Filed to-day

Registrar

219/2022

PRAYER:

That on acceptance of this appeal the impugned order dated 28.12.2021 may very kindly be modified/rectified to the extent that the appellant be promoted to the rank of Assistant Sub Inspector Driver w-e-f 29.12.2014 i.e. when his junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this Honorable Tribunal deems appropriate may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving raise to the instant appeal are as

under:

- 1- That appellant was appointed as Driver Constable in the responder Department vide order dated 10.01.2003. That right from date the appellant is serving the Department quit

efficiently, whole heartedly and up to the entire satisfaction of his high ups. Copies of the application & appointment order is attached as annexure.....**A & B.**

- 2- That the respondents constituted a committee to fix seniority and that committee vide 24.05.2016 fixed seniority of Head Constables driver of District Dir (Upper). That according to the said report the name of the appellant was enlisted at Serial No. 8 while private respondent No.4 was placed at serial No.9 of the said report though the appellant was entitled to be ranked higher/senior from Private respondents No.4 according to their dates of birth. Copy of the committee report dated 24.05.2016 is attached as Annexure..... **C.**
- 3- That the respondent department promoted private respondents no. 4 to 6 vide order date 29.12.2014 wherein the appellant was ignored, feeling aggrieved the appellant preferred representation against the said order, but unfortunately the official respondent promoted private respondent No. 4 to the post of the ASI driver vide order dated 29.12.2014 through incorrect seniority list. Copy of the Order is attached as Annexure**D.**
- 4- That the said impugned orders dated 29.12.2014 & 31.12.2015 communicated to the appellant on his request vide dated 19.10.2017, that feeling aggrieved the appellant preferred Departmental Appeal on 20.10.2017, but till date no reply has been received. Copy of the Departmental Appeal is attached as Annexure.....**E.**
- 5- That the appellant filed Service Appeal No.291/2018 before this Honorable Tribunal which has been accepted by this honorable Tribunal vide Judgment dated 03.12.2019. Copy of Judgment is attached as Annexure.....**F.**
- 6- That the appellant after getting of the attested copy approached the respondent several time for implementation of the above mentioned judgment however they using delaying and reluctant to implement the judgment of this August Tribunal.
- 7- That the appellant filed Execution/Implementation petition No.46/2020 before this August Tribunal which was decided on 12.01.2022 in which the contentions of the appellant was that the department has implemented the judgment of this tribunal vide office order dated 28.12.2021. Copy of the Execution Petition and Judgment is attached as Annexure.....**G**
- 8- That the respondent department issued impugned order dated 28.12.2021 in which the department promoted the appellant as Driver Assistant Sub Inspector against the existing vacancy of Driver ASI in

Dir Upper District w.e.f 28.12.2021 instead of 29.12.2014. Copy of the impugned order is attached as Annexure.....**H.**

- 9- That the appellant feeling aggrieved from the impugned notification 28.12.2021 preferred departmental appeal before the appellate authority for promoting the appellant with effect from 29.12.2014 but the same has not been decided within the statutory period of Ninety days. Copy of Departmental Appeal is attached as Annexure**I.**
- 10- That the appellant feeling aggrieved and having no other remedy filed the instance service appeal on following grounds inter alia.

GROUND:

- A- That the impugned orders dated 28.12.2021 issued by the respondents are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondents department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents in spite of knowing the fact that the seniority list is disputed and has challenged by the appellant before the appellate authority issued the impugned promotion orders dated 29.12.2014 & 31.12.2015 whereby the private respondent was promoted to the rank of Driver ASI while the appellant was ignored.
- D- That the respondent department acted in arbitrary and malafide manner by not promoting the appellant to the rank of ASI Driver w.e.f 29.12.2014.
- E- That promotion of the private respondent No.4 to the post of ASI Driver is against the law and material facts hence not tenable in the eye of law and liable to be set aside.
- F- That the impugned order is in contravention of section 9 of the Civil Servant Act read with rule 7 of the Appointment, Promotion and Transfer Rules 1989.
- G- That not considering the appellant for promotion to the rank of ASI Driver the respondents acted in discriminatory manner.

-4-

H- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated:

APPELLANT



ZAHIR-UR-REHMAN

THROUGH:


NOOR MUHAMMAD KHATTAK


WALEED ADNAN


UMAR FAROOQ

&

**MUHAMMAD AYUB
ADVOCATES**

AFFIDAVIT

I Zahir-ur-Rehman, Driver/ Head Constable, Police Lines Dir Upper, do hereby solemnly affirm that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


DEPONENT

"A" - 5.5.55

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کو... (Handwritten text)

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NIL

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ATTACHED
... (Stamp)

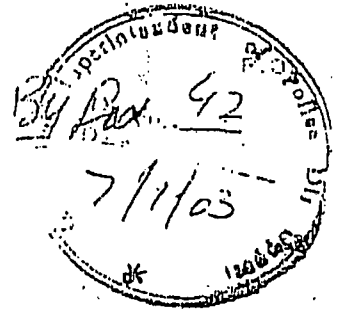
JSSA PIR (U)

Other wire file

IV db
SP

28.1.03

-6-"B" B-0



ORDER:

In exercise of the power vested in me under Police Rules 12-15, amended vide Govt. of NWFP Home and TAs Department Gazette Notification No. SQ(P-1) HD/13-J-84, dated 18th January 1989 further clarified vide Circular Order No. 2 1989 issued over CPO Peshawar Endst No. 10041-81.E-II dated 17th June 1990, the deficiency in educational qualification in respect of the following is hereby condoned for enlistment as Driver Constable in Dir Upper District:

1. Mohammad Munir S/o Mohammad Pehman r/o Panakot
2. Khista Rehman S/o Fazal Raziq r/o Gonori.
3. Zahir Rehman S/o Ahmad Shah r/o Panakot.
4. Nasibullah S/o Fazal Hamid r/o Panakot.

(Signature)
(FAQIR HUSSAIN)
Deputy Inspector General of Police,
Region-III, Saidu Sharif, Swat.

No. 79 / W.
Dated: 6/1 / 2003.

Copy to the Superintendent of Police Dir Upper for information and necessary action with reference to his Memo: No. 13687 EC, dated 23rd December 2002.

(Handwritten initials)
@HC
(Handwritten signature)
SP

ORDER:

In exercise of the power vested in the under Police Rules 12-15 amended vide Govt: of NWFP Home and TAs Department Gazette Notification No. SO(P-I)/HD/13- E84, dated 18th January, 1989 further clarified vide Circular Order No. 2/1989 issued over CPO Peshawar Endst: No. 1004-81/E-II, dated 17th June 1989 the deficiency in educational qualification in respect of the following is hereby condoned for enlistment as Driver Constable in Dir Upper District:

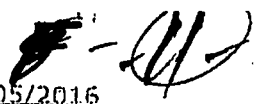
1. Mohammad Munir S/O Mohammad Rehman R/O Panakot.
2. Khaista Rehman S/O Fazal Raziq R/O Gonori.
3. Zahir Rehman S/O Ahmad Shah R/O Panakot.
4. Nasibullah S/O Fazal Hamid R/O Panakot.

(FAQIR HUSSAIN)

Deputy Inspector General of Police,
Regional-III, Saidu Sharif, Swat

No. 79/F,

Dated: 6/1/2003,

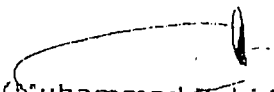
4C" 7- 
COMMITTEE REPORT.

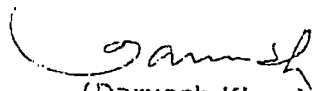
Dated: 24/05/2016

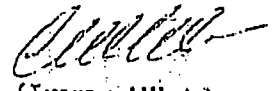
In compliance of CPO, Peshawar memo: No. 3014/E-IV, dated 17/03/2016, a committee was constituted to fix the seniority of MT Staff of Dir Upper District vide this office order Endst: No. 4415-20/E, dated 16/05/2016.

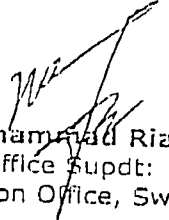
The committee after thoroughly examination of service records of the MT Staff Dir Upper, fixed their Initial seniority in the light of PR 12.2(3) as under:-

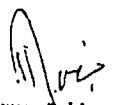
| S # | Name & No. | D/O Birth | D/O Enlisted as Driver Constable / Constable | D/O Absorption, Adjustment in MT Staff as Driver Constable |
|------|---------------------------|------------|---|--|
| → 1. | HC Bacha Khan No. 236 | 1964 | 16/08/1982 | OB No. 318 dated 19/05/1999 |
| 2. | HC Inayat Jan No. 79 | 15/03/1982 | 23/08/2000 as Driver Constable MRR quota of Dir Upper | 30/04/2008 |
| 3. | HC Rehman Hakim No. 465 | 12/01/1980 | 01/07/2001 as Driver Constable | 30/04/2008 |
| 4. | HC Islam Yousaf No. 489 | 1978 | 21/03/2002 as Driver Constable | 30/04/2008 |
| 5. | DFC Alam Zeb No. 52 | 22/04/1978 | 26/07/2002 as Driver Constable. Latter on his appointment order was converted as Constable due to non availability of the sanctioned post / vacancy of Driver vide DPO, Dir Upper OB No. 506, dated 07/09/2002. | 30/04/2008 |
| 6. | HC Khalsta Rahman No. 17 | 09/01/1978 | 09/01/2003 as Driver Constable | 30/04/2008 |
| 7. | HC Muhammad Munir No. 427 | 09/01/1978 | 09/01/2003 as Driver Constable | 30/04/2008 |
| → 8. | FC Zahir Rahman No. 449 | 05/04/1978 | 09/01/2003 as Driver Constable | 28/12/2010 |
| 9. | HC Nasib Ullah No. 453 | 10/03/1980 | 09/01/2003 as Driver Constable | 21/12/2010 |
| 10. | DFC Khalid Khan No. 263 | 1980 | 25/11/2010 as Driver Constable | 25/11/2010 |
| 11. | DFC Bahadar Zeb No. 621 | 15/01/1981 | 27/07/2007 as Constable | 14/12/2010 |
| 12. | DFC Shakirullah No. 20 | 1980 | 16/09/2011 as Driver Constable | 16/09/2011 |

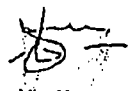

 (Muhammad Zahid)
 DSP, HQrs: Dir Upper


 (Darvesh Khan)
 DSP, HQrs: Swat.



 (Imran Ullah)
 Inspector Legal, Swat


 (Muhammad Riaz)
 Office Supdt:
 Region Office, Swat


 (Hazrat Hussain)
 Establishment Assistant,
 Region Office, Swat


 (Hanifullah)
 OASI, Dir Upper

(APPROVED)


 (AZAD KHAN) TSt, PSP
 Regional Police Officer,
 Malakand, at Saidu Sharif Swat

"D"

8-

10/12/2014

| Names and Nos of Driver | DO Enstt | DO | Pay will be fixed on |
|-------------------------|------------|--------------------------------|--|
| Constables | | Absorption as driver constable | promotion as Driver Head Constable (BS-7) 5800-320-15400 |
| Bacha Khan No.236 | 16/08/1982 | 17/05/1999 | Rs.13150/-PM |
| Inayat Jan No.79 | 23/08/2000 | 23/08/2000 | Rs.9640/-PM |
| Rehman Hakim No.465 | 01/07/2001 | 01/07/2001 | Rs.9320/-PM |
| Islam Yousaf No.489 | 26/03/2002 | 26/03/2002 | Rs.9320/-PM |
| Nasibullah No.453 | 09/01/2003 | 09/01/2003 | Rs.8680/-PM |
| Khaista Rahman No.17 | 09/01/2003 | 09/01/2003 | |
| Muhammad Munir No.427 | 09/01/2003 | 09/01/2003 | |
| Zahir Rahman No.449 | 10/01/2003 | 10/01/2003 | |
| Alam Zeb No.52 | 26/07/2002 | 30/07/2003 | |
| Bahadar Zeb No.621 | 27/07/2007 | 14/12/2010 | |
| Khalid Jan No.263 Inve | 25/11/2010 | 25/11/2010 | |
| Shakirullah No.20 | 16/09/2011 | 16/09/2011 | |

According to seniority fixed amongst the above mentioned driver Constables, officials at S/No 1 to 5 amongst their colleagues are entitle for promotion as Driver Constables against the existing vacancies.

AN AKBAR KHAN)
HQRS (MEMBER)

(HUSSAIN ALI)
CLERK-HEAD CLERK (MEMBER)

(MOHYUDIN)
RI, POLICE LINES (MEMBER)

(JEHANGIR KHAN)
JR: CLERK-ESTT: CLERK (MEMBER)

APPROVED

Driver Constables from S/No.1 to 5 are promoted as Driver Head Constables (BS-7) as per their entitlement against the existing vacancies and on promotion as Driver Head Constables their pay as noted each is fixed accordingly.

District Police Officer,
Dir Upper (CHAIRMAN)

No. 840

Dated 29/12/2014

4984

/EB, Dated Dir Upper the, 29-12 /2014

Copy submitted to the Regional Police Officer, Malakand, Muzaffarabad, Dir Upper, Swat for information with reference to this office Endst: No.4345-47/E, dated 12/12/2014 please.

District Police Officer,
Dir Upper

-9-

A Departmental promotion committee held in the office of the undersigned on 10.12.2015 the following Driver Constable BPS No. 5 were declared fit for promotion as driver Head Constable in BPS No. 7 (7490-415-19940) on the basis of seniority with immediate effect.

~~13~~

1. FC Khaista Rahman No. 17.
2. FC Muhammad Munir No. 427.

OB No. 940

Dated 29/12/ 2015.

[Signature]
District Police Officer,
Upper Dir.

No. 5596 /EB, dated Upper Dir, the 31-12 2015.

O/L

Copy of above is forwarded to the Regional Police Officer Malakand at Saidu Sharif, Swat for favour of information with reference to his office Memo No. 6884/E, dated 02.09.2015.

[Signature]
District Police Officer,
Upper Dir.

O/L

[Handwritten mark]

17/12/15

10/1

[Handwritten mark]

10.15

[Handwritten mark]

1/15

"D"

10-



The Deputy Inspector General of Police,
Malakand Division at saidu Sharif Swat.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
ORDER DATED 29.12.2014

R.Sir,

Most humbly it is stated that I was appointed as Driver Constable vide order dated 9.1.2003. That right from appointment till date I served the police Department quite efficiently and up to the entire satisfaction of my superiors.

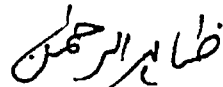
That I along with my three colleagues were appointed on the same date i.e. 9.1.2003 and being senior in age I was entitled to be ranked senior to that of my three colleagues namely Khaista Rehman, Mohammad Munir and Nasib Ullah but unfortunately I was ranked junior to my above mentioned colleagues. Feeling aggrieved I filed Departmental appeal, upon my said Departmental appeal a committee was constituted and the said committee vide recommendation dated 24.5.2016 declared/recommended that I am senior than one of my colleague namely Nasib Ullah although I was entitled to be ranked senior than all of my colleagues.

That on the basis of wrong seniority list my junior colleague namely Nasib ullah was promoted to the Rank of Driver Head Constable (BPS-07) vide impugned order dated 29.12.2014. That in light of the committee report dated 24.5.2016 I am senior than Nasibullah and therefore, entitle for promotion to the Rank of Driver Head Constable (BPS-7) w.e.f. the date when my junior colleague has been promoted i.e. 29.12.2014.

Keeping in view of the above the impugned order dated 29.12.2014 may kindly be set aside and I may kindly be promoted to the Rank of Driver Head Constable (BPS-7) w.e.f. 29.12.2014 with all back benefits.

Dated: 30.10.2017

Yours Obediently,



Zahir Rehman, Driver Constable No.449,
Police Lines Dir Upper.

"F" 4-11-15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 291 /2018

Distry No. 233

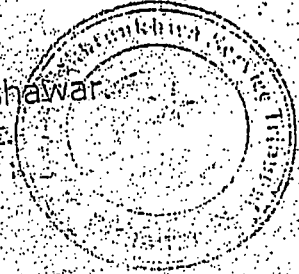
Dated 16/2/2018

Mr. Zahir-Ur-Rehman, Driver/Constable No. 449,
Police Lines Dir Upper.....

APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3- The District Police Officer, Dir Upper.
- 4- Mr. Nasib Ullah, Head Constable/Driver No. 453,
Police Lines, Dir Upper.
- 5- Mr. Khaista Rehman, Head Constable/Driver No. 17,
Police Line, Dir Upper.
- 6- Mr. Muhammad Munir, Head Constable/Driver No. 427,
Police Line, Dir Upper



RESPONDENTS

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDERS DATED 29-12-2014 & 31-12-
2015 COMMUNICATED TO THE APPELLANT ON 19-10-
2017 WHEREBY THE PRIVATE RESPONDENT NO. 4 TO 6
BEING JUNIORS TO THE APPELLANT HAS BEEN
PROMOTED TO THE RANK OF HEAD CONSTABLE DRIVER
WHILE THE APPELLANT WAS IGNORED & AGAINST NO
ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF
THE APPELLANT WITHIN THE STIPULATED PERIOD OF
90 DAYS

PRAYER:

That, on acceptance of this appeal the impugned orders dated 29-12-2014 & 31-12-2015 may very kindly be set aside and the respondents may be directed to consider the appellant for promotion to the rank of Head Constable/Driver w.e.f. the date when his junior were promoted i.e. 29-12-2014 with all consequential back benefits including seniority. Any other remedy which this Honourable Tribunal deems appropriate may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

Attended

Brief facts giving raise to the instant appeal are as
under:

(A) 12

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 291/2018

Date of Institution 16.2.2018

Date of Decision 03.12.2019



Zahir-ur-Rehman, Driver/Constable no. 449, Police Lines, Dir Upper.
(Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and five others.
(Respondents)

MR. SHAAZULLAH KHAN,
Advocate

For appellant

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents no. 1 to 3

MR. MUHAMMAD KAMRAN KHAN,
Advocate

For respondents no. 4 to 6

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMD MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS.

02. Learned counsel for the appellant argued that he was appointed as Driver Constable on 10.01.2003. That the respondents notified a seniority list of Driver Constables of Dir Upper in which his name wrongly placed at serial no.4. He was senior to the private respondents. Feeling aggrieved, he filed departmental appeal and the competent authority constituted a committee to resolve the issue of seniority

Affected
Sh

TESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

① - ~~13~~ - 13 -

of the appellant vis-a-vis private respondents. Through order dated 24.05.2016, the committee revised the seniority list of Driver Constables of Dir Upper wherein, the name of the appellant was put at an appropriate by showing him senior to the private respondents. To his astonishment, private respondents were promoted as Driver Head Constable vide impugned order dated 29.12.2014 and 13.12.2015. These orders were communicated to the appellant upon his request on 19.10.2017 and departmental appeal was preferred on 20.10.2017. Promotion given to the private respondents was against the rules and order passed to this effect had no value in the eyes of law.

03. Learned counsel for private respondents argued that they were rightly promoted under Police Rules 1934 on the basis of seniority-cum-fitness. As in the past punishments were awarded to the appellant and his service record was not satisfactory, therefore, he was not considered for promotion. The plea taken by the appellant that he never received the orders regarding promotion of private respondents was without substance, as the respondents widely disseminated these orders. Moreover, he was not fit for promotion. He also raised the issue of limitation that the present appeal was barred by time.

04. Learned Assistant Advocate General relied on arguments advanced by the learned counsel for private respondents.

CONCLUSION:

05. As regards the issue of limitation raised by the learned counsel for private respondents was concerned, though the appellant was considered for promotion but

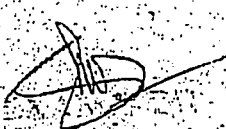
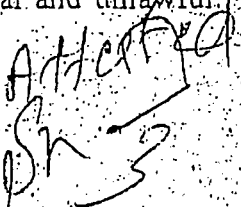
Attested
Sh 5

(A) - 14 -

ignored on the basis of wrong seniority list. Private respondents were promoted as Driver Head Constable vide order dated 29.12.2011 and 31.12.2015. However, in the absence of any solid evidence, denial by the respondents and perusal of available record, the plea taken by the appellant that he came to know about the said order on 19.10.2017 and filed departmental appeal on 20.10.2017 seems logical, convincing and worth consideration. Furthermore, on the basis of report dated 24.05.2016 and after correction of seniority position, it was incumbent on the respondents to have reviewed the promotion orders referred to above. Moreover, issues relating to promotion, confirmation and seniority were not hit by limitation, as held by superior courts in numerous judgments. In addition to this, it was against the cardinal principles of substantive justice to deprive a civil servant of his due right just on the strength of technicalities and when the respondents were unable to defend their case on merits. In this case illegalities, favoritism and arbitrary acts of the respondents have been proved beyond any shadow of doubt, therefore, the appellant has every right to be treated fairly on merit.

06. Now coming to the merits of the case, it is clarified that the appellant and private respondent no.4 were appointed as Driver Constable on 09.01.2003. However, being senior in age the appellant was shown senior to the private respondents. This fact was also confirmed by the order/report dated 24.05.2016 prepared by the committee on the directions of the competent authority. However, private respondents was wrongly promoted vide order dated 29.12.2014 and 31.12.2015. The record has established that these promotions were made on the basis of disputed seniority list which had no validity in the eyes of law and any promotion made on the basis of that was illegal and unlawful. The appellant was

ATTESTED

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entitled to be considered for promotion from 29.12.2014. The plea taken by the learned counsel for the private respondents that the appellant was ignored because of his service record/punishment was also a lame excuse and against the invogue rules/policy.

07. As a sequel to the above, the appeal is accepted, the impugned order dated 29.12.2014 is set aside to the extent of private respondent no.4. The respondents are directed to consider the case of promotion of the appellant from the due date. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
Member

(AHMAD HASSAN)
Member
Camp court Swat

ANNOUNCED
03.12.2019

12-12-19

2000

2200

2200

18-12-19

18-12-19

Affected
D.A.

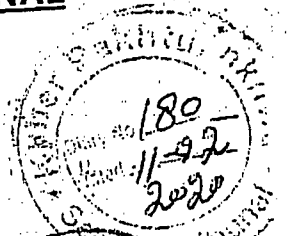
"G" D-16-4211 -

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Implementation petition No. 46 /2020

In appeal No. 291/2018

Mr. Zahir-Ur-Rehman, Driver/Constable No.449,
Police Lines Dir Upper.....Petitioner



VERSUS

- 1- The Inspector General Of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer Malakand At Saidu Sharif, Swat.
- 3- The District Police Officer, Dir Upper.

.....Respondents

**IMPLEMENTATION PETITION FOR DIRECTING THE
RESPONDENT DEPARTMENT TO IMPLEMENT THE
JUDGMENT DATED 03-12-2019 IN APPEAL
NO.291/2018 IN LETTER AND SPIRIT**

R/SHEWETH:

1- That the above mentioned appeal has been decided by this august Service Tribunal vide judgment dated 03-12-2019 in favor of the Petitioner. Copy of the judgment is attached as annexure.....A.

2- That after final arguments this august Service Tribunal decided the appeal in favor of the Petitioner vide the above mentioned judgment with observation " as a sequel to the above, the appeal is accepted, the impugned order dated 29/12/2014 is set aside to the extent of private respondent no.4. The respondents are directed to consider the case of promotion of the appellant from the due date".

3- That Petitioner after obtaining attested copy the judgment dated 03/12/2019 visited the respondent Department and submitted the same before the respondents for implementation, but the respondents are not willing to implement the judgment passed by this august Service Tribunal.

Certified to be true copy

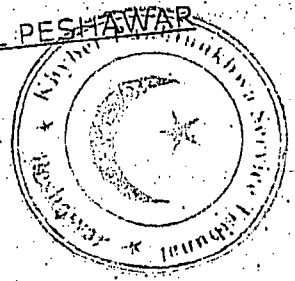
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

~~31~~ - "2" - 17 -

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 46/2020

Date of institution 11.02.2020



Zahir-Ur-Rehman, Driver/Constable No. 449, Police Lines Dir Upper.

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and
02 others.

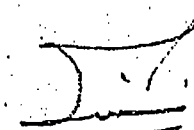
ORDER
12.01.2022

Petitioner alongwith his counsel namely Mr. Said Khan, Advocate, present. Mr. Zewar Khan, Sub-Inspector (Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and stated at the bar that the judgment passed by this Tribunal has been implemented. In this respect, he produced office order dated 28.12.2021, which is placed on file.

Learned counsel for the petitioner stated at the bar that the department has implemented the judgment of this Tribunal vide office order dated 28.12.2021, therefore, the execution petition in hand may be filed without further proceedings. In this respect, he submitted written application, which is placed on file.

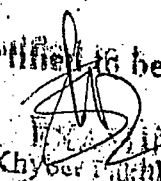
In view of the above, the execution petition in hand stands filed without further proceedings. File be consigned to the record room.

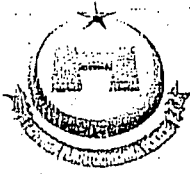
ANNOUNCED
12.01.2022


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Date of Presentation of Application 26/5/22
Number of Words 800
Copying Fee 40/-
Urgent 4/5
Total 14/-
Name of Copyist _____
Date of Completion of Copy 26/5/22
Date of Delivery of Copy 26/5/22

Certified to be true copy


ZAHIR-UR-REHMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR

Ph: 0944-880531 Fax: 0944-880119
Email: updirupper.dir@gmail.com

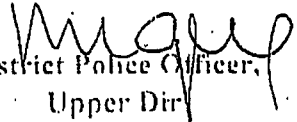
Order No. 856

Dated Dir Upper the 28/12/ 2021.

ORDER

On the recommendation of the departmental Committee constituted vide this office Endst: No.1132/EB. dated 17/02/2021, the following Driver Constables were found senior as well as fit for promotion as they have not earned any major bad entry in the last five years according to their service record and eligible for promotion in the rank of Driver Head Constables BS-09(11770-730-33670), therefore, they are promoted as Driver Head Constables BS-9 with immediate effect.

1. Alam Zaib No.52
2. Zahir Rahman No.449 ✓


District Police Officer,
Upper Dir

To

The Additional Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 28-12-2021 WHEREBY THE APPELLANT HAS BEEN PROMOTED TO THE POST OF DRIVER ASSISTANT SUB-INSPECTOR WITH IMMEDIATE EFFECT INSTEAD W.E.F 29-12-2014.

Respected Sir,

The following facts are submitted for perusal and sympathetic consideration:-

1. That the appellant is the employee of your good self department. That the appellant is performing his duty with full devotion and with zeal and zest and up to the entire satisfaction of his superior since 10-01-2003.
2. That some of the junior colleagues of the appellant were promoted to the post of Driver Assistant Sub Inspector w.e.f 29-12-2014 irrespective of the fact that they were juniors to the appellant. That the same orders were communicated to the appellant on 19-10-2017.
3. That feeling aggrieved from the said order the appellant preferred departmental appeal followed by service appeal No. 291/2018 and the same was allowed by the August Service Tribunal vide judgment dated 3/12/2019 whereby the promotion order of the juniors were set aside and your good self-department was directed to promote the appellant w.e.f 29-12-2014 with all back benefits including seniority.
4. That by not complying the same the appellant submitted implementation petition No. 46/2020 and during pendency of the said petition your good self-department issued the impugned order dated 28-12-2021 whereby the appellant was promoted with immediate effect.
5. That the impugned order dated 28/12/2021 is violative of the judgment of the August Service Tribunal as well as section 8 & 9 of the KP Civil Servants Act 1973 read with Rule 17 of the Appointment, Promotion & Transfer Rules, 1989.
6. That the impugned order dated 28/12/2021 is not sustainable and liable to be modified/rectified to the extent of effect which shall be given from 29/12/2014 with all back benefits including seniority.

It is, therefore, requested that by accepting this departmental appeal the impugned order dated 28/12/2021 may kindly be modified/rectified by giving effect from 29-12-2014 with all back benefits including seniority.

Appellant

طہیر رحمان
Zahir-ur-Rehman
No. 499 Driver ASI
Dir Upper

Dated: 02.5.2022

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No. 434

31.5-22

For Insurance Notices see reverse.
Ste RGL81666964

Rs. Ps.

50

uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Received a registered
addressed to ADDI G

Date Stamp

Initials of Receiving Officer: ADDI G
Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.

Insured for Rs. (in figures) 100 (in words) 100

If insured

Insurance fee Rs. 2 Ps. 00
Weight 100 Kilo 100
(in words) 100 Grams

Name and
address
of sender PO

VAKALATNAMA

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

Zahid Rehman (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt (RESPONDENT)
(DEFENDANT)

I/we Zahid Rehman
Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022

طاهر رحمن خان
CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

UMER FAROOQ MOHMAND

KAMRAN KHAN

HAIDER ALI

&
KHANZAD GUL
ADVOCATES