

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 1044/2013

Date of institution ... 06.06.2013

Date of judgment ... 27.07.2016

Bahadar Khan S/o Shahbaz Khan  
R/O Village Bajooro P.O Talash,  
Tehsil Timergara, District Lower Dir,

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, at Saidu Sharif, Swat.
3. The District Police Officer, Upper Dir.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 29.03.2013, WHEREBY THE APPELLANT HAS BEEN RETIRED FROM SERVICE W.E.F 07.12.2012, AND RECOVERY IS ORDERED TO BE MADE FROM HIM ALLEGEDLY ON ACCOUNT OF OVER PAYMENT, AGAINST WHICH HIS DEPARTMENTAL APPEAL DATED 15.04.2012, IS ALSO REJECTED VIDE ORDER DATED 30.04.2013, COPY COMMUNICATED TO THE APPELLANT ON 16.05.2012.

Mr. Sajid Amin, Advocate

.. For appellant.

Mr. Muhammad Jan, Government Pleader

.. For respondents.

MR. ABDUL LATIF  
MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)  
.. MEMBER (EXECUTIVE)

JUDGMENT

ABDUL LATIF, MEMBER:-

Facts giving rise to the instant appeal are that

the appellant was recruited in Police Department on 11.12.1976 and enlisted as Constable.

In the service record his date of birth was recorded as 08.12.1952 on the basis of Medical

Fitness. That later on, the appellant on the demand of the Police Department produced a

School Leaving Certificate of 07 Grade, wherein his date of birth was mentioned as

01.10.1953. That this is anomalous situation; which arose due to the difference between his

date of birth, one recorded in his service record on the basis of Medical Certificate, whereas the other recorded in his School Certificate, was resolved through an inquiry conducted by the DSP Headquarters in the year 1985, and it was recommended that the appellant date of birth be corrected according to Police Rules 12-15 (2). That the matter of the appellant date of birth never resurfaced in his entire service career, and all the things were going smooth, but all of a sudden he was made to relinquish the post vide DD No. 30 dated 05.04.2013 of PS Dir due to his alleged retirement on reaching the age of superannuation vide order dated 29.03.2013 w.e.f 07.12.2012 and it has also been intimated to him vide the same order that recovery of 04 months salaries (07.12.2012 to 31.03.2013) shall be made from him. That aggrieved from the order dated 29.03.2013, the appellant submitted his departmental appeal dated 15.04.2013, before the respondent No. 1, however his departmental appeal was also rejected vide order dated 30.04.2013, copy of the rejection order was however, communicated to the appellant on 16.05.2013. and hence the instant service appeal with a prayer that on acceptance of this appeal both the orders dated 29.03.2013, and 30.04.2012, may please be set-aside and the respondents be directed to correct the date of birth of the appellant as 01.10.1953 instead of 08.12.1952, the appellant may also be reinstated in service with full back wages and benefits of service and to allow him to serve till the age of his superannuation.

2. That learned counsel for the appellant argued that the appellant had not been treated in accordance with law hence his rights secured and guaranteed under the law were badly violated. He further argued that according to correct date of birth i.e 01.10.1953 entered in his service roll he had to reach the age of superannuation on 01.10.2013 but for no valid reason he was made to retire prior to the said date vide impugned order of his retirement. He further argued that appellant was also subjected to recovery of four months salaries on account of overstay in government service which was unjust, unfair and unjustified as he had performed duties during the said four months. He further argued that the issue of date of birth of the appellant had been settled long ago somewhere in 1985 when inquiry was conducted and all the relevant records including the entries in his Primary School record were thrashed out and it was concluded that the appellant date of birth was 01.10.1953 and

Q.F. I.

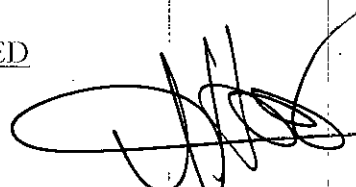
accordingly an entry in this respect was also made in his service roll. He further argued that premature retirement on the basis of date of birth of 08.12.1952 recorded in his service roll on the basis of medical certificate at the time of his enrolment and further requiring him to deposit four months salaries was illegal, against the law and facts and was therefore liable to be set-aside. He relied on PLD 1992 Supreme Court 207, 2003 PLC (C.S) 1376 and 2007 PLC (C.S) 924. He further contended that the appellant had not been given personal hearing and was thus condemned unheard and prayed that the impugned order dated 29.03.2013 and 30.04.2012 may be set-aside and the respondents may be directed to correct the date of birth of the appellant as 01.10.1953 instead of 08.12.1952 and the appellant may also be reinstated in service with full back benefits.

3. The learned Government Pleader resisted the appeal and argued that the appeal was time barred as the appellant never challenged his enlistment order wherein his date of birth was recorded as 08.12.1952. He further argued that under the appeal rules condonation of delay was required before departmental authority which was not done. He further argued that the appellant was enlisted in Police as illiterate person where his date of birth was recorded on the basis of medical certificate and under the relevant rules GFR 116 he was required to have agitated the issue within two years of enlistment which he could not do and date of birth recorded at the time of his enlistment got finally. He further argued that the issue was thoroughly examined and decided by the competent authority vide order dated 14.04.1985 and the said order could not be challenged by the appellant. He further argued that judgments cited by the learned counsel or the appellant was not relevant to the case in hand and added there was no provision in the rules to justify payment of salary beyond age of superannuation nor was there any such provision to correct the date of birth at a belated stage. He relied on 2014 SCMR 1723 and 2004 PLC (C.S) 1162 and also cited judgment of this Tribunal titled Mian Said Wahab-vs-Government of Khyber Pakhtunkhwa in appeal No. 441/2011 which did not allow the appeal on similar ground. He prayed that the appeal being devoid of merits may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that at a time of enlistment of the appellant on 11.12.1976 as Constable in Police Department his date of birth was recorded as 08.12.1952 on the basis of medical certificate being an illiterate person. The appellant at a later stage somewhere in the year 1985 agitated the said entry of date of birth on the basis of School Leaving Certificate and Matric Certificate and claimed his correct date of birth as 01.10.1953 instead of 08.12.1952 and managed to record another entry with regard to date of birth in his service book showing his date of birth as 01.10.1953. The record reveals that the issue was examined in detail and the appellant was then given benefits of Matric certificate/educational qualification for the purpose of training and recruit course for career progression but the issue with regard to his change in the date of birth was left intact as recorded in the service roll on the basis of medical certificate which order was never challenged by the appellant which orders were passed with reference to GFR 116 and 117 which did not allow alteration in the date of birth once recorded except for clerical error which principle had been upheld and endorsed by the Superior Court on many occasions. In the circumstances, we do not find any merits in the instant appeal and are constrained to dismiss the same. It is however observed that the issue of over stay in service cropped up as a resulted of negligence of dealing officer in the Police Department who failed to issue order of superannuation of the appellant according to the correct date of birth and thereafter put on the appellant the burden of recoveries of salaries for four months during which he performed duties. We therefore deem it proper to remit the case to the respondent-department with directions to settle the issue of recovery of four months salaries within one month strictly on merits according to rules and principles of justice. The appeal is decided accordingly. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
27.07.2016

  
(AHMAD HASSAN)  
Member

  
(ABDUL LATIF)  
Member

27.07.2016

Appellant with counsel and Mr. Amjid Ali, ASI (legal) alongwith Mr. Muhammad Jan, GP for respondents present.

Vide our detailed judgment of today placed on file, in the circumstances, we do not find any merits in the instant appeal and are constrained to dismiss the same. It is however observed that the issue of over stay in service cropped up as a resulted of negligence of dealing officer in the Police Department who failed to issue order of superannuation of the appellant according to the correct date of birth and thereafter put on the appellant the burden of recoveries of salaries for four months during which he performed duties. We therefore deem it proper to remit the case to the respondent-department with directions to settle the issue of recovery of four months salaries within one month strictly on merits according to rules and principles of justice. The appeal is decided accordingly. Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
27.07.2016

  
MEMBER

  
MEMBER

14.05.2015

Counsel for the appellant and Assistant A.G for respondents present. Rejoinder submitted. The appeal is assigned to D.B for final hearing for 2.7.2015.

  
Chairman

2.07.2015


Counsel for the appellant and Ziaullah, GP with Sabir Khan, SO for the respondents present. Since court time is over, therefore, case is adjourned to 29.12.2015 for arguments.

  
MEMBER

  
MEMBER

29.12.2015


Counsel for the appellant and Mr. Farhad Khan, SI alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Therefore, the case is adjourned to 23.5.2016 for arguments.


  
Member

  
Member

23.5.2016

Counsel for the appellant and Mr. Muhammad Khitab, HC alongwith Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. Adjourned for arguments to 27.7.2016.

  
Member

  
Member

06.08.2014

Junior to counsel for the appellant and Mr. Muhammad Jan, GP with Sabar Khan, SI for the respondents present and requested for time. To come up for written reply on 29.10.2014.

  
MEMBER

29.10.2014

Appellant in person and Mr. Muhammad Jan, GP with Abdul Jalil, ASI for the respondents present and needs further time. To come up for written reply on 30.12.2014.

  
MEMBER

30.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Muhammad Jan, GP for the respondents present. The Tribunal is incomplete. To come up for the same on 20.2.2015.

  
MEMBER

20.02.2015

None present for appellant. Mr. Rashid, Inspector (legal) on behalf of respondents alongwith Mr. Muhammad Jan, G.P present. Written reply submitted. To come up for rejoinder on 14.05.2015.

  
Member

Appeal No. 1044/2013.  
Mr. Babar Khan

9. 13.05.2014

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Preliminary arguments heard and case file perused. The instant appeal has been filed by the appellant against the orders dated 29.03.2013 and 30.04.2012 that the same may be set aside and the respondents be directed to correct the date of birth of the appellant as 01.10.1953 instead of 08.12.1952 and further that the appellant be reinstated in service with all back benefits till the age of his superannuation. Counsel for the appellant contended that the filed departmental appeal on 15.04.2013 against the original order dated 29.03.2013 as received to the appellant on 05.04.2013 which has been rejected vide order dated 30.04.2013 as received to him on 07.05.2013, hence the present appeal on 06.06.2013. He further contended that the impugned order dated 30.04.2013 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986.

The learned Government Pleader while assisting the Tribunal was of the view that the appeal is time barred. According to the GFR 146-47, the appellant was to file application for correction of date of birth within two years of entry into service. There is no original order regarding correction of date of birth by the respondent-department nor there is no final order, hence no departmental appeal.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 06.08.2014.

Member

10. 13.05.2014

This case be put before the Final Bench 11 for further proceedings.

Chairman

Appellant deposited  
process fee & security  
Rs. 180/- Bank Receipt  
attached with file



7.

17.03.2014


Counsel for the appellant and Muhammad Sayar, SI(Legal) with Mr. Zia Ullah, GP for the respondents present. During the course of arguments the learned counsel for the appellant requested for adjournment. To come up for preliminary hearing on ~~18~~ 04.2014.

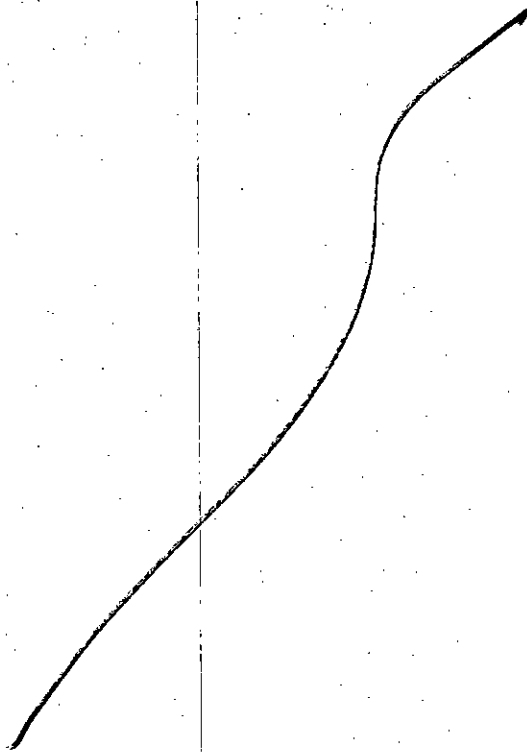
  
Member

8.

10.04.2014

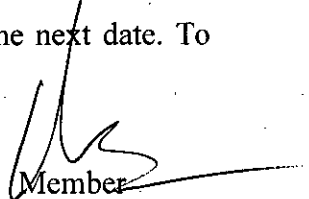
Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. The learned counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 13.05.2014.

  
Member



5.  
13.12.2013

Counsel for the appellant and Mr. Rashid Ahmad, SI(Legal) on behalf of respondent No.3 with Mr. Zia Ullah, GP for the respondents present. Representative of the respondents submitted before the court that an opportunity be given for record as the same has not been traced so<sup>for</sup> Respondents are strictly directed to produce the requisite record before the next date. To come up for preliminary hearing on 04.02.2013.

  
Member

6.  
04.02.2014

Counsel for the appellant and Mr. Rashid Ahmad, SI(Legal) on behalf of respondent No.3 with Mr. Zia Ullah, GP for the respondents present. The learned Counsel for the appellant requested for adjournment. To come up for preliminary hearing on 17.03.2014.

  
Member



3.  
01.10.2013

Clerk of counsel for the appellant present and requested for adjournment due to counsel for the appellant was busy in the High Court, Peshawar. To come up for preliminary hearing on 29.10.2013.

  
Member

4.  
29.10.2013


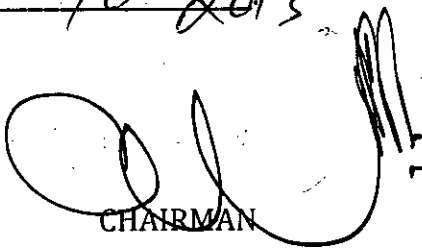
Counsel for the appellant (Mr.Sajid Amin, Advocate) present and heard. In view of submission of the learned counsel for the appellant that the date of birth of the appellant was corrected from 08.12.1952 to 01.10.1953 according to school leaving certificate in the light of office note/recommendation dated 26.03.1985 and in view of non-availability of any order from the competent authority in this respect, a pre-admission notice be issued to the respondent-department for production of record, if any, showing order with regard to correction of the date of birth. To come up for further preliminary hearing on 13.12.2013.

  
Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_


Case No. 1044 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05/07/2013	<p>The appeal of Mr. Bahadar Khan resubmitted today by Mr. Ijaz Anwar Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-7-2013	<p>This case is entrusted Primary Bench for preliminary hearing to be put up there on <u>1-10-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: center;"> </p>

The appeal of Mr. Bahadar Khan son of Shahbaz Khan received today i.e. on 06.06.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days:-

- 1- Copy of Medical Certificate mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of report mentioned in para-4 of the memo of appeal (Annexure- C & D ) is not attached with the appeal which may be placed on it.
- 3- Copies of report dated 3/7/1985, order dated 6/8/1996 and 22.9.2000 mentioned in para-7 of the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Copy of impugned order dated 29.3.2013 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 5- Annexures of the appeal may be attested.
- 6- Five more copies/sets of the appeal alongwith annexures i.e. complete in all respect may also be submitted with the appeal.

NO. 863 /S.T,  
Dt. 06/06/2013.

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

MR. IJAZ ANWAR ADV. PESH.

The above mentioned copies are attached with the appeal and the appeal is resubmitted.



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

Appeal No. 1044/2013

Bahadar Khan S/O Shahbaz Khan R/O Village Bajaoro P.O Talash,  
Tehsil Timergara, District Lower Dir.

(Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and  
others.

(Respondents)

**INDEX**

S. No	Description of Documents	Annexure	Page No
1	Memo of Appeal		1-4
2	Affidavit		5
3	Medical Certificate	A	6
4	School Leaving Certificate	B	7
5	Report dated 26.03.1983 and Service Book	C & D	8-10
6	Report dated 24.11.1984	E	11
7	Matric Certificate	F	12
8	Report dated 03.07.1985, Order dated 06.08.1996 and 22.09.2000	G, H & I	13-15
9.	DD No. 30 dated 05.0.2013, and order dated 29.03.2013	J & K	16-17
10.	Departmental Appeal and Rejection Order dated 30.04.2013	L & M	18-22
11	Vakalatnama.		


Appellant

Through



**IJAZ ANWAR**  
Advocate Peshawar

&



**SAJID AMIN**  
Advocate, Peshawar

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

Appeal No. 1044/2013

M. W. F. PESHAWAR  
1017  
Dated 06-06-13

Bahadar Khan S/O Shahbaz Khan R/O Village Bajooro P.O Talash,  
Tehsil Timergara, District Lower Dir. (Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, at Saidu Sharif, Swat.
3. The District Police Officer, Upper Dir. (Respondents)

**Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 29.03.2013, whereby the appellant has been retired from service w.e.f 07.12.2012, and recovery is ordered to be made from him allegedly on account of over payment, against which his departmental appeal dated 15.04.2012, is also rejected vide order dated 30.04.2013, copy communicated to the appellant on 16.05.2012.**

Prayer in Appeal: -

**On acceptance of this appeal both the orders dated 29.03.2013, and 30.04.2012, may please be set-aside and the Respondents be directed to correct the date of birth of the appellant as 01.10.1953 instead of 08.12.1952, the appellant may also be reinstated in service with full back wages and benefits of service and to allow him to serve till the age of his superannuation.**

Respectfully Submitted:

1. That the appellant was recruited in Police Department on 11.12.1976 and enlisted as Constable. In the service record his date of birth was recorded as 08.12.1952 on the basis of Medical Certificate. (Copy of the Medical Certificate is attached as Annexure A).

2. That after his recruitment, the appellant was selected and sent for undergoing recruitment course to the Kohat Training School, where he joined the literate classes and succeeded with good numbers. Were after, the same list of literates was sent to his

re-submitted to  
and filed.

*[Handwritten signature]*  
5/7/13

home District, and in the same sequence he passed A1 and B1 examinations.

3. That later on, the appellant on the demand of the Police Department produced a School Leaving Certificate of 07 Grade, wherein his date of birth was mentioned as 01.10.1953. (Copy of the School Leaving Certificate is attached as Annexure B).
4. That this anomalous situation, which arose due to the difference between his dates of birth, one recorded in his service record on the basis of Medical Certificate, whereas the other recorded in his School Certificate, was resolved through an inquiry conducted by then D.S.P Headquarters in the year 1985, and it was recommended that the appellant's date of birth be corrected according to **Police Rule 12-15(2)**. The recommendation, so made, was acceded to and the appellant's date of birth was re-entered as 01.10.1953 in the service roll "**According to SLC**". Police Rule 12-15(2) is reproduced for easy reference as under:-

***"(2) The greatest care shall be taken to ensure that the age of every Police Officer is correctly recorded at the time of his enrolment and appointment. The record then made becomes of the utmost importance when the question, arises of an Officer's right to pension, and is accepted as decisive in the absence of full proof both that the original entry was wrong and that the date of birth originally given was due to a bonafide mistake".***

(Copy of the Report dated 26.03.1984 and Service Book are attached as Annexure C & D)

5. That the entry as to the date of birth of the appellant was also inquired from his school, namely, Govt High School, Ziarat, Talash and it was verified by the Head Master of the School that;

***"That the appellant has been studying in this School upto 12.02.1967 in Grade-7 and on the same date he was discharged from the School. He obtained School Leaving Certificate (SLC) on 12.10.1983; his date of birth which appears in School File No. 22, Register of Admissions No 297 is 01.10.1953".***

( Copy of the Report dated 24.11.1984, is attached as Annexure E)

6. That the appellant also passed his Matriculation from the Board of Intermediate and Secondary Education (BISE), Peshawar in Session 1984, under Roll No 12192 and the Provisional Certificate issued to him on 11.03.1985 also carries his date of birth as 01.10.1953. ( Copy of the Matric Certificate is attached as Annexure F)




7. That on the basis of his Matric Certificate, the appellant was given the additional increments and on the same basis he was withdrawing his salary. He also obtained the post of Head Constable, after undergoing the requisite training of lower course at Hangu. Besides he also successfully completed the inter course at Hangu. (Copies of the Report dated 03.07.1985, Order dated 06.08.1996 and 22.09.2000 are attached as Annexure G, H & I).
8. That the matter of the appellant's date of birth never resurrected in his entire service carrier, and all the things were going smooth, but all of a sudden he was made to relinquished the post vide DD No 30 dated 05.04.2013 of PS Dir due to his alleged retirement on reaching the age of superannuation Vide order dated 29.03.2013 w.e.f 07.12.2012 and it has also been intimated to him vide the same order that recovery of 04 months salaries (07.12.2012 to 31.03.2013) shall be made from him. ( Copy of the DD No. 30 dated 05.0.2013, and order dated 29.03.2013 are attached as Annexure J & K)
9. That aggrieved from the order dated 29.03.2013, the appellant submitted his departmental appeal dated 15.04.2013, before the Respondent No. 1, however his departmental appeal was also rejected vide order dated 30.04.2013, copy of the rejection order was however, communicated to the appellant on 16.05.2013. (Copy of the Departmental Appeal and Rejection Order dated 30.04.2013 are attached as Annexure L & M)
10. That the impugned orders are illegal unlawful against law and fact, hence liable to be set aside inter alia on the following grounds:

**GROUND OF APPEAL:**

- A. That the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B. That the appellant was taken by surprise, as according to his corrected / rectified date of birth i.e 01.10.1953 entered in his character and service roll, he had to reach the age of superannuation on 01.10.2013, but for no valid reason he was made to relieve his duty on the date mentioned in the impugned order of his retirement.
- C. That the appellant has been relieved from his duty on 05.04.2013, it has also been intimated to him that recovery of 04 months salaries (07.12.2012 to 31.03.2013) shall be made from him. Such a conduct on the part of the of the Respondents shown to the appellant who has given his prime time to his service, on the face of it, too harsh, and the same needs to be rectified.

- D. That the issue of date of birth of the appellant has been settled long ago, somewhere in the year 1985, when inquiry was conducted and all the relevant record, including the entries in his Primary School Record were thrashed out and it was finally conducted that the appellant's date of birth was 01.10.1953 and accordingly an entry in this respect was also made in his service roll.
- E. That it has nowhere been denied that the appellant's date of birth in his Primary School Record and Matriculation Certificate is 01.10.1953. It has also been not denied that a corresponding entry of 01.10.1953 was made by the Department in the relevant column of the appellant's service roll. It poses a big question mark as to why this issue has been re-agitated at this belated stage.
- F. That it is settled by now by the Superior Courts, that the entries in record regarding date of birth of a Civil Servant in the School Record / Matric Certificate has to be admitted as Correct unless and until it is rebutted through unimpeachable evidence. No such rebuttal does exist in the matter in hand.
- G. That the premature and before due date retirement of the appellant, and also requiring him to deposit his 04 months salaries is illegal, against the law and facts and as such requires to be set aside.
- H. That the appellant has not been given opportunity of personal hearing thus he has been condemned unheard.
- I. That the appellant seeks permission of this Honorable Tribunal to rely on additional grounds at the hearing of the appeal.

It is, therefore, humbly prayed that On acceptance of this appeal both the orders dated 29.03.2013, and 30.04.2012, may please be set-aside and the Respondents be directed to correct the date of birth of the appellant as 01.10.1953 instead of 08.12.1952, the appellant may also be reinstated in service with full back wages and benefits of service and to allow him to serve till the age of his superannuation.

  
Appellant

Through

  
IJAZ ANWAR  
Advocate Peshawar

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

Appeal No. \_\_\_\_\_/2013

Bahadar Khan S/O Shahbaz Khan R/O Village Bajaoro P.O Talash,  
Tehsil Timergara, District Lower Dir.

(Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and  
others.

(Respondents)

**AFFIDAVIT**

I, *Bahadar Khan S/O Shahbaz Khan R/O Village Bajaoro P.O Talash, Tehsil Timergara, District Lower Dir*, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal is true and correct and that nothing has been kept back or concealed from this Honorable Tribunal.



*Bahadar Khan*  
Deponent

*Admitted in file*

(5)

(6) Admitted - A

M.C.

SLC

*No pay  
No care  
No pay  
RSP/DIV  
RSP/DIV*

GS&PD. NWFP.—1251 F. S.—200 Pads of 50—1-1-75—(280)

G. P. No. 131.

Form No. 10.64

POLICE DEPARTMENT

*DIR* DISTRICT.

CERTIFICATE.

I do hereby certify that I have examined Bahadur Khan & Shah Beg  
Talash Bajura P.S. T. Gan a candidate for employment in the Police  
Department, and cannot discover that he has any disease constitutional affection,  
bodily infirmity, except nil

I do not consider this a disqualification for employment in the Office of  
Police Department

His age is according to his own statement 24 years and by  
appearance about 24 years.

*12/26*

*[Signature]*  
Civil Surgeon

[Note—When an officer is transferred from one office to another, the duties of which are different in character, a Commissioned Medical Officer or Medical Officer in-charge of a Civil Station should state whether the defect, if one exists, will materially interfere with the discharge of his [new duties by the Officer transferred].

(Prescribed by Rule 3.1, P.F.H.B., No. 2, Vol. II).

I declare that I have never been pronounced unfit for Government employment by a Medical Board or any other duly constituted Medical Authority.

*[Signature]*

Arrived: - B

(5) (7)

مدیریت مدرسہ چھوڑنے کا سارٹیفکیٹ

29

بھارتیہ

10-1953-10

297

بھارتیہ

اس کا امتحان

First October 1953

Conduct

مدیریت مدرسہ	داخل ہونے کی تاریخ		خارج ہونے کی تاریخ	سال مدرسہ میں حاضری کی مدت		حاضر ہونے کی تاریخ	حاضر ہونے کی مدت	حاضر ہونے کی مدت	حاضر ہونے کی مدت	حاضر ہونے کی مدت
	بھارتیہ	بھارتیہ		بھارتیہ	بھارتیہ					
بھارتیہ	10/10/53	10/10/53	10/10/53	10/10/53	10/10/53	10/10/53	10/10/53	10/10/53	10/10/53	10/10/53

بھارتیہ

بھارتیہ

بھارتیہ

بھارتیہ

Allen

3

2

8

ANNEX - C

REFERENCE ATTACHED:-

I have gone through-out the case file and found that Constable Bahadar Khan No. 990 was enlisted as illiterate F.C.L on 11.12.1976. He obtained 1st Class Certificate as literate during the Recruits Course for the term ending 20.9.1977.

At the time of enlistment his date of birth was recorded according to Medical Certificate as 8.12.1952 i.e. 24 Years. During the selection for Lower School Course, he was ignored due to none production of School Leaving Certificate for the term ending 1.10.1984. Later on he produced an attested photostate copy of his S.L.C., according to which his date of birth was 1.10.1953, thus he is not under age or over-age. Therefore, according to Police Rule 12.15(2) it is suggested that his date of birth be corrected according to Police Rule.

As he obtained 1st Class Certificate as a literate constable and later on he was brought on promotion Lists A-I and B-I and thus he was selected for the said course for the term commencing from 1.10.1984, but he was ignored, for not producing the S.L.C. Therefore, he is of the right to be counted as literate.

Thorough checking of the Service Roll conducted and a report to this effect will be submitted on.

Submitted for favour of perusal and

No 391 DsP/HO  
Dated 26-3/1985

W/S.P.Dir.

*Mm Mr*  
(SHER KHAN)

Dy: Supdt: of Police, H. qrs,  
Dir at Timergera.

*[Large handwritten signature]*

*AEC*  
*27/3/85*  
*[Handwritten notes]*

*Attested*

*[Handwritten mark]*

CHARACTER AND SERVICE ROLL OF

① ⑨ AMER-D

REGULATORY No. ( ) in  
 DITTO ( ) in  
 DITTO ( ) in

DISTRICT.  
 DISTRICT.  
 DISTRICT.

Name	Father's Name	Tribe or Caste	Village or Town	Post and Telegraph Office	Police Station	District	Province	Date of Birth	Height	Chest Measurement	Date of Enrolment	Age on Enrolment	Distinctive Marks
Bichindar Khan	Sheeha Beg Khan						DIR	1-10-55	5-7 1/2	32-33 1/2	6/12/76	24 years	According to MC

Verification Roll No. \_\_\_\_\_ dated \_\_\_\_\_ received back and attached to the fauji misal.

Government Service prior to present employment, which is approved, for pension service.

Service or department	Rank or Grade	Pay of last Appointment	From	To	PERIOD		
					Year	Months	Days
Cause of and character on discharge from above service.				Reference to orders approving above service for pension service in the Police Department.			

Agreement:—I understand that I have been appointed under section 7 of the Police Act (V of 1861), and the purport of that section and the provisions of the Act and of the Rules issued under it and now in force, by which my discipline and conduct are governed, have been explained to me. I agree to serve faithfully under the provisions of the said Police Act and to obey all lawful orders issued to me by my Superior Officers and to undertake not to resign my appointment within three years from the date of my enrolment. I have received a certificate of appointment issued under section 8 of the Police Act (V of 1861).

Date: ..... Signature: \_\_\_\_\_

5. Rolled impression of fingers and thumb of left hand.

Left little	Left ring	Left middle	Left index	Left thumb
-------------	-----------	-------------	------------	------------

Attest  
 [Signature]

10

CHARACTER ROLL OF

6. APPOINTMENTS, PROMOTIONS, REDUCTIONS, DISCHARGES, ETC.

contin

1	2	3	4	5
Appointed, promoted, suspended, reduced, discharged, dismissed, resigned or died	To what grade and pay, appointed, promoted or reduced	Date	No. of District Order	Full Signature of Superintendent of Police

Appointed as Constable Timescale at Rs 110/P.M with effect from 11-12-76

Pay fixed provisionally in Revised in NPS 1977 at Rs 260/- P.M w/E from 1.5.1977

Pl. as Const at Rs 266/PM w/E from 1.12.77

Service verified from 11.12.76 to 30.11.78 from the pay bills and a/c rolls held in this office

PAID Rest & Recreation Allowance equal to Month's Pay i.e. Rs. 133/-  
Per 11.12.76 to 30.11.78  
G.T. No. 128 Date 12.12.78

From  
S/O

Signature  
S/O A/Cs Officer, D.P.R.

SPD  
A.  
S/O  
ML  
VSP/DIR.

7. TRANSFERS BEYOND THE DISTRICT.

1	2	3	4
Date	From	To	Authority for transfer

OFFICE OF THE ACCOUNTANT GENERAL  
MADHARAJAPURAM  
DEPARTMENT OF REVENUE  
TAMIL NADU  
OFFICE NO. 260-6-202/7-363  
D.D. 260/7-5.1977  
1977

Signature  
ASSTY. ACCOUNTS OFFICER,  
OFFICE OF THE ACCOUNTANT GENERAL,  
MADHARAJAPURAM

Alleged  
Signature

Signature

Signature



فقہی Extract نمبر 15614/83 صفحہ 10/17 کی تعداد  
ضابطہ پڑھنا مشورہ ہے اور غلطی سے ہونے والی غلطیوں سے اجتناب کرنا چاہیے۔

پندرہ سالہ عمارت 990 واٹر ٹینک عمارت ایسی کوکل میں ساتویں  
عمارت میں صفحہ 12 ضروری تیار 1967 تک پڑھنا چاہیے جو اس  
تاریخ سے ڈیمانڈ ہو کر صفحہ 2 اکتوبر 1983 تک عمارت کوکل  
مذکورہ سے S.H.C. دیا گیا ہے۔ مذکورہ کتابیں کا تاریخ پیدائش  
7 جو کوکل کے فائبر 22 رصہ پڑھنا 297 پر درج ہے۔

دیگم اکتوبر سال 1953 سے 1983 تک  
رہنوں کا ریکارڈ مقررہ قاعدوں کے مطابق  
یا دیگر عمارت سے پڑھنا مشورہ ہے اس کی کاپی فراہم ہے۔  
پورٹ مقرر ہے۔

S/PP talash  
24/11/84

عالی  
جناب

ماہیاتی  
رہنوں کا S.H.C. رقم و مفصل ملے گا۔ کمانڈر عمارت نمبر 990 کی  
روزنامہ مندرجہ ہے۔ اس تاریخ سے 10-1-83 /  
تعداد میں سارے فائل ہیں۔ اصل یہ آدرس کے ایک کاپی /

Forwarded  
for

Comments  
22/1/84  
5140 T - 24-11-84  
25/11/84

Approved  
FD

SLAN 058414

Approved: F  
Roll No 12192

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan  
PROVISIONAL CERTIFICATE

SECONDARY SCHOOL CERTIFICATE EXAMINATION

Session 19 84 Annual/Supplementary

THIS IS TO CERTIFY THAT Bahadar Khan  
Son/Daughter of Shah Bag Khan  
and a candidate of Dir Distt.

has passed the Secondary School Certificate Examination of the  
Board of Intermediate & Secondary Education, Peshawar held in oct 19 84  
as a Regular/Private candidate. He/She obtained 322 Marks out of 850 and has  
been placed in Grade (IE) Representing Satrapudry

The candidate passed in the following subjects:

- 1. ~~English~~ ✓
- 2. Urdu ✓
- 3. Islamiyat ✓
- 4. Paki Studies
- 5. Cal math
- 6. Civics
- 7. Isl. Studies
- 8. Pushtu

Internal assessment Grade awarded by the institution concerned is (—)

Date of Birth according to admission form is First October  
One thousand nine hundred and Fifty Three (1-10-1953)

Prepared by \_\_\_\_\_  
Checked by \_\_\_\_\_  
Date of issue 11/3/85

[Signature]  
Asstt. Secretary (Certificates)

[Signature]  
District Education Officer (M.A.)  
Dir at Timargara, 13/3/85

Amjad  
97

(13) Annex G (10)

Reference attached

Constable Bahadar Ullau No 990  
had produced his S.C of Matriculation  
on 30.3.1985 during an interview with learned  
S.I. His Case of Age has since been decided  
vide OB No 392 dt. 14.4.85.

According to B.S. 1983 he is  
entitled for 5 advance increments @  
B-12/E.

Therefore, if approved, his  
pay will be advanced by 5  
increments w.e.f. 1.4.1985 & pay fixed @ B. 628/-  
Submitted for G.O. order please.

Ullau  
13/7/85  
13/7/85

Handwritten signature and initials

OB 680  
3-7-85

OTs/PAC  
8/7/85

A.P. - II  
Pr. n. entry & pay  
on S. Roll.  
4/7/85

Alleged  
AP

POLICE DEPARTMENT.

(14) (11)  
FOR PUBLICATION IN HSEFP POLICE GAZETTE PART-II.  
ORDERS BY THE SUPDT: CP POLICE DIR AT TIGERGERA.

NOTIFICATION.

Approved: H  
Dated 6-8-1995.

No. 21406 / EB. PROMOTION TO LIST "D":-- The names of the following offg: Head Constables of this District Police, who have passed the Intermediate School Course from P.T.C. Hanga during the term ending 20.9.1995 have been brought on promotion list "D" with effect from 20.9.1995:--

S.No.	Name with Rank.
1.	Shah Khalid No.24.
2.	Bahadar Khan No.990.
3.	Bacha Zada No.863.
4.	Akbar Hussain No.1469.
5.	Haseeb Khan No.813.

Order of merit.

- 55/65
- 42/65
- 43/65
- 45/65
- 47/65

*M. S. Khan*  
Superintendent of Police  
Dir at Tigergera. 01/5/95

DDs of 26/27/10. 89 were not entered in DO for some ill motive on the basis finding report attached,

caution as  
punishment: Awarded minor punishment for his above  
OB No: 1922 misconduct vide this office OB No: 1922

11-7-90

*Attest*

11-7-90

ORDER

(15) (3) APPROVED

HC/Bahadar Khan No. 21 of this Distt: is allowed  
Move-over from BPS No 7 to BPS No 8 (1540-88-2860) and  
his pay fixed at Rs 2772/- P.M. with effect from 1.12.1999.

O.B.No 548  
Dated 29.9.2000

(BAD SHAH KHAN)  
Superintendent of Police,  
Dir Upper.

*leg*

$\frac{2772}{10}$

O.B.No. 34  
Dated 14-2-1998.

Superintendent  
Dir Upper

(A.zeb) *13/2*

No. 1111-14 /EC dated Dir Upper 13-2-98

Copy to the :-

- ✓ 1) DSP/Dir.
- 2) Pay Officer.
- 3) E.C.
- 4) O.H.C.

....

Signature of the official.

*Attestd*  
*[Signature]*

T-I-E-S-I-E-D.

Superintendent of Police,  
at Timergara.

P.I

Annex - 2

(16)

بقایہ دہ

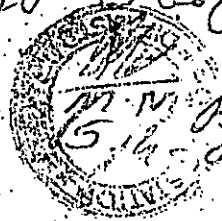
تقدیر فریز 30 جون 1954

محمد میرا

روانگی

یہاں پر خان 5 جون 1954 تاریخ سے 5 جون 54 تک جو رقم جمع انگریزی ہزی 642  
 5 جون 54 سے 19 جون 54 تک جو رقم جمع انگریزی ہزی 660 اسیوں 2/4  
 7/2 سے 12 جون 54 تک جو رقم جمع انگریزی ہزی 710 اسیوں 2/4  
 یہ رقم حساب سے جمع 10/3 اور یہ رقم شمار ہو گیا ہے۔  
 مگر بطور ایک دفعہ رقم مقدار سے جمع پہلے یہ شمار ہوا ہے۔  
 سندھ کا فوٹو سٹوڈیو پر خط سٹوڈیو سے لکھا گیا ہے اس کا جواب  
 میں اس وقت لکھ رہا ہوں۔ اس کے بعد دیگر ضمانتوں کو اس نے توڑا اور  
 دیکھ نہیں آتا ہے اس کے لئے سزا پھانسی کی ہے۔  
 سزا 4 جنات عالی۔

حصہ اولیٰ ہرگز  
 نقل دیا تو 4/2/54



Attested  
 H

(17)

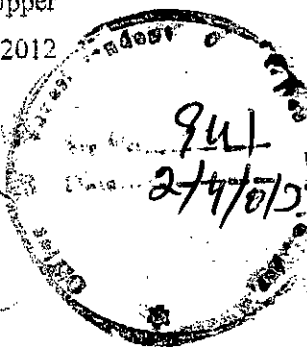
(6)

Approved: R

**ORDER.**

In compliance of Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar Memo: No. 682/Legal, dated 19-03-2013 and District Police Officer, Dir Upper Memo: No. 1118/E, dated 26-03-2013. Sub-Inspector Bahadar Khan No. 139/M of Dir Upper District is hereby retired on superannuation Pension (60 Years) with effect from 07-12-2012 (A.N).

The over payment so received by the officer may be recovered from him.



*[Signature]*  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat

No 1709-30/E,  
Dated 29/3/2013.

Copy for information and necessary action to the:-

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: No. quoted above.
2. District Police Officer, Dir Upper name of the official who are made correction in the date of Birth of the above named SI may be nominated for further departmental action. Necessary Gazette Notification may also be issued accordingly.

OB

*[Signature]*  
DP  
0404

OB No: 160  
Dt: 02-04-2013

(18)

ANV502-2

Through Proper Channel.

To,

The Provincial Police Officer,  
(I.G.P) Khyber Pakhtunkhwa,  
Peshawar.

Subject: Departmental Appeal against the order of retirement dated 29.03.2013 communicated on 05.04.2013

*Sheweth:*

1. That the appellant was recruited in Police Department on 11.12.1976 and enlisted as constable. In the service record his date of birth was recorded as 08.12.1952 on the basis of Medical Certificate.
2. That after his recruitment, the appellant was selected and sent for undergoing recruitment course to the Kohat Training School, where he joined the literate classes and succeeded with good numbers. Whereafter, the same list of literates was sent to his home district, and in the same sequence he passed A<sub>1</sub> and B<sub>1</sub> examinations.
3. That later on, on the demand of the Police Department the appellant produced a certificate of 7 grade, wherein his date of birth was mentioned as 01.10.1953.
4. That this anomalous situation, which arose due to the difference between his dates of birth, one recorded in his service record on the basis of Medical Certificate, whereas the other recorded in his school certificate, was resolved through an inquiry conducted by then D.S.P. Headquarters in the year 1985, and it was

Accepted  
#

5-1  
35



recommended that the appellant's date of birth be corrected according to police rule 12-15(2). The recommendation, so made, was acceded to and the appellant's date of birth was reentered as 01.10.1953 in the service roll "according to SLC". Police Rule 12-15(2) is reproduced for easy reference as under:-

*"(2) The greatest care shall be taken to ensure that the age of every police officer is correctly recorded at the time of his enrollment and appointment. The record then made becomes of the utmost importance when the question, arises of an officer's right to pension, and is accepted as decisive in the absence of full proof both that the original entry was wrong and that the date of birth originally given was due to a bonafide mistake"*

- 5. That the entry as to the date of birth of the appellant was also inquired from his school, namely, Govt. High School, Ziarat, Talash and it was verified by the Head Master of the School that;

*"That the appellant has been studying in this school upto 12.02.1967 in grade-7 and on the same date he was discharged from the school. He obtained SLC on 12.10.1983; his date of birth which appears in school file No.22, Register of Admissions No.297 is 01.10.1953"*

- 6. That later on he passed his Matriculation, from the BISE, PESHAWAR in Session 1984, under Roll NO.12192 and the provisional certificate issued to him on 11.03.1985 also carries his date of birth as 01.10.1953.

- 7. That on the basis of his Matric Certificate, the appellant was given the additional increments and on the same basis he was withdrawing his salary. He also obtained the post of Head

*Alleged*  
*TV*

3

20

Constable, after undergoing the requisite training of lower course at Hangu. Besides he also successfully completed the inter course at Hangu.

8. That the matter of the appellant's date of birth never resurrected in his entire service carrier, and all the things were going smooth, but all of a sudden he was made to relinquished the post vide DD No.30 dated 05.04.2013 of PS Dir due to his alleged retirement on reaching the age of superannuation.
9. That the appellant was taken by surprise, as according to his corrected/ rectified date of birth i.e. 01.10.1953 entered in his character and service roll, he had to reach the age of superannuation on 01.10.2013, but for no valid reason he was made to relieve his duty on the date mentioned in the impugned order of his retirement.
10. That it is apart the appellant has been relieved from his duty on 05.04.2013, it has also been intimated to him that recovery of 4 months salaries (07.12.2012 to 31.03.2013) shall be made from him. Such a conduct on the part of the department shown to the appellant who has given his hey days to its service is, on the face of it, too harsh, and the same needs to be rectified by your good offices.
11. That the issue of date of birth of the appellant has been settled long ago, somewhere in the year 1985, when inquiry was conducted and all the relevant record, including the entries in his primary school record were thrashed out and it was finally concluded that the appellant's date of birth was 01.10.1953 and accordingly an entry in this respect was also made in his service roll.

Attested  
TR

2007 P L C (C.S.) 924

[Lahore High Court]

Before Iqbal Hameedur Rahman, J

ASAD ALI ALVI

Versus

SECRETARY, GOVERNMENT OF PUNJAB, IRRIGATION AND POWER DEPARTMENT,  
LAHORE and 8 others

Writ Petition No.562.of 2007, heard on 15th May, 2007.

**Constitution of Pakistan (1973)---**

---Art. 199---Constitutional petition---Civil service---Recovery of alleged excess salary/allowance from petitioner---Petitioner was awarded promotion on the recommendation of Departmental Promotion Committee and he was appointed as officiating Circle Superintendent and he worked on that post and performed his duties honestly---If proceedings of the Departmental Promotion Committee were defective or there was any irregularity committed by the Department; petitioner could not be held responsible for the same---Recovery of amount paid on basis of incorrect order and received by the petitioner on a bona fide belief that he was entitled to it, authorities were not entitled to recover same from him during the period when alleged incorrect order remained in field and principle of locus poenitentiae would be applicable in the case---No one could be deprived of his salary for the work which had been done by him---Salaries of the employees could not be withheld on the ground that their appointment was illegal being made in violation of relevant rules---Accepting petition, impugned letter regarding recovery of alleged excess salary/allowance, was set aside by the High Court and authorities were directed to release the pensionary benefits with all other emoluments to petitioner within one month.

Administrator, District Council, Larkana and another v. Ghulam Khan and 5 others 2001 SCMR 1320; Zafar Mahmood Malik v. Water Management Specialist and 5 others 2005 PLC (C.S.) 4; Nisar Ahmad and others v. Town Committee, Khairpur Tamewali through Administrator 2004 PLC (C.S.) 382; Khalid Parveen v. D.E.O. (Female) Secondary, Karak and others 2003 PLC (C.S.) 1376; Shaikat Ali v. District Government through Nazim/Chairman Selection Committee and 4 others 2005 PLC (C.S.) 790; The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalal Uddin PLD 1992 SC 207 rel.

Ghulam Murtaza Malik for Petitioner.

Muhammad Qasim Khan Asstt. A.-G., Muhammad Shafi Admn. Officer for Respondents Nos.2 to 6.

Muzaffar Ahmad, Admin. Officer for Respondent No.3.

Ishfaq Ahmad Bhutta Superintendent for Respondent No.4.

Date of hearing: 15th May, 2007.

**JUDGMENT**

Bahadur Khan

vs.  
PRO & otherson behalf of  
Appellant

**IQBAL HAMEEDUR RAHMAN, J.**--- Brief facts giving rise to this writ petition are that the petitioner was appointed as Junior Clerk in the year 1965 in Irrigation and Power Department and in the year 1995 he was promoted as Head Clerk. According to Notification dated 7-10-1998 issued by the Governor of the Punjab, the petitioner was promoted as Circle Superintendent (BS-16) in Northern Tube-Well Division (NTD), Multan vide Order No.ADMN/2002/13831/247/94, dated 17-12-2002 passed by respondent No.2/The Chief Engineer, Irrigation Zone, Dera Ghazi Khan. Respondent No.6 vide Order No.ADMN/2003/1337/247/94, dated 1-2-2003 had withdrawn the order, dated 18-12-2002 and one Muneer Ahmad Stenographer was promoted as Circle Superintendent vide Order No.ADMN./2003/1344/247/94, dated 1-2-2003. The order dated 1-2-2003 was assailed by the petitioner in departmental appeal/representation but respondent No.2/Chief Engineer Irrigation Zone D.R. Khan did not decide the matter within stipulated time. The petitioner preferred Appeal No.1071 of 2003 before the Punjab Service Tribunal challenging the order, dated 1-2-2003 passed by respondent No.6. The learned Tribunal vide order, dated 17-3-2004 while setting aside of the order, dated 1-2-2003 remanded the case to Departmental Promotion Committee for regular promotion. The DPC approved the promotion of the petitioner after fulfilment of all the legal requirements vide its decision dated 29-5-2004 and the petitioner was posted as Circle Superintendent in Project Circle, D.G. Khan vide order, dated 29-5-2004 issued by respondent No.6 and consequently, he assumed the charge as Circle Superintendent Project Circle Irrigation D.G. Khan vide letter No.223/EA, dated 1-6-2004 issued by respondent No.4. Munir Ahmad Stenographer serving in Irrigation Zone D.G. Khan filed a representation before respondent No.2, who vide order, dated 2-6-2004 stayed the proceedings of DPC. The said order was challenged by the petitioner through Writ Petition No.2985 of 2004 which was dismissed with the observation that the petitioner may approach the Service Tribunal for the redressal of his grievance. The petitioner, therefore, filed Appeal No.1632 of 2005 before the Punjab Service Tribunal which was disposed of vide judgment dated 20-3-2006 and the case was remanded to respondent No.1 to decide the matter regarding promotion and seniority of the petitioner after hearing both the parties. In compliance of the judgment dated 20-3-2006 passed by the Punjab Service Tribunal, the petitioner moved representation before respondent No. 1 but he did not even both to call the parties for hearing. During the pendency of representation before respondent No.1, order of retirement of the petitioner was issued vide Office Order No.ADMN/2006/10299-10305/1297, dated 14-9-2006 passed by respondent No.6. During the process of retirement of the petitioner, he was transferred from Project Circle Irrigation D.G. Khan to Development Division II (Northern Tube-Well Division), Multan, vide Order, No.1967/ZE, dated 23-9-2006 passed by respondent No.4. Both the orders dated 14-9-2006 and 23-9-2006 were challenged by the petitioner through Writ Petition No.5075 of 2006 which was disposed of with the direction that respondent No.1 shall decide the representation of the petitioner by or before 7-10-2006, vide order, dated 29-9-2006. Thereafter, respondent No.1 decided the representation of the petitioner and set aside the decision of the Departmental Promotion Committee regarding the promotion of the petitioner vide order, dated 6-10-2006. The petitioner tiled an application before respondent No.8 District Accounts Officer, D.G. Khan for the issuance of Last Pay Certificate (LPC) and payment of pay for the month of September, 2006, 23 days duty period on 19-1-2007 as he relinquished the charge on 23-9-2006 but neither LPC was issued nor the salary was paid to the petitioner. Instead respondent No.2 had issued a Letter No.12211-98/12/97, dated 6-11-2006 regarding the recovery of alleged excess salary/allowance from the petitioner. Against the said order, the petitioner has filed this writ petition.

2. It is contended on behalf of the petitioner that no one can be deprived of his salary for the work, which has been done by him and action of the respondents is therefore, not only illegal but also is against the norms of natural justice. and in this respect reliance is placed upon Administrator, District Council, Larkana and another v. Ghulab Khan and 5 others 2001 SCMR 1320, wherein it has been held that salaries of the employees cannot be withheld on the ground that appointment was illegal being made in violation of the relevant rules and in fact action should have been initiated against those who were sitting at the helm of, affairs for such irregularities. Reliance is also placed upon

Zafar Mahmood Malik v. Water Management Specialist and 5 others 2005- PLC (C.S.) 4, Nisar Ahmad and others v. Town Committee, Khairpur Tamewali through Administrator 2004 PLC (C.S.) 382 and Khalid Parveen v. D.E.O. (Female) Secondary, Karak and others 2003 PLC (C.S.) 1376 and that the petitioner was awarded promotion on the recommendation of the DPC and he was appointed as officiating Circle Superintendent and on that post he worked and performed his duties and, therefore, action of the respondents for recovery of the salary is without lawful authority and in this respect reliance is placed upon Shaukat Ali v. District Government through Nazim/Chairman Selection Committee and 4 others. 2005. PLC (C.S.) 790 and The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalal Uddin PLD 1992 SC 207.

3. On the other hand, the learned A.A.-G. has supported the impugned order, dated 6-11-2006 and also supported the comments submitted by the respondents, wherein it is stated that pension papers of the petitioner have not been received and as soon as his pension papers are received, the pension matter will be disposed of immediately according to prevailing rules and regulation.

4. I have heard learned counsel for the petitioner as well as the learned A.A.-G. and also perused the impugned letter, dated 6-11-2006 and comments submitted by the respondents.

5. It is an admitted fact that the petitioner was awarded promotion on the recommendation of the DPC and he was appointed as officiating Circle Superintendent and on that post he worked and performed his duties honestly and if the proceedings of the DPC were defective or there was any irregularity committed by the Department, the petitioner could not be held responsible for the same. Recovery of amount paid on basis of incorrect order received by the petitioner on a bona fide belief that he was entitled to it, as such the respondents were not entitled to recover the amount from the petitioner during the period when incorrect order remained in field and principle of locus poenitentiae would be applicable to this case. In this respect, reliance is placed upon The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalal Uddin PLD 1992 SC 207 and Shaukat Ali v. District Government through Nazim/Chairman Selection Committee and 4 others 2005 PLC (C.S.) 790. The petitioner filed an application before respondent No.8 for the issuance of Last Pay Certificate (LPC) and payment of pay for the month of September, 2006 (23 days duty period) on 19-1-2007 as he relinquished the charge on 23-9-2006 but neither LPC is issued nor the salary is paid to the petitioner. It is settled principle of law that no one can be deprived of his salary for the work which has been done by him and even it has been held in Administrator, District Council, Larkana and another v. Ghulam Khan and 5 others 2001 SCMR 1320 that salaries of the employees cannot be withheld on the ground that the appointment was illegal being made in violation of the relevant rules and in fact action should have been initiated against those who were sitting at the helm of affairs for such irregularities. Reliance is also placed upon Zafar Mahmood Malik v. Water Management Specialist and 5 others 2005 PLC (C.S.) 4, Nisar Ahmad and others v. Town Committee, Khairpur Tamewali through Administrator 2004 PLC (C.S.) 382 and Khalid Parveen v. D.E.O. (Female) Secondary, Karak and others 2003 PLC (C.S.) 1376.

6. In view of the above circumstance and relying upon the afore-mentioned authorities, this writ petition is accepted and the impugned letter, dated 6-11-2006 is set aside. The respondents are directed to release the pensionary benefits with all other emoluments of the petitioner within one month.

H.B.T./A-142/L

Petition accepted.

2003 P L C (C.S.) 1376

[Peshawar High Court]

Before Talaat Qayyum Qureshi and Ijaz-ul-Hassan, JJ

**KHALIDA PARVEEN**

Versus

**DISTRICT EDUCATION OFFICER and 2 others**

Writ Petition No. 1416 of 2000, decided on 2nd June, 2003.

**Civil service---**

---Withholding salary of civil servant---Civil servant was appointed against leave vacancy as Arabic Teacher and she worked for 34 months on that post---Salary of civil servant for said period of 34 months was withheld on ground that appointment of civil servant was irregular and in violation of rules and regulations---No objection with regard to alleged irregularity or violation of rules and regulations was ever raised by Authority during said period of service of civil servant---During period-of her appointment, civil servant was entrusted with election duties and during inspection, satisfactory remarks were entered in log book about her performance---Civil servant who was duly appointed, could not be subjected to victimization on account of negligence of Department---Department had no legal justification to withhold salary of civil servant for period she served the Department---Department was directed to release amount of salary for whole period of 34 months in which she had served.

Administrator, District Council, Larkana and another v. Ghulam Khan and 5 others 2001 PLC (C.S.) 991 ref.

Ghulam Nabi Khan for Petitioner.

Sardar Shaukat Hayat, Addl. A.-G. for Respondents

Date of hearing: 21st June, 2003

## ORDER

**IJAZ-UL-HASSAN, J.**---Mst. Khalida Parveen, petitioner was appointed as Arabic Teacher by the respondent department against leave vacancy vide appointment letter dated 29-5-1996. The petitioner took over the charge as Arabic Teacher in Government Girls- Middle School, Gandari Khattak on 1-9-1996 and started with her duties in the said school upto 1-8-1999. She received termination letter from District Education Officer (Female) Secondary, Karak, respondent No.1 on 17-7-1999. Feeling aggrieved, the petitioner filed departmental appeal which has remained unresponded.

2. The petitioner having no other remedy resorted to the filing of instant Constitutional petition with the prayer that respondents be directed to release the amount of the salary of the petitioner @ Rs.1605 per month for the whole period in which the petitioner has been within services of the respondent department.

3. In the parawise comments submitted on behalf of respondents Nos. 1 and 2, claim of the petitioner

*Bahadur Khan.*  
*vs.*  
*PPO & others*

has been denied and it is reiterated that the petitioner is not entitled for the dues as her basic appointment was 'irregular' and in violation of the rules and regulations.

4. Appearing on behalf of the petitioner Mr Ghulam Nabi, Advocate strenuously contended that the petitioner was validly appointed against leave vacancy of one Zubaida Shaheen and during the period the petitioner has also been performing election duties held on 3-2-1997 alongwith other teachers at Polling Station Government High School, Ghujaki Kalla, Tehsil and District Karak that during this tenure of her duty on 7-3-1997 the inspection of the school was carried on by respondent No. 1 and satisfactory remarks were incorporated on the log book regarding the performance of the petitioner. Concluding the arguments, the learned counsel maintained that salary of the petitioner has been withheld by the department without legal justification and that the petitioner could not have been penalised due to fault on the part of the Government functionaries. He relied on Administrator, District Council, Larkana, and another v. Ghulam Khan and 5 others (2001 PLC (C.S.) 991):

5. Sardar Shaukat Hayat, Additional Advocate-General, on the other hand, supported the action of the department and contended that salary of the petitioner was withheld for the reason that she continued to work even after the expiry of the leave period fully knowing that her services automatically stood terminated and the same were no more required.

6. The learned counsel also raised certain preliminary objection regarding maintainability of the petition and locus standi of the petitioner to invoke Constitutional jurisdiction of this Court.

7. We have heard at length the arguments of learned counsel for the parties and have also gone through the documents annexed with the petition. We find ourselves in agreement with learned counsel for the petitioner that appointment of the petitioner was quite regular made by the competent authority against the leave vacancy. It may be observed here that none of the respondents or any responsible officer of the respondent department has ever raised such objection while the petitioner was working as a Teacher for 34 months. At this juncture it does not lie in the mouth of the department to assert that salary of the petitioner has been withheld for the reason that her appointment was 'irregular' and in violation of the rules and regulations. The petitioner cannot be subjected to victimization on account of the negligence of the respondent department. The petitioner is demanding salary for a period which she has been serving the department, which is also not disputed. She was appointed against the leave vacancy of one Mst. Zubaida Shaheen and she was allowed to continue her service even after 11-12-1996 by the respondent department, with a hope that her services will be regularized if she continues her services with the respondent department. It may be noticed here that the petitioner was appointed by the competent authority on the leave vacancy. If at all there was some irregularity in the appointment, it was never objected by any other respondent or any authority during the period while rendering services by the petitioner to the department, rather the petitioner was entrusted with election duties and during inspection satisfactory remarks were entered in the log book about her performance. In the circumstances we feel that respondent department had no legal justification to withhold the salary of the petitioner for the period in question. We accept the petition and direct the respondent department to release the amount of the salary of the petitioner at the rate of Rs.1605 per month for the whole period to which the petitioner has been within service of the respondent department. We make no order as to costs.

H.B.T./829/P

Petition accepted.

Bahadur Khan on behalf of Appellants

P L D 1992 Supreme Court 207

Present: Muhammad Afzal Zullah, C.J., Abdul Qadeer Chaudhry and Wali Muhammad Khan, JJ

**THE ENGINEER-IN-CHIEF BRANCH through Ministry of Defence, Rawalpindi and another--Appellants**

Versus

**JALALUDDIN—Respondent**

Civil Appeal No.202 of 1988, decided on 19th January, 1992.

(On appeal from the judgment and order dated 5-7-1987 of the Federal Service Tribunal, Islamabad in Appeal No.453(R) of 1984).

**(a) Locus Poenitentiae--**

---Principle of---Application---Order in question which was incorrect had already been acted upon--- Principle of locus poenitentiae would not be applicable.

**(b) General Clauses Act (X of 1897)--**

--S. 21---Authority which can pass an order, is entitled to vary, amend, add to or to rescind that order.

**(c) Locus Poenitentiae--**

--Principle of---Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction.

Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. In the present case the appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiase would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field.

**(d) Locus Poenitentiae--**

---Principle of--- Recovery of amount paid on basis of incorrect order and the recipient had received same on a bona fide belief that he was entitled to it---Payer was not entitled to recover the amount from the payee during the period when incorrect order remained in field and principle of locus poenitentiae would be applicable to the case.

Ch. Ijaz Ahmed, Dy. A.-G. instructed by Manzoor Ilahi, Advocate-on-Record for Appellants.

Ch. M. Ikram, Advocate Supreme Court and K.E. Bhatti, Advocate-on-Record for Respondent.

Date Of hearing: 10th December, 1991.



## JUDGMENT

**ABDUL QADEER CHAUDHRY, J.--** This appeal by leave of the Court is directed against the judgment of the Federal Service Tribunal dated 5-7-1987.

The facts of the case are that respondent Jalaluddin was appointed as Draughtsman Class 'C' in the M.E.S. Department on 1st of March, 1971. On the implementation of the National Pay Scale with effect from 1st March, 1972, the respondent was placed in National Pay Scale No.5. As per rules, the respondent qualified the departmental promotion examination from Draughtsmen Class 'C' to Draughtsmen Class 'B' in May, 1976. He was promoted to Draughtsmen Class 'B' on 15-5-1976. On 8th of May, 1974, the Ministry of Finance issued an Office Memorandum which reads as under:--

"It has been decided that in the case of Engineering Diploma holders and technical draughtsmen employed under the Federal Government the enhanced pay scale shall be as follows:--

- (a) NPS-11 shall be allowed for posts for which the prescribed qualification for direct entry is Matriculation plus 3 years diploma course in any branch of engineering from a recognised institution.
- (b) NPS-11 shall also be allowed for posts of draughtsmen requiring for direct recruits the educational qualification of Matric with 3 years diploma course.
- (c) The promotees to posts (a) and (b) above shall get the same NPS as direct recruits irrespective of their educational qualification."

According to respondent, he was allowed National Pay Scale 11 with effect from 13-5-1976. He stated at the time of hearing that he was granted the National Pay Scale 7, on 13-5-1976. It means, on the same day, he was given escalated pay scale from 7 to 11. (If the contention of the appellant be accepted, then he was granted this Scale No.11 on 13-5-1976). The perusal of letter dated 8th May, 1976, clearly shows that National Pay Scale-11 was allowed to all promotees irrespective of their educational qualifications. Thus the qualification for promotion as contended by the department of the appellant, was done away by this Notification. Under the Recruitment Rules, the qualification for direct recruits of Draughtsmen is Matric. The Certificate of Draughtsmanship from the recognised institution and there is no dispute between the parties about the qualifications for appointment of Grades 'A' and 'B' of the Draughtsmen, as direct recruits.

The Draughtsmen Class 'A' were allowed National Pay Scale No. 9' with effect from 1-3-1972. They were placed in National. Pay Scale No. 11 with effect from 1-5-1974. If the contention of the respondent is accepted then irrespective of their qualifications and experience, both categories of Draughtsmen would get National Pay Scale 11. This is to our mind, against the principle of fairness and justice. By the letter dated 24th May, 1976, the Finance Division stated that NPS-11 shall be allowed to the post for which the prescribed qualification for direct entry is matriculation and three years' diploma course in any branch of engineering from the recognised University. However, relaxation was made for those who had been appointed/recruited directly without the requisite qualification, by the competent authorities, in consideration perhaps of their practical experience. They were also allowed NPS-11. There is no reference in this letter that Grade 'B' is also entitled to the same National Pay Scale. In the letter dated 12-10-1977 issued by M.A.G., Rawalpindi, it has been stated that for the post of Draughtsmen 'B' grade of M.E.S., the minimum qualification is Matric plus Certificate from a recognised institution in Draughtsmanship. Accordingly, it is clear that Draughtsmen 'B' Grade of M.E.S. being not Diploma-holders, whether appointed direct or promoted from 'C' Grade are not entitled to NPS-11.

By letter dated 27th February, 1984, MAG directed to recover the overpayment for the last 12 months from the date it was challenged. The letter dated 12th October, 1977, was cancelled on 28th November, 1977, by the Engineer-in-Chief Branch, Rawalpindi. Similarly, on 18-5-1982, it was stated that incorrect fixation of pay of Draughtsmen Grade 'B' in Grade-11 has been carried out and this was not in order. It was directed that all the cases be reviewed and necessary re-fixation may be made out. The facts narrated above, make it clear that the respondent was never promoted to NPS-11 and no decision of the competent authority has been placed on record to substantiate the contention of the respondent about his fixation in NPS-11. He was not properly and legally allowed the Grade-11. The respondent challenged the action of the appellants in an appeal before the Federal Services Tribunal. The appeal was allowed. The reasons which weighed with the learned Tribunal are as follows:--

"Be that as it may however, it is a well-settled legal position that a public authority which can pass an order, is empowered to vary, amend or rescind that order. But this power to recede can be exercised only till a decisive step to carry out that order is taken. If, however, the order has been given effect to, so that no locus poenitentiae is left, there will be no occasion for exercise of such power. Thus the power to amend or cancel an order cannot be carried into effect if the order has been acted upon. In the present case the pay of the appellant was duly fixed in NPS-11 in 1976 which was being paid to him for about seven years. Therefore, the departmental authorities had no valid power of receding the orders of fixation of the appellant's pay in NPS-11 which was fully carried into effect. Consequently we hold that the impugned action is incompetent and unjust."

It is therefore, clear that the Tribunal has also not disputed the contention of the appellant that respondent was not entitled to be fixed in Grade-11 of National Pay Scale. The principle of locus poenitentiae was invoked by the learned Tribunal in aid of the respondent. Having gone through the facts of the case, we have come to the conclusion that this principle is not attracted in the present case. Additionally, under section 21 of the General Clauses Act, the authority which can pass an order, is entitled to vary, amend, add to or to rescind that order. The order under which the payment was made to the respondent had no sanction of law. Locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during the period when the latter remained in the field. Learned counsel for the appellants had submitted that the appellants had drawn Rs.12,890.86 (Rupees twelve thousand, eight Hundred, ninety and paisa eighty-six only) during this period but the Engineer-in-Chief had directed the recovery of Rs.1,860.00 only (Rupees one thousand, eight hundred, sixty and paisa nil only). We consider that as far as the recovery of the amount in question is concerned, the principle of locus poenitentiae would be applicable and the appellants are not entitled to recover the amount. The appellants have themselves taken a liberal view and the recovery of only 12 months is being made.

For the reasons stated above, WC accept this appeal and set aside the order of the Tribunal. However, the appellants would not recover even Rs.1,860 (Rupees one thousand, eight hundred, sixty and paisa nil only) from the respondent. There would be no order as to costs.

M.B.A./E-24/S

Appeal accepted.

(4)

21

12. That it has nowhere been denied that the appellant's date of birth in his primary school record and Matriculation certificate is 01.10.1953. It has also been note denied that a corresponding entry of 01.10.1953 was made by the department in the relevant column of the appellant's service roll. It poses a big question mark as to why this issue has been reagitated at this belated stage.

13. That it is settled by now by the Superior Courts, that the entries in record regarding date of birth of a Civil Servant in the school record/ matriculation certificate has to be admitted as correct unless and until it is rebutted through unimpeachable evidence. No such rebuttal does exist in the matter in hand.

14. That the premature and before due date retirement of the appellant, and also requiring him to deposit his 4 months salaries is illegal, against the law and facts and it requires interference by your good self.

It is, therefore, humbly requested that, on acceptance of this departmental appeal the date of birth of the appellant as entered in his service roll based on his school record may kindly be considered as 01.10.1953 and accordingly he may be allowed to render his services upto 01.10.2013, the date of superannuation. It is further prayed that the order of recovery of salaries for the months of (01.12.2012 to 31.03.2013) may also be set aside.

Dated 15.4.13

Attest  
FD

Appellant

B. Khan

**Bahadar Khan S.I**  
S/o Shahbaz Khan  
R/o Village Bajaoro  
P.O Talash, Tehsil  
Timergara, District  
Dir Lower

Rejection of Appeal, Made (22) to IGP

Office of the Regional Police Officer, Malakand, at Saidu Sharif, Swat.  
2812  
Dated 6/5/13.

ANNEX M

From: The Regional Police Officer, Malakand, at Saidu Sharif, Swat.  
To: The District Police Officer, Dir Upper  
No. 2270 /E, dated Saidu Sharif, the 30/4 /2013  
Subject: **APPEAL**

1302  
21-5-13

Memorandum:  
Reference Your Office Memo: No. 1489/EC, dated 18/04/2013 on the Subject.

In this connection necessary guidance was solicited from CPO / Peshawar, on the letter received from your Office Vide Memo: No. 569/E, dated 21/02/2013, who vide Memo: No. 682/legal, dated 19/03/2013 has advised to issue retirement order of the said official according to his date of birth recorded in the Service Book at the time of his Enlistment.

In the light of CPO / Peshawar, clear cut directions and your request vide Memo: No. 1118/EB, dated 25/03/2013, the official has been retired on Superannuation Pension from his original date of birth (07/12/2012) vide this office order No. 1729-30/E, dated 29/02/2013.

Since the Official is no more in Service, therefore, submission of his appeal by your office at this stage, has no legal Grounds.

No. 1729-30/E,  
dt 29-2-2013

*[Signature]*  
Regional Police Officer,  
Malakand, at Saidu Sharif, Swat.

copy to DPO Dir Lower to inform  
Ex-SI Bahadur Khan no 139/M 90 Shikri Bag

Naqill: Bajawara P.S. Talash Dir Upper Swat

accordingly.

SHO Talash  
Ex-Si Bahadur Khan  
be informed accordingly.

No. 8965-1/EB dt 6-5-2013.

copy of above is sent to SHO (T-GNO)

SHO Talash to inform Ex-Si Bahadur Khan on the above address accordingly

SDPO  
07-05-13

Attestation  
*[Signature]*

*[Signature]*  
District Police Officer,  
Dir Lower at Timergara.  
4/5

SHO Talash informed Ex-SI Bahadur Khan on 7/5/2013

DSP

T. Gauri

ضلع علی

اس کی تاریخ 16/01/13 کو برادر جاری کیا گیا ہے

نہ اس سے پہلے  
منجانب سے  
MAJORS TALASH  
16/01/13

POWER OF ATTORNEY

In the Court of 12 PE Service Tribunal Peshawar  
Bahadar Khan

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

P. P. O and others  
} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

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

**IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN**

Sajid Amin Advocate my true and lawful attorney, for me in my name and on my behalf to appear at Pesh 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. Companies 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 subpoena 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 employ 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 or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at Peshawar  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants B. Q. Khan  
Accepted subject to the terms regarding fee \_\_\_\_\_

*[Handwritten signatures]*

**Ijaz Anwar**

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt  
Ph.091-5272154 Mobile-0333-9107225

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

Service Appeal No. 1044/2013.

Mr Bahadar Khan s/o Shahbaz Khan r/o Lower Dir .

..... Appellant.

**VERSUS**

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sherif, Swat.
- 3) District Police Officer Dir Upper.

..... Respondents.

**PARA WISE REPLY ON BEHALF OF RESPONDENTS.**

Respectfully Shewith:

**PRELIMINARY OBJECTIONS.**

- 1) That the present service appeal is not maintainable in it's form.
- 2) That the appellant has not come to this August tribunal with clean hands.
- 3) That the present appeal is badly time barred.
- 4) That this Honorable Service Tribunal has no jurisdiction to entertain the present service Appeal.
- 5) That the appellant has got no cause of action.
- 6) That the appellant has suppressed the material facts from this

Honorable Tribunal

**ON FACTS:**

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Incorrect. The appellant was appointed as illiterate constable in the police department, his date of birth

08.12.1952 was fixed as per medical certificate. Later on he produced school leaving certificate, where his date of birth was mentioned as 01-10-1953. To resolve this issue an inquiry was conducted in the year 1985.

Consequent upon, the then Superintendent of Police Dir Upper vide his Office OB# 06-No 392 dated 14-04-1985 concluded that the date of birth of constable Bahadar Khan recorded on the basis of medical certificate will remain the same, the date of birth of the applicant was recoded with greatest care under police rules 12-15(2)(copy of the order attached as annx. "A")

5. Subject and proof hence need no comments.

6. As replied in Para 4.

7. Pertains to record.

8. Incorrect. His service tenure has been ended on 08-12-2012. He was rightly retired from the service and the order regarding the recovery of four months salaries (07-12-2012 to 31-03-2013) is legal and according to the record.

9. The departmental appeal was rightly rejected as there were no valid grounds in the appeal.

10. Incorrect, the orders are legal and according to the facts hence liable to be implemented.



## **ON GROUND**

- (A). *Incorrect, the appellant has been treated in accordance with law and no right of the appellant has been violated.*
- (B). *Incorrect, reply to this ground has already been given in para No- 04 of facts.*
- (C). *Incorrect, reply to this ground has already been given in para No.8 of facts.*
- (D). *Incorrect, the issue of date of birth has been finalized vide OB No.392 dated 14-04-1985 by the then Superintendent of Police.*
- (E). *Incorrect, the date of birth of the appellant is finalized as 08-12-1952.*
- (F). *Incorrect, The case in hand has been rebutted through unimpeachable evidence.*
- (G). *Incorrect, the retirement date of the appellant is mature and he is bound to deposit four months salaries.*
- (H). *Incorrect, the appellant has been provided opportunities of personal hearing.*
- (I). *The respondents also seek permission of this Honorable tribunal to rely on additional grounds at the time of arguments.*

**PRAYER:**

*It is therefore humbly prayed that on acceptance of this Para-wise reply, the service appeal may very graciously be dismissed with costs.*

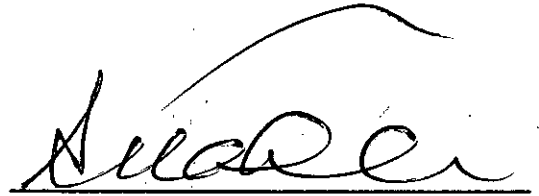
**Provincial Police Officer,  
Khyber Pakhtunkhwa Peshawar.**



**Provincial Police Officer  
Khyber Pukhtunkhawa**

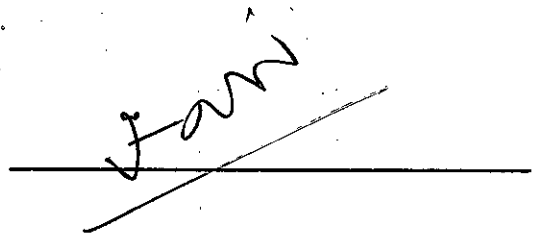
**Regional Police Officer,  
Malakand at Saidu Sherif, Swat.**

//



**Regional Police Officer,  
Malakand, at Saidu Sharif Swat.**

**District Police Officer,  
Dir Upper.**



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

Service Appeal No. 1044/2013.

Mr Bahadar Khan s/o Shahbaz Khan r/o Lower Dir .

..... Appellant.

**VERSUS**

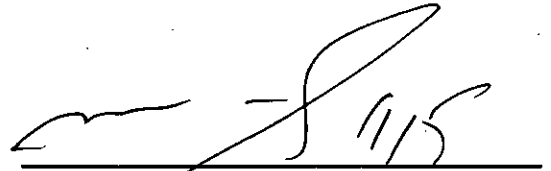
- 4) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 5) Regional Police Officer Malakand at Saidu Sherif, Swat.
- 6) District Police Officer Dir Upper.

..... Respondents.

**AFFIDAVIT**

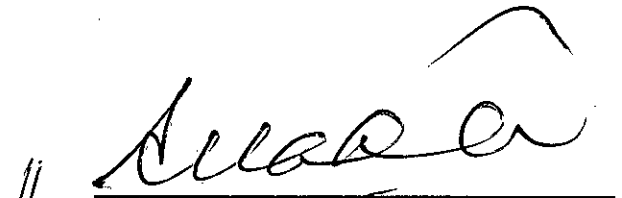
I, Ijaz Khan SI Legal Lower Dir at Timergara, do hereby solemnly affirm and declare on oath that the contents of para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Court.

**Provincial Police Officer,  
Khyber Pakhtunkhwa Peshawar.**



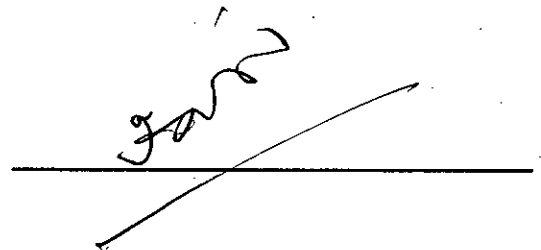
Provincial Police Officer  
Khyber Pukhtunkhawa

**Regional Police Officer,  
Malakand at Saidu Sherif, Swat.**

// 

Regional Police Officer,  
Malakand, at Saidu Sharif Swat.

**District Police Officer,  
Dir Upper.**



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

Service Appeal No. 1044/2013.

Mr Bahadar Khan s/o Shahbaz Khan r/o Lower Dir .

..... Appellant.

**VERSUS**

- 7) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 8) Regional Police Officer Malakand at Saidu Sherif, Swat.
- 9) District Police Officer Dir Upper.

..... Respondents.

**POWER OF ATTORNEY**

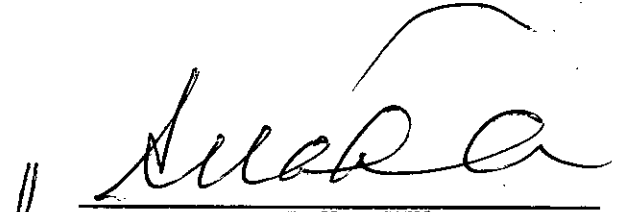
We the undersigned do hereby appoint Mr. Ijaz Khan SI legal Dir Lower to file para wise reply in the above mentioned case and pursue the case on each and every date. He is also authorized to file the relevant documents in connection with the subject case.

**Provincial Police Officer,  
Khyber Pakhtunkhwa Peshawar.**



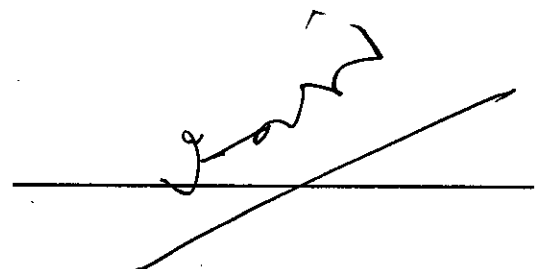
Provincial Police Officer  
Khyber Pakhtunkhwa

**Regional Police Officer,  
Malakand at Saidu Sherif, Swat.**

// 

Regional Police Officer  
Malakand, at Saidu Sherif Swat.

**District Police Officer,  
Dir Upper.**



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

In the Matter of  
Appeal No. 1044/2013

Bahadar Khan ..... Appellant

**VERSUS**

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

**REJOINDER ON BEHALF OF THE APPELLANT.**

**RESPECTFULLY SUBMITTED,**

That the appellant submit his rejoinder as under:-

**ON PRELIMINARY OBJECTIONS:-**

1. Content incorrect and misleading, the appeal being filed well in accordance with the prescribed rules and procedure, hence maintainable in its present form.
2. Contents incorrect and misleading, the appellant has come to the Tribunal with clean hands.
3. Contents incorrect and misleading, the appeal is filed well within the prescribed period of limitation.
4. Contents incorrect and misleading, the appellant is a Civil Servant, moreover, the matter pertains to his terms and conditions of the service as such only this Honourable Tribunal has got the jurisdiction to entertain and adjudicate the present appeal.
5. Content incorrect and misleading, the appellant has prematurely been retired before attaining the age of superannuation and an illegal recovery is ordered to be made on him vide order dated

74.05.15

29/03/2013 as such he has got the necessary cause of action to file the instant appeal.

6. Contents incorrect and misleading, Contents incorrect and misleading, all necessary facts are brought before the Honourable Tribunal and nothing has been suppressed.

**ON FACTS:-**

1. Contents need no reply, however, contents of Para 1 of the appeal are true and correct.
2. Contents need no reply, however, contents of Para 2 of the appeal are true and correct.
3. Contents need no reply, however, contents of Para 3 of the appeal are true and correct.
4. Contents of Para 4 of the appeal are true and correct, the reply submitted to the Para is incorrect and misleading. The inquiry so conducted was in favour of the appellant and it was recommended that as per school leaving certificate the date of birth of the appellant maybe corrected, thereafter the date of birth of the appellant was corrected and entry in his service book in the column of date of birth was also made as per his school leaving certificate.
5. Contents need no reply, however, contents of Para 5 of the appeal are true and correct.
6. Contents need no reply, however, contents of Para 6 of the appeal are true and correct moreover, as explained in Para 4 above.

7. Contents need no reply, however, contents of Para 7 of the appeal are true and correct.
8. Contents of Para 8 of the appeal are true and correct. The reply submitted is incorrect and misleading.
9. Contents of Para 9 of the appeal are true and correct. The reply submitted is incorrect and misleading.
10. Contents of Para 10 of the appeal are true and correct. The reply submitted is incorrect and misleading.

**GROUND:-**

Grounds (A to I) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

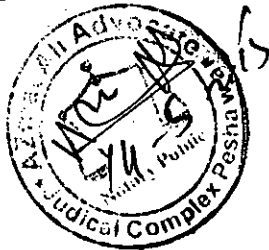
Appellant  
Through  
And  
SAJID AMIN  
Advocates, Peshawar.

**AFFIDAVIT:-**

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

**ATTESTED**

**DEPONENT**



**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1223 /ST

Dated 1 / 8 / 2016


To

The Regional Police Officer,  
at Saidu Sharif Swat.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 27.7.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.



ORDER.

Annexure "A"

Constable Bahadar Khan No.990 was enlisted as constable on 11.12.1976 and his date of birth was recorded as 8.12.1952 on the basis of Medical Certificate. Later on, he produced 6th Class Certificate of Education wherein his date of birth was recorded as 1.10.1953. On 20.3.1985 he produced Matriculation certificate.

Preliminary Enquiries were made by SHO/T.Gera DSP/Dir and lastly by DSP/Headquarters, Timergera.

DSP/H.qrs in his report has stated that the date of birth is to be corrected according to Police Rules 12.15(2) and further added that he has the right to be counted as literate, as he has obtained 1st Class Certificate in Recruit. course and is on promotion List A-I and B-I.

I have gone through the case, papers on file, P.R.12.15(2), IGP/NWFP, Peshawar Memo: No. 3645/A-2, dated 10.4.84 and Para 116 of G.F.R.

According to G.F.R.-117, cases in which the date of birth has been deduced from the age at the time of appointment or enrolment by any other method need not be re-opened. According to Para-116 of G.F.R., the date of birth once recorded cannot be altered except clerical errors without the ~~previous~~ <sup>previous</sup> provisions of orders of local Administration.

Keeping in view the above discussion, I have reached at the conclusion that the date of birth recorded on the basis of M.C. will remain the same, and the constable is eligible for the benefits opened to literate constable, as neither he is under-age nor overage.

In the previous ~~to~~ <sup>to</sup> terms, he was not selected for Lower School Course, as his case was under consideration, therefore, he will be selected for Lower School Course in the coming term on the basis of his B-I seniority.

O.B.No.

392

Dated

14.4.85

(MOHAMMAD AKRAM KHAN)  
Superintendent of Police, Dir  
at Timergera.  
\*Zahir Shah\* 2.4.85/

ABC-E  
Place on S.Roll

18/4/85

29.11.83