


30.05.2022

Junior to counsel for the appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment as senior counsel is busy before Apex Court. In this regard, proper application seeking adjournment was filed and is placed on file of Service Appeal No.1133/2019 titled "Muhammad Zeeshan Vs. Government of Khyber Pakhtunkhwa". Case is adjourned to 09.08.2022 for arguments before D.B.

  
(Fareeha Paul)  
Member(E)


  
(Rozina Rehman)  
Member (J)

9-8-2022

Due to the Public holiday the case is adjourned to 9-11-2022

9.11.2022

Since 9<sup>th</sup> November has been declared as public holiday, case is adjourned to 05.01.2023 for the same as before.

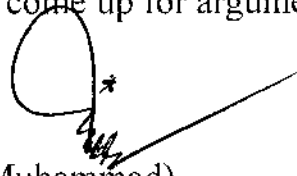
  
Reader

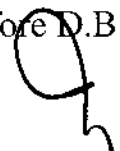
  
Reader

05.01.2023

Appellant in person present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. Last opportunity is granted. To come up for arguments on 06.04.2023 before D.B.

  
(Mian Muhammad)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

SCANNED  
Posi

Stipulated period passed reply not submitted.

15.09.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

  
Chairman

09.12.2021

Learned counsel for the appellant and Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Muhammad Faheem, Inspector (Legal) for the respondents present.


Representative of the department submitted comments on behalf of respondents No. 1 to 3, which are placed on file and copy of the same is handed over to learned counsel for the appellant. To come up for rejoinder, if any, as well as arguments on 31.03.2022 before D.B.

  
(MIAN MUHAMMAD)  
MEMBER (E)

31.03.2022

Miss. Rabia Muzaffar, Advocate, (junior of learned counsel for the appellant) present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 30.05.2022 before the D.B.

  
(Rozina Rehman)  
Member (J)

  
(Salah-ud-Din)  
Member (J)

02.08.2021

Counsel for the appellant present. Preliminary arguments heard.

In term of normal course, the appeal appears to be time barred but in view of particular legal position to be discussed herein-after, the bar of limitation for the time-being is immaterial. In wake of COVID, 19, the Government of Khyber Pakhtunkhwa for the first time declared Public Health Emergency in March, 2020 for three months which was extended from time to time for further term and presently it has been extended by the Government vide Notification No. SOG/HD/1-102/Covid-19/2020/ 3062, dated 30.06.2021 for the period from 01.07.2021 to 30.09.2021. The case of the appellant falls within the period of emergency. In view of Section 30 of the Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020, the limitation period provided under any law shall remain frozen. Points raised Need consideration. Subject to all just and legal objections, this appeal is accepted for full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 09.12.2021 before the D.B.

Appellant Deposited  
Security & Process Fee

02/8/21



  
Chairman

Form- A

# FORM OF ORDER SHEET

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

Case No. - 5917 /2021

S.No.	Date of order, proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/06/2021  <b>SCANNED KF ST PESAWAR</b>	<p>The appeal of Mr. Abid Jawad presented today by Mr. Fazal Shah Mohmand Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/08/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

# BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 5917/2021

Abid Jawad.....Appellant

**V E R S U S**

AIG & Others.....Respondents


## I N D E X

S.No	Description of documents	Annexure	Pages
1.	Service Appeal with affidavit		1-3
2.	Application for condonation of delay with affidavit		4
3.	Copies of orders	A	5-6
4.	Copy of Notification dated 14-01-2011, and order dated 18-07-2018	B & C	7-9
5.	Copy of Service Appeal No 7/2019 & Notification dated 23-12-2020	D & E	10-13
6.	Copy of departmental appeal	F	14
7.	Vakalat Nama		15

Dated:-07-06-2021

  
Appellant

Through

  
**FAZAL SHAH MOHMAND**  
ADVOCATE,  
SUPREME COURT OF PAKISTAN.

**OFFICE:-** Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841  
Email:- [fazalshahmohmand@gmail.com](mailto:fazalshahmohmand@gmail.com)

-1-

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No \_\_\_\_\_/2021

Abid Jawad, Assistant Sub Inspector, Photography Section, Forensic Science Laboratory, KPK Peshawar.....**Appellant**

**V E R S U S**

1. Additional Inspector General of Police (Investigation) KPK Peshawar.
2. Director, Forensic Science Laboratory, KPK Peshawar.
3. Provincial Police Officer, KPK Peshawar.

.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR THE MODIFICATION OF NOTIFICATION DATED 23-12-2020 TO THE EXTENT OF APPELLANT WHEREBY THE APPELLANT HAS BEEN PROMOTED AS ASI WITH EFFECT FROM 23-12-2020 INSTEAD OF 09-06-2018 AND FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT DATED 07-01-2021 HAS NOT BEEN RESPONDED DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:-**

On acceptance of this appeal, the impugned Notification dated 23-12-2020 to the extent of the appellant may kindly be modified thereby promoting the appellant as ASI with effect from 14-06-2018 instead of 23-12-2020 with all back benefits.

**Respectfully Submitted:-**

1. That the appellant was enlisted as Constable in the respondent department and was transferred to Forensic Science Laboratory KPK Peshawar (herein after referred to as FSL) in the year 2009 and was posted in photography Section and later on, upon recommendations of the Director FSL he was permanently transferred to FSL. **(Copies of orders are enclosed as Annexure A).**
2. That the vacancy of the Head Constable fell vacant in Photography Section on 14-01-2011, due to Promotion of Head Constable Taza Gul as ASI and the appellant for his promotion as Head Constable after preferring departmental appeal, approached Service Appeal No 636/2016 and in the meanwhile the appellant was promoted as Head Constable vide Order dated 29-06-2017, thus Service Appeal of the appellant was decided however the appellant was granted permission to approach proper forum for the redressal of his grievances. **(Copies of Notification dated 14-01-2011, and order dated 18-07-2018 in Service Appeal is enclosed as Annexure B & C).**

3. That thereafter the appellant preferred Departmental Appeal for modification of Notification dated 29-06-2017 which was not responded where after the appellant filed Service Appeal No 7/2019 which is still pending before this honorable Tribunal and in the meanwhile the appellant was promoted as ASI vide Notification dated 23-12-2020 with immediate effect instead from 09-06-2018. **(Copy of Service Appeal No 7/2019 & Notification dated 23-12-2020 is enclosed as Annexure D& E).**
4. That the appellant preferred departmental appeal on 07-01-2021 for his promotion from the date when the vacancy of ASI fell vacant which has not been responded so far despite the lapse of more than the statutory period of ninety days. **(Copy of Departmental Appeal is enclosed as Annexure F).**
5. That the impugned Notification dated 23-12-2021 to the extent of the appellant by prompting him as ASI w.e.f 23-12-2020 instead of 09-06-2018 is liable to modification thereby promoting the appellant as ASI w.e.f. 09-06-2021 i.e. from due date, on grounds inter alia as follows:-

**GROUND:-**

1. That the Impugned Notification to the extent of the appellant is liable to modification as the same is not according to laws and rules governing the matter.
2. That the appellant has not been treated according to Law and rules as he has been denied accrued rights without any omission or commission on his part.
3. That the appellant is entitled to be promoted as ASI from the date when the post of ASI fell vacant as the appellant is perfectly fit and eligible besides being senior, thus the impugned Notification is liable to modification accordingly.
4. That the post of ASI is lying vacant in the photography section since 28-06-2018 and if the pending service appeal is accepted, then the appellant would be promoted as Head Constable w.e.f 14-01-2011, then the appellant being the only ASI in section would be entitled to be promoted as ASI w.e.f 14-06-2018.
5. That as per the plethora of Judgments rendered by the Apex as well as by this honorable Tribunal, a civil servant is to be promoted from the date when the vacancy in the promotion falls vacant and the appellant as such is entitled to be promoted from the requested date.
6. That the appellant has been denied due promotion from due date without any omission or commission on his part.

- 7. That the appellant has about 12 years of service with unblemished service record.
- 8. That the appellant seeks permission of this honorable Tribunal for additional grounds at the time of arguments.

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

Any other relief deemed appropriate in the circumstances of the case and not specifically asked for may also be granted in favor of the appellant.

Dated:-07-06-2021

*[Signature]*  
Appellant

Through

*[Signature]*  
**FAZAL SHAH MOHMAND**  
ADVOCATE,  
SUPREME COURT OF PAKISTAN.

**LIST OF BOOKS**

- 1. Constitution 1973
- 2. Other books as per need

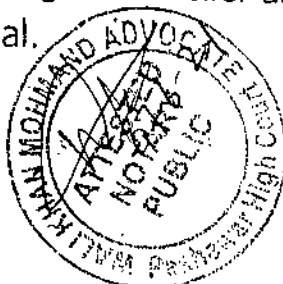
**CERTIFICATE**

Certified that as per instructions of my client, no Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable tribunal.

*[Signature]*  
**ADVOCATE**

**AFFIDAVIT**

I, Abid Jawad, Assistant Sub Inspector, Photography Section, Forensic Science Laboratory, KPK-Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



*[Signature]*  
**DEPONENT**



-4-

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No \_\_\_\_\_/2021

Abid Jawad.....Appellant

**V E R S U S**

AIG & Others.....Respondents

**Application for the condonation of delay if any.**

**Respectfully Submitted:-**

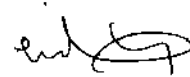
1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the issue in hand being of promotion which is recurring cause of action, departmental appeal of the appellant is still pending in the department and further the appellant is entitled to ante-dated promotion from the date of occurring of vacancy, and the appeal is as such within time.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

**It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.**

**Dated:-07-06-2021**

  
**Applicant/Appellant**

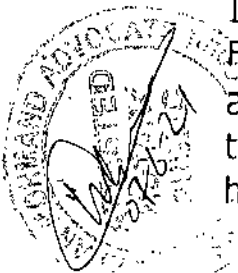
**Through**

  
**FAZAL SHAH MOHMAND**  
ADVOCATE,  
SUPREME COURT OF PAKISTAN.

**AFFI DAVIT**

I, Abid Jawad, Assistant Sub Inspector, Photography Section, Forensic Science Laboratory, KPK Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

  
**DEPONENT**



ORDER

-5-0-A  
PESHAWAR  
②

Constable Abid Jawad No. 94 of Investigation Unit CPO, Peshawar is hereby transferred and posted to FSL NWFP, Peshawar on loan basis with immediate effect and till further orders

(H. BIKHAR KHAN)  
Deputy Inspector General of Police,  
Investigation-I NWFP, Peshawar  
Mujahid/2009

NO. 9726-29 /Inv: dated Peshawar, the 26 /12/2009.

Copies are sent for information and n/action to:-

1. Director FSL NWFP, Peshawar.
2. SP/Research Inv;
3. SRC/Inv;
4. SHO PS Inv;

9

ATTESTED

A

From: The Director  
Forensic Science Laboratory  
Khyber Pakhtunkhwa, Peshawar

-6-

To: The Inspector General of Police,  
Investigation, Khyber Pakhtunkhwa, Peshawar

13520 FSL Dated Peshawar the 11/8/2010

Subject: TRANSFER OF MEN

Kindly refer to this office memo No 10862/FSL dated 25/6/2010 and your office memo No 5974/inv dated 5/7/2010 on the above noted subject

It is submitted that Constable Ahmad Nawaz is working on loan basis, a very competent and diligent official. His services are required in Photography Section of the Peshawar FSL, will be impacted on availability vacancy. It is recommended that his loan may kindly be transferred to FSL, Peshawar Please

P.

Director  
Forensic Science Laboratory  
Khyber Pakhtunkhwa, Peshawar.

Sund

o/c.

Request of Director FSL.  
for Transfer of Constable Ahmad Nawaz  
to FSL. for appellant

P.

ATTESTED

"B" -7-

FOR PUBLICATION IN THE KHYBER PUKHTUNKHWA POLICE GAZETTE PART-II ORDERS BY THE DIG/INVESTIGATION-II KHYBER PUKHTUNKHWA PESHAWAR

NOTIFICATION

Dated Peshawar, the \_\_\_\_\_/01/2011.

NO. \_\_\_\_\_/SRC/INV:- PROMOTION:- Being senior most and suitable amongst their colleagues, following Police Officers/Officials of this unit are hereby promoted to the next higher rank as noted against each with immediate effect. All further orders against the existing vacancies of their respective sections:-

S.#	NAME/RANK	PROMOTED AS	SECTION
1	ASI Muhammad Alangir	Offg: Sub Inspector BPS-14 (4920-380-16320)	FPB (FSL)
2	Head Const: Faza Gul	Offg: Asstt. Sub. Insp: BPS-09 (3820-230-10720)	Photographic Section/FSL
3	HC/Comp: Operator Abdul Halim	Offg: Asstt. Sub Insp: BPS-09 (3820-230-10720)	Computer Section (Conditionally promoted) subject to improve his performance in relevant field.

(FEROZE SHAH)

Deputy Inspector General of Police,  
Investigation-II, Khyber Pukhtunkhwa  
Peshawar.

No. 374-18 /SRC/Inv: dated Peshawar, the 14 /01/2011.

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

1. Director FSL Khyber Pukhtunkhwa Peshawar
2. System Analyst Computer Section.
3. PA to Addl IGP/Investigation Khyber Pukhtunkhwa Peshawar
4. Accountant Inves:
5. SRC/Inv:
6. Gazette Clerk Inv:

*All concerned*

*Dy Insp 19  
Of B-1-*

*Sen. SR/BL  
For info/action*

(FEROZE SHAH)

Deputy Inspector General of Police,  
Investigation-II, Khyber Pukhtunkhwa  
Peshawar

Muzahid 06.01.2011


*Director P.I. Muzahid*

**ATTESTED**

-8- "C"

Sr No	Date of order/proceeding
1	2

Order or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 636/2016

Date of Institution ... 13.06.2016  
 Date of Decision ... 18.07.2018

Abid Jawad, Constable Forensic Science Laboratory Peshawar,  
 Presently CPO, Peshawar.

Appellant

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. The Director, Forensic Science Laboratory, Khyber Pakhtunkhwa Peshawar.
3. The Additional Inspector General of Police, Investigation, Khyber Pakhtunkhwa Peshawar.
4. The Deputy Inspector General of Police Investigation-I, Khyber Pakhtunkhwa Peshawar.

Respondents

Mr. Muhammad Hamid Mughal ----- Member  
 Mr. Ahmad Hassan ----- Member

18.07.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant

with counsel present. Learned Deputy District Attorney present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 13.12.2012 passed by respondent No.2 whereby the appellant was surrendered from Forensic Science Laboratory to the Investigation Wing and against the order dated 23.05.2016 whereby departmental appeal of the appellant was rejected. In the present service appeal

**ATTESTED**  
  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

**ATTESTED**

the appellant has prayed for setting aside the impugned orders and that the respondents be directed to allow the appellant to remain posted at Photography Section FSL and he be also promoted to the post of Head Constable with all back benefits.

3. During the course of arguments it was brought to the Notice of this Tribunal that vide order dated 29.06.2017 the appellant in the capacity of lower subordinate of FSL/FPB KP (Photography Section) has been promoted to the post of next higher rank as officiating Head Constable. Copy of order dated 29.06.2017 placed on file.

4. In view of above when the appellant is performing his duties as lower subordinate of FSL (Photography Section) and has also been promoted, the present service has become infructuous. Consequently the present service appeal is hereby dismissed having become infructuous. In case the appellant feels aggrieved that his junior colleagues were promoted first or otherwise he should have been given ante dated promotion from a specific date, he may approach proper forum for the redressal of his grievances in accordance with law. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Announced *sd/- M. Hamid Nughal, Member*  
*sd/- Ahmad Hassan, Member*  
18-07-2018

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Presentation of Application 19-07-18  
Number of Words 1200  
Copying Fee 800  
Urgent —  
Total 800  
Name of Copyist [Signature]  
28-07-18

ATTESTED

"D" -10-

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 07 /2016

Abid Jawad, Head Constable, Photography Section, Forensic Science Laboratory, KPK Peshawar.....Appellant.

**VERSUS**

1. Additional, Inspector General of Police (Investigation) KPK Peshawar.
2. Director, Forensic Science Laboratory, KPK Peshawar.
3. Provincial Police Officer KPK Peshawar.

.....Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT 1974 FOR THE MODIFICATION OF ORDER DATED 29-06-2017 THEREBY PROMOTING THE APPELLANT AS HEAD CONSTABLE W.E.F. 14-01-2011 INSTEAD OF 29-06-2017 FOR WHICH DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF MORE THAN THE STATUTORY PERIOD OF NINETY DAYS.

**PRAYER:-**

On acceptance of this appeal the impugned Order dated 29-06-2017, may kindly be modified and the appellant may kindly be ordered to be promoted as Head Constable from due date i.e 14-01-2011, with all back-benefits with further promotion to the rank of ASI as per law and rules.

**Respectfully Submitted:-**

1. That the appellant was appointed as Constable in the respondent department and was transferred to Forensic Science Laboratory, KPK Peshawar in the year 2009 and was posted in Photography Section and later on, on the recommendation of the Director FSL he was permanently transferred there. (Copies of orders are enclosed as Annexure A).
2. That the vacancy of Head Constable fell vacant in Photography Section on 14-01-2011, due to promotion of Head Constable Taza Gul as ASI. (Copy Notification dated 14-01-2011 is enclosed as Annexure B).
3. That the appellant preferred departmental appeal and thereafter he filed Service Appeal No 636/2016 before this honorable Tribunal. (Copy of departmental appeal, Comments and Service Appeal No 636/2016 is enclosed as Annexure C).

**ATTESTED**

- 11 -
4. That in the mean while the appellant was promoted as Head Constable vide Order dated 29-06-2017, the mentioned Service Appeal was decided vide Judgment dated 18-07-2018, wherein it was held that, as the appellant has been promoted to the rank of Head Constable, therefore the Service Appeal has become infructuous, however the appellant was granted permission to approach proper forum for the redressal of his grievances. **(Copy of Order dated 29-06-2017 and Judgment dated 18-07-2018 is enclosed as Annexure D).**
  5. That there after appellant preferred departmental appeal for the modification of Notification Dated 29-06-2017 which has not been responded so far despite the lapse of more than the statutory period of ninety days. **(Copy of departmental appeal is enclosed as Annexure E).**
  6. That the impugned Notification dated 29-06-2017 is liable to modification thereby promoting the appellant as Head Constable w.e.f. 14-01-2011, i.e from due date, on grounds inter alia as follows:-

**GROUND:-**

- A. That the impugned Notification is liable to modification as the same is not according to law and rules governing the matter.
- B. That the appellant has not been treated according to law and rules and he has been denied accrued rights without any omission or commission on his part.
- C. That the appellant is entitled to be promoted as Head Constable w.e.f 14-01-2011 instead of 29-06-2017, as the post of Head Constable fell vacant in Photography section on 14-01-2011
- D. That the appellant is perfectly fit, Senior and eligible to ante-dated promotion as per the threshold governing the matter.
- E. That the appellant was recommended for promotion as Head Constable vide letter dated 01-11-2011, but he was not promoted as per recommendations and instead he was promoted on 29-06-2017. **(Copy of letter dated 01-11-2011 is enclosed as Annexure F).**
- F. That as per the Judgments of the Apex Court, wherein it has been held that **"A Civil servant is to be promoted from the date when the vacancy in the promotion quota falls vacant"** and the appellant is as such entitled to be promoted as Head Constable from the said date.
- G. That even the post of ASI is lying vacant in the Photography Section since 28-06-2018 and if the appellant is promoted as

**ATTESTED**



-12- -b-

Head Constable w.e.f 14-01-2011, then he becomes eligible for promotion to the rank of ASI.


- H. That the appellant has been denied due promotion from due date without omission or commission on his part and as per law no one could be punished for the fault on his part.
- I. That the appellant has a long service with Unblemished service record and is perfectly fit for ante-dated promotion from due date.
- J. That the appellant seeks the permission of this honorable Tribunal for further/additional grounds at the time of arguments

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

Any other relief not specifically asked for and deemed appropriate in the circumstances of the case may, also be granted in favor of the appellant.

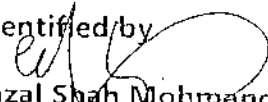
Dated:-13-12-2018

Through

  
Appellant  
Fazal Shah Mohmand  
Advocate, Peshawar

### AFFIDAVIT


I, Abid Jawad, Head Constable, Photography Section, Forensic Science Laboratory, KPK Peshawar, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by  
  
Fazal Shah Mohmand  
Advocate Peshawar

  
DEPONENT

**ATTESTED**

**"E" -13-**



**FOR PUBLICATION IN THE KHYBER PUKHTUNKHWA POLICE GAZETTE  
PART-II ORDERS BY THE ADDL/IGP INVESTIGATION KHYBER  
PUKHTUNKHWA PESHAWAR**

**NOTIFICATION**Dated Peshawar, the 23 /12/2020.

NO. 13364 /EC/INV:- **PROMOTION:-** As recommended by the Departmental Promotion Committee in its minutes vide No. 779/Admn/Inv, dated 22.12.2020, the following Head Constables of Forensic Science Laboratory, Peshawar are hereby promoted to the next higher rank i.e. Offg: Assistant Sub Inspector BPS-11 (12570-880-38970) with immediate effect against the existing vacancies of their respective sections as noted against each:-

S.NO.	NAME	PRESENT RANK	PROMOTED TO THE NEXT RANK	FSL SECTION
1.	Muhammad Arif Jan	Head Constable	Offg: Assistant Sub Inspector	Fire Arms
2.	Kamran Aziz	Head Constable	Offg: Assistant Sub Inspector	Fire Arms
3.	Abid Jawad	Head Constable	Offg: Assistant Sub Inspector	Photography
4.	Muhammad Mujahid	Head Constable	Offg: Assistant Sub Inspector	FPB
5.	Mian Safdar Shah	Head Constable	Offg: Assistant Sub Inspector	FPB
6.	Hamidullah	Head Constable	Offg: Assistant Sub Inspector	FPB
7.	Suleman	Head Constable	Offg: Assistant Sub Inspector	Chemical

  
(FEROZE SHAH) PSP

Addl: Inspector General of Police  
Investigation KP Peshawar

No: 13365-69/INV:

Endst: Even No and date.

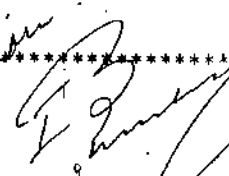
Copies are forwarded for information and necessary action to the:-

1. DIG//Investigation Admn: CPO Peshawar.
2. Director FSL Khyber Pakhtunkhwa Peshawar.
3. SP/Court and Litigation CPO Peshawar.
4. SP Legal FSL Peshawar.
5. PA to Addl:IGP/Investigation Khyber Pakhtunkhwa Peshawar.
6. Gazette Clerk Inv:

HR/SRL

Fa m/outline

\*\*\*\*\*



24/12

**ATTESTED**

To.

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

"F"  
-14-

Subject

APPEAL FOR THE MODIFICATION OF ORDER NOTIFICATION  
NO.13364-69/EC /INV:DATAED:23-12-2020 TO THE EXTENT OF  
APPELLANT WHEREBY THE APPELLANT HAS BEEN PROMOTED AS  
ASI WITH EFFECT FROM 23.12.2020 INSTEAD OF 09.6.2018.

With great reverence it is stated that:-

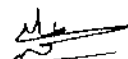
1. The appellant is serving in FSL, Photography section since 2009 and was promoted as Head Constable on 29.06.2017, the appellant preferred appeal for his promotion as Head Constable with effect from 14.01.2011 instead of 29.06.2017 which appeal is awaited for decision before Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar. (Copy of departmental appeal and Service Tribunal appeal is enclosed)
2. That the appellant was promoted as ASI vide order/Notification No. 13364-69/EC/Inv. dated 23.12.2020 (copy enclosed)
3. That the impugned order, Notification No. 13364-69/EC/Inv. dated 23.12.2020 is liable to modification to the extent of appellant thereby promoting the appellant as ASI with effect from 09.06.2018 on the following grounds.
  - I. That the appellant is perfectly fit, eligible, senior and qualified the criteria for promotion as ASI with effect from the occurrence of vacancy.
  - II. That as per law and rules on the subject, the appellant is entitled to be promoted on the next falling day on which the vacancy has fallen vacant in Promotion quota.
  - III. That the Honorable Service Tribunal as well as the Honorable Supreme Court of Pakistan has repeatedly held that a civil servant is entitled to promotion from the date, on which the vacancy falls vacant in promotion quota. This view is also held in the judgments reported by Honorable Supreme Court of Pakistan (copy enclosed).
  - IV. That there is no omission or commission on the part of the appellant and the appellant could not be punished for the fault of the others, if any
  - V. That the appellant is having the requisite qualification, length of service and training for promotion as ASI

PRAYER

It is therefore prayed that on acceptance of this appeal the impugned order notification No. 13364-69/EC/inv. dated 23.12.2020 may kindly be modified to the extent of appellant thereby promoting the appellant as ASI with effect from 09.06.2018 with all back benefit.

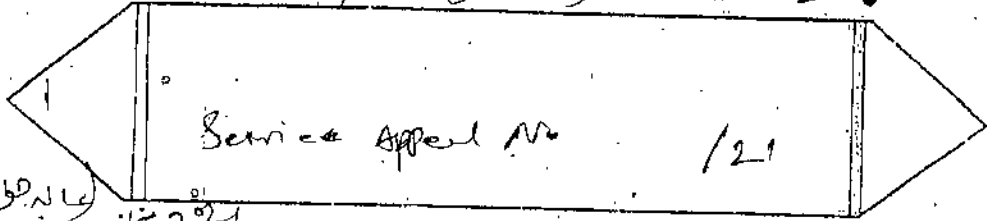
**ATTESTED**

Regard

  
Abid Jawad 7/1/2021

Assistant sub Inspector  
Photography Section, FSL  
Peshawar.

بعدالت مہر و سنٹر سول اور



(عالمہ طور سائن) 2 مہینے

بنام AIG مشیر

موزخ  
مقدمہ  
دعویٰ  
جرم

باعث تحریر آئنگے

مقررہ مدت درجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی اور کل کارروائی متعلقہ  
آجین مقام سینا اور سینا شاہ سندھ ASC + راہ مظفر ایڈوکیٹ

مقررہ مدت کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
ڈیکلوریشن اور صاحب کو راضی نامہ کر... نے تقرر تالیف ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
تیسرے وقت ڈگری کرنے اجراء اور صولی چیک دور و پیرا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا پٹرنہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائرہ کرنے اپیل گمرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا سہاقت  
پر اخذ منقاد قبول ہوگا۔ دوران مقدمہ میں جو خرچہ درجاندہ التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ تصدیق یا کہ سند ہے۔

المرنوم ۰۶ ماہ جون ۲۰۲۱

Attested & Accepted  
Adv

Handwritten signature

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

Service Appeal No. 5917/ 2021


Abid Jawad..... (Appellant)  
VERSUS

IGP, KP etc.....(Respondents)

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Respondents through

  
**(MUHAMMAD FAHIM KHAN)**  
Inspector/ Legal,  
FSL, PESHAWAR  
17301-7938461-9  
0333-9354705.

**BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 5917/2021.

Abid Jawad ..... (Appellant)

VERSUS

Addl: IGP Investigation and others..... (Respondents)

SUBJECT: **COMMENTS BY RESPONDENTS NO. 1 TO 3 ARE AS UNDER.**

RESPECTFULLY SHEWETH:

**PRELIMINARY OBJECTIONS:-**

- a) That the appeal is not based on facts.
- b) That the appeal is not maintainable in the present form.
- c) That the appeal is bad for miss-joinder and non-joinder of necessary parties.
- d) That the appellant is estopped to file the appeal by his own conduct.
- e) That the appellant has not come to this Honorable Tribunal with clean hands.
- f) That the appellant has got no cause of action to file the instant service appeal.
- g) That the appellant has concealed real facts from this Honorable Tribunal.

**OBJECTIONS ON FACTS**

1. Pertains to service record of the appellant needs no comments.
2. Incorrect. It is pertinent to mention here that as per recommendation of DPC meeting held on 23.06.2017, appellant was promoted to the post of officiating Head Constable after fulfilling the prescribed criteria mentioned in the instructions in respect of Forensic Science Laboratory and Finger Print Bureau for promotion to the next higher rank. He was promoted at the moment when vacancy occurred. Furthermore, this Honorable Tribunal dismissed the Service Appeal No. 636/ 2016 of the appellant vide judgment dated 18.07.2018, being infructuous.
3. Incorrect. The Service Appeal No. 07/ 2019 has already been decided by the Honorable Khyber Pakhtunkhwa, Service Tribunal, Peshawar vide judgment dated 15.10.2021, which has been challenged by respondent department through CPLA. It is worth to explain here that he was promoted as ASI when vacancy occurred, it is not just on the will of an individual. He was promoted on right time after fulfillment of the prescribed criteria. (Copy of judgment dated 15.10.2021 is annexed as "A").
4. Incorrect. As already explained that he was promoted on right time. Furthermore, promotion cannot be given to the appellant on his own will and choice. Police is a discipline Force promotion has its own criteria.

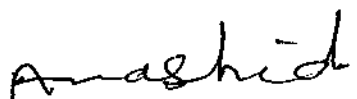
5. The appellant has challenged the legal/ valid orders of the respondents through unsound Grounds.

**OBJECTIONS ON GROUNDS.**

1. Incorrect. The Notification passed by the answering respondents is quite legal and in accordance with law/ rules.
2. Incorrect. The appellant has been treated in accordance with Law/ Rules. The answering respondents did not deny any legal right of the appellant.
3. Incorrect. As already explained in preceding Paras. He was promoted after fulfillment of prescribed criteria and as vacancy occurred. Furthermore, the answering respondents treated the appellant in accordance with law/ rules.
4. Incorrect. As already explained above.
5. Correct to the extent of Honorable Court/ Tribunal judgments while the last part is denied as the respondents already explained that promotions cannot be done on an individual will. Promotions always done as and when vacancy occurs.
6. Incorrect. As already explained that answering respondents dealt the appellant quite legally and in accordance with law/ rules.
7. Pertains to service record of the appellant needs no comments.
8. That the answering respondents may also be allowed to raise additional Grounds at the time of hearing of instant service appeal.


**PRAYERS**

In view of the above, it is humbly prayed that on acceptance of Para-wise comments, the instant Service Appeal may kindly be dismissed being meritless.


  
Director Forensic Science Laboratory.  
Khyber Pakhtunkhwa  
Peshawar.

(Respondent No. 02)

**DIRECTOR**  
Forensic Science Laboratory  
Police Investigation, Khyber Pakhtunkhwa  
Peshawar.

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

(Respondent No. 01)

  
Inspector General of Police,  
Khyber Pakhtunkhwa  
Peshawar.

(Respondent No. 03)

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

Service Appeal No. 5917/ 2021

Abid Jawad..... (Appellant)


**VERSUS**

IGP, KP etc.....(Respondents)

**AFFIDAVIT**

I, Muhammad Fahim Khan Inspector, Legal FSL do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondent No. 1 to 3 are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

Respondents through

  
**(MUHAMMAD FAHIM KHAN)**  
Inspector/ Legal,  
FSL, PESHAWAR  
17301-7938461-9  
0333-9354705.





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.07/2019

Date of Institution ... 13.12.2018  
Date of Decision ... 15.10.2021



Abid Jawad, Head Constable, Photography Section, Forensic Science Laboratory, Khyber Pakhtunkhwa, Peshawar.

... (Appellant)

VERSUS

Additional Inspector General of Police (Investigation) Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Fazal Shah Mohmand,  
Advocate

... For Appellant.

Asif Masood Ali Shah,  
Deputy District Attorney

... For Respondents.

*Certified to be true copy*  
EX-AMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Rozina Rehman  
Atiq Ur Rehman Wazir

... Member (J)  
... Member (E)

JUDGMENT

Rozina Rehman, Member(J): Facts gleaned out from the memorandum of appeal are that appellant was appointed as Constable and was transferred to Forensic Science Laboratory Khyber Pakhtunkhwa, Peshawar. Vacancy of Head Constable fell vacant in Photography Section on 14.01.2011, whereas, appellant was promoted as Head Constable on 29.06.2017 but with immediate effect. He preferred departmental appeal for antedating of his

promotion from occurrence of vacancy which was not responded to, hence, the present service appeal.

2. We have heard Fazal Shah Mohmand Advocate for appellant and Asif Masood Ali Shah learned Deputy District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Fazal Shah Mohmand Advocate learned counsel appearing on behalf of appellant, in support of appeal contended with vehemence that the appellant was not treated according to law and rules as he was entitled to be promoted as Head Constable w.e.f 14.01.2011 instead of 29.06.2017 as post of Head Constable fell vacant in Photography Section on 14.01.2011. He contended that the appellant was fit, senior and eligible to antedated promotion as per rules and lastly, he submitted that it has been held by the superior fora that a civil servant is to be promoted from the date when the vacancy in the promotion quota falls vacant, therefore, appellant is also entitled to be promoted as Head Constable from the said date. Reliance was placed on 2010 P.L.C (C.S) 760 and 2019 PLC (C.S) 1252.

4. Conversely, learned D.D.A submitted that as per recommendation of D.P.C held on 23.06.2017 appellant was promoted to the post of Officiating Head Constable after fulfilling the *prescribed criteria mentioned in the instructions in respect of Forensic Science Laboratory and Finger Print Bureau* for promotion to the next higher rank. He contended that the appellant was promoted, the moment vacancy occurred and that now the prayer of appellant is not justified as he was treated in accordance with law and rules.

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BY  
 [Signature]  
 District District Attorney  
 District District Attorney

[Signature]


5. From the record it is evident that appellant was appointed as Constable and was transferred to Forensic Science Laboratory in the year 2009 on Loan Basis with immediate effect. A request for transfer of lien was made by Director Forensic Science Laboratory to the Additional Inspector General of Police as his services were required in Photography Section of F.S.L and accordingly, lien of Constable Abid Jawad the present appellant of Investigation Unit C.P.U was transferred to F.S.L Khyber Pakhtunkhwa on 12.08.2010. Admittedly, one Head Constable Taza Gul was promoted on 14.01.2011 in the Photography Section of F.S.L, therefore, appellant submitted an application requesting therein for promotion to the next rank on the existing vacancy of Head Constable. His application was properly processed. Comments were also invited from the D.S.P (Legal) and transfer of the appellant to Photography Section of F.S.L was recommended in order to enable him to seek his promotion being a qualified candidate. Despite his repeated requests, he was not considered for promotion, therefore, he filed Service Appeal NO.636/2016 and during the pendency of service appeal, he was promoted but with immediate effect. The availability of vacant post is not denied. Retrospective promotion is to be given effect from the day following the day of regular promotion of employee holding the said post. In the instant case, Head Constable Taza Gul got his promotion on 14.01.2011, whereas, the present appellant was promoted on 29.06.2017.


6. In view of the above discussion, this appeal is accepted with direction to the respondents to antedate the promotion of the appellant from the date of occurrence of vacancy i.e. (14.01.2011).

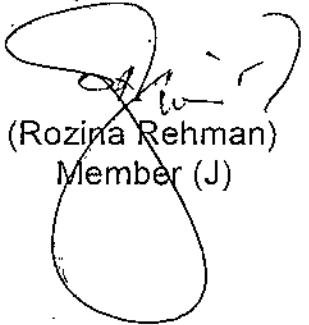
Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
15.10.2021

Certified to be true copy

  
EXAMINER  
Khyber Pakhtunkhwa  
Services Tribunal  
Peshawar

  
(Atiq Ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

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

Service Appeal No. 5917/ 2021

Abid Jawad..... (Appellant)

VERSUS

IGP, KP etc.....(Respondents)

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17301-7938461-9  
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Abid Jawad ..... (Appellant)

VERSUS

Add: IGP Investigation and others..... (Respondents)

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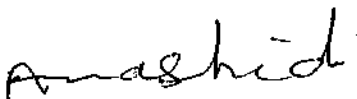
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### PRAYERS


In view of the above, it is humbly prayed that on acceptance of Para-wise comments, the instant Service Appeal may kindly be dismissed being meritless.

  
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Khyber Pakhtunkhwa  
Peshawar.


(Respondent No. 02)

**DIRECTOR**

Forensic Science Laboratory  
Police Investigation, Khyber Pakhtunkhwa  
Peshawar.

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

(Respondent No. 01)

  
Inspector General of Police,  
Khyber Pakhtunkhwa  
Peshawar.

(Respondent No. 03)

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

Service Appeal No. 15917/ 2021

Abid Jawad..... (Appellant)

VERSUS

IGP, KP etc.....(Respondents)

**AFFIDAVIT**

I, Muhammad Fahim Khan Inspector, Legal FSL do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondent No. 1 to 3 are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

Respondents through



**(MUHAMMAD FAHIM KHAN)**

Inspector/ Legal,  
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17301-7938461-9  
0333-9354705.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.07/2019

Date of Institution ... 13.12.2018  
Date of Decision ... 15.10.2021



Abid Jawad, Head Constable, Photography Section, Forensic  
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(Appellant)

VERSUS

Additional Inspector General of Police (Investigation) Khyber  
Pakhtunkhwa, Peshawar and two others.

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Fazal Shah Mohmand,  
Advocate

For Appellant.

Asif Masood Ali Shah,  
Deputy District Attorney

For Respondents.

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EX CATINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Rozina Rehman  
Atiq Ur Rehman Wazir

Member (J)  
Member (E)

JUDGMENT

Rozina Rehman, Member(J): Facts gleaned out from the memorandum of appeal are that appellant was appointed as Constable and was transferred to Forensic Science Laboratory Khyber Pakhtunkhwa, Peshawar. Vacancy of Head Constable fell vacant in Photography Section on 14.01.2011, whereas, appellant was promoted as Head Constable on 29.06.2017 but with immediate effect. He preferred departmental appeal for antedating of his

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Certified to be true copy  
BY  
Kishan Singh  
Deputy District Attorney  
Fazal Shah Mohmand


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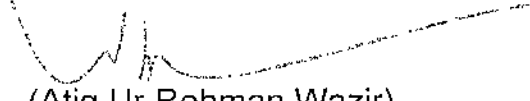
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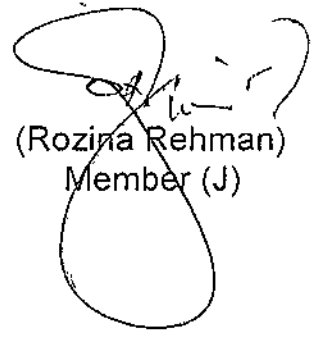
Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
15.10.2021

Certified to be true copy

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

  
(Atiq Ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)