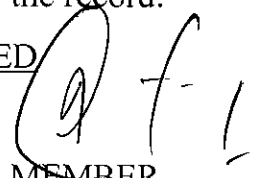


564/2014

16.11.2015

Counsel for the appellant (Mr.Sajid Amin, Advocate) and Sr. Government Pleader (Mr. Usman Ghani) with Amir Hamza, S.I and Muhammad Ghani, SI for the respondents present. Arguments heard and record perused. Vide our detailed judgment of to-day in connected appeal No. 561/2014, titled 'Muhammad Ijaz Versus the Provincial Police Officer, KPK Peshawar etc.' this appeal is also disposed off as per detailed judgment. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
16.11.2015


MEMBER


MEMBER

05.3.2015

Counsel for the appellant and Addl. A.G with Muhammad Ghani, SI and Muhammad Siyyar, Inspector for the respondents present. Rejoinder received. To come up for arguments on 25.6.2015.


MEMBER

25.06.2015

Appellant with counsel and Mr. Muhammad Jan, GP with Muhammad Ghani, SI for the respondents present. Due to rush of work, case is adjourned to 17.09.2015 for arguments.


Member


Member

20.08.2015

Counsel for the appellant, M/S Amir Hamza, S.I and Muhammad Ghani, S.I alongwith Muhammad Jan, GP for respondents present. Since the Court time is over therefore, case is adjourned to 21.09.2015 for arguments.


Member


Member

21.09.2015

Counsel for the appellant, Mr. Sayar Khan, Inspector and Muhammad Ghani, SI (Legal) alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 16-11-15.


Member


Member

23.10.2014

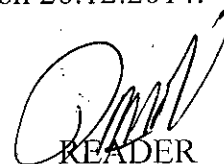
Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Qazi Sajidud Din, DSP (Legal) and Muhammad Ghani, ASI for the respondents present. Respondents need further time. To come up for written reply on 19.11.2014.



MEMBER

19.11.2014

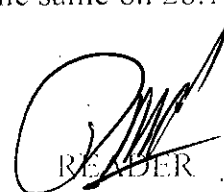
Clerk to counsel for the Petitioner and Mr. Muhammad Jan, GP with Qazi Sajidud Din, DSP (Legal) and Muhammad Ghani, SI for the respondents present. The Tribunal is incomplete. To come up for the same on 26.12.2014.



READER

24.12.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Ghani, ASI for the respondents present. The Tribunal is incomplete. To come up for the same on 28.1.2015.



READER

28.1.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Muhammad Ghani, SI and Muhammad Raghieb, Inspector for the respondents present. Written reply on behalf of the respondents received, copy whereof is handed over to counsel for the appellant. To come up for rejoinder on 5.3.2015.



MEMBER

Appeal No. 564/2014
Mr. Hamid Jan Khan

6. 01.7.2014

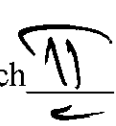
Counsel for the appellant present. Preliminary arguments heard and case file perused.

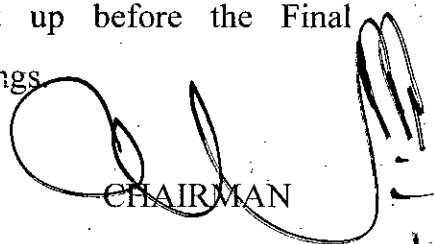
Through the instant appeal, the appellant has impugned orders vide which he was firstly reverted to the post of ASI, further reverted to the post of H. Constable and finally repatriated to district Mardan vide impugned orders dated 13.12.2013, 23.12.2013 and 26.12.2013, respectively. Against the impugned orders, the appellant filed departmental appeal on 08.1.2014 which was not responded within the statutory period, hence the instant appeal.

Since the terms and conditions of the appellant has been violated and the appeal in hand is within time therefore, admit for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 12.09.2014.


MEMBER

7. 01.7.2014

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


CHAIRMAN

12.09.2014

Appellant with counsel and Mr. Muhammad Jan, GP with Qazi Sajidud Din, DSP (Legal) and Muhammad Shafiq, Inspector (Legal) for respondents present. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court affecting his status as District & Sessions Judge. To come up as before on 23.10.2014.


MEMBER


3. 29.05.2014

Counsel for the appellant present. Preliminary arguments partly heard. Since the matter required further elucidation, therefore, pre-admission notice is hereby given to the learned GP to assist the Tribunal on the next date. To come up for preliminary hearing on 05.06.2014.


Member

4. 05.06.2014

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. The learned counsel for the appellant requested for adjournment for filing application before the Chairman for placing the said appeal before another appropriate Bench. Request accepted. To come up for preliminary hearing before that Bench on 24.06.2014.


Member

5. 27.06.2014

File received from the learned Chairman. Order sheet dated 05.4.2014 and application submitted on behalf of the appellant perused. To come up for preliminary hearing on 01.07.2014.

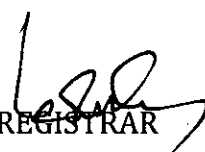


MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 564/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/04/2014	<p>The appeal of Mr. Hamayun 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	22-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>29-5-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Hamayun Khan Ex-Assistant sub-Inspector of Police received today i.e. on 14.04.2014 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 promotion order dated 21.4.2012 mentioned in para-2 of the memo of appeal is not attached with the appeal which may be
- 2- Copy of departmental appeal dated 8.01.2014 in respect of appellant is not attached with the appeal which may be placed on it.
- 3- One copy/set of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 607 /S.T,

Dt. 15/04 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ijaz Anwar Adv.Pesh.

Promotion order crossed dated 21/4/12 Mr. Per
DA dated 8.1.2014 is attached in
page 13, 14. Please read the
order of the

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 564/2014

Hamayum Khan Ex-Assistant Sub Inspector, Investigation Branch/Crime Branch, now Constable, District Police Mardan.

(Appellant)

VERSUS

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

(Respondents)

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S. No	Description of Documents	Annexure	Page No
1	Memo of Appeal & Affidavit		1-5
2	Commendation Certificates	A	6
3	Charge Sheet and Statement of Allegations	B	7
4	Reply to the Charge Sheet	C	8
5	Inquiry Report	D	9
6	Penalty Order dated 10.12.2013	E	10
7	Departmental Appeal dated 23.12.2013	F	11
8	Copy of the Departmental appeal	G	12-14
9	Copy of the Judgment and order dated 17.01.2014	H	15-19
10	Vakalatnama.		20

Through

Hamayum Khan
Appellant

IJAZ ANWAR

Advocate Peshawar

Sajid Amin
SAJID AMIN

Advocate, Peshawar

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

Appeal No. 564/2014

564
14-4-2014

Hamayum Khan Ex-Assistant Sub Inspector, Investigation Branch/Crime Branch, now Constable, District Police Mardan.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police Investigation (Crime Branch) Khyber Pakhtunkhwa CPO, Peshawar.
3. DIG of Police Investigation (Crime Branch) Khyber Pakhtunkhwa CPO, Peshawar.
4. District Police Officer Mardan.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 13/12/2013, whereby the appellant has been reverted from the Post of ASI to the Post Head Constable, and against the order dated 23/12/2013, whereby the appellant has been further reverted to the post of Constable and subsequent order dated 26.12.2013, whereby the appellant has been repatriated to the District Mardan, against which the departmental appeal dated 08.01.2014, has not been responded despite the lapse of 90 days statutory period.

Prayer in Appeal: -

On acceptance of this appeal the order dated 13.12.2013, order dated 23.12.2013 and order dated 26.12.2013, may please be set-aside and the appellant may please be re-instated to his original rank of Assistant Sub Inspector with all back benefits.

re-submitted to-407
and filed.

14/4/14
21/4/14

Respectfully Submitted:

1. That the appellant was initially enlisted as Constable BPS-05 in the Crime Branch C.P.O, Peshawar vide order dated 10.07.1991. Ever since his enlistment, the appellant had performed his duties as assigned to him with zeal and devotion and without giving any chance of complaint whatsoever to his superiors. *(Copy of the enlistment order dated 10.07.1991 is attached as Annexure A)*
2. That during the course of his service, the appellant also got promotion to the Rank of Head Constable on 02.05.2002, lastly he was promoted to the Rank of Assistant Sub Inspector on 20.04.2012. *(Copies of the promotion orders dated 02.05.2002 and 20.04.2012 are attached as Annexure B & C)*
3. That while serving in the said capacity, to the great surprise of the appellant, without serving upon him any notice, he has been reverted to the post of Head Constable vide order dated 13.12.2013. *(Copy of the order dated 13.12.2013 is attached as Annexure D)*
4. That again vide order dated 23.12.2013, the appellant was further reverted to the post of Constable, allegedly on the ground that the "Crime / Investigation Wing is not empowered to make promotions of Police staff nor the said police official has acquired mandatory qualifications necessary for the promotion." *(Copy of the Order dated 23.12.2013, is attached as Annexure E)*
5. That though the appellant was initially appointed in the Crime Branch/Investigation Branch, C.P.O, Peshawar, however he was not only reverted but has also been illegally repatriated to District Mardan vide order dated 26.12.2013. *(Copy of the Order dated 26.12.2013, is attached as Annexure F)*
6. That the aggrieved from the impugned orders, the appellant also filed the departmental appeal dated 23.12.2013 and 08.01.2014, however it has not been responded despite the lapse of statutory period. *Copy of the Departmental appeal is attached as Annexure G)*

7. That the appellant also filed Writ Petition No. 93-P of 2014, in the Peshawar High Court Peshawar, which was disposed of vide order & Judgment dated 17.01.2014. the concluding Para of the Judgment is reproduced below

“this Court in view of the foregoing discussion, without passing any finding on the merit of the present matter, which may prejudice the case of the parties, treat the present petition as representation and refers the same to the Appellate Authority/Inspector General of Police (PPO) Khyber Pakhtunkhwa, Peshawar with directions to decide the appeal of the petitioners on merit, in accordance with law and Rules, after hearing the petitioners, within a period of one month, if not earlier, form the date of receipt of this Order.

(Copy of the Judgment and order dated 17.01.2014, is attached as Annexure H)

8. That the impugned orders are illegal unlawful without lawful authority and are thus 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 no proper procedure has been followed before reverting the Appellant down to the Rank of Constable, the Appellant has not been served with any notice or charge sheet, nor he has been provided any opportunity of hearing before the issuance of the impugned orders thus the orders so made are liable to be set aside.
- C. That the Appellant was promoted by the competent authority, after observing all necessary formalities, moreover, the order of promotions have taken its effect, the appellant has taken over the charge of the higher post and had performed duties against the promoted posts for a considerable period, thus valuable rights have been created in his favor and the same cannot be undone or snatched illegally.
- D. That according to police Rules 21-25(6) in every exceptional cases and for the political branch only with the written sanction of the DIG personally, direct enrollment as constable or in the

higher ranks may be made to the Criminal Investigation Department.

- E. That the appellant has not joined the investigation/Crime Branch on deputation and he was originally enrolled as constable in the Investigation Branch therefore, his repatriation order to district Mardan is against the law.
- F. That the appellant was directly appointed as constable in Crime Branch, Peshawar and was promoted as officiating Head Constable and officiating Assistant Sub Inspector (ASIs) on the vacancies in the Crime Branch Peshawar.
- G. When there are no quota for the Lower and Intermediate courses for Crime Branch Peshawar in such circumstances the appellant can not be held responsible for not undergoing the said courses.
- H. That the Appellant was initially appointed in Crime Branch (now Investigation Wing), C.P.O Peshawar and have got promotions to different Ranks in the same branch, thus his lien cannot be transferred to any other district without his consent.
- I. That the Appellant remained Head Constable for more than 12 years and as ASI for almost 2 years, therefore under the provisions of 13-18, Police Rules the Appellant, having not been reverted in that period, has matured his right to be allowed to regular promotion instead of reversion.
- J. That the Appellant was promoted to higher Posts, he obeyed the orders and performed the duties of the higher post, his salary was also fixed against the promoted posts. Therefore, the pay once fixed in the higher posts can under no circumstances be reduced or withdrawn.
- K. That some similarly placed employees, who were also appointed/transferred in the Crime Branch and also got promotions in the same branch/ wing, they have been retained in the same branch and are still serving their, neither any reversion nor they have been transferred thus the appellant has been highly discriminated.
- L. That on promotion of the Appellant, valuable rights have been created in his favour and the order of promotion has taken its effect, therefore, the same cannot be rescinded or snatched illegally.
- M. That reversion to lower Post amounts to penalty for which proper right of hearing is required coupled with service of proper show

cause, but in the instant case no such procedure was adopted, thus the order of reversion is illegal and not tenable.

- N. That the Appellant has never been served with any Show Cause Notice nor he was allowed any opportunity of personal hearing before the order of reversion.
- O. That even otherwise the reversion for two step lower in same succession is illegal and not warranted under the law.
- P. That the Appellant has at his credit more than 23 years service career, the reversion made would spoil his bright service career.
- Q. That the appellant also seek permission of this honorable Tribunal to rely on additional grounds at the time of hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 13.12.2013, order dated 23.12.2013 and order dated 26.12.2013, may please be set-aside and the Appellant may please be re-instated to his original rank of Assistant Sub Inspector with all back benefits.

Through

[Signature]
Appellant

IJAZ ANWAR
Advocate Peshawar

&
[Signature]
SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, **Hamayum Khan Ex-Assistant Sub Inspector, Investigation Branch/Crime Branch, now Constable, District Police Mardan,** do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

ATTESTED
[Signature]
Mian, *[Signature]*
Advocate
Notary Public/Oath Commissioner
High Court Peshawar



[Signature]
DEPONENT

6

Approved: A

PROCEEDING

Case No. Hamayun Khass

in Chaman Khan resident of village Sargan

and Katlang on Hardaman Hard

arrested in P.S. No. 1,1,2 (22,70-2-100) on 10-7-9

and allotted case number No. 107

He is entitled merely on temporary basis and his services should be liable to terminate any time without any notice under sub-section 2(33)

Height 5' 9 1/2 and 35-37

Age 19 years occupation 10TH

Date of Birth 1-4-72

P.S. No. 26

Date 10-7-1991


Sub-Inspector General of Police,
Crime Branch, District Police Station



(7)

ANNEX B

ORDER.

The following constables of Crimes Branch No. 7, Peshawar are hereby promoted as Siffs: Head Constables HPS-7 (2220-120-5820) with effect from 30.4.2002:-

- | | | |
|----|----------------------------|----------|
| 1. | PC <u>Rifaq Ali</u> | No. 7 |
| 2. | PC <u>Abdul Jalil</u> | No. 3 |
| 3. | PC <u>Marooz-ur-Rashid</u> | No. 11 |
| 4. | PC <u>Mumayun Khan</u> | No. 12 ✓ |

O.B NO. 278/SNO/CB
DT: 2 /5/2002.

(FACIR KUSBAIK)
By: Inspector General of Police,
Crimes Branch No. 7, Peshawar.

NO. 1934-38/SNO/CB, dated Peshawar, the 2 /5/2002.

Copies forwarded for information & n/action to:-

1. SNO Crimes Branch.
2. SNO Adm: CB.
3. Line Officer CB.
4. Accountant CB.
5. SNO PS CB.

YR

(8)

Approved: (

ORDER

As approved by the Addl:IGP Investigation, KPK Peshawar on the recommendations by the DIG/Investigation-II Khyber Pakhtunkhwa, Peshawar followed by the report of DSP/Legal Investigation, the following Head Constables of Investigation Unit CPO are hereby promoted as Offg: Assistant Sub Inspectors BPS-09 (6200-380-17600) against the existing vacancies of this unit with immediate effect and till further orders:-

S.NO.	NAME/RANK
1.	Head Constable Nizar Muhammad No. 141
2.	Head Constable Muhammad Tariq No. 128
3.	Head Constable Muhammad Ijaz No. 127
4.	Head Constable Fazle Rehman No. 131
5.	Head Constable Humayun Khan No. 171

Muhammad Idrees

(MUHAMMAD IDREES)

Deputy Inspector General of Police,
(Hqrs) Investigation-III, Khyber Pakhtunkhwa,
Peshawar.

2/1/12

No. 2829-35 /EC, dated Peshawar, the 21 /04/2012.

Copies are sent for information and necessary action to the:-

1. DIG/Investigation-II Khyber Pakhtunkhwa Peshawar.
2. DIG/Investigation-III (Hqrs:) Khyber Pakhtunkhwa Peshawar.
3. SSP/Investigation CPO Peshawar.
4. PSO/DSP Legal Inv.
5. PA to Addl:IGP Inv.
6. Accountant Inv.

(MUHAMMAD IDREES)

Deputy Inspector General of Police,
(Hqrs) Investigation-III, Khyber Pakhtunkhwa,
Peshawar.

Atiq

(9)

APPROVED: D

ORDER

In terms of Section 21 of The General Clauses Act 1956 the promotion order as Offg. ASIs in respect of the following Head Constables of Investigation Unit CPO Peshawar, issued by the then DIG Hqrs./Investigation, CPO Peshawar vide his office Endst. No.2829-35/EC, dated 21.04.2012 is hereby cancelled with immediate effect:-

S.NO	NAME/RANK
1	Head Constable Nizar Muhammad No. 141
2	Head Constable Muhammad Tariq No. 128
3	Head Constable Muhammad Ijaz No. 127
4	Head Constable Fazle Rehman No. 161
5	Head Constable Humayun Khar No. 171

Sd/-----

SHAUKAT HAYAT ISP
Addl. Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.

No. 11542-45 /EC, dated Peshawar, the 13 /12/2013.

Copies are sent for information and necessary action to the:-

1. SSP/Investigation CPO Peshawar.
2. DSP Legal Inv.
3. PA to Addl. IGP Inv.
4. Accountant Inv.
5. SHO PS Investigation (CB)

(ASIF ZAFAR CHERMANI)
DIC/HQRS./INVESTIGATION
For Addl. Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar. 13/12/2013

10

Approved: E

24/12/13

ORDER

The following officiating Head constables of Investigation Unit CPO Peshawar promoted vide order No.4648-52/SRC/CB dated 10-11-2001, order No.4992-98/SRC/CB dated 01-12-2001, No.765-70/CB dated 04-3-2002, and vide order No.1934-38/SRC/CB dated 2-5-2005 respectively have neither qualified A-1, B-1 examination nor undergone Lower College Course, hence their promotions being repugnant to the Police Rules Chapter-13. In the light of section 20 of the General Clauses Act 1956. The orders are hereby cancelled with immediate effect and reverted to their substantive rank of Constable.

S. NO.	NAME/RANK
1.	H/Constable Nizar Muhammad No.141
2.	H/Constable Muhammad Tariq No.128
3.	H/Constable Muhammad Ijaz No.127
4.	H/Constable Fazle Rehman No.161
5.	H/Constable Hamayun Khan No.171

(SHAUKAT HAYAT) PSP
Additional Inspector General of Police,
Investigation, Khyber Pakhtunkhwa,
Peshawar.

No. 2092-99 EC,

dated Peshawar, the 23 /12/2013.

Copies are sent for information and necessary action to the: -

1. Regional Police Officer, Mardan Region, Mardan.
2. DIG/HQrs/Investigation, CPO Peshawar.
3. SSP Investigation CPO, Peshawar.
4. DSP Legal Investigation,
5. Accountant Investigation
6. SHO PS Investigation (CB)

seen file

SHO/PS/AV
24/12/2013

11

Amr: F

Office of the Addl. IGP Investigation
Op. No. 8649
Dated 26/12/2013
Khyber Pakhtunkhwa Peshawar

ORDER

The following Constables of District Police Mardan on deputation to investigation unit CPO Peshawar are hereby repatriated to their parent district Mardan with immediate effect:-

1. Constable Nizar Muhammad No. 141
2. Constable Muhammad Tariq No. 128
3. Constable Muhammad Ijaz No. 127
4. Constable Fazl Rehman No. 161
5. Constable Hamayun Khan No. 171

(SYED FIDA HASSAN SHAH)
AIG/Establishment
For Provincial Police Officer,
Khyber Pakhtunkhwa
Peshawar

No. 3146-83/E-II, dated Peshawar the 26/12/2013

Copy of above is forwarded for information and necessary action

to the:-

1. Addl: IGP/HQ's Khyber Pakhtunkhwa Peshawar.
2. Addl: IGP/Investigation Khyber Pakhtunkhwa Peshawar w/r to his letter No. 14524/EC/Inv. dated: 13.12.2013 and No. 12391/EC/Invest: dated: 23.12.2013.
3. Deputy Inspector General of Police Mardan Region.
4. District Police Officer, Mardan.

OFFICE OF THE ADDL: IGP INVESTIGATION KHYBER PAKHTUNKHWA PESHAWAR

No. 3146-83/EC/Inv.

Dated Peshawar the 27/12/2013

Copy of above is forwarded for information & necessary action to the:-

1. DIG/HQ's/ Investigation CPO.
2. SSP Investigation CPO.
3. DSP Admn: Investigation.
4. SHO PS Investigation.
5. PA to Addl: IGP Investigation CPO
6. Accountant investigation.

SSP/ Investigation
For Addl: Inspector General of Police
Investigation, Khyber Pakhtunkhwa
Peshawar

JK

تزارش ہے کہ سائیلان سال 1991 میں بطور کنسٹیبلان کرائم برانچ میں جبرتی ہوئے۔
 راج میں لوڑ کورس اور انٹر کورس کا کوٹھ مخصوص نہیں تھا۔ اسکے باوجود ہم نے مختلف کورسز بھی کی ہیں مگر کوٹھ
 کی وجہ سے ہم کنسٹیبلان ورتج ہو گئے بعد میں لوڑ اور انٹر کورس اپنے اپنے صلح سے شروع ہوا ہم سائیلان سال
 21 میں ہیڈ کنسٹیبلان ترقی یاب ہوئے۔ تمام ہیڈ کنسٹیبلان خواندہ اور تعلیم یافتہ ہے۔ اور اپنے اپنے ڈیوٹیاں خوش
 ما اور ایمانداری سے سرانجام دے رہے ہیں افسران بالا کو شکایت کا کوئی موقعہ نہیں دیا استدعا ہے۔ کہ انوسٹی گیشن
 میں خالی اسامیاں ASI کے موجود ہے۔ لہذا ہمیں ASI کے عہدے پر ترقی دے دیا جائے۔ تاہم تازگی دعا گو اور
 رہیں گے۔

عرض کنندہ گان

1. طارق محمد HCN No. 141
2. محمد اعجاز HCN No. 127
3. محمد طارق HCN No. 128
4. مایون خان HCN No. 171
5. فضل رحمان HCN No. 167

Handwritten signature or mark at the bottom of the page.

(اپیل)

13

(بخدمت جناب انسپکٹر جنرل آف پولیس خیبر پختونخوا)

جناب عالی!

مودبانہ گزارش ہے کہ سائل جولائی 1991 میں کرائمنر برانچ میں بطور کنسٹیبل بھرتی ہوئے تھے۔ اس وقت

کرائمنر برانچ میں A-1, B-1 کا کوٹہ نہیں تھا۔ اور نہ اب تک ہے۔ سائل نے مختلف کورسز کئے ہیں اور ساتھ ہی ساتھ اور ترقی

ہونے کا درخواستیں بھی گزاریں۔ لیکن کوئی شنوائی نہ ہوئی اس کے بعد 1998 میں بغرض (Lein) اپنے اپنے متعلقہ اضلاع کو

تبادلہ کے احکامات جاری ہوئے لیکن بحکم محمد تنویر الحق DIG/Qrs صوبہ سرحد ہمیں متعلقہ اضلاع کو جانے نہیں دیا گیا۔ (نقل حکم

لف ہے)۔ سائل کو 2001 میں آفسران بالانے بطور ہیڈ کنسٹیبل ترقیباب کر دیا گیا۔ پھر 2012 میں سائل نے آفسران بالاکا

خدمت میں بعدہ ASI ترقیباب نے کے لئے درخواست گزاری۔ جس پر Addl:IGP/Inv صاحب نے طریقہ کار کے

بارے میں DIG-1 سے رائے مانگی جنہوں نے نوٹ شیٹ لکھ کر اس میں وضاحت کر دی اور ساتھ ہی ترقی کی سفارش بھی کی۔ اسی

نوٹ شیٹ کو Addl:IGP/Inv صاحب نے PDSP صاحب جو کہ آج کل AIG لیگل کی ڈیوٹی سرانجام دے رہے

ہیں کو بغرض قانونی آراء دینے کا حکم دیا۔ PDSP صاحب نے اس پر پولیس رولز باب 21, 25 کا حوالہ دیتے ہوئے قانونی

رائے دی کہ

Police Rules 21.25 is clear in the subject. The police officer's deputed to crime branch are eligible for officiation promotion.(copy enclosed)

لہذا اس پر Addl:IGP/Inv صاحب نے بمورخہ 21-4-2012 ترقیباب کرنے کی منظوری دی اسی

بناء پر DIG-1 اور ایس خان صاحب نے پر مشورہ آرڈر جاری کیا (آرڈر کاپی لف شد)۔ 1991 سے لیکر اب تک سائل نے

کبھی بھی آفسران بالاکا کو شکایت کا کوئی موقع نہیں دیا۔ اور اپنی ڈیوٹی نہایت خوش اسلوبی سے سرانجام دے رہے ہیں۔

مگر اب موجودہ Addl:IGP/Inv صاحب نے اسی PDSP حالیہ AIG لیگل سے رائے مانگی جنہوں

نے اپنے ہی سابقہ رائے کی نفی کرتے ہوئے دفعہ 21 سرورسز رولز کا حوالہ دیتے ہوئے ہماری دیرینہ عرصہ ملازمت کو تباہ کرتے

ہوئے سابقہ احکامات کو منسوخ کرنے کی رائے دی۔ جس پر بحوالہ حکم نامہ نمبری 11542-46/EC dated 13-12-2013 ہماری

عرصہ ملازمت کو مد نظر نہ رکھتے ہوئے ہمیں متنزل بھی اور سابقہ احکامات کو منسوخ بھی کیا گیا (کاپی ہمراہ لف ہے)۔ اور ساتھ ہی

ساتھ ہمیں متعلقہ اضلاع میں از کنسٹیبل رپورٹ کرنے کی ہدایات بھی جاری کر دی گئیں۔ اور عذر یہ بنایا گیا کہ ہم نے متعلقہ کورسز

پاس نہیں کئے۔ ان مذکورہ حالات میں ذیل عرضیات پیش خدمت ہیں کہ۔

۱۔ ہم سب تو کرائمنر برانچ کے بھرتی شدہ ہیں۔

۲۔ ہم پولیس پر رولز 25-21 کا اطلاق ہی نہیں ہوتا۔

۳۔ ہم تو افسران بالا کے حکم پر ہی کرائمنز برانچ میں رہے اور متعلقہ اضلاع کو رپورٹ نہیں کی۔

۴۔ ہماری طرح اور بھی 30, 40 ملازمین انوسٹی گیشن یونٹ سی پی پشاور میں ہیں کہ جنہوں نے A-I, B-I پاس نہیں کیا یا متعلقہ کورس نہیں کئے اور وہ ASI, HC SI اور Inspector ترقیاب ہوئے ہیں اور کچھ ایسے بھی ہیں کہ اپنی عہدوں پر پینشن بھی چلے گئے ہیں۔ اور اس طرح دوسری یونٹوں میں بھی ہیں۔

۵۔ کورسز پر ہمیں افسران نے ہی منتخب کر کے بھیجوانا تھا جو نہیں کیا گیا تو اس میں ہمارا کیا قصور ہے۔ کیا سا لہا سال تک ملازمت سرکار صرف اور صرف افسران کی پسند و ناپسند کے مطابق سرانجام دیں گے ہمیں اپنے جائز حق سے محروم کرنے کا ذمہ دار کون ہوگا۔ کیا سابقہ رائے PDSP غیر قانونی تھی اور اب AIG لیگل کی رائے قانونی حیثیت رکھتی ہے۔

۶۔ 2001-2002 میں بطور ہیڈ کنسٹیبل ترقیاب ہوئے تھے۔ اور اب بطور کنسٹیبل ہماری ڈبل ریورشن کر دی گئیں۔

لہذا ان مذکورہ بالا امور کو پیش نظر رکھا جا کر اور ہماری دراز عرصہ ملازمت کو بہ یک جنبش قلم تباہ کرنے میں مداخلت کیا جائے اور براہ کرم ہمارے ساتھ انصاف کیا جائے۔

ضلع علی

اس سے پہلے ہم نے سنٹر کے ایبل

18/2013
23/3/2013

الغرض:
سائل ہمایون خان

Ac

(15)

Amreen H

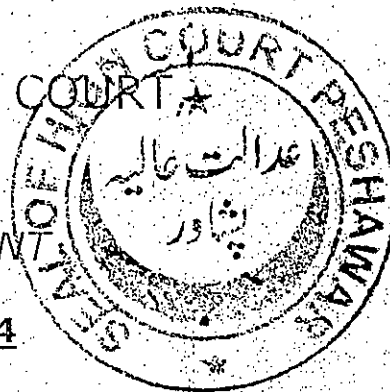
Judgment Sheet

IN THE PESHAWAR HIGH COURT
PESHAWAR

JUDICIAL DEPARTMENT

WP No. 93-P of 2014

JUDGMENT



Date of hearing.....17/01/2014.....

Petitioner...(Hamayun Khan etc) by Ms. Ambreen Gulzar,
Advocate

Respondent...(Govt. of Khyber Pakhtunkhawa through
Chief Secretary and 3 others)

MRS. IRSHAD QAISER, J:- Hamayun
Khan and three others, petitioners, seek the
constitutional jurisdiction of this Court,
praying that;

*"It is, therefore, prayed that on
acceptance of this writ petition
the:*

- (i) The impugned orders of demotion No.11542-46/EC dated 13.12.2013 and No.12092-99/EC dated 01.12.2013 may please be set aside.
- (ii) The impugned order of repatriation No.31480-83/E-II dated 26.12.2013 of petitioners to their parent

JQ

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JQ

ATTESTED

EXAMINER
Peshawar H. Court

20 JAN 2014

(15)

Approved: H

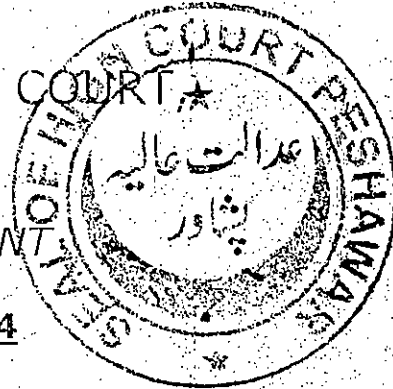
Judgment Sheet

IN THE PESHAWAR HIGH COURT
PESHAWAR

JUDICIAL DEPARTMENT

WP No. 93-P of 2014

JUDGMENT



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repatriation No.31480-83/E-
II dated 26.12.2013 of
petitioners to their parent

ATTESTED

EXAMINER
Peshawar High Court

20 JAN 2014

district may also be set aside and the Respondents may kindly be directed to:

- (a) Restore the posts/status of the petitioners in the Investigation/Crime Branch which they were holding before issuance of impugned orders.*
- (b) Refrain from stoppage of salaries an taking any punitive action against the petitioners till the final disposal of instant writ petition."*

2. In the present case, the grievances of the petitioners, in essence, are that they being Police Officials serving in Crime Branch, Peshawar as constables. The petitioners were initially promoted as Head Constables by respondent No.4 and subsequently they were promoted to the rank of Assistant Sub Inspectors in recognition of their performance vide order dated 21.04.2012 and they were receiving their salaries in BPS-09. The promotions granted to the petitioners were subsequently cancelled by respondent No.3 vide order dated 23.12.2013 and they were transferred to

J.S.

Y2

ATTEST
 EXAMINER
 Peshawar High Court.
 20 JAN 2014

(19)

not earlier, from the date of receipt of this Order.

6. Accordingly, this petition is disposed of in the above terms.

Announced:
Dt.17.01.2014.

sd/ Jeshal Daisez J
sd/ Lal Jan Chhattak J

Jeshal Daisez
JUDGE

Lal Jan Chhattak
JUDGE

File
20-1-2014

/*M.S.A*/

CERTIFIED TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1988

20 JAN 2014

20-1-14

10630

Date of Presentation of Application *20-1-14*
No. of Pages *14P*
Copying fee */*
Urgent Fee */*
Total *28.00*
Date of Preparation of Copy *20-1-14*
Date Given For Delivery *20-1-14*
Date of Delivery of Copy *20-1-14*
Received By *Hanyantla*

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POWER OF ATTORNEY

In the Court of K R R Sivasubramanian Pillai
Mamun Chou

- } For
- } Plaintiff
- } Appellant
- } Petitioner
- } Complainant

VERSUS

R P O Et

- } Defendant
- } Respondent
- } Accused

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

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

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Syed Anwar my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises 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 _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Sajid Amin
SAJID AMIN
ADVOCATE HIGH COURT
Legal Advisor Services & Labour Laws Consultants
FR-3-4, Fourth Floor, Bilour Plaza Peshawar Cantt.
Ph: 091-5272054, Mob: 0333-4564966, 03339155956

Ijaz Anwar
Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 & 4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 564/2014

HUMAYUN CONSTABLE Appellant

VERSUS

PROVINCIAL POLICE OFFICER, KPK AND THREE (03) Others Respondents

Subject: **REPLY /PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS**

PRELIMINARY OBJECTIONS:-

- (a): The appeal has not been based on facts.
- (b): The appeal is not maintainable in the present form.
- (c): The appellant has got no cause of action to file the service appeal.
- (d): The appellant has not come to the Service Tribunal with clean hands.
- (e): The appeal of appellant is barred by law and limitation.
- (f): Service Tribunal has no jurisdiction to entertain the appeal.
- (g): That the appeal is bad for non joinder and misjoinder of necessary parties.

Respectfully Sheweth:-

Facts:

1. Correct to the extent that the appellant was enlisted as Constable in the Crimes Branch (Now Investigation Wing CPO) while in fact the Crimes Branch under the Police Rules 21.25 is essentially a borrowing agency. Under the Police Rules district is competent to recruit/enlist constables at its strength.
2. The appellant was promoted to the next ranks i.e officiating Head Constable and thereafter officiating Assistant Sub-Inspector without qualifying any promotion courses which are mandatory under the Police Rules. Promotion lists of Police officers i.e (A-1, B-1, C-1, D, E and F are maintained in the district and range offices in accordance with Police Rules 13.6, 13.7, 13.8, 13.9, 13.10, and 13.15

respectively. The appellant was serving in Crimes Branch and his name was not existing in any of the promotion lists referred above, therefore he was illegally promoted to the next rank of Head Constable and onward. Furthermore, the alleged promotion has not been made by the competent authority.

3. Incorrect appellant's promotion to the next ranks was void ab-initio and no legal right accrues from illegal orders. Furthermore, under the Police Rules 1975 reversion from officiating rank is no penalty, therefore, neither disciplinary action nor notice is required in such matters.
4. Incorrect. Respondent No. 2 (Addl: IGP Investigation Wing CPO Peshawar) when checked the service dossier of the appellant, it was found that he was recruited as constable on 10.07.1991 by the Crimes Branch and subsequently promoted to the rank of officiating HC in 2002 and officiating ASI in 2012 despite the fact that he had not qualified promotion course of Lower School Course and his name was also not existing on promotion lists A1, B1 and C1. Moreover under the Police Rules 21-25 the Crimes Branch being borrowing agency is not competent to promote the Police officers /officials, hence, viewing the above irregularities and illegalities, respondent No. 2 issued reversion order of the appellant from the officiating rank of ASI to the substantive rank of constable. In fact annexure "D" is not a reversion order but it is cancellation of the promotion order dated 21.04.2012.
5. As submitted above that under the Police Rules 21-25 the Crimes Branch can only borrow Police officers/officials from Police districts and it is not competent to promote Police officers /officials serving under its command hence the appellant was rightly reverted to the substantive rank of constable. Regarding repatriation of the appellant to district Mardan it is submitted that under the PR 21-25 (1) Police officers/officials can serve the Crimes Branch for three years extendable by not more than two years. After expiry of the prescribed period stated above the Police officers/officials are required to be repatriated to their parent district. The appellant in his appeal at para 1 has admitted that he was serving in the Crimes Branch since 02.07.1991 and in para 5 he has admitted that in the year 2013 he was repatriated to district Mardan. Thus the appellant served in the Crimes Branch for more or less 22 years. The competent authority keeping in view the above rule repatriated the appellant to district Mardan and thus has upheld the spirit of law/rule.
6. Since reversion from officiating rank to the substantive rank is no punishment; therefore, the departmental appeal moved by the appellant is/was not sustainable.
7. Needs no comments as the writ petition was disposed of.

8. Incorrect Appellant was correctly reverted to the substantive rank of constable as he was wrongly promoted to the rank of HC and ASI. Moreover the appellant has never been confirmed in any rank to which he was promoted. Thus the order of reversion is quite lawful and needs no interference.

GROUNDS

- A. Incorrect, appellant has never been discriminated. He was treated in accordance with law and rules. Illegal promotion orders confer no right on appellant therefore the impugned order was just, legal and was passed in accordance with law and rules. "Mere passage of time could never and should never be allowed to convert an illegality into pristine purity of legal existence".
- B. Incorrect, reversion from the officiating rank to the substantive rank is no punishment as envisaged in Police Rules 1975 4(2) (b) therefore no departmental proceedings in shape of issuing charge sheet/show cause notice were required under the law and rules.
- C. Incorrect, appellant was promoted to the ranks of HC and ASI in violation of rules. He had neither qualified the prescribed courses nor his name existing in the prescribed promotion lists. Furthermore, confirmation in the lower rank is precondition for promotion to the next rank. Appellant was wrongly promoted to the rank of HC and ASI because he was never confirmed in the rank of constable, HC and ASI, therefore no legal valuable rights have accrued to the appellant on his illegal promotions.
- D. Incorrect, the alleged exception for enrolment in Crimes Branch is only for political branch which will be made with the approval of Deputy Inspector General of Police and the case of appellant does not fall within the purview of Police rule 21-25 (6).
- E. Incorrect. As submitted above the Crimes Branch is a borrowing agency and it is not competent to enroll /recruit constable while his stay in the Crimes Branch was more or less 22 years, thus the appellant is legally barred to raise objection on repatriation order to district Mardan. The appellant under the rules stated above was required to offer consent for transfer of his lien to his parent district for gaining promotion and regularization of his services.
- F. Incorrect. As submitted above the Crimes Branch is a borrowing agency hence legally no vacancy for recruitment/enrollment in any rank can be allotted to the said branch. Moreover his stay in the Crimes Branch was more than the five years

prescribed period hence he was repatriated to his parent district in accordance with the Police Rules.

- G. Incorrect. The non existence of quota for Lower and Intermediated courses to the Crimes Branch reflects that under the Police Rules the same is inherently rests within the domain of the district. Thus the appellant instead of adopting other means superfluous to the Police Rules for managing his promotion, he should have stacked to the Police Rules strictly so that to avoid any legal or procedural complications.
- H. Incorrect. Under the Police Rules 1934 the Crimes Branch can neither enroll constables, HC, ASI nor promote Police officers/officials to the next rank hence the Crimes Branch cannot keep lien of any Police officers/officials. The same is required to be kept with the district.
- I. Incorrect, the promotion of appellant was illegal ab-initio and he was never confirmed in the rank of constable, HC and ASI therefore he was correctly reverted to substantive rank of constable. Illegal promotion orders confer no right on appellant therefore the impugned order was just, legal and was passed in accordance with law and rules. "Mere passage of time could never and should never be allowed to convert an illegality into pristine purity of legal existence".
- J. Incorrect, appellant was wrongly promoted and he drew enhanced pay however, in view of his financial position and length of service no order for recovery of the enhanced amount received by him was made. Benefit of pay protection in case of illegal promotion order cannot be extended to the appellant.
- K. Incorrect. Officers illegally promoted were reverted to their substantive rank.
- L. Incorrect, illegal orders of promotion create no legal rights.
- M. Incorrect. Reversion from the officiating rank to the substantive rank is not a penalty within the meaning of Rule 4 (2) (b) of KPK Police Rules 1975. Thus service of show cause notice and initiating departmental action was not required.
- N. Incorrect. Reversion from the officiating rank to the substantive rank does not amount to penalty; therefore disciplinary proceeding is not required in such matters.
- O. Incorrect. Appellant was wrongly promoted to the next ranks for which he neither qualified the mandatory courses nor his name ever existed in the promotion lists as prescribed by the Police Rules, therefore reversion of appellant from two steps was legally justified.

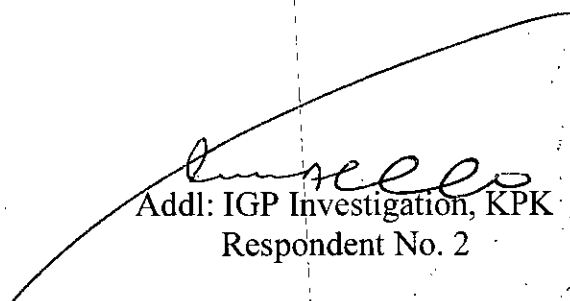
P. Incorrect. Appellant was required to make efforts for acquiring the prescribed qualifications for promotion to the next rank of HC and ASI. It appears from his service record that he has not made legitimate efforts for promotions in accordance with the rules, hence the question of his alleged spoiling of service career does not arise under the circumstances.

Q. Respondents may also be allowed to raise additional points during arguments.

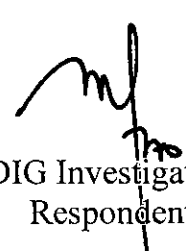
It is therefore prayed that appeal of the appellant being without any substance and devoid of any law/rules may be dismissed with costs.



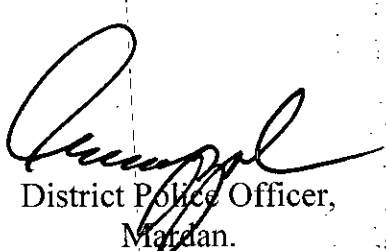
Provincial Police Officer, KPK
Respondent No. 1



Addl: IGP Investigation, KPK
Respondent No. 2



DIG Investigation CPO
Respondent No. 3



District Police Officer,
Matran.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In the Matter of
Appeal No. 546/2014

Hamayun Khan

Appellant

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and
others.

Respondents

**REJOINDER OF THE PARAWISE COMMENTS FILED
BY THE RESPONDENTS.**

RESPECTFULLY SUBMITTED.

That the appellant submit his rejoinder as under:-

ON PRELIMINARY OBJECTIONS:-

- a. Contents incorrect and misleading, the appeal is based on facts.
- b. Content incorrect and misleading, the appeal being filed well in accordance with the prescribed rules and procedure, hence maintainable in its present form.
- c. Contents incorrect and misleading, the appellant has illegally reverted to lower rank, hence he has got the necessary cause of action to file the instant appeal.
- d. Contents incorrect and misleading, the appellant has come to the Tribunal with clean hands.
- e. Contents incorrect and misleading, the appeal is filed well within the prescribed period of limitation and is maintainable under the law.
- f. Contents incorrect and misleading, the appellant is a Civil Servant and the appeal is related of the terms and conditions of his service, hence only this Honourable Tribunal has got the jurisdiction to entertain and adjudicate the instant appeal.

- g. Contents incorrect and misleading, Contents incorrect and misleading, all parties necessary for the disposal of the appeal and arrayed in the appeal.

ON FACTS:-

1. Contents need no reply, however, contents of Para 1 of the appeal are correct. Moreover, the Crime Branch is an Independent Unit and can make appointments / promotion of its employees.
2. Contents of Para 2 of the appeal are correct, the reply are correct. The reply submitted of the Para is incorrect and misleading, the appellant was promoted by the competent authority after observing all the codel formalities, moreover, the promotion orders of the appellant were issued in the year 2002, and 2012 respectively the appellant had taken charge of the higher rank, and had performed duties and received salaries against the promoted posts / rank hence the promotion orders had acted upon and taken its legal effect, therefore, the same could not be withdrawn / cancelled that too after a considerable long period. Moreover, the contention of the respondents is in violation of manual duly approved by the IGP / Govt. promulgated for crime branch and its ancillary units. Furthermore, there are good number of the other employees in the crime branch who also got promotion in the same branch and are still serving there.
3. Contents of Para 3 of the appeal are correct, the reply submitted of the Para is incorrect and misleading, moreover as explained in the above para.
4. Contents of Para 4 of the appeal are correct, the reply submitted of the Para is incorrect and misleading. It is also added here that the respondent No. 2 himself made promotions of different officers / officials serving in the crime branch in past.
5. Contents of Para 5 of the appeal are correct, the reply submitted of the Para is incorrect and misleading. Moreover, the appellant initial appointment was made in the crime branch (Investigation Wing) he during the course of his service got promotion to the higher rank in the same branch, hence there arise no question his

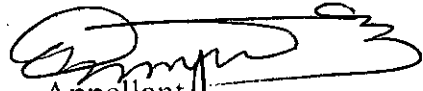
repatriation to other district, moreover, the appellant has also been discriminated as other employees.

6. Contents of Para 6 of the appeal are correct, the reply submitted of the Para is incorrect and misleading.
7. Contents of Para 7 of the appeal are correct, the reply submitted of the Para is incorrect and misleading.
8. Contents of Para 8 of the appeal are correct, the reply submitted of the Para is incorrect and misleading.

GROUND:-

Grounds (A to Q) 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

IJAZ ANWAR

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.


DEPONENT

ATTESTED

