

E.P. No. 223/2019
Minhaj SIKandar

7th Oct, 2022

Petitioner in person present. Mr. Kabirullah Khattak,
Addl: AG alongwith Mr. Khalil, SI for respondents
present.

Representative of the respondents submitted objection
petitioner which is placed on file. A copy of the same is
also handed over the petitioner. To come up for further
proceedings on 10.11.2022 before S.B.

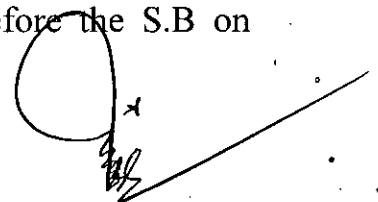


(Kalim Arshad Khan)
Chairman

10.11.2022

Petitioner in person present. Mr. Kabirullah Khattak, Additional
Advocate General alongwith Mr. Khalil Khan, Inspector for the
respondents present.

As per previous order sheet, objections submitted by the
respondents, have been shared with the learned counsel for petitioner.
Petitioner requested for adjournment on the ground that his counsel is
not available today. Request is acceded to by way of last chance.
Adjourned. To come up for further proceedings before the S.B on
01.12.2022.

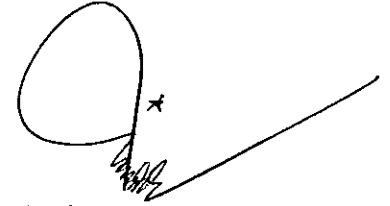


(Mian Muhammad)
Member (E)

15.08.2022

Petitioner in person present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. None present on behalf of the respondent department.

Notice be issued to the respondents for submission of objection petition. Adjourned. To come up for further proceedings before the S.B on 05.09.2022.



(Mian Muhammad)
Member (E)

05.09.2022

Petitioner present in person. Mr. Kabir Ullah Khattak, Additional Advocate General alongwith Zia Ullah, IIC for respondents present.

Representative of the respondent department submitted reply to objection petition No. 5577/ES, dated 25.08.2022 which is placed on file. A copy of the same is handed over to the petitioner and learned AAG also. To come up for further proceedings on 06.10.2022 before S. B.



(Farceha Paul)
Member (E)

E.P. No. 223/2019
Minhaj SIKANDAR vs Gurt

28.06.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Khalil S.I for the respondents present.

Respondent department submitted implementation report wherein request has been made for submission of objection petition on the ground that certain legal issues were involved in execution of the Service Tribunal judgement dated 26.03.2019. Learned AAG was confronted with the question as to why this point had not been raised at appropriate time after the said judgement and now being raised after three years? He simply replied that the respondents were obligated to implement the judgement, however, sometimes certain legal issues were involved due to which such requests were posed before the Honourable court i.e. Service Tribunal. He stated at the Bar and committed to submit/file objection petition within the requested time i.e. within 2 weeks. The Bench considering the commitment/submission of learned AAG at the Bar and interest of justice allows the respondents to submit objection petition within 02 weeks positively. Adjourned. To come up for further proceedings before the S.B 25.07.2022 at Camp Court D.I.Khan.

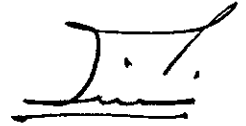


(Kalim Arshad Khan)
Chairman
Camp Court, D.I.Khan

26.05.2022

Petitioner alongwith his counsel present. Mr. Qayum Khan, Senior Clerk as representative for respondents present.

Representative of the respondents stated at the bar that process for implementation of the judgment has been initiated and will soon be finalized. The Execution Petition in hand is pending since 2019 and implementation report has not been produced before the Tribunal. Respondents are directed to ensure the implementation of the judgment under execution without further delay, failing which coercive measures shall be taken against them in accordance with law. To come up for implementation report on 28.06.2022 before the S.B at Camp Court D.I.Khan.




(Salah-Ud-Din)
Member (J)
Camp Court D.I.Khan

16.12.2021

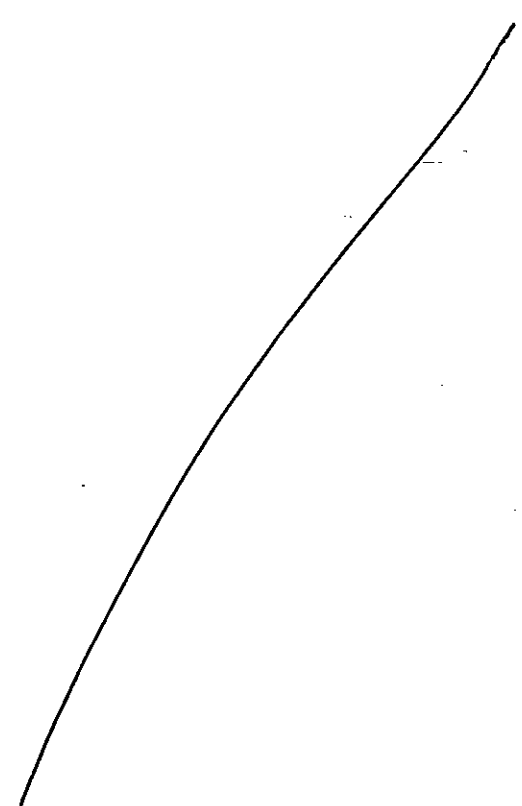
Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Khalil, S.I (Legal) for the respondents present.

Representative of respondents seeks further time to submit implementation report. Respondents are directed to implement the judgment under execution and subsequent order dated 23.11.2021 in letter and spirit and submit compliance report on 27.01.2022 before S.B at camp court, D.I.Khan.


Chairman
Camp Court, D.I.Khan.

27.01.2022

Order is cancelled, therefore,
case is adjourned to
for the same
as before. 26.5.22
Reader.



23.11.2021

The petitioner alongwith his counsel and Mr. Muhammad Rasheed, DDA alongwith Muhammad Khalil, S.I (Legal) for the respondents are present.

The learned Deputy District Attorney produced copy of letter No. 5051/ES, dated 20.11.2021 addressed to the Additional Advocate General Khyber Pakhtunkhwa Service Tribunal, Peshawar with reference to his letter dated 17.11.2021 on the subject of Execution Petition No. 229/2019. As ascertained from the information contained in the said letter and from its annexure i.e. minutes of the meeting of Regional Departmental Committee (RDC) held on 11.02.2020, the said committee was constituted at regional level in pursuance to a decision of Departmental Selection Committee (DSC) as constituted by the Inspector General of Police in aftermath of the judgment at credit of petitioner. On reference of DSC, the RDC discussed the direction given in the judgment of this Tribunal as reflected in the minutes of its meeting regarding assignment of seniority to the appellant/petitioner from "due date". The RDC unanimously agreed to revise the seniority list of 2014 in accordance with the rules, judgment of Service Tribunal dated 26.03.2019 as well as directions of IGP Khyber Pakhtunkhwa Peshawar vide letter dated 02.12.2019. It is mentioned in the minutes of RDC that the seniority list was revised by it and new/fresh seniority list "E" 2014 has been issued, wherein the name of petitioner has been placed at Serial No. 52 above the name of OSI Ebad Wazir, 89/D and below the name of OSI Saleem Pervez, 87/D. Formal order dated 19.02.2020 as annexed with the letter to AAG was issued in furtherance of the minutes of meeting to comply with judgment of the Tribunal dated 26.03.2019. Evidently, on acceptance of petitioner's appeal, the impugned seniority list dated 12.03.2014 was set aside followed by direction to respondents to assign seniority to him from the due date. However, it is not deducible from the minutes discussed above that what meaning was assigned to the expression "due date" as used in the operative part of judgment under execution, as far as revision of

seniority list is concerned. Therefore, it has become expedient to draw parameters for the expression "due date" as used in operative part of the judgment dated 26.03.2019 for its execution in letter and spirit.

It is a matter of rule that the confirmation of the petitioner on the post of A.S.I of police being direct appointee was to be reckoned from the date of his appointment made on 19.02.2009, on completion of prescribed probation period; but due to its having been reckoned otherwise with adverse effect on appellant's seniority, service dispute arose compelling him to invoke the jurisdiction of this Tribunal. The direction given in the judgment under execution to assign seniority to the petitioner from due date is not divertible to reckon any other date of his confirmation than the date of appointment after completion of probation period as PASI. The mode and manner for determination of date of confirmation of PASI is not similar to that of Executive cadre of the police officers. To make the said proposition understandable, reference to Chapter XII of the Police Rules, 1934 is necessary, which deals with appointments and enrolments of police officers. Irrespective of the appointment being one made by promotion or direct recruitment, all appointments of enrolled police officers, within meaning of Sub Rule (3) of Rule 12.2 of the Police Rules, 1934 are considered on probation. According to Rule 12.8, Inspectors, Sergeants, Sub Inspectors and Assistant Sub Inspectors who are directly appointed will be considered to be on probation for three years and are liable to be discharged at any time within the period of their probation. The same Rule i.e. 12.2(3) provides that seniority, in the case of upper subordinates, will be reckoned in the first instance from date of first appointment. Seniority shall, however be finally settled by date of confirmation, the seniority *inter se* of several officers confirmed on the same date being that allotted to them on first appointment remains the same. It is also provided in Rule 12.2(3) that the seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12.24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date. Chapter XXIII of Volume-II of Police Rules, 1934 contains the provisions describing mode and manner of promotions for the ranks comprising Constable, Head Constable (HC), Assistant Sub Inspector (ASI), and

Sub Inspector (SI) of Police. Sub Rule (3) of Rule 13.1 provides that for the purposes of regulating promotion amongst enrolled police officers, six promotion lists A, B, C, D, E and F will be maintained. It is further provided thereby that lists A, B, C, D shall be maintained in each district as prescribed in rules 13.6, 13.7, 13.8, and 13.9 respectively. Rule 13.10 of the ibid rules provides for maintaining of List "E" at regional level and Rule 13.15 for maintaining of List "F" at provincial level. According to scheme of the said lists, they are meant for the ranks of Constable, HC, ASI, and SI of Police to maintain their seniority for the purpose of promotion. Among the said ranks, appointment to the post of ASI and SI besides by way of promotion from the lower ranks is also made through direct recruitment. List "D" is maintained for the rank of HC for their promotion to the rank of ASI while list "E" is maintained for the rank of ASI for their promotion to the rank of SI and List "F" for the rank of SI for their promotion to the rank of Inspector. Undeniably, there are two categories of officers whose names are enlisted in List "E" and "F". One category comprises the officers who in common parlance are called rankers and are brought forward from list "D" to List "E" in case of ASI and from List "E" to list "F" in case of SIs. The other category comprises directly recruited ASIs and SIs who in common parlance are called probationers. Section 13 of the Khyber Pakhtunkhwa Act, 2017 envisages the organization of police establishment on functional basis. Legal Affairs Branch has been individualized among the functional branches enumerated under sub section (3) of Section 13 ibid. Thus, the probationers of the Legal Affairs Branch in terms of their functional duty are distinguishable from holders of executive posts in the branches of police responsible for general policing functions. PASI or Sub Inspector (Legal) make part of the Legal Affairs Branch of police and they are not liable to meet the requirements for confirmation as provided for ASI/SI in executive cadre who despite their enlistment in List "D" and "E" remain officiating until they mete out the prescribed criteria for their confirmation in addition to satisfactory completion of probation period on appointment either made by direct recruitment or by promotion. On the other hand, there is no such additional criteria for PASIs or SIs (Legal) except their automatic confirmation on completion of prescribed probation period. I have no hesitation to hold that a PASI

appointed by direct recruitment becomes entitled for confirmation from the date of his appointment on automatic confirmation after satisfactory completion of prescribed probation period and in turn, for his enlistment in List "E" from the date of confirmation which remains the same as his date of appointment. Consequently, his seniority in list "E" is supposed be treated accordingly. The SI (Legal) appointed either by direct recruitment or by promotion becomes entitled for confirmation from the date of his appointment after satisfactory completion of the probation period, and in turn for direct enlistment in list "F" prescribed to maintain seniority for the post of Inspector. The forgoing guidelines have been laid down with reference to the law on the subject for convenience of the respondents to revise the seniority of petitioner within parameters of expression "due date" as drawn herein-before to delineate the spirit of the judgment at credit of petitioner. The respondents are directed to actualize the seniority of the petitioner in letter and spirit of the judgment of this Tribunal to ensure its implementation without further delay. To come up for implementation report on 16.12.2021.



Chairman
Camp Court, D.I.Khan

E.P No. 223/2019

28.09.2021

Petitioner alongwith his counsel present. Mr. Rehmatullah, Superintendent alongwith Mr. Usman Ghani, District Attorney for the respondents present and stated that time may be granted to them for submission of reply of objections filed by the petitioner. Adjourned. To come up for reply of objections as well as further proceedings before the S.B at Camp Court D.I.Khan on 23.11.2021.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

24.02.2021

Learned counsel for the petitioner present.

Mr. Riaz Khan Paindakhel learned Asst. AG alongwith Zia Ullah H.C for respondents present.

Representative of respondents produced letter addressed to Provincial Police Officer requesting for permission to conditionally implement the judgment of this Tribunal till the outcome of CPLA. It was noted that the instant execution petition was instituted on 27.05.2019 and till date respondents have not implemented the judgment of this Tribunal which, however was required to be implemented. The respondents are putting forth lame excuses under one pretext or the other. However, it is very clear from minutes of the DSC meeting held on 24.09.2019 that the committee recommended that judgment of this Tribunal be sent to RPO D.I Khan for further necessary action as issue of seniority in list E is the legal mandate of Regional office D.I Khan. In such a decision, the RPO D.I Khan is directed to decide the case within a week. In view of the clear instructions in minutes of the said meeting asking PPO ~~action~~ for permission makes no sense.

In a situation DIG D.I Khan Range be put on notice for 25.05.2021 to depute a responsible officer to apprise ^{The} Tribunal ^{The} in respect of Implementation of the judgment before S.B at Camp Court, D.I Khan.




(Atiq Ur Rehman Wazir)

Member (E)

Camp Court, D.I Khan

Due to covid,19 therefore to
come up for the same on 28/9/21



Reader

23.02.2021

Petitioner with counsel present.

Riaz Khan Paindakhel learned Assistant AG alongwith Mr. Khalil SI for respondents present.

Implementation/progress report not submitted. Representative of respondents seeks time to submit implementation/progress report. Time was sought. To come up for implementation/progress report on 24.02.2021 before S.B at Camp Court, D.I Khan.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, D.I Khan

24.11.2020

Petitioner with counsel and Muhammad Jan, learned DDA alongwith Khalid Nawaz Inspector for respondents present.

Counsel for petitioner seeks adjournment. Adjourned to 25.11.2020 before S.B at Camp Court, D.I. Khan.



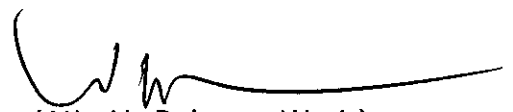
(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, D.I. Khan

25.11.2020

Petitioner with counsel and Mr. Muhammad Jan, learned DDA alongwith Khalid Nawaz, SI for respondents present.

Representative of respondents produced an order dated 08.09.2020, whereby a Regional Departmental Scrutiny Committee is constituted to consider the various case of affected officers in seniority/promotion. Another order dated 08.09.2020 is also provided, whereby the Superintend of Police Investigation Unit Tank was intimated that the present petitioner has preferred his application for rectification/ revision of his confirmation/admission to list E. He was directed to place his case before the committee.

The representative of respondents stated at the bar that the issue of present petitioner will be discussed in the committee and progress report will be submitted after the committee held its meeting. The respondents are directed to submit progress report for the date fixed. To come up for implementation/progress report on 23.12.2020 before S.B at Camp Court, D.I Khan.



(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, D.I.Khan

23.12.2020

Due to Covid-19 case is
adjourned to 23.02.2021 for
the same as before




28.10.2020

Petitioner is present in person. Mr. Usman Ghani, District Attorney and Mr. Khalid Nawaz, Inspector (Legal), for the respondents are also present.

2. AIG (Legal) has not forth come despite directing him on the previous date of hearing to appear before the Tribunal. According to the learned District Attorney he has proceeded to the august Supreme Court of Pakistan vide the notice issued by the august court, copy of which has been produced and placed on record. As regards the attendance of AIG (Legal), learned District Attorney submitted that the current issue is a Regional, therefore, his attendance in the instant petition would be unnecessary, the plea so submitted is appropriate, however, Khalid Nawaz, Inspector (Legal), has to attend the proceedings before the Tribunal regularly.

3. Petitioner has submitted written objections on the implementation report of the judgment of this august Tribunal dated 26.03.2019, the copy of objections was handed over to learned District Attorney who is seeking time for putting forth his submission. Time given. To come up for arguments on the issue on 24.11.2020 before S.B at Camp Court, D.I.Khan.


(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT D.I.KHAN

23.09.2020

Petitioner alongwith his counsel present.

Mr. Usman Ghani, learned District Attorney alongwith Muhammad Khalil S.I (Legal) for respondents present and submitted a report dated 11.02.2020 which will be discussed on the next date in presence of AIG (Legal).

It was on 25.02.2020 when DSP (Legal) District D.I Khan was directed to appear in person alongwith implementation report but today S.I (Legal) is present in court and is unable to apprise the Tribunal in respect of implementation of the judgment of this Tribunal. Reportedly, post of DSP (Legal) D.I.Khan is vacant, therefore, AIG (Legal) being put on notice for 28.10.2020 to attend this Tribunal in person and to apprise the Tribunal in respect of implementation of the judgment, before S.B at Camp Court D.I.Khan.



(Rozina Rehman)
Member (J)
Camp Court, D.I Khan

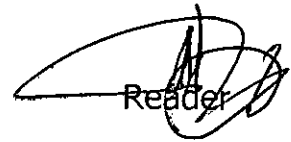
26/3/2020

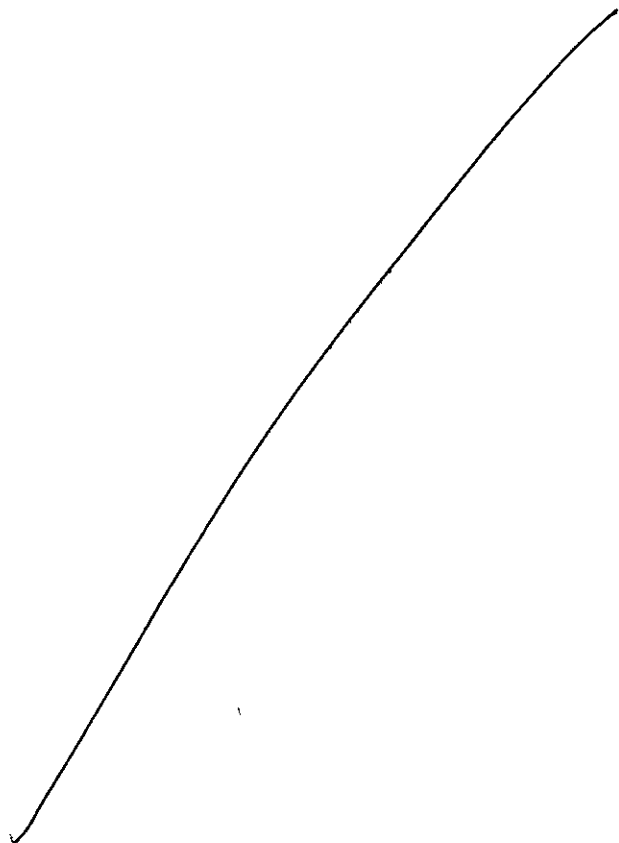
Due to COVID-19 the case is adjourned. To come up for the same 22/4/2020 at Camp Court, D.I Khan


Reader

22/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 23/4/2020 at Camp Court, D.I Khan


Reader



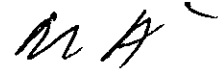
Minhaj Sikandar

25.02.2020

Petitioner in person and Mr. Usman Ghani, District Attorney alongwith Mr. Khalilullah, S.I (legal) for the respondents present.

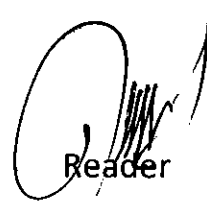
Representative of the department stated that the implementation report is in process and requested for adjournment. Last chance is given to the respondents for filing of implementation report.

DSP (Legal) of District D.I.Khan is also directed to appear personally on the next date alongwith Implementation report. To come up for attendance of DSP (Legal) District D.I.Khan and implementation report on 26.03.2020 before S.B at Camp Court D.I.Khan.




(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

23/10/2019 Since tour to D.I.Khan has been cancelled .To come for the same on 26/11/2019.




Reader

26.11.2019 Petitioner in person and Mr. Ziaullah Deputy District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Implementation report not submitted. Representative of the department requested for adjournment. Adjourned to 28.01.2020 for implementation report before S.B at Camp Court D.I.Khan.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan


28.01.2020 Petitioner in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Khalil, S.I (Legal) for the respondents present. Representative of the department stated at the Bar that the implementation report is under process and requested for further time for filing of implementation report. Adjourned to 25.02.2020 for implementation report before S.B at Camp Court D.I.Khan.



(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan


26.06.2019

Petitioner alongwith his counsel and Mr. Tariq Aziz, District Attorney alongwith Mr. Attaullah, S.I (Legal) for the respondents present. Implementation report not submitted. Representative of the department requested for adjournment. Adjourned to 26.08.2019 for implementation report before S.B.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

26.08.2019

None present on behalf of the petitioner. Mr. Tariq Aziz, District Attorney alongwith Mr. Khalil Ahmad, S.I (Legal) for the respondents present. Implementation report not submitted. Representative of the department requested for further adjournment. Last chance is granted to the respondents for filing of implementation report. Adjourned to 24.09.2019 for implementation report before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

24.09.2019




Learned counsel for the petitioner present. Khalil Ahmad ASI representative of the respondent department present and stated that implementation of judgment in question is in process and to this effect, submitted office letter dated 13.09.2019. Adjournment requested. Adjourn. To come up for further proceedings on 23.10.2019 before S.B at Camp Court, D.I.Khan.


Member
Camp Court, D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 223/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27.5.2019	<p>The execution petition of Mr. Minhaj Sikandar submitted today by Mr. Muhammad Abdullah Baloch Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 27/5/19</p>
2-		<p>This execution petition be put up before S. Bench on <u>27/5/2019</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	27.05.2019	<p>Petitioner in person present.</p> <p>The respondents shall be given notice for submission of implementation report before S.B at camp court, D.I.Khan on 26.06.2019.</p> <p style="text-align: right;"> Chairman</p>