

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

Appeal No. 1107/2017

Date of Institution ... 18.09.2017

Date of Decision ... 26.03.2019

Muhammad Hussain Jorh S/o Ghulam Hussain, R/o Ejazabad, Muryali, D.I.Khan
(Ex Police Inspector BPS-16-D-11 Tank). ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs
Department, Peshawar and two others. ... (Respondents)

MR. RUSTUM KHAN KUNDI,
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney

--- For respondents

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

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

ARGUMENTS

2. Learned counsel for the appellant argued that the he was serving as Inspector
(BPS-16) under the administrative control of the respondents. That a meeting of the
DPC was held on 10.10.2012, wherein promotion cases of officers junior to the
appellant were considered/cleared but that of the appellant deferred for want of
PER. He preferred a representation before PPO on 14.7.2017, which was disposed
off through order dated 7.12.2015, communicated to him through letter dated
22.12.2015. In the light of observations contained in the said letter, his case for
confirmation was again discussed in the meeting of Departmental Promotion
Committee held on 8.10.2015 and deferred due to incomplete PER dozier. The

appellant again filed representation, which was turned down vide order dated 28.8.2018 followed by the present service appeal.

3. Learned counsel for the appellant further argued that according to the method of recruitment, the appellant was fully eligible for promotion and this fact was admitted /conveyed by the respondent vide order dated 7.12.2017. As PER record was in the custody of respondents so deferment of his promotion smacked of malafide on their part. Reliance was placed on case law reported as 2008 SCMR 1535, 2008 SCMR 1138 and 2017 SCMR 399.

4. Learned Deputy District Attorney argued that the case of appellant for confirmation as Inspector was discussed in DPC meeting held on 8.10.2015 and deferred for want of PER. Moreover, the appellant remained out of service from 2013 to 2015 due to imposition of major penalty of compulsory retirement and thereafter reinstated in service. The appellant stood retired from government service on reaching the age of superannuation on 02.02.2016. He filed representation after considerable delay and was not worth consideration being badly time barred.

CONCLUSION.

5. The appellant was senior most Inspector (BPS-16) and fully eligible for promotion to the rank of DSP. A meeting of Departmental Promotion Committee was held on 10.10.2012, wherein case of the appellant for promotion was deferred for want of PER and juniors were promoted. Feeling aggrieved, he filed departmental representation copy of which is not available on case file. A letter issued from the office of PPO dated 07.12.2015 indicated that the DPC examined his representation on 19.11.15 and decided that his case for confirmation was discussed in the meeting of Departmental Promotion Committee meeting on

8.10.2015 and deferred due to incomplete PER. His case will be considered for promotion in next meeting of the DPC on merit. In the meanwhile on reaching the age of superannuation, he stood retired from government service 02.02.2016. As meeting of the DPC was not convened by the respondents, so he filed another representation on 14.07.017, which was filed on 31.08.2017, hence, the present service appeal.

6. The information gathered from the case file indicated that due to imposition of major penalty of compulsory retirement he remained out of service for two years. Subsequently, he was reinstated in service. It appears to be the main cause of delay in processing his promotion case in time. Moreover, respondents were well aware of his date of retirement and were under obligation to process his promotion case promptly. Due to their laxity/in action the appellant is suffering recurring financial loss in the shape of less pension/gratuity. His case cannot be shelved on technical grounds and to hide lethargy and malafide of the respondents. Being a retired government servant, he deserves to be promoted as DSP from the due date on notional basis from the due date. It will enable him to draw pension/gratuity according to his entitlement.

7. Consequently, the appeal is accepted. The respondents are directed to process the case of the appellant for notional promotion. Parties are left to bear their own costs. File be consigned to the record room.


(HAMID FAROOQ DURRANI)
CHAIRMAN



(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

ANNOUNCED
26.03.2019

22.01.2019 Appellant with counsel and Mr. Farhaj Sikandar,
District Attorney alongwith Muhammad Tahir, S.I (Legal)
for the respondents present.

Learned counsel for the appellant requests for
adjournment. Adjourned to 26.03.2019 for arguments
before the D.B at at camp court, D.I.Khan.


Member


Chairman
Camp Court, D.I.Khan


Order

26.03.2019 Counsel for the appellant present. Mr. Farhaj Sikandar,
Deputy District Attorney alongwith Mr. Muhammad Tahir, S.I
(Legal) for respondents present. Arguments heard and record
perused.

Vide our detailed judgment of today of this Tribunal placed
on file, the appeal is accepted. The respondents are directed to
process the case of the appellant for notional promotion. Parties are
left to bear their own cost. File be consigned to the record room.


Announced:
26.03.2019


(Hamid Farooq Durrani)
Chairman


(Ahmad Hassan)
Member
Camp Court D.I.Khan

28.11.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Nawaz, IHC on behalf of the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 18.12.2018 before D.B at Camp Court D.I.Khan.


(Ahmad Hassan)

Member

Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)

Member

Camp Court D.I.Khan

18.12.2018

As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 18.12.2018 has been rescheduled and the case is re-fixed for 27.12.2018.

Reader

27.12.2018

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 22.01.2019 before D.B at Camp Court D.I.Khan.


(Hussain Shah)

Member

Camp Court D.I.Khan


(Muhammad Amin Khan Kundi)

Member

Camp Court D.I.Khan

22.06.2018

Appellant Muhammad Hussain in person present. Mr. Muhammad Nadim HC for the respondents present and written reply/comments submitted. To come up for rejoinder, if any, and arguments on 29.08.2018 before the D.B at camp court, D.I.Khan.


Chairman
Camp Court, D.I.Khan

29.08.2018 ~~Appellant~~ present. No one present on behalf of respondent. Court is hereby cancelled. Therefore the case is adjourned for the same as 22-10-18 at camp court D. I. Khan


22-10-18

Court is hereby cancelled, therefore the ~~heavily~~ case is adjourned for the same as 27-11-18 at camp court D. I. Khan.

27.11.2018

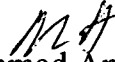
Appellant in person present. Mr. Usman Ghani, District Attorney for respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned for tomorrow i.e 28.11.2018 before D.B at camp court D.I.Khan.


(Ahmad Hassan)
Member


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


22.02.2018

Appellant in person present. Mr. Usman Ghani, District Attorney alongwith Mr. Abdul Ali, ASI for the respondents also present. Written not reply submitted. Representative of the department requested for further adjournment. Adjourned. To come up for written reply/comments on 15.03.2018 before S.B at Camp Court D.I.Khan.


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

15.03.2018

Appellant in person and Mr. Ziaullah, DDA alongwith Mr. Nadeem, LHC for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply on 28.06.2018 before D.B.


(AHMAD HASSAN)
MEMBER
Camp Court D.I.Khan

25.05.2018

As per direction of the Hon'ble Chairman, court to D.I.Khan is rescheduled. To come up for arguments on 21.06.2018 instead of 26.06.2018. Notice be issued to the parties accordingly.


Member

Service Appeal No. 1107/2017

29.12.2017

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant is serving in Police Department as Inspector. It was further contended that Departmental Promotion Committee meeting was held on 10.10.2012 and the appellant was not promoted to the rank of DSP due to shortage of ACRs. It was further contended that the appellant filed departmental appeal which was rejected on 07.12.2015. It was further contended that again Departmental Promotion Committee meeting was held on 08.10.2015 and the appellant was again deferred due to incomplete ACRs and it was observed that his case be considered in the next DPC, despite being senior, eligible and fulfilling the criteria for promotion to the rank of DSP the appellant was not promoted. It was further contended that the appellant again made representation on 14.07.2017 when DPC meeting could not be held till July 2017 which was turned down on 31.08.2017 hence, the present service appeal on 18.09.2017. It was further contended that the appellant was deferred from promotion due to incomplete ACRs but the same is not fault of the appellant rather the same is fault of the respondents department therefore, the respondents have illegally deferred the appellant from promotion and the appellant is deserve to ante-date promotion from 10.10.2012

The contentions raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing. The appellant is directed to deposit the security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 22.02.2018 before S.B at Camp Court D.I.Khan.


Appellant Deposited
Security & Process Fee



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

30.11.2017


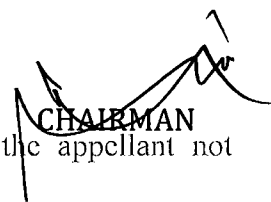
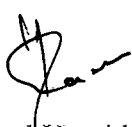
Clerk of the counsel for appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on 29.12.2017 before S.B at Camp Court D.I.Khan.


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

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 1107/2017


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/10/2017	<p>The appeal of Mr. Muhammad Hussain Jorh received today by post through Mr. Rustam Khan Kundi Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 9/10/17</p>
2-		<p>This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>26.10.17</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>26.10.2017 Appellant and counsel for the appellant not present. Notice be issued to the appellant and his counsel. To come up for preliminary hearing on 30.11.2017 before S.B at Camp Court D.I.Khan.</p> <p style="text-align: center;"> (Muhammad Ilamid Mughal) Member (J) Camp Court D.I.Khan</p>

The appeal of Mr. Muhammad Hussain Jorh son of Ghulam Hassain r/o Ejaz Abad Muryali Dera Ismail Khan received today i.e. on 19.09.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of minutes of the DPC Meeting held on 8.10.2015 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of first departmental appeal mentioned in para-2 of the memo of appeal is not attached with the appeal.
- 3- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.

No. 1242/S.T,

Dt. 19/9/2017

to 
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Rustam Khan Kundi Adv.
High Court D.I.Khan.


Received at D.I.Khan
29.9.17.

Sir

1. The said Resolution is a part of the note portion or indoor management of the affairs of the Respondent no:2 and its copy is not receivable usually and during proceedings, the Respondent no: 2 would be obliged to admit such fact or record under the provisions of O11 & O12 of the CPC. The omission is thus regretted.
2. The copy is present on pp- 6 & 7 of the Appeal.
3. The Annexures dt 22.12.2015 - 14-7-2017 & 31-8-2017 are detentive

The Appeal may thus kindly be placed in the Cause list of the Bench who visit D.I.Khan.

The Deemed Registrar
S.T. Peshawar

Yours Truly
Muhammad Hussain
Appellant
Through:  Adv. 61011

BEFORE KPK SERVICE TRIBUNAL – PESHAWAR

S.T.A No: 1107/2017

**MUHAMMAD HUSSAIN JORH S/O GHULAM HASSAIN
R/O; EJAZ ABAD, MURYALI, D.I.KHAN (EX POLICE INSPECTOR BPS-16-
D-11 TANK)**

APPELLANT

V/S

- 1. THE GOVT OF K.P.K THROUGH SECRETARY HOME & TRIBAL AFFAIRS DEPARTMENT, PEHAWAR.**
- 2. THE INSPECTOR GENERAL OF POLICE (PROVINCIAL POLICE OFFICER) CENTRAL POLICE OFFICE- PESHAWAR**
- 3. THE REGIONAL POLICE OFFICER (DIG)-D.I.KHAN POLICE RANGE, DERA ISMAIL KHAN.**

RESPONDENTS

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Muhammad Hussain
Appellant
13-8-17

(1)

BEFORE KPK SERVICE TRIBUNAL – PESHAWAR

S.T.A No: 1107/2017

MUHAMMAD HUSSAIN JORH S/O GHULAM HASSAIN
R/O; EJAZ ABAD, MURYALI, D.I.KHAN (EX POLICE INSPECTOR BPS-16-
D-11 TANK) Khyber Pakhtunkhwa
Services Tribunal

Case No. 1082 -- APPELLANT

V/S

Date: 18/9/2017

1. THE GOVT OF K.P.K THROUGH SECRETARY HOME & TRIBAL AFFAIRS DEPARTMENT, PESHAWAR.
2. THE INSPECTOR GENERAL OF POLICE (PROVINCIAL POLICE OFFICER) CENTRAL POLICE OFFICE- PESHAWAR
3. THE REGIONAL POLICE OFFICER (DIG)-D.I.KHAN POLICE RANGE, DERA ISMAIL KHAN.

RESPONDENTS

FURTHER REPRESENTATION UNDER SECTION.4 OF K.P.K SERVICE TRIBUNAL ACT, (1) 1974 AGAINST ORDER DATED 07.12.2015, FOLLOWING THE ORDER DATED 08.10.2015 AND FINAL ORDER NO.778/CPB DATED PESHAWAR THE 31ST AUGUST, 2017, OF THE RESPONDENT No.2

(ACKNOWLEDGED AT D.I.KHAN ON 05.09.2017.)

PRAYER:-

On acceptance of the Instant Appeal, the Respondents may graciously be directed to grant promotion from Inspector BPS-16 to the Rank Of DSP (BPS-17) wef 10.10.2012 (from the meaningful meeting of DPC vide which Appellant and other contemporaries/colleagues and a few Junior Inspectors to the Appellant had been promoted as DSP (BPS-17) thereby suppressing the grant of promotion to the Appellant without any reason or rime.

The Appellant, amongst other grounds; respectfully submits as follows:-

1. That the Appellant was serving as Inspector BPS-16 under the domain of the Respondents.
2. That after DPC meeting on 10.10.2012 and after promotion of some colleagues Junior to the Appellant, the Appellant came to know that the Appellant being Senior Most Inspector has been ignored in the DPC meeting due to shortage of ACR. The Appellant submitted Departmental Appeal/Representation before the Inspector General Police, Respondent No.2

Filed by Registrar 18/9/17

Re-submitted to -day and filed.

- 2 -

Registrar 9/10/17

Asst. HC 18/9/17

Copy of the Departmental Appeal Dated 14/07/17 is enclosed as Annexure I.

3. That the Appeal/Representation of the Appellant had been disposed off on 07.12.2015 vide memo No.2720. Copy of the letter bearing No.4990 dated 12.2015 was conveyed to the Appellant with the following observation.

“His name was not included in the next DPC meeting for promotion to the rank of DSP despite his being Senior. He is eligible for promotion to the rank of DSP and fulfills the criteria of standing orders, thereof, he may be promoted as DSP giving Seniority with effect from 10.10.2012. Copy is enclosed as Annexure II.

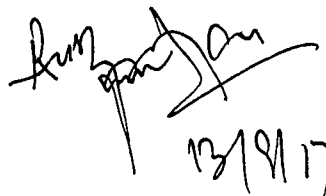
The DPC examined representation on 19.11.2015 and decided that his case for confirmation was discussed in the Departmental Promotion Committee meeting held on 08.10.2015 and deferred due to incomplete ACRs. His case be considered for promotion to the next Departmental Promotion Committee meeting on merit.

4. The Appellant again made Representation when DPC meeting could not be held till July, 2017. Copy of the Representation 14.07.2017 is enclosed as Annexure III, which has been turned down without personal hearing on 31.08.2017. Copy of Refusing Order Dated 31.08.2017 is enclosed as Annexure IV. 778 jcp

5. That Appellant feeling aggrieved now humbly approaches this Hon'ble Tribunal against the acts of omission of the Respondents No.2 & 3. The grievances of the Appellant amongst other grounds are as follows:-

GROUND:-

- i. That the acts of omission of the Respondent No.2 is unlawful and without lawful authority. Appellant has been deprived from due rights of his promotion on proper time.
- ii. That according to the rule of Seniority-cum-Fitness, the Appellant is entitled for promotion, which is admitted by the Respondent authorities in their findings conveyed to the Appellant vide letter bearing No.2720/E-II dated 07.12.2015.
- iii. That deferring/delaying or with holding of the promotion of the Appellant to the next DPC meeting on the basis of incomplete ACRs is malafide and discriminatory against the Petitioner. when the


13/9/17

record is not in custody of the Appellant. And thus the Appellant had been adversely affected due to no fault of the Appellant.

- iv. That the Respondent No.2 and his sub ordinate officers are under obligation to complete and submit ACRs of the Appellant on due time, thus punishing the Appellant on the basis of incomplete ACRs is an instance of non-transparency and such delaying of the promotion denial of legitimate rights and suppression of legitimate expectations.
- v. That the counsel of the Appellant may kindly be allowed to raise additional ground during the course of hearing when the final order dated 31.08.2017 has reactivated the orientation of proceeding Under Section 4 of STA (1) 1974, and the delay has been condoned by the Respondent No.2 himself and such condonation of delay is not beyond the authority of the Respondent No.2.

In the wake of submissions made above it is humbly PRAYED that the Respondent No.2 may be urged upon to pass order for promotion of the Appellant, when the Appellant was cleared to be fit for promotion as narrated in Para.3 Supra of the Facts. More so when the Appellant was not denied the right of promotion on in December 2015.

Miss Qai
YOUR HUMBLE APPELLANT

THROUGH COUNSEL: MISS ANSA IQBAL GANDAPUR ADVOCATE

Ansa Iqbal
Advocate D.I. KHAN

VERIFICATION

It is solemnly affirmed that the contents of the Appeal are true and correct to the knowledge and belief.

Miss Qai
APPELLANT

DATE: 13.09.2017

BEFORE KPK SERVICE TRIBUNAL – PESHAWAR

S.T.A No: 2017

MUHAMMAD HUSSAIN JORH S/O GHULAM HASSAIN
R/O; EJAZ ABAD, MURYALI, D.I.KHAN (EX POLICE INSPECTOR BPS-16-
D-11 TANK)

APPELLANT

V/S

1. THE GOVT OF K.P.K THROUGH SECRETARY HOME & TRIBAL AFFAIRS DEPARTMENT, PESHAWAR.
2. THE INSPECTOR GENERAL OF POLICE (PROVINCIAL POLICE OFFICER) CENTRAL POLICE OFFICE- PESHAWAR
3. THE REGIONAL POLICE OFFICER (DIG)-D.I.KHAN, POLICE RANGE, DERA ISMAIL KHAN.

RESPONDENTS

Memo - of - Address

JK

Advocate

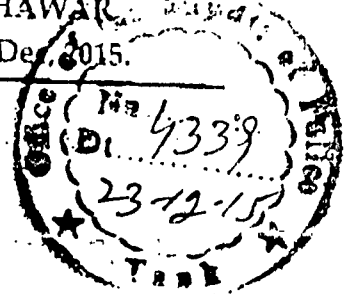
Miss Anis



Deputy Inspector General of Police
DI Khan

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

No. 2720 /E-II, dt: 17 Dec. 2015.



To : The Deputy Inspector General of Police,
DI Khan Region, DI Khan.

Subject: APPLICATION

Memo:

Please refer to your memo no.2978/ES, dated 06.08.2015.

Inspector Muhammad Hussain No.D/11 stated that he was enlisted as Constable in 1975 and after qualifying necessary departmental courses/trainings, he was promoted to the rank of Inspector. He was deferred in the DPC meeting held on 10.10.2012 and later on, his name was not included in the next DPC meetings for promotion as DSP despite his being senior. He is eligible for promotion to the rank of DSP and fulfills the criteria of Standing Order; therefore, he may be promoted as DSP by giving seniority with effect from 10.10.2012.

The DPC examined his representation on 19.11.2015 and decided that his case for confirmation was discussed in the Departmental Promotion Committee meeting held on 08.10.2015 and deferred due to incomplete ACRs. His case will be considered for promotion in the next Departmental Promotion Committee meeting on merit.

No. 4990/ES dated 22/12/15

DPO-Tank

(NAJEEB UR REHMAN BUGVI) PSP
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

For information and necessary action w/r to this office order no. 2979/ES
Dated 06-8-2015.

By Inspector General of Police
Dera Ismail Khan

9/12/15
11/15

attested
14/9/17

SRC

To Inform as desired

District Police Officer
Tank

Annexure - II

خدمت جناب انسپکٹر جنرل آف پولیس خیبر پختونخوا پشاور

(صلاح الدین خان محمود)

سروس اپیل بابت نویشنل Basis پروموشن گریڈ-17 بطور DSP (پروفارمہ پروموشن)

جناب عالی!

گزارش بحضور انوریہ ہے کہ

1. سائل نے 1975ء سے محکمہ پولیس میں بھرتی ہو کر بہترین فرائض منصبی کی بجا آوری کی اور بتدریج سلسلہ وار ترقیاں پائیں اور بطور انسپکٹر از مورخہ 2007ء پروموشن لیتے ہوئے انسپکٹر کے عہدے پر پہنچا اور 2007ء سے براہ راست گریڈ-17 کی پوسٹوں پر تعینات رہ کر احسن کارکردگی دکھاتے ہوئے ملازمت پوری کر رہا تھا کہ سائل کے ہم عمر اور ہم عہدہ 2012ء میں DSP کے عہدے پر پروموشن کئے گئے۔ لیکن مجھے due to Shortage of ACR's ڈیفری کیا گیا۔ اور یہی سلسلہ چلتے چلاتے 2015ء تک پہنچا۔
2. گوکہ یہ ذمہ داری Completion of ACR's سٹیبلشمنٹ ڈیپارٹمنٹ CPO پشاور کی تھی، سائل نے پھر یہ ذمہ داری خود نبھاتے ہوئے اور کئی ایک افسران سے ملک کے مختلف حصوں خاص کر کوئٹہ، کراچی وغیرہ سے ACR's مکمل کئے۔ اور اسٹیبلشمنٹ برانچ کے سپرنٹنڈنٹس جناب شاہ صاحب اور غیر اللہ خان اسٹیبلشمنٹ سپرنٹنڈنٹ CPO کو مکمل کر کے دیئے۔ لیکن کافی التجا کے باوجود تک DPC مقرر نہ ہو سکی۔
3. اور اس طرح سال 2016ء 02 فروری کو میری مدت ملازمت کے 60 سال اختتام کو پہنچے۔ اور بخیر و عافیت محکمہ سے فارغ کر دیا گیا۔ اور سائل کی اور بچل پروموشن وہیں رہ گئی۔ سائل نے اس وقت کے IGP صاحب جناب ناصر خان درانی کو پیش ہو گیا۔ اور ساری ظلم و ستم کی روئیداران کو سنا دی جنھوں نے میرے لئے اپیل DPC مقرر کئے جانے کے لئے AIG اسٹیبلشمنٹ کو فرما دیا۔ لیکن انتہائی لیت و لعل کے بعد بڑی مشکل سے DPC ایک دو بار منسوخ ہو یہ مصروفیات افسران کرتے ہوئے مقرر ہوئی۔ جس میں اس وقت کے AIG ہیڈ کوارٹر میاں آصف صاحب بمعہ AIG لیگل فلک ناز خان صاحب و AIG اسٹیبلشمنٹ کے من سائل کو سنا گیا۔ اور میرے موقف کو درست تسلیم کیا۔ لیکن میاں آصف صاحب نے جو کہ DPC کے سربراہ تھے، نے AIG لیگل کی معذوری کے تحت ایک ہفتہ کے اندر اس نسبت سے قانون طلب کرنے کا فرمایا۔ کہ اگر کوئی ایسا قانون موجود ہے جس میں ریٹائرمنٹ کے بعد وہ سابقہ پروموشن دے سکتے ہیں تو پیش کریں۔
4. سائل نے الحمد للہ اس چیلنج کو قبول کیا۔ اور اس لحاظ سے ایک ہفتہ تک DPC کے منشن جو Held On کئے گئے تھے بجائے ایک کے دو قانون پیش کر دیئے۔ جس میں

1. فنانس ڈیپارٹمنٹ کے نوٹیفیکیشن نمبر 22.03.2006 dated SO(R-VI)E&ADI-16/2005 جس میں سیریل نمبر 25 پر قیوم نواز SPET گورنمنٹ ہائیر سیکنڈری سکول مندرہ کلاں ڈیرہ اسماعیل خان میں اسے Against vacant post his date of Birth to 10.03.1965 and he is died 31.03.2016 while the DPC was held on 20.01.2016 thus he is promoted w.e. from date of DPC in light of Establishment Department instructions SO(R-VI)E&ADI-16/2005 dated 22.03.2006 اور

2. پروموشن کی کاپی سپریم کورٹ آف پاکستان کی اتھارٹی 2008 S C M R صفحہ نمبر 1535، جناب محمد نواز عباسی اور محمد جاوید بٹریس ٹائٹل ڈاکٹر سید شیر علی بنام گورنمنٹ آف دی پنجاب تھر ویکٹری ہیلتھ پنجاب وغیرہ پیش کر دی۔ جو کہ ان کے ریکارڈ پر بھی موجود ہے۔ اور اپیل ہذا کے ساتھ لیت ہے۔

Attest

Mac. Qa
14/9/17

5. لیکن اس کے بعد نہ منٹس جاری ہوئے۔ اور نہ ہی کام آگے چلا۔ اور اس دوران میاں آصف صاحب بھی مدت ملازمت پوری کر کے گھر چلے گئے دوبارہ جناب ناصر خان درانی جو کہ ایام اختتام مدت ملازمت پر بیٹھے ہوئے تھے، کو پھر یہی رونا رویا گیا۔ لیکن بات نہ بنی۔
6. والا شان! اب موجودہ صورت حال میں میری فریاد کا سلسلہ ابھی تک التواء کے شکار میں ہے اور میری بات نہیں سنی گئی اور نہ سنی جا رہی ہے۔ حضور والا شان سے میری انتہائی مودبانہ گزارش ہے کہ براہ کرم مجھے طلب فرمایا جاوے اور میری جملہ روئے داد کی حقیقت کو سنا اور پرکھا جائے اور مجھے اور میرے بال بچوں کو میرے حقوق سروس (Dues) عطاء فرمائے جاوے تاکہ خیر و عافیت اپنی زندگی کی پونجی اپنے بچوں تک پہنچا سکوں اور آپ کو دعائیں دوں۔

تازیت دعا گور ہوں گا۔

مورخہ:- 14.07.2017

ارض

ایکس انسپکٹریگل، ٹانک، محمد حسین 11-D ولد حاجی غلام حسین قوم جوڑ سکندھ مریالی تحصیل ضلع ڈیرہ اسماعیل خان

رابطہ نمبر: 03459873504

Miss Anis

بخدمت جناب قابل قدر سیکرٹری ہوم ڈیپارٹمنٹ ، حکومت خیبر پختونخوا پشاور
 سرس اپیل بابت نوٹسٹل Basis پروموشن گریڈ-17 بطور DSP (پروفارمہ پروموشن)

جناب عالی!

گزارش بحضور انوریہ ہے کہ

1. سائل نے 1975ء سے محکمہ پولیس میں بھرتی ہو کر بہترین فرائض منصبی کی بجا آوری کی اور بتدریج سلسلہ وار ترقیاں پائیں اور بطور انسپکٹر از مورخہ 2007ء پروموشن لیتے ہوئے انسپکٹر کے عہدے پر پہنچا اور 2007ء سے براہ راست گریڈ-17 کی پوسٹوں پر تعینات رہ کر احسن کارکردگی دکھاتے ہوئے ملازمت پوری کر رہا تھا کہ سائل کے ہم عمر اور ہم عہدہ 2012ء میں DSP کے عہدہ پر پروموشن کئے گئے۔ لیکن مجھے due to Shortage of ACR's ڈیفری کیا گیا۔ اور یہی سلسلہ چلتے چلاتے 2015ء تک پہنچا۔

2. گوکہ یہ ذمہ داری Completion of ACR's سٹیبلشمنٹ ڈیپارٹمنٹ CPO پشاور کی تھی، سائل نے پھر یہ ذمہ داری خود نبھاتے ہوئے اور کئی ایک افسران سے ملک کے مختلف حصوں خاص کر کوئٹہ، کراچی وغیرہ سے ACR's مکمل کئے۔ اور اسٹیبلشمنٹ برانچ کے سپرنٹنڈنٹس ضیاء اللہ شاہ صاحب اور غیر اللہ خان اسٹیبلشمنٹ سپرنٹنڈنٹ CPO کو مکمل کر کے دیئے۔ لیکن کافی التجا کے باوجود تک DPC مقرر نہ ہو سکی۔

3. اور اس طرح سال 2016ء 02 فروری کو میری مدت ملازمت کے 60 سال اختتام کو پہنچے۔ اور بخیر و عافیت محکمہ سے فارغ کر دیا گیا۔ اور سائل کی اور بجٹل پروموشن وہیں رہ گئی۔ سائل نے اس وقت کے IGP صاحب جناب ناصر خان درانی کو پیش ہو گیا۔ اور ساری ظلم و ستم کی روئیداران کو سنا دی جنہوں نے میرے لئے اپیشنل DPC مقرر کئے جانے کے لئے AIG اسٹیبلشمنٹ کو فرما دیا۔ لیکن انتہائی لیت و لعل کے بعد بڑی مشکل سے IDPC ایک دو بار منسوخ ہوجہ مصروفیات افسران کرتے ہوئے مقرر ہوئی۔ جس میں اس وقت کے AIG ہیڈ کوارٹرمیاں آصف صاحب بمعہ AIG لیگل فلک ناز خان صاحب و AIG اسٹیبلشمنٹ کے من سائل کو سنا گیا۔ اور میرے موقف کو درست تسلیم کیا۔ لیکن میاں آصف صاحب نے جو کہ DPC کے سربراہ تھے، نے AIG لیگل کی معذوری کے تحت ایک ہفتہ کے اندر اس نسبت سے قانون طلب کرنے کا فرمایا۔ کہ اگر کوئی ایسا قانون موجود ہے جس میں ریٹائرمنٹ کے بعد وہ سابقہ پروموشن دے سکتے ہیں تو پیش کریں۔

4. سائل نے الحمد للہ اس چیلنج کو قبول کیا۔ اور اس لحاظ سے ایک ہفتہ تک DPC کے منٹس جو Held On کئے گئے تھے بجائے ایک کے دو قانون پیش کر دیئے۔ جس میں

1. فنانس ڈیپارٹمنٹ کے نوٹیفیکیشن نمبر SO(R-VI)E&ADI-16/2005 dated 22.03.2006 جس میں سیریل نمبر 25 پر قیوم نواز SPET گورنمنٹ ہائیر سیکنڈری سکول مندرہ کلاں ڈیرہ اسماعیل خان میں اسے Against vacant post his date of Birth to 10.03.1965 and he is died 31.03.2016 while the DPC was held on 20.01.2016 thus he is promoted w.e.from date of DPC in light of Establishment Department instructions SO(R-VI)E&ADI-16/2005 dated 22.03.2006. اور

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Attested
 14/9/17

5. لیکن اس کے بعد نہ منٹس جاری ہوئے۔ اور نہ ہی کام آگے چلا۔ اور اس دوران میاں آصف صاحب بھی مدت ملازمت پوری کر کے گھر چلے گئے دوبارہ جناب ناصر خان درانی جو کہ ایام اختتام مدت ملازمت پر بیٹھے ہوئے تھے، کو پھر یہی رونا رو یا گیا۔ لیکن بات نہ بنی۔
6. والا شان! اب موجودہ صورت حال میں میری فریاد کا سلسلہ ابھی تک التواء کے شکار میں ہے اور میری بات نہیں سنی گئی اور نہ سنی جا رہی ہے۔ حضور والا شان سے میری انتہائی مودبانہ گزارش ہے کہ براہ کرم مجھے طلب فرمایا جاوے اور میری جملہ روئے داد کی حقیقت کو سنا اور پرکھا جائے اور مجھے اور میرے بال بچوں کو میرے حقوق سروس (Dues) عطاء فرمائے جاوے تاکہ خیر و عافیت اپنی زندگی کی پونجی اپنے بچوں تک پہنچا سکوں اور آپ کو دعائیں دوں۔

تازیت دعا گور ہوں گا۔

مورخہ:- 14.07.2017

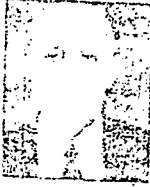
ارض

ایکس انسپکٹریگل، ٹانک، محمد حسین 11-D ولد حاجی غلام حسین قوم جوڑ سکندھریالی تحصیل و ضلع ڈیرہ اسماعیل خان

رابطہ نمبر: 03459873504

شہد مسال

MUSTAFI KHAN KUNDI
Advocate High Court
hc-09-0902
Date of Issue: 07-06-2014
valid upto: 07-06-2017



ADVOCATE HIGH COURT

وکالت نامہ

کورٹ فیس	تیمت ایک روپیہ
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بندالت جناب سروس ٹری بونل پشاور
 محمد حسین
 بنام KPK و عدیہ

دعویٰ یا جرم
 تفصیل دعویٰ یا جرم
سروس ایبل

باعث تحریز آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے پیروی و جواب دہی کے لیے جناب مستنجم خان کنڈی کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر کسی پر خود یا بذریعہ اختیار یا جس رو بہ عدالت حاضر ہوتا، دل کا اور ہر وقت پکارے جانے سمجھے کہ میں صاحب موصوف کو اطلاع دیکر مقررہ عدالت کروں گا، اگر کسی پر مظہر حاضر نہ ہوا اور مقدمہ میری غیر رضامندی کی وجہ سے کسی شخص پر میرے برخلاف ہو گیا اور صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف مقدمہ مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پچھلے یا بعد از غلطی ہی نہ کرے گا، ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف مقدمہ مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پچھلے یا بعد از غلطی ہی نہ کرے گا، ذمہ دار نہ ہوں گے اور مقدمہ کچہری کے علاوہ اور جگہ سماعت ہونے یا بعد از غلطی یا کچہری کے اوقات کے آگے پچھلے میں ہونے پر مقدمہ کوئی نقصان پہنچنے تو اس کے ذمہ دار یا اس کے واسطے اپنی مداخلت کے اور کرنے یا ممانعت واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ جو جو دخل ممانعت پر داخل صاحب موصوف کی طرف سے ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرضی دعویٰ یا اجواب دعویٰ یا درخواست اجراء کے ذمہ داری نظر ثانی اپنی کمرانی، ہر قسم درخواست پر دستخط و قلم کرنے کا بھی اختیار ہوگا اور کسی قسم یا ذمہ داری کرنے اور ہر قسم کا روپیہ وصول کرنے اور وصولیہ اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر مٹائی یا مٹائی نامہ فیصلہ بر حلف کرنے، اقبال و کوئی کا بھی اختیار ہوگا اور بصورت ستر ہونے تاریخ قلم ختم مقدمہ مذکورہ میں ان کے کچہری میں مقدمہ مذکورہ نظر ثانی، اٹوٹن، آئی، آئی، آئی مقدمہ یا مستثنیٰ ذمہ داری سے طرفہ یا درخواست چشمہ انتہائی یا قریبی یا اگر قدامت میں از فیصلہ اجراء کے کسی میں صاحب موصوف کو بشرط ادا کی جائے و حقانہ ہوگی کا اختیار ہوگا اور تمام ساختہ پر داخل نہ ہو، حسب موصوف میں کردہ ذات خود منظور قبول ہوگا اور بصورت ستر ہوتے صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی اپنی یا کمرانی یا دیگر معاملہ مقدمہ مذکورہ کی دوسرے کسی یا غیر ستر کو اپنے بجائے یا اپنے ہر اہل حق کریں اور اپنے مشیر قانون کو بھی ہر امر میں وقتی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو مقرر ہیں، اور دوران مقدمہ میں جو کچھ ہر جزو اتوار پڑا، وہ صاحب موصوف کو حق ہوگا کہ صاحب موصوف کو پوری نہیں تاریخ پیشی سے پہلے ادا نہ کرے گا، نیز صاحب موصوف کو یہ اختیار ہوگا کہ وہ مقدمہ میں پیروی نہ کریں اور اس صورت میں یہ کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے

مورخہ 13 7 2017
 العبد العبد العبد
 مستنجم وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted
 14/9/17
 13/9/17



ANSA ARMEEZA SARDAR

Advocate

bc-15-6108

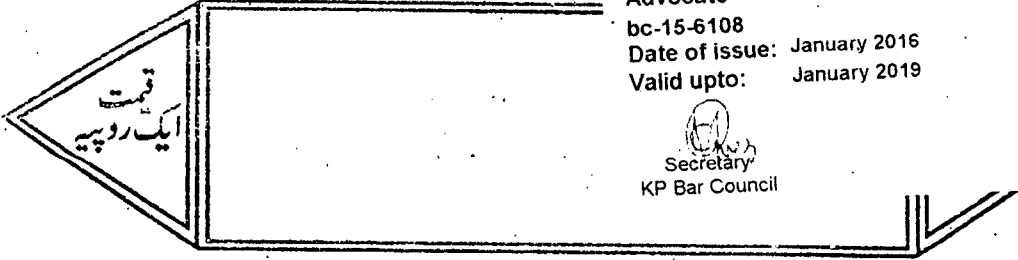
Date of issue: January 2016

Valid upto: January 2019



Secretary
KP Bar Council

تثانہ



بعدالت جناب _____
 سرور ایملی بیرونل - لیساور
 منجانب محمد حسین
 ہام KPAK وغیرہ
 دعویٰ یا جرم
 تفصیل دعویٰ یا جرم
 سرور ایملی
 باعث تحریر آنکہ

خان

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی وجود بھی برائے پیشی یا تصفیہ مقدمہ بمقام محکمہ اعلیٰ عدالت
 منسب اقبل گندہ اجور اید وولٹ - گیسوا سہل اقبل

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
 موصوف کا اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر مظہر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف
 اسکے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے
 ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی جگہ یا پکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ
 ہوں گے۔ اور مقدمہ صدر پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے
 ذمہ دار نہ ہوں گے واسطے کسی معاوضہ کے ادا کرنے یا عینہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ
 ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ، یا جواب دعویٰ یا درخواست ایزرائے ڈگری و نظر ثانی اپیل و جرم درخواست پر دستخط و تصدیق کرنے کا
 بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرنے اور جرم کاروبار وصول کرنے اور سید دینے اور داخل کرنے اور جرم کے بیان دینے اور اس پر تاشی یا راضی نامہ و فیصلہ بر
 حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون انز پکھری صدر بیرونی مقدمہ مذکورہ نظر ثانی و اپیل و جرم نامگی
 مقدمہ یا منسوخی ڈگری یا طرف یا درخواست حکم انتہائی یا تقریبی یا گرفتاری قبل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ عینہ بیرونی کا اختیار ہوگا
 اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو
 کی کارروائی یا بصورت درخواست نظر ثانی اپیل یا جرم یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا بیرسٹر کا پتے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو
 بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقبضہ میں جو کچھ ہر جانہ التواء پڑیگا، وہ صاحب
 موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا کرنے کی ضرورت ہوگی۔ اور صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیرونی نہ کریں اور ایسی
 صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

مورخہ 14 ستمبر 2017ء
 2017ء جمہوریت

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد _____

شعبہ
 14/9/17

Accepted
 Anshul
 Advocate
 14-09-2017

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

T.B

No.

Appeal No. 1107 of 20 17

Muhammad Afzal Appellant/Petitioner
Versus

Through Supt. Police Respondent

Respondent No. 3

Notice to: -

The Regional Police Officer (D/O)
D. I. Khan, Police Range Dera Ismail Khan.

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 11/11/17 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 11/11/17

Day of Jan 20 17

(at Camp Court D. I. Khan)

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"A"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

APPEAL No. 1107 of 20 .

Muhammed Hussain Jorh

Appellant/Petitioner

Versus

through Secretary Home and Tribal Affairs Department Peshawar.

RESPONDENT(S)

Notice to Appellant/Petitioner ^{Counsel} Mr. Rustom Khan Kundli Adv.
High Court D.I. Khan

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 21-26-2018 at 8:00-9:00 am instead of 26/6/2018

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

(at Camp Court D.I. Khan)

[Signature]
**Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.**

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

APPEAL No. 1107 of 20 .

Muhammad Hussain Josh

Appellant/Petitioner

Versus

Through Secretary Home and Tribal Affairs Deptt. Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner

Muhammad Hussain Josh S/o
Ghulam Hossain B/o Ejaz Abad, Muz ali
D.I. Khan (Ex Police Inspector BPS-16-D-11 TanH)

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 21.06.2013 at 8:00-A.M

Instead of 26/6/2013

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

(at Camp Court D.I. Khan)

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Appeal No..... 1107 of 20 ..

Muhammad Hussain Jorh Appellant/Petitioner
Versus

Through Secy. Home K.P.K. Respondent
Respondent No..... 3 ..

Notice to: - The Regional Police officer (DIG) - D.I - Khan
Police Banger Dera Ismail Khan

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 21/06/2018at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 31/5/18

Day of..... May 20 18

Cat Camp Court D.I. Khan Registrar,
instead of 26/6/2018 Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE HONOURABLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No.1107 of 2017

Muhammad Hussain Inspector (Retired).

...(Appellant)

Versus

Govt: of KPK through Secretary,
Home & Tribal Affair and others

...(Respondents)

PARAWISE COMMENTS ON BEHALF OF
RESPONDENTS

Respectfully sheweth,

Parawise Comments are submitted as under:-

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is badly time barred.
4. That the appellant has not come with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from Honourable Tribunal.

REPLY ON FACTS

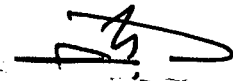
1. Pertains to record.
2. Incorrect. The appellant case for confirmation as Inspector was discussed in the DPC held on 08.10.2015 and deferred due to incomplete ACRs. Moreover, the appellant remained out of service 2013 to 2015 due to major punishment of compulsory retirement and reinstated by converting the punishment into reduction in pay by stoppage of increment for one year and out of service period was treated without pay.
3. Correct to the extent of disposal of representation only as stated in above Para No.2 reply.
4. Correct to the extent of filing/rejection of his representation. That the DPC are held as per Police Rules 13-1A. The appellant submitted his Representation after his retirement as the appellant has admitted his retirement on 02.02.2016 in his representation.
5. That the appellant has already retired in the year 2016. His representation was also submitted after retirement considerable delay and has got no cause of action.

REPLY ON GROUNDS

- i. Incorrect. His case was considered in the DPC meeting held on 08.10.2015 but deferred due to incomplete ACR. Moreover, the appellant remained out of service 2013 to 2015 due to major punishment of compulsory retirement and reinstated by converting the punishment into reduction in pay by stoppage of increment for one year and out of service period was treated without pay. All the proceedings were held in accordance with law/rules. Now the appellant has retired on 02.02.2016 and appeal has become infructuous and not maintainable.
 - ii. Incorrect. The appellant was found not fit for promotion and deferred due to incomplete ACRs.
 - iii. Incorrect. As replied above.
 - iv. Incorrect. As per rule the efficiency & fitness is judged on the basis of annual evaluation report and appellant is required to be well aware of his record.
 - v. Incorrect. The instant appeal is badly time barred. The impugned DPC was held on 08.10.2015 whereas representation lodged on 14.07.2017 which was badly time barred. Similarly the appellant has lodged representation after retirement in 2016 which is not maintainable.
- The Respondents also seeks permission to raise further objections or additional evidence/record at the time of arguments.

PRAYER

In view of above, it is humbly prayed that on acceptance of these Parawise Comments, the instant appeal may kindly be dismissed, being meritless and badly time barred.

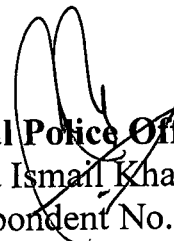


Secretary,

Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.2)



Regional Police Officer,
Dera Ismail Khan
(Respondent No.3)

ninety days and for every remand, reasons have to be recorded. Petitioner is in judicial lock up since his arrest i.e. 20-11-2006, whereas, as pointed out by learned Addl. Prosecutor General NAB reference was filed on 4-6-2007 but no progress whatsoever has taken place towards the conclusion of trial. This Court in the case of Asif Sharif v. Chairman, NAB 2004 SCMR 1805 granted bail to accused against whom the reference was filed after about two years from date of his arrest. It was also held in the case Aga Jehanzeb v. NAB and others 2005 SCMR 1666 that if trial of case is not concluded within 30 days from date of submission of challan, accused would automatically become entitled to grant of bail. This Court has also held in the case of Abdul Qadir v. Federation of Pakistan through Secretary Ministry of Interior, Government of Pakistan and others 2002 SCMR 1478 that conveyance of the grounds and substance on the basis of which the accused is arrested, is the first essential ingredient of section 24(d) of the Ordinance which is mandatory in nature and has to be complied with in letter and spirit as the same is based on constitutionally guaranteed right providing safeguards as to arrest and detention of a person embodied in Article 10 of the Constitution of Pakistan, 1973. Non-compliance of such provisions of the Constitution and the Ordinance would render the arrest and detention illegal.

5. In view of above discussion, we are of the view that it is a fit case for interference by this Court. Accordingly, we convert this petition into appeal and allow the same. Appellant Anwarul Haq Qureshi is granted bail, subject to furnishing surety in the sum of Rs.10,00,000 (Rupees ten lac only) with P.R. bond in the like amount to the satisfaction of the trial Court.

6. These are the reasons in support of our short order of even date, which are of tentative nature and shall have no bearing on the merit of the case.

M.H./A-13/SC

Bail granted.

2008 S C M R 1138

[Supreme Court of Pakistan]

Present: Ijaz-ul-Hassan Khan and Syed Zawwar Hussain Jaffery, JJ

FEDERATION OF PAKISTAN and others---Petitioners

versus

AMIR ZAMAN SHINWARI, SUPERINTENDING ENGINEER---Respondent

Civil Petition No.901 of 2007, decided on 1st January, 2008.

Civil Servants Act (LXXI of 1973)--- Jaffery

---S. 9---Constitution of Pakistan (1973), Art.185(3)---Promotion, claim for---Implementation of order---Department had sought leave to file appeal against order of High Court whereby petitioner was directed by the High Court to promote the civil servant immediately in next grade--- Civil Servant whose name was at serial No.3 of the seniority list, his case of promotion from Superintending Engineer (BPS-19) to Chief Engineer (BPS-20) was deferred by General Selection Board without any tangible material, on unauthenticated and evasive ground, while his juniors whose names were at Serial Nos.6 and 7 of the seniority list with less score were promoted---Civil Servant feeling aggrieved thereby assailed order before the Service Tribunal which remanded case to the Department, with the direction to consider case of Civil Servant for promotion and in case he was clear for promotion, same would take effect from the date his juniors were promoted to the post of Chief Engineer BPS-20---Said order passed by the Service Tribunal having not been implemented, Civil Servant filed constitutional petition against non-implementation of order of the Tribunal---High Court accepted petition with a direction to the Department to implement order of the Tribunal--- High Court examining the attitude of the Department issued direction that he be promoted to the next grade with immediate effect with all back benefits---Factual position was conceded by the Department in the Service Tribunal as well as before High Court, but despite that the Department had failed to implement orders passed by the Service Tribunal---Attitude of Department was hostile and injustice was done to Civil Servant without any substantial ground---High Court had rightly examined the attitude of Department and had rightly issued direction that Civil Servant be promoted to the next grade with immediate effect with all benefits---Judgment passed by the Tribunal and impugned judgment passed by the High Court could not be set aside---Civil Servant having already retired, his emoluments were ordered to be released within stipulated period. [pp. 1140, 1143] A, B & C

Government of Pakistan through Establishment Division Islamabad and 7 others v. Hameed Akhtar Niazi, Academy of Administrative Training Walton, Lahore and others 2003 PLC (C.S.) 212 ref.

Ms. Naheeda Mehboob Ellahi, D.A.G for Pakistan.

M.S. Khattak, Advocate-on-Record.

Tahir Mehmood Qureshi, S.O.

Ibrahim Shah, Law Officer.

leave refused

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JUDGMENT

SYED ZAWWAR HUSSAIN JAFFERY, J.---Leave is sought against the order of the learned Lahore High Court, Rawalpindi Bench, dated 14-9-2007 passed in Writ Petition No.2146 of 2006 whereby the departmental authority was directed to promote the respondent immediately in the next grade w.e.f. 31-12-2001 with all back-benefits.

2. The relevant facts as incorporated in the writ petition are that respondent was serving as Superintending Engineer (BPS-19), Pak P.W.D., Islamabad for the last 15 years on regular basis and performing his duties diligently to the best of his abilities and to the entire satisfaction of his superiors having 30 years un-blemished record at his credit. He retired at the age of superannuation on 7-9-2007 and the name of respondent was at Serial No.3 of the seniority list and his case of promotion from Superintending Engineer (BPS-19) to Chief Engineer (BPS-20) was deferred by the Central Selection Board (hereinafter referred to as CSB) without any tangible material, unauthenticated and evasive grounds, floated a departmental inquiry while his juniors at Serial Nos.6 and 7 of the seniority list with less score were promoted. It is pertinent to mention here that no departmental inquiry was pending against the petitioner on or before the said meeting. The respondent feeling aggrieved thereby assailed the order before the Federal Service Tribunal (hereinafter referred to as FST), Islamabad in Appeal No.22(Q) CS 2002. After notice to the departmental authorities, the factual position was conceded as prayer made in the appeal and the case was remanded back by the Federal Service Tribunal to the department with the direction as under:--

"By mutual consent of the parties concerned the case is remanded to the department to consider the appellant for promotion to the post of Chief Engineer (B-20) in accordance with law in the next meeting of CSB-II. In case the appellant is cleared for promotion, the same shall take effect from the date his Juniors were promoted to the post of Chief Engineer (B-20)".

The certified copy of the judgment passed by the FST was communicated to the office for taking necessary action. The respondent approached the officers of the department by submitting representation dated 20-6-2003 but his case was not placed before the competent authority in two next meetings of the CSB. In spite of explicit direction of FST, a third meeting of CSB was held on 1-11-2004 and the respondent's case was treated amongst five persons with the remarks "lack of tactics and emotional stability". It is further disclosed by the respondent in his petition that

four officers much junior to the respondent having less quantification marks were promoted without any justification whereas respondent's case was within the best of the best having excellent report, attained maximum marks in quantification and being senior to all of them who got promotion as Chief Engineer (BPS-20). The respondent being dissatisfied with the view taken by the department again preferred Miscellaneous Petition No.1059 of 2005 before FST for implementation of its judgment dated 16-5-2003. His application was allowed vide order dated 26-4-2006. It will be advantageous to reproduce the observations of the FST as under:--

"Para. 8. It was implied in Tribunals' judgment dated 16-5-2003 that the petitioner's promotion case would be placed before the CSB-II without any deficiency in his service record. His ACR for 2002 containing adverse remarks was placed before the CSB without its prior mandatory processing which required that in the 1st place it should have been communicated to the petitioner to afford him an opportunity to make a representation, if he so chose. It was an invaluable right of the petitioner which was denied to him without any cogent reason. We are, therefore, of the opinion that the case was submitted before the CSB-II in Mechanical Way which was against the letter and spirit of Tribunal's judgment."

"Para. 9. In the interest of justice we direct that the supersession of the petitioner be converted into deferment and his promotion case be again placed before the CSB. We also direct that the ACR containing adverse remarks be communicated to the petitioner to enable him to represent against the adverse remarks, if he so chooses, and the matter be decided within two months of the date of this order. In case a meeting of the CSB is held within the next two months, the relevant record of service of the petitioner may be placed before the CSB excluding the ACR for 2002 containing the adverse remarks."

3. Respondent No.1 ultimately filed Constitutional Petition No.2146 of 2006 under Article 199 of the Constitution of the Islamic Republic of Pakistan with the following prayer:--

"Under the circumstances it is, therefore, very humbly prayed that this Court my kindly be pleased to direct the respondent to implement the judgment dated 16-5-2003 as well as the order dated 26-4-2006 passed by the learned FST and promote the petitioner to the next higher grade w.e.f. from the date of promotion of his juniors and his deferment dated 31-12-2001 on the basis of his service record as would have been available up to the said date with all back-benefits."

4. After service of the notice of the said petition and after hearing the respondent in person, learned Deputy Attorney General of Pakistan conceded that the competent authority had expunged the adverse remarks recorded in the ACRs of respondent for the years, 2001-2002. The CSB was informed that those remarks were not endorsed by the countersigning officer and there was no inquiry or disciplinary proceedings pending against the respondent and reliance was made on a letter dated 10th April, 2003. The competent authority had exonerated the respondent (Amir Zaman Shinwari) from the charges levelled against him vide charge-sheet No.F.4(29)/2001-Admn.III dated 10-1-2002. The departmental authority have failed to point out any departmental inquiry or disciplinary proceedings pending against the respondent whereas it is also disclosed in the petition that the order dated 26-4-2006 passed by the FST was not challenged which holds the field.

5. Ms. Naheeda Mehboob, Ellahi, learned Deputy Attorney General along with Mr. Tahir Mahmood, S.O. has contended that facts are not disputed as the same were conceded before the lower forums as well as before the learned High Court but there is direction that the respondent be promoted in the next grade i.e. w.e.f. 31-12-2001 as the promotion case of the respondent was deferred by the CSB on the ground that department contemplated disciplinary proceedings against him. It is further contended that the High Court has no authority to issue directions to promote the respondent in the grade w.e.f. 31-12-2001 as such power is vested to the CSB. Therefore, this portion of the order in the last two lines of the judgment may be set aside. On this point, reliance was placed in the case of Government of Pakistan through Establishment Division Islamabad and 7 others v. Hameed Akhtar Niazi, Academy of Administrative Training Walton, Lahore and others 2003 PLC (C.S.) 212.

6. Conversely, the respondent (Amir Zaman Shinwari) present in person submits that Miscellaneous Petition No.1059 of 2005 was preferred before the FST, Islamabad against the Federation of Pakistan and after hearing the charge by mutual consent, the case was remanded to the department to consider his case for promotion for the post of Chief Engineer (BS-20) in accordance with law in the next meeting of the CSB-II. In case the respondent is for promotion the same may take effect from the date his juniors were promoted to the post of Chief Engineer (BPS-20) and miscellaneous petition was disposed of as per observation mentioned in the order dated 26-4-2006. It is further urged by the respondent that his case was not considered and the attitude of the departmental authority was negative to decide his case. Therefore, he was deferred for promotion by the CSB-II held on 3-12-2001 only on the ground that department contemplated disciplinary proceedings against

him. In fact, he was exonerated from the disciplinary proceedings as there was no tangible material available on record. Therefore, the representative of the Secretary, Cabinet Division, stated that the case of respondent would be placed before the next meeting for consideration for promotion to the next higher grade. Appeal No.22(Q) C.S. 2002 was disposed of vide judgment dated 16-5-2003 passed by the FST, Islamabad. He has invited our attention that the learned Deputy Attorney General may be asked to show that there was any departmental inquiry pending against him. His case was not put before the CSB in three consecutive meetings i.e. 18-9-2003, 19-6-2004 and 1-11-2004. Therefore, the department had committed grave violation of the directions of the FST and failed to implement the judgment in its letter and spirit. The respondent has not received any remarks recorded in the A.C.Rs. throughout his service career and deliberately withheld his promotion without any justification as his case was more bright than the case of his juniors who were promoted having less quantification and have obtained 72,75,72 and 71 scores while his quantification score was 80. It is further urged that he also attended National Institute of Public Administration (NIPA) course in grade 'A' and he was eligible to be promoted with other juniors who have been promoted earlier. He has annexed copy of the notification attaining the age superannuating w.e.f. 7-9-2007 and he stands retired from government service from the same date.

7. We have examined the orders of the FST and the documents placed on record as well as impugned judgment dated 14-9-2007 passed by the Lahore High Court, Rawalpindi Bench in Writ Petition No.2146 of 2006. After scanning the whole material available on record, we are of the view that the departmental authority failed to implement the order of FST. The factual position was conceded by the departmental in the FST as well as before the learned High Court but the orders were not implemented although the respondent had not contested the case regarding the pleas taken by the petitioner and the order of FST dated 26-4-2006 is holding field in the light of the observations made by the FST, the writ petition filed by the respondent was accepted with a direction to the petitioner department to implement the judgment dated 16-5-2003 as well as the order dated 26-4-2006 of the FST with immediate effect. The attitude of the department authority was hostile and injustice was made to the respondent without any substance. Therefore, the Lahore High Court, Rawalpindi Bench examining the attitude of the departmental authority issued direction that the respondent be promoted in the next grade with immediate effect from 31-12-2001 with all back-benefits. The respondent is running since, 2005 and obtaining orders from FST and directions from the Lahore High Court, Rawalpindi Bench and his running is to achieve valuable rights from the department.

8. In view of the foregoing reasons, we are of the view that there is no substance to set aside the judgments passed by the FST and impugned judgment passed by the Lahore High Court. As departmental authorities have unnecessarily dragged the case of the respondent and withheld his benefits. As the respondent has already retired on 7-9-2007, his emoluments shall be released within one month.

9. Accordingly, there is no merit in this petition and the same is dismissed. Leave refused.

H.B.T./F-7/SC

Leave refused.

2008 S C M R 1144

[Supreme Court of Pakistan]

*Present: Abdul Hameed Dogar, C.J.,
Ijaz-ul-Hassan Khan, Muhammad Qaim Jan Khan
and Ch. Ejaz Yousaf, JJ*

FAZAL AHMAD NASEEM GONDAL---Appellant

versus

REGISTRAR, LAHORE HIGH COURT---Respondent

Civil Appeals Nos.53, 54, 55 and 56 of 2008, decided on 29th April, 2008.

(On appeals from the judgments, dated 28-9-2007 passed by the Punjab Subordinate Judiciary Service Tribunal, Lahore High Court, Lahore in S.A. Nos.49 of 2002, 17 of 2004, 11 of 2005 and 13 of 2005).

Punjab Civil Servants Efficiency and Discipline) Rules, 1999---

---Rt. 3(b)(c) & 4---Punjab Subordinate Judiciary Service Tribunal Act (XII of 1991), S.4---Constitution of Pakistan (1973), Art.212(3)---Civil Judge-cum-Judicial Magistrate---Dismissal from service---Charges of misconduct and corruption---Dismissal of appeal by Service Tribunal---Plea of Civil Judge that he had 25 years' unblemished service at his credit without any complaint; that charges levelled against him were false; and that he was condemned unheard---Validity---While giving his findings, Inquiry Officer had considered reference sent by District and Sessions Judge, Resolution of District Bar and adverse remarks recorded in A.C.Rs. of Civil Judge, statements of prosecution witnesses and other material on record---Twenty one transfer applications containing allegations of corruption were made against Civil Judge during his

posting at place "R"---President and other members of District Bar at place "R" had been complaining against integrity and reputation of Civil Judge---Civil Judge in three transfer applications was accused of having flouted orders of District Judge and announced judgments despite stay orders of Appellate Court---Civil Judge had failed to clarify his position even though he had attended proceedings before Inquiry Officer and cross-examined witnesses---Supreme Court dismissed appeal filed by Civil Judge. [pp. 1146, 1147] A, B, C & D

Samiuddin Qureshi v. Collector of Customs PLD 1989 SC 335 and S.M. Tufail Ahmad v. Kafiluddin Ahmad and others 1986 PLC (C.S.) 393 ref.

M. Zakria Sh. Advocate Supreme Court for Appellant (in all Appeals).

Qazi M. Amin, Additional Advocate-General Punjab and M. Akram, D.R. (Conf.) Lahore High Court for Respondent (in all appeals).

Date of hearing: 29th April, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.--- The above captioned appeals, with leave of the Court, have been filed by Fazal Ahmed Naseem Gondal, appellant, against judgments, dated 28-9-2007 passed by the Punjab Subordinate Judiciary Service Tribunal, Lahore High Court, Lahore, challenging appellant's dismissal from service as well as adverse remarks recorded in his annual confidential reports.

2. Relevant facts giving rise to the filing of instant appeals are, that appellant joined Police Department on 2-10-1979 as Prosecutor and served the Police and Law Department for about 7 years. On 24-1-1987 appellant was inducted in the Punjab Subordinate Judiciary. Appellant while serving as Civil Judge-cum-Judicial Magistrate, Rajanpur, was served with a charge-sheet for 'misconduct' and 'corruption' within the purview of Rule 3(b) and (c) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999. Regular inquiry was conducted and the Inquiry Officer found charges of 'misconduct' and 'corruption' proved against the appellant, recommended imposition of major penalty of dismissal from service and issued notice to appellant to offer his explanation against the proposed penalty. The appellant filed reply. After providing him opportunity of personal hearing, the Authority dismissed appellant from service. The appellant filed departmental review/representations which remained unresponded. The appellant, feeling aggrieved, preferred appeals before the Punjab Subordinate Judiciary Service Tribunal, Lahore High Court, Lahore. Service Appeal No.17 of 2004

Ch. M. Anwar Khan, Advocate-on-Record for
Respondent No.2.

Rana Abdul Majeed, Additional P.-G. for the State.

Date of hearing: 23rd June, 2016.

ORDER

MANZOOR AHMAD MALIK, J.---Petitioner Maqsood Ahmad along with his co-accused namely Zakir, Muhammad Abbas, Muhammad Majeed and Lal @ Lalu faced trial in case FIR No.64/2014, offence under sections 302, 337-L(2), 148, 149, P.P.C., registered at Police Station Ahmad Yar, District Pakpattan Sharif. The learned trial Court vide judgment dated 24.02.2016 while acquitting his co-accused, convicted the petitioner under section 302(b), P.P.C. and sentenced him to suffer imprisonment for life. He was also directed to pay Rs.200,000/- as compensation under section 544-A, Code of Criminal Procedure, to the legal heirs of the deceased, in default whereof to undergo SI for six months. Benefit of section 382-B, Code of Criminal Procedure was extended to him. The petitioner challenged his conviction/sentence before the learned High Court in appeal, which is pending decision. In the meanwhile, the petitioner filed criminal miscellaneous application before the learned High Court for suspension of sentence till the final disposal of his appeal but the same was not granted by the learned High Court. Hence this petition for leave to appeal.

2. After hearing the learned counsel for the petitioner, learned AOR appearing for respondent No.2, learned Law Officer and perusing the available record and also the impugned orders of the Courts below with their assistance, it has been observed by us that, as per the FIR, the petitioner was not armed with any weapon. Precise allegation against him is that while his co-accused Muhammad Abbas and Muhammad Majeed (since acquitted) caught hold of complainant's father from his arms, the petitioner gave kick blows on his abdomen and testicals, who fell down and died at the spot. We have gone through the statement of Dr. Muhammad Idrees (PW7) who conducted the postmortem examination on the dead body of Muhammad Iqbal (complainant's father). In his cross-examination, the Doctor (PW7) has categorically stated that "it is correct that I did not give final opinion about the cause of death of deceased." Moreover, the co-accused of the petitioner namely Muhammad Zakir and Lal @ Lalu who were allegedly armed with Sotas at the time of occurrence and as per FIR Zakir gave a Sota blow to the complainant, whereas Lal @ Lalu gave a Sota blow to Zafar Iqbal (PW2), have since been acquitted by the learned trial Court. It is pertinent to mention here that co-accused Lal @ Lalu was also attributed lalkara in the FIR. The other two co-accused namely Muhammad Abbas and Muhammad Majeed who allegedly caught hold of deceased from his

arms while the petitioner gave kick blows, have also been acquitted by the learned trial Court. Another relevant aspect of the case is that complainant of FIR Saeed Ahmad (PW1) while appearing before the trial Court stated that his father was abducted by one Muhammad Sharif etc. and that he never submitted any application with regard to lodging of the instant FIR against the accused persons including the petitioner who were nominated in the FIR.

3. In this backdrop, when the Doctor (PW7) has not given final opinion about the cause of death of the deceased; when the co-accused of the petitioner namely Zakir and Lal @ Lalu who were allegedly armed at the time of occurrence and were attributed injuries on the injured witnesses, have been acquitted by the learned trial Court and when the complainant himself while appearing before the learned trial Court categorically stated that his father was abducted by someone else and present accused including the petitioner are not his culprits, *prima facie*, a case for suspension of sentence in favour of the petitioner is made out. The appeal filed by the petitioner is still pending before the learned High Court and its early disposal is not in sight. The guilt or otherwise of the petitioner shall be determined by the learned High Court after reappraisal of entire prosecution evidence while hearing the criminal appeal filed by the petitioner.

4. For the foregoing reasons, we convert this petition into appeal, allow it and suspend the sentence of the petitioner subject to his furnishing bail bond in the sum of Rs.100,000/- (Rupees one hundred thousand only), with one surety in the like amount, to the satisfaction of the Deputy Registrar (Judicial) of the Lahore High Court, Lahore. The petitioner shall remain present before the learned High Court at the time of hearing of his appeal.

MWA/M-76/SC

Sentence suspended.

2017 S C M R 399

[Supreme Court of Pakistan]

Present: Iqbal Hameedur Rahman
and Umar Ata Bandial, JJ

EXECUTIVE DISTRICT OFFICER
(REVENUE) BAHAWALPUR and others---Appellants

versus

MUHAMMAD ATTIQUE and another---Respondents

Civil Appeal No. 316-L of 2009, decided on 21st July, 2016.

(On appeal against the judgment dated 28.04.2008 passed by the Punjab Service Tribunal, Lahore, in Appeal No. 1194 of 2005)

Punjab Land Administration Manual---

---Para. 242---Naib-tehsildar, appointment of---Respondent who was serving as Kanungo was not considered for promotion as Naib-tehsildar as the Departmental Promotion Committee had already reserved name of one of his senior colleagues for promotion as Naib-tehsildar---Legality---Seat of Naib-tehsildar had been illegally reserved by the Departmental Promotion Committee for a senior colleague of respondent, which clearly showed mala fide and favouritism on the part of the competent authority---Service Tribunal had rightly observed that the only reason for which the respondent could not be considered for promotion was that one of the five available posts of Naib-tehsildar had been reserved for his senior colleague; that said colleague was not recommended for promotion on account of pendency of an inquiry against him and so it was the respondent who could have been considered for promotion being the next in seniority--- Besides senior colleague of respondent was working against an ex-cadre post out of district, as such was not working in his parent department, therefore, he being posted out of the district was ineligible for promotion---Service Tribunal had rightly given directions to consider respondent for antedated promotion of Naib-tehsildar with effect from the date when the vacancy of Naib-tehsildar had been reserved for his senior-colleague---Appeal was dismissed accordingly. [p. 401] A, B & C

Malik Abdul Aziz Awan, Additional A.-G. and Rao M. Yusuf Khan, Advocate-on-Record (absent) for Appellants.

Mian Mehmood Hussain, Advocate Supreme Court and Faiz-ur-Rehman, Advocate-on-Record for Respondent No.1.

Date of hearing: 21st July, 2016.

JUDGMENT

IQBAL HAMEEDUR RAHMAN, J.---Through this appeal with the leave of the Court, the appellants have called in question the judgment dated 28.04.2008 passed by the Punjab Service Tribunal, Lahore (hereinafter to be referred as "the Tribunal"), in Appeal No.1194/2005, whereby the said appeal filed by respondent No. 1 has been accepted with a direction to consider him for antedated promotion of Naib Tehsildar w.e.f. 03.05.2005 i.e., with effect from the date when the vacancy of Naib Tehsildar had been reserved for respondent No. 2 (Muhammad Sarwar, Kanungo).

2. The concise facts of the instant appeal are that respondent No.1 was serving as Kanungo and on 03.02.2005 the Departmental Promotion Committee recommended names of his colleagues for promotion as Naib Tehsildar, but his name was not considered for promotion. Being aggrieved, he filed a service appeal before the Tribunal, which was accepted vide impugned judgment in the terms mentioned above. Thereafter, the appellants approached this Court by filing Civil Petition No.917-L/2005, wherein leave was granted by this Court vide order 25.05.2009.

3. The only argument put forth by the learned Additional Advocate General for the appellants was that respondent No. 1 was junior as such he could not be considered for antedate promotion with effect from 03.05.2005. He further argued that no one can claim promotion from a specific date as the employees are always promoted on seniority-cum-fitness basis, as such the impugned judgment of the Tribunal may be set aside. On the other hand, the learned counsel for respondent No.1 fully supported the impugned judgment of the Tribunal.

4. We have heard the learned Additional Advocate General for the appellants and learned counsel for respondent No. 1 and have also gone through the impugned judgment as well as material available on the record.

5. It is apparent that there were five available posts of Naib Tehsildar in the district of Bahawalnagar, which had fallen vacant. We have noticed that a seat of Naib Tehsildar had been illegally reserved by the Departmental Promotion Committee for respondent No.2, which clearly shows mala fide on the part of the appellant by favouring him. The learned Tribunal has duly considered this aspect of the matter and has observed as under:-

"10. The only reason for which the appellant could not be considered for promotion on 3.2.2005 was that one of the five available posts of Naib Tehsildar had been reserved for his senior i.e., respondent No.5 who was senior to him. Admittedly respondent No.5 was not recommended for promotion in the meeting held on 3.2.2005 on account of pendency of an inquiry against him and so it was the appellant who could have been considered for promotion being the next in seniority. But as it was not done, this amounted to illegality, rather injustice."

6. Moreover, it had also been admitted that respondent No.2 was working against an ex-cadre post out of district Bahawalnagar, as such was not working in his parent department, therefore, he being posted out of the district was ineligible for promotion.

7. In the above perspective, we are of the considered opinion that the impugned judgment of the Tribunal is based upon proper appreciation of facts and law. The impugned judgment does not suffer from any illegality or infirmity, therefore, in the circumstances, we are not inclined to interfere in the same. Resultantly, this appeal is dismissed being bereft of any merits.

MWA/E-5/SC

Appeal dismissed.

2017 S C M R 402

[Supreme Court of Pakistan]

Present: Mian Saqib Nisar and
Manzoor Ahmad Malik, JJ

ALLAH DITTA and others---Petitioners

versus

MANAK alias MUHAMMAD SIDDIQUE
and others---Respondents

Civil Petition No. 422-L of 2015, decided on 6th September, 2016.

(Against the judgment dated 28.1.2015 of the Lahore High
Court, Lahore passed in C.R. No. 97 of 2005)

Gift---

---Proof---Relationship between the alleged donor and alleged donees was of uncle and nephew(s)---Person depriving his own children and doling out his property to his nephews, seemed very unnatural conduct---Consideration for the gift as claimed by the alleged donees, that they had been looking after the alleged donor had not been proved on the record---Alleged donees asserted that the gift had been made by the deceased in their favour and subsequently the mutation was attested, but in the entire evidence led by them they had not been able to prove through positive evidence the day, venue, the persons in whose presence the alleged gift was made, the time thereof, the month and year and even the consideration---Tehsildar who sanctioned the mutation appeared and deposed that the mutation was validly attested, however such statement simpliciter by itself would not serve the purpose of the alleged donees who as beneficiaries had to prove the gift in unequivocal terms, particularly considering the fact that the Revenue Officer never stated that he knew the alleged donor personally or that the gift for valid consideration was made in his presence---Besides

there were quite a few lapses committed by the revenue authorities in connection with the alleged sanction of the mutation---Suit filed by alleged donees was rightly dismissed---Petition for leave to appeal was dismissed by the Supreme Court accordingly. [403] A

Rai Muhammad Tufail Khar Kharal, Advocate Supreme Court
for Petitioners.

Ejaz Anwar, Advocate Supreme Court for Respondent No. 1.

Date of hearing: 6th September, 2016

ORDER

MIAN SAQIB NISAR, J.---The petitioners claim to be the donees of the suit property, which according to them was gifted by Abdul Haq, their uncle, and a gift mutation to that effect bearing No.740 dated 15.12.1990 was attested. Respondent No.1 (respondent), the son of Abdul Haq, after the demise of the alleged donor challenged the gift on the ground of fraud and misrepresentation which was contested by the petitioners and the learned Trial Court after framing of issues and recording of evidence dismissed the same. The appeal filed by the respondent also could not succeed, however, in the revisional jurisdiction invoked by him the learned High Court set aside the concurrent decrees and has dismissed the suit. It is submitted that the revisional judgment is founded upon misreading and non-reading of the evidence. The concurrent findings of the courts below could not be upset only for the reason that on reappraisal of evidence a different conclusion could be drawn by the learned High Court.

2. Heard. We find that the instant case is founded upon misreading and non-reading of the evidence on the record which lapses have been cured by the learned High Court. In this context, it may be mentioned the relationship *inter se* the alleged donor and the petitioners is of uncle and nephew(s). The consideration for the gift as alleged by the respondent, that he has been looking after the alleged donor has not been proved on the record. It seems unnatural that a person could deprive his own children and dole out the property to others, may be nephews. The alleged donor had his own children; besides the mutation of transfer of immovable property is only a manifestation of the oral transaction and it does not carry any presumption of correctness, particularly in the circumstances when it has been assailed by the person affected by the same. In the instant case, the petitioners assert that a gift had been made by Abdul Haq deceased in their favour and subsequently the mutation was attested, but in the entire evidence led by them they have not been able to prove through positive evidence the day, venue, the persons in whose presence the alleged gift was made, the time thereof, the month

Control of Narcotic Substances Act/(XXV of 1997)---

---S. 9(c)---Constitution of Pakistan (1973), Art.185(3)---Contentions were that the samples of 1 Kg. each of the contraband material separated for chemical analysis from each bag were not sent to the Laboratory for examination and that the report of the Chemical examiner was neither on the prescribed pro forma of Excise Muharrer Form nor signed by the Chemical Examiner, rather it had been prepared on a Form of Excise Manual in the Excise Office and was signed by the Excise Inspector--- Leave to appeal was granted to accused, inter alia, to consider the above aspect of the matter for safe administration of criminal justice. [p. 1534] A & B

Malik Kabir, Advocate Supreme Court for Petitioner.

Muhammad Zaman Bhatti, Advocate Supreme Court for the State.

ORDER

ABDUL HAMEED DOGAR, J.--- Petitioner, Hashmatulalh, seeks leave to appeal against the judgment dated 28-9-2004 of a learned Division Bench of the Lahore High Court, Lahore whereby Criminal Appeal No.1754 of 2002 preferred by him was dismissed and his conviction under section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced to suffer imprisonment for life and to pay fine of Rs.50,000 or in default payment of fine to further undergo six months' R.I. awarded by the learned Additional Sessions Judge, Sheikhpura were maintained.

2. Learned counsel for the petitioner mainly contended that though samples of 1 Kg. each were separated for chemical analysis from each bag but the same were not sent to the laboratory for examination. According to him, the report of Chemical Examiner to Government of Punjab are neither on the prescribed pro forma of Excise Muharrer Form nor signed by the Chemical Examiner. On the contrary, it has been prepared on a Form of Excise Manual and in the Excise Office and signed by the Excise Inspector.

3. Accordingly, leave to appeal is granted, inter alia, to consider the above aspect of the matter for safe administration of criminal justice.

N.H.Q./H-39/SC

Leave to appeal granted.

2008 S C M R 1535

[Supreme Court of Pakistan]

Present: Muhammad Nawaz Abbasi and M. Javed Buttar, JJ

Dr. Syed SABIR ALI---Appellant

versus

GOVERNMENT OF THE PUNJAB through
Secretary, Health Punjab and others---Respondents

Civil Appeal No.327 of 2003, decided on 25th October, 2005.

(On appeal from the judgment of the Punjab Service Tribunal, dated 4-11-2002 passed in Appeal No.2490 of 2002).

Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---Rr. 7 & 8---Constitution of Pakistan (1973), Art.212(3)--- Promotion---Considerations for---Appellant, having superannuated, retired from service, whereas he was due for promotion much before his retirement, but was not considered for said promotion on the ground that a restraint order was passed by Service Tribunal in another appeal--- Order in said appeal was passed to protect the rights of appellant and authorities were not at all restrained to consider appellant in present appeal for promotion in his own right---Appellant was wrongly prevented to get next promotion and discharge the higher responsibilities as a result of which he was not only deprived of his legitimate right of promotion, but was also caused permanent loss of pensionary benefit of higher grade---Departmental authorities were directed by the Supreme Court to consider case of appellant for promotion as per his entitlement in accordance with law and complete the process within specified period. [p. 1536] A, B & C

Dr. Mohyuddin Qazi, Advocate Supreme Court for Appellant.

Syed Sajjad Hussain Siain, A.A.-G: for Respondents.

Date of hearing: 25th October, 2005.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.--- This appeal by leave of the Court has been directed against the judgment dated 4-11-2002 passed by Service Tribunal whereby the appeal filed by the appellant for the grievance of having not considered for promotion as per his entitlement, was dismissed. Leave was granted in this appeal vide order dated 20-2-2003 as under:---

"Leave is granted to inter alia consider that in the absence of

injunctions qua the petitioner, the Departmental Promotion Committee was justified in not considering his case for the sake of promotion when the vacancy was already in existence."

2. The appellant, having superannuated, retired from service on 2-6-1999 whereas he was due for promotion much before his retirement but was not considered for promotion on the ground/ reason that a restrained order was passed by the Tribunal in another appeal.

3. The learned counsel for the appellant has contended that the Department by misconstruing the order passed by the Tribunal in Appeal No.2095 of 1998, withheld the promotion of the petitioner and deprived him from a legitimate right to hold the higher post and the consequential benefits. The Tribunal passed the following order in C.A. No.2095 of 1998:---

"No adverse action to the extent of the appellant shall be taken."

This order was passed to protect the right of appellant in the above referred appeal and respondents were not at all restrained not to consider the appellant in the present appeal for promotion in his own right.

4. The learned A.A.-G. without justifying the action of the Department; has contended that the appeal of the appellant before the Service Tribunal was time-barred. We are afraid the question of limitation was not taken before the Tribunal and the point, which was not raised before the Tribunal, cannot be allowed to be taken before this Court in appeal.

5. The entitlement of the appellant for promotion was not denied rather the process of promotion was withheld on the excuse of above referred order of Tribunal. We having considered the matter, have found that the appellant was wrongly prevented to get next promotion and discharge the higher responsibilities as a result of which he was not only deprived of the legitimate right of promotion but was also caused permanent loss of pensionary benefit of the higher grade. In view of the above, we direct that Departmental Authorities should proceed to consider the case of appellant for pro forma promotion as per his entitlement in accordance with law and complete the process within three months. This appeal is accordingly allowed with no order as to costs.

H.B.T./S-143/SC

Appeal accepted.

2008 S C M R 1537

[Supreme Court of Pakistan]

Present: M. Javed Buttar and Saiyed Saeed Ashhad, JJ

SHAFI MUHAMMAD and others----Petitioners

versus

MUHAMMAD ISMAIL and another----Respondents

Criminal Petition No.29-K of 2005, decided on 6th July, 2005.

(On appeal from the judgment, dated 4-4-2005 passed by High Court of Sindh, at Karachi in Criminal Transfer Application No.7 of 2005).

Criminal Procedure Code (V of 1898)---

---S. 526---Constitution of Pakistan (1973), Art.185(3)---Transfer of case---Accused were not granted any hearing by High Court while transferring this trial from one District to another District---Counsel for both the parties had agreed to the remand of the case---Impugned order was consequently set aside---Complainant's application for transfer of the case was directed to be decided afresh on merits by the High Court after granting hearing to both the parties---Petition for leave to appeal was converted into appeal and allowed accordingly in the said terms. [p. 1537] A

Abdul Majeed Pirzada, Advocate Supreme Court and Akhlaq Ahmed Siddiqui, Advocate-on-Record for Petitioners.

Suleman Habibullah for Respondent No.1.

Nemo for Respondent No.2.

ORDER

The trial, which is being faced by the petitioners, has been transferred from one District to another through the impugned order without granting opportunity of hearing to the petitioners/accused. So much so, they were not even made party to the proceedings and no notice was issued to them and apparently the impugned order has been passed because the Law Officer gave consent for the transfer of the trial to Sessions Judge, Malir, Karachi.

We have heard the learned counsel for the petitioners as well as learned counsel representing respondent No.1/complainant. Since the petitioners were not granted any hearing at the time of passing of the

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 757 /ST

Dated 12-4- /2019


To,

The Regional Police Officer,
D.I.Khan Range,
D.I.Khan.

SUBJECT: - ORDER IN APPEAL NO. 1107/2017, MUHAMMAD HUSSAIN JORH VS GOVT.

I am directed to forward herewith a certified copy of Order/Judgment dated
26.03.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above



REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR