

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.

Rozina Rehman

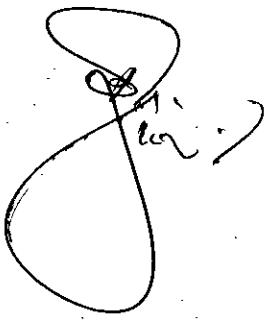
... Member (J)

Atiq Ur Rehman Wazir

... 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

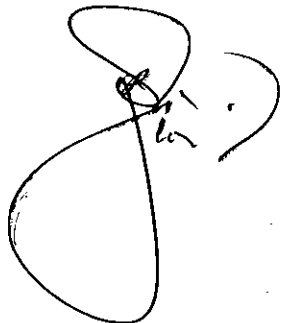


promotion from occurrence of vacancy which was not responded to, hence, the present service appeal.

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.



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.

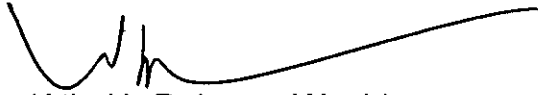
6. In view of the above discussion, this appeal is accepted with direction to the respondents to antedate the promotion of the appellant from the date of occurrence of vacancy i.e. (14.01.2011).



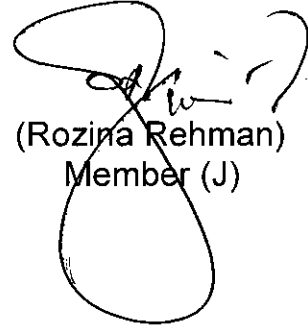
Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

15.10.2021



(Atiq Ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

Order

15.10.2021

Appellant present through counsel.

Asif Masood Ali Shah, learned Deputy District Attorney for respondents present.

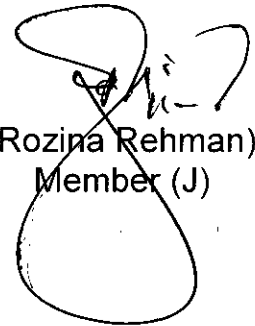
Vide our judgment of today of this Tribunal placed on file, this appeal is accepted with direction to the respondents to antedate the promotion of the appellant from the date of occurrence of vacancy i.e. (14.01.2011). Parties are left to bear their own costs. File be consigned to the record room.

Announced.

15.10.2021



(Atiq ur Rehman Wazir)
Member (E)




(Rozina Rehman)
Member (J)

02.09.2021

Appellant in person present. Mr. Shahid, Senior Clerk alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B 15.10.2021.


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

02.09.2021

Appellant present through counsel.

Asst. Musaddi Ali Shah, learned Deputy District Attorney respondents present.

View our judgment of today of this Tribunal placed on file, this appeal is accepted with direction to the respondents to expedite the promotion of the appellant from the date of occurrence of vacancy i.e. (14.01.2011) for the purpose of pay fixation. Parties are left to bear their own costs. File to be consigned to the record room.

Atiq-ur-Rehman Wazir
Member (Executive)

(Atiq-ur-Rehman Wazir)
Member (E)

(Salah-ud-Din)
Member (J)

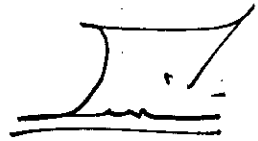
04.06.2021

Appellant alongwith his counsel Mr. Fazal Shah Mohmand, Advocate, present. Mr. Shahid Ali, Senior Clerk alongwith Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Former requested for adjournment on the ground that due to lot of work he has not gone through the record of instant appeal. Adjourned. To come up for arguments before the D.B on 08.07.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

08.07.2021

Appellant alongwith his counsel Mr. Fazal Shah Mohmand, Advocate, present. Mr. Shahid Ali, Senior Clerk alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents.

Learned Additional Advocate General requested for adjournment on the ground that he has not met the preparation for arguments. Learned counsel for the appellant is having no objection on the adjournment. Adjourned. To come up for arguments before the D.B on 02.09.2021.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

07.12.2020

Due to COVID-19 the case is adjourned for the same on
26.02.2021 before D.B.


READER

26.02.2021

Due to Pandemic of Covid-19, the case is adjourned to
02.06.2021 for the same.



Reader

02.06.2021

Appellant present in person.

Muhammad Adeel Butt learned Additional Advocate
General alongwith Shahid Ali S.C for respondents present.

Former made a request for adjournment as his
counsel is busy before Hon'ble Peshawar High Court
Peshawar; granted. To come up for arguments on
04.06.2021 before D.B.

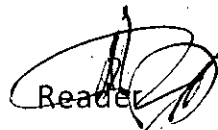

(Rozina Rehman)
Member (J)


Chairman

_____ .2020

Due to COVID19, the case is adjourned to

11/8/2020 for the same as before.


Reader

11.08.2020

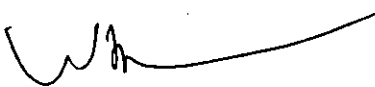
Due to summer vacations case to come up for the same on
13.10.2020 before D.B.

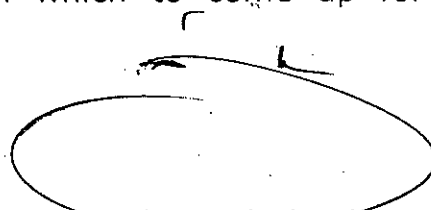

Reader

13.10.2020

Appellant himself alongwith Miss. Rabia Muzaffar, Advocate are present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith representative of the department Mr. Wisal, Head Constable are also present.

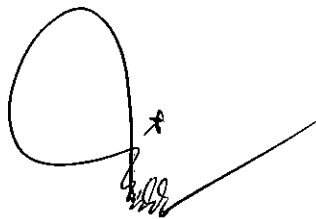
Junior counsel for the senior submitted that her senior is busy before the Hon'ble Peshawar High Court, Peshawar and requested for adjournment. Adjourned to 07.12.2020 on which to come up for arguments before D.B.


(Atiq-ur-Rehman Wazir)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

18.03.2020

Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Wisal, HC for respondents present. Record reveals that the appellant was promoted to the post of Head Constable with immediate effect vide order dated 29.06.2017 and he has filed the instant service appeal for antedation promotion with effect from when his other colleague namely Nadir Khan was promoted from the post of Head Constable to the post of ASI vide order dated 14.01.2011, therefore, respondents are directed to furnish relevant seniority list pertaining to the year 2010-11, moreover, the appellant has filed an undated departmental appeal against his promotion dated 29.06.2017 but the departmental appeal does not bear any date, therefore, respondents are also directed to furnish copy of departmental appeal bearing any date or any other record to show that on which date the departmental appeal was filed. Learned counsel for the appellant requested ^{for} to requisition seniority list pertaining to the year 2019. Adjourned. To come up for record and arguments on 19.05.2020 before D.B.



(MAIN MUHAMMAD)
MEMBER




(M.AMIN KHAN KUNDI)
MEMBER

01.01.2020

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Wisal Head Constable for the respondents. present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 21.02.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

21.02.2020

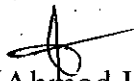
Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Wisal H.C for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 18.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

11.06.2019

Appellant in person present. Addl: AG alongwith Mr Salman, H.C for respondents present. Written reply/comments submitted which is placed on file. Case to come up for arguments on 06.08.2019 before D.B.


(Ahmad Hassan)
Member

06.08.2019

Appellant in person and Mr. Muhammad Jan, DDA for respondents present.

Appellant submitted rejoinder which is placed on file.

To come up for arguments on 30.10.2019 before D.B.


Member


Chairman

30.10.2019

Appellant absent. Learned counsel for the appellant absent. However junior to counsel for the appellant present and submitted application for adjournment. Mr. Usman Ghani learned District Attorney for respondents present. Adjourn. To come up for arguments on 01.01.2020 before D.B. Appellant be put to notice for the date fixed.


Member


Member

08.03.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Head Constable) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 for antidation of his promotion as Head Constable.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 22.04.2019 before S.B.


Appellant Deposited
Security & Process Fee


Member

22.04.2019

Appellant in present and Addl: AG for respondents present. Written reply/comments not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 11.06.2019 before S.B.


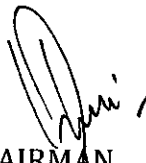


(Ahmad Hassan)
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 7/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/1/2019	<p>The appeal of Mr. Abid Jawad resubmitted 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 03/01/2019</p>
2-	06.2.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>6-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant in person present.</p> <p>Requests for adjournment of instant matter as his learned counsel is unable to appear due to general strike of the Bar.</p> <p>Adjourned to 08.03.2019 before the S.B.</p> <p style="text-align: right;"> Chairman</p>


P-21

The appeal of Mr. Abid Jawad Head Constable Photography Section FSL KPK Peshawar received today i.e. on 13.12.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Copies of order dated 29.06.2017 and 01.11.2011 are illegible which may be replaced by legible/better one.
- 4- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 5- Five copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 2390 /S.T,

Dt. 14-12-2018.

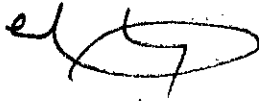

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Fazal Shah Mohmand Adv. Pesh.

Sir, Please Requiried further time


(Adv)
28/12/18
7 days time further extended.

Stb Resubmitted after necessary completed.


28/1/19

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 7 /2018

Abid Jawad.....Appellant.

VERSUS

AIG and others.....Respondents.

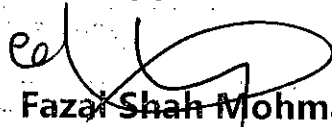
INDEX

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-3
2.	Copies of orders	A	4-6
3.	Copy of Notification dated 14-01-2011	B	7
4.	Copy of departmental appeal, Comments and Service Appeal No 636/2016	C	8-18
5.	Copy of Order dated 29-06-2017 and Judgment dated 18-07-2018	D	19-21
6.	Copy of departmental appeal.	E	22-23
7.	Copy of letter dated 01-11-2011	F	24-26
8.	Wakalat Nama		27

Dated:-13-12-2018

Through


Appellant


**Fazal Shah Mohmand
Advocate, Peshawar**

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

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR Hyber Pakhtunkhwa
Service Tribunal

Service Appeal No 7 /2018

Diary No. 1751

Dated 13-12-2018

Abid Jawad, Head Constable, 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 SERVICE TRIBUNAL ACT 1974 FOR THE MODIFICATION OF ORDER DATED 29-06-2017 THEREBY PROMOTING THE APPELLANT AS HEAD CONSATBLE 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 NINTY 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).**

Filed to-day
Registrar
13/12/18

Re-submitted to day and filed.
Registrar
03/01/18

- 2 -
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

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

[Signature]
Fazal Shah Mohmand
Advocate, Peshawar

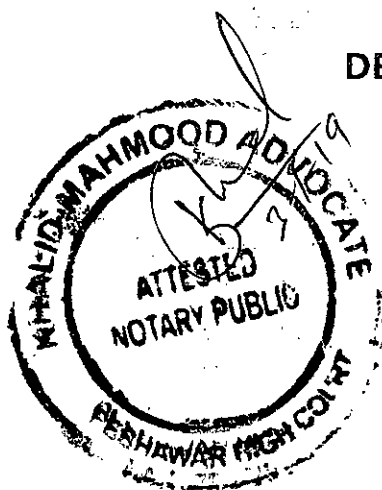
AFFIDAVIT

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

[Signature]
Fazal Shah Mohmand
Advocate Peshawar

[Signature]
DEPONENT



ORDER

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

(IFTIKHAR 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:

CT
20

From: The Director
Forensic Science Laboratory
Khyber Pakhtunkhwa, Peshawar.


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

No. 135257 FSL Dated Peshawar the 11/8/2010

Subject: TRANSFER OF LIEN.

Memo: 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.

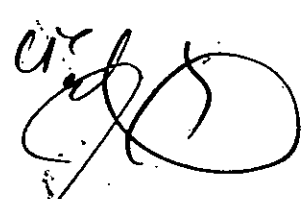
It is submitted that Constable Abdul Jawad No. 94 working in FSL on loan basis, is very component and diligent official. His services are required in Photography Section of FSL, Peshawar. He will be adjusted on availability of vacancy. It is recommended that his lien may kindly be transferred to FSL, Peshawar Please.


Director
Forensic Science Laboratory
Khyber Pakhtunkhwa, Peshawar.

By Hand

q/c.

Request of Director FSL
for transfer of lien of appellant
to FSL.



ORDER

The lien of Constable Abid Jawad No. 94 of Investigation Unit CPO, Peshawar is hereby transferred to FSL KPK, Peshawar with immediate effect.

Signature
(HAFIZ KHAN)
Deputy Inspector General of Police,
Investigation-I KPK, Peshawar

No. 7137-40/Inv., dated Peshawar, the 18/08/2010

Copies are forwarded for information and n/action to the:-

1. Director FSL Peshawar w/r to his letter No. 13525/FSL., dated 11.08.2010.
2. DSP Admn: Inv:
3. SRC Inv:
4. SHO PS Invest:

Transfer 7.12.10 order

Signature

Signature

C

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 : till further orders against the existing vacancies of their respective sections:-

S.#	NAME/RANK	PROMOTED AS	SECTION
1	ASI Muhammad Alamgir	Offg: Sub Inspector BPS-14 (4920-380-16320)	FPB (FSL)
2	Head Const: Taza 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. 314-18 /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 19/1/11
Dt 8-1-11

(**FEROZE SHAH**)

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

Mujahid 06.01.2011

SECRET

For info/action

Director FSL *Director FSL*

"C"

بخدمت جناب پرائشل پولیس آفیسر خیر پختونخواہ سی پی او، پشاور۔

مضمون: درخواست برآمداری و حصول انصاف۔

جناب عالی:

گزارش کی جاتی ہے کہ سال تعلیم تافہ ایم۔ اے پاس ہے۔ اور 1994 میں محکمہ پولیس میں بھرتی ہوا۔ سال کا 2009 میں عارضی طور پر ایف ایس ایل تبادلہ ہوا اور فوٹو گرافی میں تعینات ہوا۔ سال نے اس دوران فوٹو گرافی میں اے ون اور بی ون کا امتحان پاس کیا جو کہ پروموشن کیلئے لازمی ہوتی ہے۔ کاپی ہمراہ لف ہے "F/A" سال کی محنت اور تعلیمی قابلیت کو دیکھتے ہوئے انچارج فوٹو گرافی سیکشن نے ڈائریکٹر ایف۔ ایس۔ ایل کے ذریعے سال کی مستقل بنیاد پر تبادلے کی سفارش کی۔ کاپی ہمراہ لف ہے۔ "F/B" جس پر مورخہ 12.08.2010 کو سال کا تبادلہ مستقل بنیاد پر ایف ایس ایل فوٹو گرافی سیکشن ہوا۔

کاپی ہمراہ لف ہے۔ "F/C"

مورخہ 25.11.2010 کو متوقع اسامی پر سال نے پروموشن کیلئے درخواست کی۔ کاپی ہمراہ لف ہے "F/D" جس پر ڈائریکٹر ایف ایس ایل صاحب نے اسامی خالی ہونے پر سال کی سفارش کی۔ کاپی ہمراہ لف ہے "F/E" اسی دوران سال کو معلوم ہوا کہ فوٹو گرافی کی سینارٹی لیٹ میں ایک ڈرائیور ہے۔ جن پر سال نے ایڈیشنل آئی جی پی او کو تحریری درخواست کی جس میں سال نے اپنے تعلیم اور تجربہ اور فوٹو گرافی کی مینوان اور فوٹو گرافی سیکشن میں تعیناتی اور پروموشن کیلئے requirement کی وضاحت کرتے ہوئے دادری کی استدعا کی۔ کاپی ہمراہ لف ہے "F/F" جس پر ڈی آئی جی انوسٹیگیشن نے ڈائریکٹر ایف ایس ایل صاحب سے رائے طلب کی۔ کاپی ہمراہ لف ہے۔ "F/G" ڈائریکٹر ایف ایس ایل صاحب نے وضاحت کرتے ہوئے سال کو پروموشن کیلئے سفارش کی کاپی ہمراہ لف ہے "F/H" اسی دوران سال کو سرپلس میں ڈالنے اور پروموشن سے محروم کرنے کیلئے سال کو فوٹو گرافی سیکشن کے بجائے ایس اری نے اپنے طرف سے جنرل برانچ میں ڈال دیا۔ جسکی کاپی ہمراہ لف ہے "F/I"

جس کے خلاف سال نے سینارٹی لیٹ میں درستی کیلئے درخواست دی۔ کاپی ہمراہ لف ہے "F/J"

جس پر ڈائریکٹر ایف ایس ایل نے چھٹی نمبری 19880/FSL dated 6.11.2012 کو سینارٹی میں درستی کر کے

انوسٹی گیشن برانچ سی پی او بھیجی۔ کاپی ہمراہ لف ہے۔ "F/K"

اسی دوران مورخہ 31.12.2012 کو سال چھٹی نمبری 23039/FSL کے ذریعے دیگر پانچ کسانوں کے ساتھ سال کو بھی سرپلس میں ڈال دیا۔ جو سال کے ساتھ سراسر زیادتی تھی۔ کیونکہ فوٹو گرافی سیکشن میں تاحال ہیڈ کونسل اور دیگر تکنیکی حالی پڑی ہے جس کی کاپی ہمراہ لف ہے۔ "F/L" اور "F/M"

کاپی

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One of the Provincial Police Officers
Establishment Bijnah
1305/2012
Sd/-
Sd/-

مذکورہ بالا آرڈر کے خلاف سائل نے ایڈیشنل آئی جی پی انوسٹی گیشن کو درخواست کی۔ جس پر تاحال ڈائریکٹر ایف ایس ایل صاحب نے کوئی شیوا کی نہیں کی۔ کاپی ہمراہ لف ہے "F/N"

جسکے خلاف سائل نے سروس ٹریبونل میں رٹ پٹیشن داخل کی۔ اسی دوران مورخہ 18.4.2013 کو آئی جی پی صاحب خیر پختونخواہ نے چھٹی نمبری 8857 dated 18.4.2013 کو ڈائریکٹر ایف ایس ایل صاحب کی آرڈر کو فائل کیا جس کی کاپی ہمراہ لف ہے "F/O" جس پر تاحال عمل درآمد نہیں کی گئی۔

اسی دوران سائل کو دوبارہ معلوم ہوا کہ سائل کا نام دوبارہ فوٹو گرافی سیکشن سے ہیر کسی آفسر مجاز کے حکم کے ہیر جنرل برانچ میں رکھا گیا ہے جس کے خلاف سائل نے ایڈیشنل آئی جی پی صاحب کو تحریری درخواست دی۔ جس پر ایڈیشنل آئی جی پی صاحب نے ڈی آئی جی انوسٹی گیشن ہیڈ کوارٹر صاحب کی سربراہی میں انکوائری کرنے اور ذمہ داران کا تعین کرنے کا حکم دیا۔ کاپی ہمراہ لف ہے "F/P" جس پر تاحال کوئی کارروائی نہیں ہوئی۔

اسی دوران چھ ملازمین میں سے چار ملازمین جو کہ میٹرک پاس ہے کو واپس ایف ایس ایل بھیج دیا گیا اور ٹیلنٹ ہنٹ کے نام سے کئی دیگر اضلاع سے ملازمین ایف ایس ایل میں ایڈجسٹ کئے گئے۔ جس پر عدالت نے حکم دیتے ہوئے سائل کے ساتھ برتاؤ کو امتیازی قرار دیکر سائل کو ایف ایس ایل واپس بھیجنے اور پروموشن دینے کیلئے ڈیپارٹمنٹ کو میرا کیس ریمانڈ کیا۔ جسکی کاپی ہمراہ لف ہے "F/Q"

اس لئے بذریعہ درخواست استدعا ہے کہ سائل کی کیس پر ہمدردانہ غور کر کے سائل کو موجودہ حالی ویکسی پر ترقیاب کرنے اور ایف ایس ایل میں فوٹو گرافی سیکشن میں تعینات کرنے کا حکم صادر فرما کر مشکور فرمائے سائل تاحیات دعا گو اور احسان مند رہے گا۔

العارض

المرقوم 09.03.2016

اپکا تالعدار عابد جواد سبزی 94 فوٹو گرافی سیکشن ایف ایس ایل حال کمپیوٹر اپریٹری اسی ہی انوسٹی گیشن ونگ سی پی او، پشاور

Tel: No 03348470440

AR
عابد



447
2/2/17
Khyber Pakhtunkhwa

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

Letter 2017(E-IV)

No. 911 /E-IV, Dated Peshawar, the 24/1/2017.

Forensic Science Laboratory

To : The Addt: IGP/Investigation,
KPK, Peshawar.

Diary No: 191 / F

Date: 3/2/17

Subject: APPLICATION OF ABID JAWAD NO. 94

INVESTIGATION WING
Khyber Pakhtunkhwa Peshawar

Memo. Please refer to your office Memo No. 933/CPB dated; 16.06.2016 on the
subject noted above.

Constable Abid Jawad No. 94 of Investigation Unit CPO submitted
application/representation requesting therein for posting in photographic section
FSL Peshawar nad his promotion to next rank on the existing vacancy of Head
Constable.

His case was marked to DPC.

The DPC examined his case in its meeting held on 16.11.2016 and
recommends that the Investigation Wing CPO, Peshawar may consider his case on
merit for promotion and posting at photographic section of FSL Peshawar.

(PERVEZ ILLAHI)
Registrar

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Director FSL
for report.

CP
at

2/2/17

Addt: Inspector General of Police
Investigation
Khyber Pakhtunkhwa Peshawar

- 11 - ① (ZVP)

Subject: COMMENTS TO APPLICATION SUBMITTED BY FC ABID JAWAD FOR POSTING TO PHOTOGRAPHY SECTION OF FSL PESHAWAR AND PROMOTION TO THE EXISTING POST OF HEAD CONSTABLE PHOTOGRAPHY SECTION FSL PESHAWAR.

Respected Sir,

In compliance of direction dated 06.02.2017, requisite comments on the subject application are submitted as below.

1. According to Service record, Abid jawad No .94 was enlisted as FC FRP on 11.12.1994.
2. He was transferred to FSL Peshawar vide Order No: 27529-32/E-II dated 26.12.2009. **(Copy enclosed as F/A).**
3. His lien was transferred to FSL on vide Order No.7137-40/Inv: dated 12.08.2010. **(Copy enclosed as F/B).**
4. During his posting in Photography Section of FSL he passed A-I and B-I examination i.e Photography Courses , Technical Course and Proficient Course pre-requisite for promotion to the Post of HC in Photography Section. **(copy enclosed as F/C).**
5. That vide letter No 23404/FSL dated 01.11.2011, **(copy enclosed as F/D)** Director FSL Peshawar informed that constable Mukhtiar Khan No. 111 is senior most in Photography Section of FSL however he is matriculate and working as driver. He further informed that lien of FC Abid Jawad was permanently transferred to FSL on 12.08.2010 since then he is working in Photography Section FSL Peshawar he is Post Graduate, literate in Adobe Photoshop, MS Office and qualified Technical courses A-I and B-I pre-requisite for promotion to the Post of Head Constable, therefore recommended for vacant Post of Head Constable in Photography section of FSL.
6. Seniority list of Photography Section FSL submitted by Director FSL vide letter No.19880/FSL indicated seniority Position of applicant in the light of letter referred at Serial No.4 he deserves promotion to the post of Head Constable in Photography section FSL, Peshawar. **(Copy enclosed as F/E).**

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- 7. After his surrender back to Investigation wing vide letter No. 23039/FSL dated 31.12.2012, he remained serving in different Offices in Investigation wing CPO Peshawar. Presently FC Abid jawad is attached in legal Section of Investigation Unit CPO Peshawar. **(Copy enclosed as F/F)**
- 8. That the case of transfer of lien of applicant and others to their Parent Districts was taken up vide letter NO: 1228/EC /Inv: dated 20.02.2013 F/G with competent Authority which was decided in favour of applicant vide No 8857/E-I dated 18.04.2013.
- 9. An application filed by applicant Abid jawad No.94 before Police Appellate Board CPO for Posting back to Photography Section FSL and Promotion against the existing vacancy of Head Constable in Photography section FSL also decided in favour of the applicant vide No 911 E-IV dated 24.01.2017 which is Subjudice before your goodself office for decision on merit. **(Copy enclosed on F/H)**

In the light of above facts, it is recommended that applicant Abid Jawad No. 94 may be transferred back to Photography section of FSL Peshawar to enable him in seeking his promotion to the Post of HC in Photography section FSL being a qualified Candidate.

Submitted for your kind perusal and Order's deemed proper please.

02/02/17
02/02/17

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Director F.S.L
for report

DSP/Legal
Inv: CPO, Peshawar.

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- 13 -

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 636 /2016

Khyber Pakhtunkhwa Service Tribunal



628

Dated 13-6-2016

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

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 31.12.2012 PASSED BY RESPONDENT NO.2 WHEREBY APPELLANT HAS BEEN SURRENDERED FROM THE FSL TO THE INVESTIGATION WING AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL APPEAL TO THE APPELLATE AUTHORITY BUT THE SAME WAS REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 23.05.2016.

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PRAYER:

On acceptance of the instant appeal, the impugned original order dated 31.12.2012 issued by Respondent No.2 and the appellate order dated 23.05.2016 may graciously be brushed aside and the Respondents be directed to act in the matter in accordance with law and to allow the appellant to remained posted at Photography Section, FSL being technically qualified and experienced and be also promoted to the post of Head Constable being fit having Adobe Photo Shop and Technical Courses A1 and B1 meant for the said Section with all back benefits.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

9/14/16
13/6/16

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant is a qualified Constable holding Master degree from Peshawar University. He has been performing his duties for the last 21 years and presently posted at CPO Peshawar.
2. That appellant was transferred from Research Section of CPO to FSL Peshawar vide order dated 26.12.2009 (*Annex:-A*) on loan basis and then he was adjusted in Photography Section of FSL on temporary basis, and got different trainings in the field of Photography. In this regard due to appellant's knowledge, Photography skills, computer knowledge and qualification, the then Director FSL recommended his name for transfer and permanent lien to Photography Section of FSL, Peshawar vide letter dated 11.08.2010 (*Annex:-B*).
3. That Respondent No.4 transferred the lien of appellant to FSL Peshawar vide order No.7137-40/Inv: dated 12.08.2010 (*Annex:-C*). Later on appellant submitted an application (*Annex:-D*) before Respondent No.4 for promotion to the rank of Head Constable on 01.11.2010, which was referred to Respondent No.2 for consideration and comments who submitted the same (*Annex:-E*) recommending appellant for promotion against the expected vacant post of Head Constable in Photography Section.
4. That to his utter dismay, appellant was informed that in the Seniority List, his name was prescribed on second place and Mr. Mukhtar Ali (Driver Constable) was placed on top of the Seniority List, even when there is no vacancy of the Driver Constable on the strength of FSL nor in FPB and especially in Photography Section. In this regard he put all the requisite rules and regulations according to FSL Manual and submitted to Respondent No.4 on 08.09.2011 (*Annex:-F*), in continuation of which, appellant's application was endorsed to Respondent No.2 for comments vide letter No.7397/SRC/Invest: dated 31.10.2011 (*Annex:-G*) in which appellant was again recommended for promotion in Photography Section vide letter No.23404/ dated 01.11.2011 (*Annex:-H*) of Respondent No.2 referring to 02 vacancies of Head Constables one each in Photography Section and Chemical Section.
5. That in this regard Respondent No.4 made a query for clarification whether the Driver Constable Mukhtiar Ali is a Driver Constable or Constable vide letter

ATTESTED

EXAMINER
Cyber Policing
Service Tribunal,
Peshawar

dated 18.11.2011 (*Annex:-I*) who clarified that "Constable Mukhtiar Ali No.111 of FSL was appointed as Constable in the FRP on 11.12.1994 and later on he was absorbed as Driver Constable on 20.08.1998 in FRP Peshawar vide letter dated 28.11.2011 (*Annex:-J*).

6. That later on an uncalled for observation was made that the appellant had two liens. In this regard appellant has submitted the relevant rules (*Annex:-K*) to meet the observation but inspite of the same it was suggested through a letter to CPO for comments which is still pending duly signed by Respondent No.4.

7. That vide impugned order dated 31.12.2012 (*Annex:-L*) passed by Respondent No.2, appellant was unlawfully surrendered to the CPO on the ground of being over and above sanctioned strength of FSL/FPB. Since the order was illegal, unfair and unjust inas much as the case of the appellant for promotion was already in the process, therefore, appellant preferred a departmental Representation (*Annex:-M*) to the Appellate Authority but the same was not disposed of within the statutory period of 90 days, hence Service Appeal No.620/2013 was filed before this Hon'ble Tribunal wherein the Respondents filed their parawise comments (*Annex:-N*) and thereafter, Rejoinder (*Annex:-O*) was also submitted.

8. That vide order dated 21.12.2015 (*Annex:-P*), this Hon'ble Tribunal disposed of the appeal in the following terms:-

"This may be observed that in the said scenario the learned counsel for the appellant has worked out prima facie case on the ground of discrimination, hence, the Tribunal is constrained to remit the case of the appellant to Respondent Department to consider his appeal and provide the same benefit to him, if his case is similar with the case of the said Hameedullah. The appeal is disposed off accordingly."

In the post remand proceedings, without hearing the appellant vide impugned appellate order dated 23.05.2016 (*Annex:-Q*) the appeal of the appellant was rejected on quite untenable grounds, hence this appeal inter-alia on the following grounds:-

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Grounds:

A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders instead of

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considering the appellant for promotion to the next higher grade, which are unjust, unfair and hence not sustainable in the eye of law.

B. That as a matter of fact the impugned order passed by Respondent No.2 was then forwarded to the competent authority i.e. Respondent No.1 who did not agree therewith and filed the same vide letter dated 18.04.2013 (Annex:-R) and thereafter not only Hameedullah but all others were also readjusted as the FSL who are still serving there.

C. That the reason mentioned in the impugned appellate order is not sustainable because all the employees serving in the FSL are drawing their salaries from the Investigation because the FSL is a Wing of the Investigation Branch.


D. That previously the name of the appellant was taken out from the Photography Section and placed in the general Section in the Seniority List of FSL employees as stood on 31.12.2012 (Annex:-S) without any concept of general section in the FSL upon which appellant then filed an application (Annex:-T) to Respondent No.2 whereafter again the Seniority List was rectified vide letter dated 06.11.2012 (Annex:-U) and the name of the appellant was restored to Photography Section.

E. That the impugned orders are the result of arbitrary exercise of powers inas much as appellant has remained in the FSL for considerable period of time and during this period has developed his skills in the Photography and his sending back will result into the futility of his skills obtained during the course of time.

F. That when once the case of promotion of the appellant was processed considering the appellant as the permanent employee of the FSL then surrendering him being over and above is beyond comprehension, therefore, the impugned orders are void, ab-initio, without lawful authority, therefore, not maintainable.

G. That the case of the appellant was a clear case of discrimination as other five persons mentioned in the impugned order were subsequently re-adjusted in the FSL after the approval was not accorded by Respondent No.1 including Hameedullah and for that very reason on the ground of clear discrimination the case was remitted to the appellate authority to do substantial justice but the impugned appellate order but once again the issue was left unresolved which is against the law.

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Keyber Pakhtunkhwa
Service Tribunal
Peshawar

H. That appellant has been condemned unheard inas much as the impugned order has been passed at his back which is against the principle of natural justice.

I. That appellant will also beg to submit other grounds at the time of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

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

Through

Appellant
[Signature]
Khaled Rahman,
Advocate,
Supreme Court of Pakistan.

Dated: 13-06/2016

Certified to be true copy
EX-12-ER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Date of Presentation of Application 19-07-18
Number of Words 2400
Copying Fee 14.00
Urgent _____
Total 14.00
Name of Copyist *[Signature]*
Date of Completion of Copy 28-7-18
Date of Delivery of Copy 28-7-18

-18-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2016

Abid JawadApplicant

Versus

The PPO and othersRespondents

Application for restraining the Respondents from filling the available vacancy of Head Constable by way of promotion in the Photography Section FSL till the final disposal of the instant appeal.

Respectfully Sheweth,

- 1. That the above titled service appeal is being filed today which is yet to be fixed for hearing.
- 2. That the facts alleged and grounds taken in the body of main appeal may kindly be as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
- 3. That the balance of convenience also lies in favour of appellant and in case the respondents are not restrained and in the meanwhile the disputed vacancy in the Photography Section is filled in the meanwhile; not only the appellant will suffer irreparably but the instant would also become infructuous.

It is, therefore, humbly prayed that on acceptance of this application, the Respondents may graciously be restrained from filling the vacancy of Head Constable in the Photography Section FSL, Peshawar by way of promotion till the final disposal of the appeal.

Dated: 13/06/2016

Through

Applicant

Khaled Rahman,
Advocate,
Supreme Court of Pakistan

Verification

I, Abid Jawad, Constable, CPO Investigation, Peshawar, do hereby verify 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 Hon'ble Tribunal.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Applicant/Appellant

- 19 - "D"

ORDER

As recommended by the Departmental Promotion Committee in its meeting held on 23.05.2017 the following lower subordinates of FSI/FPB KP, Peshawar are hereby promoted to the next higher rank as noted against each with immediate effect and till further orders against the existing vacancies of their respective sections:-

S.NO.	NAME/DESIGNATION	SECTION	PROMOTED AS	REMARKS
1.	Masood-Ur-Rehman HC	Finger Print	Offg. ASI BPS-09 (9800-610-28160)	
2.	Abid Jawad Constable No.94	Photography	Offg. Head Constable BPS-07 (9220-510-24520)	

(M. SHAHZAD ASLAM SIDDIQI) PSP
DIG/HORS/Investigation
For Addl. Inspector General of Police
Investigation, Khyber Pakhtunkhwa
Peshawar

No. 6073-6101 /EC/Inv Dated Peshawar, the 29 / 5 / 2017

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

- 1. DIG/HORS/Investigation CPO Peshawar
- 2. Director FSI, Khyber Pakhtunkhwa Peshawar
- 3. SP Investigation Unit CPO Peshawar
- 4. O/S Investigation Unit CPO Peshawar

Handwritten signature/initials

(M. SHAHZAD ASLAM SIDDIQI) PSP
DIG/HORS/Investigation
For Addl. Inspector General of Police
Investigation, Khyber Pakhtunkhwa
Peshawar

ORDER

As recommended by the Department Promotion Committee in meeting held on 23.06.2017, the following lower subordinates of FSL/FPB KP Peshawar are hereby promoted to the next higher rank as noted against each with immediate effect and till further orders against the existing vacancies of the respective section:-

S. NO.	NAME/DESIGNATION	SECTION	PROMOTED AS	REMARKS
1	Masood-Ur-Rehman HC	Finger Print	Offg: ASI BPS-09 (9800-610-28160)	
2	Abid Jawad Constable No. 94	Photography	Offg: Head Constable BPS-07 (9220-510- 24520)	

-sd-

(M. SHAHZAD ASLAM SIDDIQUEI) PSP
DIG HOrs/Investigation
For Addl. Inspector General of Police
Investigation Khyber Pakhtunkhwa,
Peshawar

No. 6098-6101/EC/Inv:

Dated Peshawar, the 29/6/2017.

Copies are forwarded for information and necessary action to the:

1. DIG/HORS/Investigation CPO Peshawar.
2. Director FSL Khyber Pakhtunkhwa, Peshawar.
3. SP Investigation CPO, Peshawar
4. O.S Investigation Unit CPO, Peshawar.

-sd-

(M. SHAHZAD ASLAM SIDDIQUEI) PSP
DIG HOrs/Investigation
For Addl. Inspector General of Police
Investigation Khyber Pakhtunkhwa,
Peshawar



Sr. No	Date of order/proceeding	Order or other proceedings with signature of Judge or Magistrate
1	2	3



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

(Signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- 21 -

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 antedated 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.

CR
al

Announced *Edf. M. Hamid Mughal, Member*
Edf. Ahmad Hassan, Member
18-07-2018

Certified to be true copy
K.P.B. MUR
Service Tribunal
Peshawar

Date of Presentation of Application 19-07-18
 Number of Words 1200
 Copying Fee 8-00
 Urgent —
 Total 8-00
 Name of Copyiest [Signature]
 Date of Completion of Copy 28-07-18

- 22 -

E

**Before the worthy Additional Inspector General of Police
(Investigation) Khyber Pakhtunkhwa, Peshawar.**

Subject:- **Departmental Appeal For Promotion Of The Appellant As
Head Constable W.E.F 14.1.2011 Instead Of 29.6.2017.**

Respectfully submitted as under:-

1. That the appellant was transferred to FSL, in the year 2009 and was posted in Photography Section, later on the Director FSL, recommended his transfer to FSL, on permanent basis.(F/A)
2. That the vacancy of Head Constable fell vacant in Photography Section on 14.1.2011 due to the promotion of Head Constable Taza Gul as ASI.(F/B)
3. That the appellant preferred departmental appeal and there after he filed Service appeal NO-636/2016 before the Khyber Pakhtunkhwa, Service Tribunal.(F/C)
4. That in the mean while the appellant was promoted as Head Constable vide order dated 29.6.2017 (F/D), the Service appeal referred above was decided vide Judgment dated 18.07.2018 and it was held by the Service Tribunal 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.(F/E)
5. That the appellant is entitled to be promoted as Head Constable w.e.f 14.1.2011, instead of 29.6.2017, as the Post of Head Constable has fallen vacant in Photography Section on 14.1.2011.at Para 2
6. That the appellant was recommended for promotion as Head Constable vide letter dated 1.11.2011(F/F) but illegally promotion was not granted to him as per recommendation and instead he was promoted



- on 29.6.2017, illegally and in violation of law and rules on the subject. attached at Para 4
7. That the appellant was perfectly fit and eligible for promotion as Head Constable in year 2011, at the time of occurrence of vacancy i.e 14.1.2011. attached at Para 4
 8. That as per the numerous Judgments of the Honorable Supreme Court of Pakistan. (Supreme Court judgment attached) **a Civil Servant is to be promoted from the date when the vacancy in promotion Quota falls vacant and the appellant is as such entitled to be promoted as Head Constable from the date when the Post of Head Constable has fallen vacant i.e 14.1.2011. (F/G**
 9. That even the Post of ASI is laying vacant in Photography section since 28.6.2018 (F/H) and If the appellant is promoted as Head Constable w.e.f 14.1.2011, then even becomes eligible for promotion to the rank of ASI.
 10. That the valuable rights of appellant are involved and if he is not promoted w.e.f 14.1.2011, he would suffer irreparable loss.

Prayer:-

it is therefore requested that on acceptance of this departmental appeal, the appellant may kindly be promoted as Head Constable w.e.f 14.1.2011, instead of 29.6:2017 with all back benefits with further promotion to the rank of as ASI as per law and rules.

CR
e/f

Appellant
Abid Jawaq
Photography Section,
FSL, Peshawar.

From The Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

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


No. 192/2010 /FSL, Dated Peshawar the 30/11 /2010.

Subject:- APPLICATION FOR PROMOTION TO THE RANK
OF HEAD CONSTABLE IN PHOTOGRAPHY SECTION.

Memo:-

Kindly refer to your remarks on the application of FC Abid Jawad of
Photography section, FSL, Peshawar received in this office vide your office diary
No.378/PA dated 1-11-2010 on the above noted subject.

There is no vacancy of HC lying in Photography section at present.
However the case for promotion against the rank of ASI in photography section has since
been submitted to the Addl. Inspector General of Police, Investigation, KPK, Peshawar for
consideration. On finalization of the promotion case, one vacancy of HC would fall vacant
against which, the applicant Mr. Abid Jawad of Photography section would be considered.
please.


Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar

⑤ "F"

-24-

CR
eff

100

- 25 -

From The Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

To The Addl. Inspector General of Police,
Investigation, Khyber Pakhtunkhwa, Peshawar.

No. 2344/FSL, Dated Peshawar the 11/11 2011.

Subject: AFFLICTION.

Memo:-

(10)

Amir

Kindly refer to your office memo no. 7397/SRC/Inv. dated 21-10-2011 on the above noted subject.

At present there are two (2) posts of lower subordinates i.e are lying vacant since long in the following section of FSL, Peshawar:

- 1- FSL (Photo Section) HC=1
- 2- FSL (Chemical Section) HC=1

According to seniority list of FSL staff issued during the year 2009, by the Addl. IGP/Investigation Peshawar driver constable Mukhtia Khan No. 111 is senior most in photography section of FSL. However, he is matriculate and working as driver.

03/11/11

~~As per the application of the applicant, it is requested that the applicant should be transferred to the vacant post of FSL (Photo Section) HC=1, Peshawar, vide order dated 12.03.2011 on the subject mentioned above.~~

~~Working as a driver in the said section since 12.03.2011.~~

~~Addl. IGP/Investigation Peshawar.~~

~~To the said section.~~

~~in Peshawar.~~

CR
21/11

Submitted please.



Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

Submitted for 10/11/11

HT

Page No. (25)

From The Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar

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

No. 23404/FSL, Dated Peshawar the ___/11/2011.

Subject: APPLICATION

Memo:-

Kindly refer to your office memo no. 7397/SRC/Inv: dated 21-10-2011 on the above noted subject.

At present there are two (2) posts of lower subordinates i.e. are lying vacant since long in the following section of FSL, Peshawar.

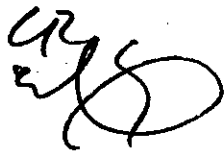
1. FSL (Photo Section) FC=1
2. FCL (Chemical Section) HC=1

According to seniority list of FSL staff issued during the year 2009, by the Addl: IGP/Investigation Peshawar driver constable Mukthiar Khan No. 111 is senior most in photography section of FSL. However, he is matriculate and working as driver.

As for as, the appointment for Abid Jawad No. 94 is concerned his was transfer to FSL on permanent basis on 12.8.2010 and since then he is working in Photography section to FSL Peshawar.

-sd-

Director,
Forensic Science Laboratory
Khyber Pakhtunkhwa, Peshawar





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Forensic Science Laboratory
29, Sector B-1 Phase-V Hayatabad
Khyber Pakhtunkhwa Peshawar
Tel. 091-9217394/Fax. 091-5892825

No. 288 Date 17/3/17

The Addl: Inspector General of Police,
Investigation, Khyber Pakhtunkhwa, Peshawar.

SUBJECT: APPLICATION OF ABID JAWAD NO.94

Memo:

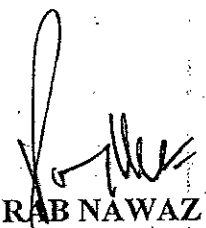
Please refer to your telephonic directions, Constable Abid Jawad was transferred to FSL in the year 2009 on loan basis and posted in photography section of FSL, where he passed A1 & B1 courses of photography meant for promotion (*Annex-A*). Due to his qualification, ability and hardworking the then Director FSL recommended his transfer on permanent basis to FSL. He was transferred to FSL vide letter No.7137-40/Inv: dated 12-08-2010 (*Annex-B*). On expected vacancy of Head Constable fallen vacant due to promotion of Head Constable Taza Gul he was recommended for promotion (*Annex-C*).

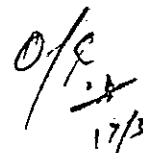
In the mean time the name of the applicant was withdrawn from seniority list from photography section to general branch and surrendered to Investigation Unit CPO as surplus along with other 06 constables, which was filed by W/IGP (*Annex-D*).

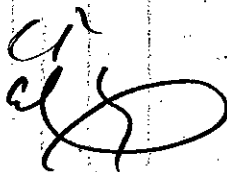
The applicant submitted an application to W/PPO (*Annex-E*). The application was referred to appellate board, the DPC examined his case and recommended him for promotion on merit and posted to photography section of FSL (*Annex-F*).

In light of above the applicant is already recommended for promotion vide this office letter No.23404/FSL, dated 01-11-2011. He is qualified A1 & B1 courses for photography section, literate in MS office, adobe photo shop. Due to the retirement of Inspector Ikram Ullah on 29-09-2017 there is no other qualified substitute in photography section for continuing smooth running of the section.

It is, therefore, recommended that the services of Constable Abid Jawad No. 94 are required to this lab for the best interest of government work please.


(RAB NAWAZ KHAN)
Director
Forensic Science Laboratory
KP, Peshawar.





Occurrence of vacancy
14-01-2017

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WAKALAT NAMA

IN THE COURT OF Service Tribunal KP Peshawar

Abid Javed

VERSUS

Ali et al.

Accused/
Petitioner/
Appellant/
Plaintiff.

Respondent/
Defendant/
Complainant

FIR No. Dated: Police Station:
Charge U/s.

KNOW ALL to whom these presents shall come that I the undersigned appoint:

Fazal Shah Mohmand Advocate Supreme Court of Pakistan,
(herein after called the advocate) to be the Advocate for the Appellant in the above mentioned case, to do all the following acts, deeds and things or any of them, that is to say:

- 1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
- 2) To sign, verify and present pleadings; appeals, cross - objections, petitions for execution, review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
- 3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- 4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
- 5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case and in consequence of his absence from the court when the said case is called up for hearing

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

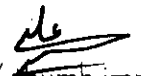
IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this _____ day of _____ 201__

Accepted By



Fazal Shah Mohmand,
Advocate Supreme Court of Pakistan

Signature/ thumb impression
of party / parties.



BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHWAR

Service Appeal No. 07/2019

Abid Jawad..... (Appellant)

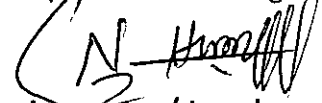
Versus

IGP KPK and others.....(Respondents)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-Wise Comments	-	1-3
2.	Affidavit	-	4
3.	FSL Guidelines/ Instructions	A	5-11
4.	Notification dated 29.06.2017	B	12

Respondents through



Inspector/ Legal,

CPO, Peshawar

0333-9594026

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 07/2019.

Abid Jawad (Appellant)

VERSUS

Addl: IGP Investigation and others (Respondents)

SUBJECT: **COMMENTS ON BEHALF OF RESPONDENTS ARE AS UNDER.**

RESPECTIVELY SHEWETH:

PRELIMINARY OBJECTIONS:-

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

FACTS

1. Pertains to record.
2. Incorrect. There was no vacancy available.
3. Incorrect. As evident from the Tribunal judgment dated 18.07.2018, appellant was surrendered to Investigation Wing which was challenged in the Service Appeal and the same was not for promotion.
4. Pertains to record.
5. Incorrect. As per recommendations of DPC held on 23.06.2017 vide Notification dated 29.06.2017, The appellant was promoted to Officiating Head Constable after fulfilling the prescribed criteria mentioned in the instructions/ guidelines in respect of Forensic Science Laboratory and Finger Print Bureau for the promotion to the next higher rank. Copy of FSL guidelines/ instructions is annexed as "A".
6. Incorrect, when vacancy occurred, the appellant was promoted to Officiating Head Constable vide Notification dated 29.06.2017 after fulfilling the required criteria as per FSL guidelines annexed above and the claim/ prayer of appellant is not justified. Copy of Notification dated 29.06.2017 is annexed as "B".

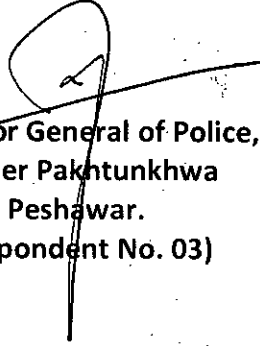
In view of the above, it is humbly prayed that on acceptance of Para-wise comments, the instant Service Appeal may kindly be dismissed being meritless.



**Director Forensic Science Laboratory,
Khyber Pakhtunkhwa
Peshawar.
(Respondent No. 02)**



**Addl: Inspector General of Police,
Inv., Khyber Pakhtunkhwa
Peshawar.
(Respondent No. 01)**



**Inspector General of Police,
Khyber Pakhtunkhwa
Peshawar.
(Respondent No. 03)**

BEFORE THE HONORABLE SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 07/2019

Abid Jawad HC..... (Appellant)

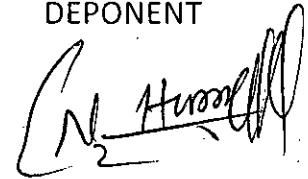
Versus

Provincial Police Officers & others.....(Respondents)

AFFIDAVIT

I, Naeem Hussain Inspector Legal CPO, Peshawar do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondents are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Court.

DEPONENT



NAEEM HUSSAIN
inspector/ Legal
CPO, Peshawar.
17102-1175519-9.

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.
Appeal no: 07 / 2019

ABID JAWAD

VERSUS

IGP & others

APPLICATION FOR THE ADJOURNMENT ON THE
BEHALF OF Appellant.

Respectfully Sheweth;

1) That the above titled service appeal is pending adjudication in this Hon'able tribunal and is fixed for today, i.e 30th 10 - 2019.

2) That the counsel for the appellant is busy before August Peshawar High Court, Peshawar in some other cases.

It is therefore, humbly prayed that on acceptance of this application, the case may very kindly be adjourned.
Appellants;

Through,

Fazal Shah Mohmand A.S.C

Through,

Rabia ^{Rabia} Muzaffar Advocate.

Dated: 30th 10 - 2019.

30/10

- 1 -

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 7/2019

Abid Jawad.....**Appellant.**

V E R S U S

IGP & Others.....**Respondents**

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The instant Appeal is based on facts and law, which is maintainable in its present form and in which all necessary parties have been impleaded. The appellant has got valid cause of action, he is not stopped by his conduct to file instant appeal, the appellant has come to this Honourable Tribunal with clean hands and this Hon'ble Tribunal has got jurisdiction to entertain and adjudicate upon the matter.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules.

In the circumstances the appellant has been deprived of his rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land.

Malafide of the respondents is proved from the fact that vide letter dated 30.11.2010, respondents made commitment that at present there is no vacancy, however, on falling the vacancy, the appellant would be promoted. However, after the availability of vacancy after promotion of HC Taza Gul in January, 2011, the appellant was not promoted. (Copies of letters dated 30.11.2010 and 14.01.2011 are enclosed annexure "A" & "B").

The appellant has earned commendation certificates and other trainings in his field / section, the appellant has qualified relevant technical courses and is also fit and senior, thus eligible for promotion from due date with consequential benefits. (Copies of certificates and promotion criteria are attached as Annexure "C" & "D").

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

Dated:-06-08-2019.

Appellant

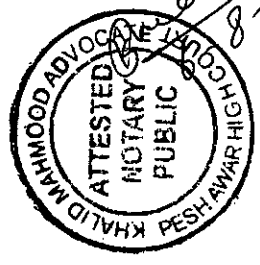
Through

Fazal Shah Mohmand

Advocate Peshawar

AFFIDAVIT

I, Abid Jawad (the appellant), do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.



DEPONENT

From The Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

(Handwritten marks and signatures)

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

No. 23644/FSL, Dated Peshawar the 01/11 2011.

Subject: APPLICATION.

Memor:-

Kindly refer to your office memo no;no.7397/SRC/Inv: dated 21-10-2011 on the above noted subject.

At present there are two (2) posts of lower subordinates i.e are lying vacant since long in the following section of FSL, Peshawar.

1- FSL (Photo Section) HC=1

2- FSL (Chemical Section) HC=1

According to seniority list of FSL staff issued during the year 2009, by the Addl: IGP/investigation Peshawar driver constable Mukhtiar Khan No.111 is senior most in photography section of FSL. However, he is matriculate and working as driver.

As for as the applicant namely Abid Jawad No.94 is concerned his lien was transferred to FSL on permanent basis on 12-8-2010 and since then working in photography section of FSL, Peshawar. He is post graduate, literate in Adobe photo shop, M.S Office and qualified technical courses A-1 and B-1 meant for the said section. He is therefore recommended for promotion to the rank of H.C against the vacant post of Photography section of FSL.

To The Addl: Inspector General of Police,
Investigation, Peshawar.
Submitted please.
No. 23644/FSL, Dated Peshawar the 01/11 2011.
Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

Comments of FSL

Submitted for...
Not recommended

HT

From The Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

- 3 -

"A"

5

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


No. 19244 /FSL, Dated Peshawar the 30 /11 /2010.

Subject:- APPLICATION FOR PROMOTION TO THE RANK
OF HEAD CONSTABLE IN PHOTOGRAPHY SECTION.

Memo:-

Kindly refer to your remarks on the application of FC Abid Jawad of
Photography section, FSL, Peshawar received in this office vide your office diary
No.378/PA dated 1-11-2010 on the above noted subject.

There is no vacancy of HC lying in Photography section at present.
However the case for promotion against the rank of ASI in photography section has since
been submitted to the Addl: Inspector General of Police, Investigation, KPK, Peshawar for
consideration. On finalization of the promotion case, one vacancy of HC would fall vacant
against whom, the applicant Mr. Abid Jawad of Photography section would be considered
please.


Director,
Forensic Science Laboratory,
Khyber Pakhtunkhwa, Peshawar.

-4- "B"

POLICE DEPARTMENT

INVESTIGATION UNIT, CPC

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 till further orders against the existing vacancies of their respective sections:-

S.#	NAME/RANK	PROMOTED AS	SECTION
1	ASI Muhammad Alamgir	Offg: Sub Inspector BPS-14 (4920-380-16320)	FPB (FSL)
2	Head Const: Taza 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 19/1
Dt 8-1-2*

Sen

SRC/BL

(**FEROZE SHAH**)

Deputy Inspector General of Police



-6-

Forensic Science Laboratory
29, Sector B-1 Phase-V Hayatabad
Khyber Pakhtunkhwa Peshawar
Tel. 091-9217394/Fax. 091-5892825

No. 288 Date 17/3/17

The Addl: Inspector General of Police,
Investigation, Khyber Pakhtunkhwa, Peshawar.

SUBJECT: APPLICATION OF ABID JAWAD NO.94

Memo:

Please refer to your telephonic directions, Constable Abid Jawad was transferred to FSL in the year 2009 on loan basis and posted in photography section of FSL, where he passed A1 & B1 courses of photography meant for promotion (*Annex-A*). Due to his qualification, ability and hardworking the then Director FSL recommended his transfer on permanent basis to FSL. He was transferred to FSL vide letter No.7137-40/Inv: dated 12-08-2010 (*Annex-B*). On expected vacancy of Head Constable fallen vacant due to promotion of Head Constable Taza Gul he was recommended for promotion (*Annex-C*).

In the mean time the name of the applicant was withdrawn from seniority list from photography section to general branch and surrendered to Investigation Unit CPO as surplus along with other 06 constables, which was filed by W/IGP (*Annex-D*).

The applicant submitted an application to W/PPO (*Annex-E*). The application was referred to appellate board, the DPC examined his case and recommended him for promotion on merit and posted to photography section of FSL (*Annex-F*).

In light of above the applicant is already recommended for promotion vide this office letter No.23404/FSL, dated 01-11-2011. He is qualified A1 & B1 courses for photography section, literate in MS office, adobe photo shop. Due to the retirement of Inspector Ikram Ullah on 29-09-2017 there is no other qualified substitute in photography section for continuing smooth running of the section.

It is, therefore, recommended that the services of Constable Abid Jawad No. 94 are required to this lab for the best interest of government work please.

(RAB NAWAZ KHAN)
Director

Forensic Science Laboratory
KP, Peshawar.

O/c
17/3

Occurrence of Vacancy
14-01-2017

Police No. 107

Form No. 15.3 (c)

-7-



N.W.F.P. POLICE COMMENDATION CERTIFICATE

GRANTED BY CLASS III (CAPT:USMAN ZAKARYA)
Sr: Supdt: of Police, Swat.

Granted to Abid N/R.W/C.P.O, Peshawar

Son of Sher Ali Khan of Takidar Killa Village

C.P.O Police Station, Peshawar District,

in recognition of co-operation with Swat Police during preparation

of Annual Adminsitration Report for the Year 2001.

O.B. No.....32.....

Dated.....19.....2.....2000 Cash Reward Rs: 100/-

Sr. Supdt: of Police, Swat

Senior Superintendent of Police
SWAT.

-8-

S. No. 11763

Government of Pakistan

Federal Civil Defence Training School PESHAWAR



Certificate

Mr. Abid Jawad S/O *Of* DEPUTY INSPECTOR GENERAL OF
Sher Ali POLICE CRIMES BRANCH N.W.F.P.
PESHAWAR
has Successfully Completed

CIVIL DEFENCE GENERAL PROTECTION COURSE NO. 5

Conducted at Federal Civil Defence Training School

PESHAWAR

from 04-1-1999 to 16-1-1999


Director Training


Commandant

-9-

N.W.F.P. POLICE

CERTIFICATE OF PROFICIENCY

Certified that Abid Jawad Constable
No. 94 (Inv/eb District) of N.W.F.
Province Police, has passed the examination prescribed for
Proficients and is fit to conduct the duties of that office.

No. 19770-814/FSL

Date 4/11/73


Deputy Superintendent of Police
Finger Print Bureau,
Crime Branch, N.W.F.P., Peshawar.

FORENSIC SCIENCE LABORATORIES - 10 -

FRONTIER POLICE
(Investigation Wing)
Peshawar.

Certificate

Certified that ABID JAWAD

No: 94 Rank CONSTABLE District CRIMES BRANCH

Of NWFP has attended and qualified

A I PHOTOGRAPY COURSE.

Held at F.S.L. Peshawar w.e.f. 01.01.2010 to 31.01.2010

No. 2225/FSL

Date: 10/2/2010

[Signature]

[Signature]

Director F.S.L
Investigation wing, N.W.F.P
Peshawar

Director
Forensic Science Laboratory
Investigation N.W.F.P. Police
Peshawar

In Charge
Photo Chemical,
Section.

KHALID USMAN
Inspector
i/c Photo-Chemical Section,
Forensic Science Laboratory,
Investigation, N.W.F.P., Peshawar.

FORENSIC SC

NC

DRATORIES

KHYBER PAKTOON KHAWA POLICE
(Investigation Wing)
Peshawar.

Certificate

Certified that **MR. ABID JAWAD**

No: **94** Rank **CONSTABLE** District **PESHAWAR**

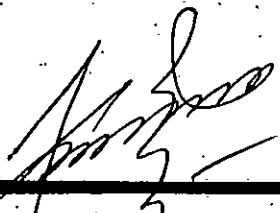
Of **K.P.K** has attended and qualified

B1. TECHNICAL COURSE

Held at F.S.L Peshawar w.e.f. **1.05.2010** TO **31.10.20**

No. **17668/FSL**

Date: **2/11/010**



Director
Forensic Science Laboratory
Director F.S.L



In Charge

Investigation wing, K.P.K

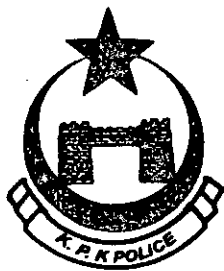
Photo Chemical
Section.

PESHAWAR.

OB No. 01
dt. 5/7/2012

-12-

FORENSIC SCIENCE LABORATORY



INVESTIGATION WING, KPK, PESHAWAR

LOWER TECHNICAL COURSE

This is certify that ABID JAWAD

Rank Constable of FSL, Peshawar

has successfully completed Photography lower Technical Course for Six

Months From 01-01-2012 to 30-06-2012

COURSE CONTENTS:

- A. Type of Photographic Films.
- B. Type of Printing Paper.
- C. Ingredients of Chemical and Preparation of Chemicals used in developing and fixing process.
- D. Crime Scene Photography.
- E. Photography of Criminals.
- F. Preparation / Enlargements.

Ikram
Ikram Ullah Khan
 Inspector Officer Incharge
 Photography Section
 Forensic Science Laboratory
 KPK, Peshawar

Director
 Forensic Science Laboratory
 Khyber Pakhtunkhwa Peshawar

Director
 Forensic Science Laboratory
 Khyber Pakhtunkhwa Peshawar

OB No. 69
Date. 27/9/17

-13-

FORENSIC SCIENCE LABORATORY

INVESTIGATION, KHYBER PAKHTUNKHWA, PESHAWAR

PHOTOGRAPHY CERTIFICATE

This is to certify that Mr. Abid Jawad Head Constable No.94 of Photography Section FSL, Peshawar has successfully completed Photography Practical / Theoretical training w.e from 27/3/2017 to 27/9/2017 for a period of Six months under the direct supervision of In-charge Photography Section FSL, Peshawar.

On successful completion of training for the requisite period he is awarded certificate of qualified Photography Intermediate course and perform duties as Forensic Photographer in this lab.

1/K. J. 19/9/17
Officer In-charge

Photography Section
Forensic Science Laboratory
Khyber Pakhtunkhwa, Peshawar

[Signature]
Director

Forensic Science Laboratory
Khyber Pakhtunkhwa,
Peshawar

US No. 11
Oct. 9-01-2019

-14-

FORENSIC SCIENCE LABORATORY



INVESTIGATION, KHYBER PAKHTUNKHWA, PESHAWAR

PHOTOGRAPHY CERTIFICATE

This is to certify that Mr. Abid Jawad Head Constable of photography Section FSL, Peshawar has successfully completed Photography Practical / Theoretical (expert) training w.e from 1st January 2018 to 31st December 2018 for a period of one year under the direct supervision of In-charge Photography Section FSL, Peshawar.

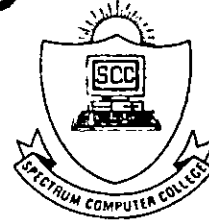
On successful completion of training for the requisite period he is awarded certificate of qualified Photography Expert Course and perform duties as Forensic Photographer in this lab.

Officer In-charge
Photography Section
Forensic Science Laboratory
Khyber Pakhtunkhwa, Peshawar

Director
Forensic Science Laboratory
Khyber Pakhtunkhwa,
Peshawar

SPECTRUM TYPE & SHORT HAND COLLEGE CHARSADDA

- 15 -



Affiliated with the Board of Technical Education N.W.F.P. Peshawar
vide Notification No. 2309-15

Certificate Of Achievement

This is to certify that *Mr./Miss/Mrs.* Abid Jawed
Son/Daughter of Mr. Sher Ali has satisfactorily
 completed Three months *Type/Short Hand* Course at Tangi at the time of
 course completion his/~~her~~ speed was 35 / Thirty Five words per minute.
 During his/~~her~~ stay in this college his/~~her~~ conduct was good In recognition thereof
 of this certificate is awarded to him/~~her~~ on the Monday day of 25th May 1998.

Principal
Spectrum Type & Short Hand
College

Director

Spectrum Type & Short Hand
College

- 16 -



29-Sector B1 Phase V, Hayatabad, Peshawar
 Tel #: 91-92-7394, Fax #: 091-58928
 web Address: www.p.polic.gov.pk fs
 email: speshinwar@gmail.com

12. SENIORITY AND PROMOTION

-17-

List "A" to "E" will be maintained in the office of DIG Crimes Branch NWFP, Peshawar. Promotion to the next rank will be made on the basis of technical qualification, efficiency cum seniority against the available vacancy in their respective units/ sections.

13. NON TECHNICAL STAFF.

This include store keeper, lab: attendant and librarian/ attendant. They may be recruited as constable and promoted to higher rank up-to SI according to their aptitude towards their efficiency and qualification.

a	Store Keeper (Constable)	Matric With Science
B	Librarian (Constable)	Matriculate
C	Lab: Attendant (Constable)	Matric with Science

14. GENERAL.

- a. All sealed parcel shall be received by the Reception Officer of rank not below of SI. He will be assisted by ASI or HC after checking these parcels their entry should become in receipt register under separate Lab: No. These may be deposited in strong room of crime laboratory for safe custody. Date of collection of such exhibits should be conveyed to the quarter concerned after complete examination by the experts.
- b. Improper entries in dockets/ parcels be brought to the notice of Director FSL for further action. These are returned to the respective district S.Ps or agencies for correction as deemed proper.
- c. Section wise register shall be maintained where in particulars of each parcels so received and delivered to the expert concerned be entered with reference register number.
- d. Cases may be marked to experts of each unit by Director FSL for examination and opinion. The expert will collect such parcels form reception officer after signing movement register as token of receipt.
- e. Incharge of each section shall keep a register ensuring that all the movement of the exhibits/ opinions relating to his section are properly made in it. After examination, each expert will submit his opinion in duplicate form in his own hand writing, under his own signature to his senior officer (incharge of the section for further scrutiny and signature). Finally these opinion shall be put to Director FSL for his signature and embossing. The Head Clerk will then dispatch it to the quarter concerned through Reception Officer in sealed envelopes by registered post or through representative of the sending agency. Copy of each opinion shall be retained in the record room under the supervision of Director FSL.

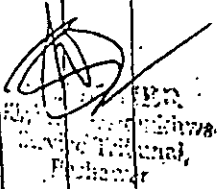
~~Para 257, 829~~

1

(6) For Appellant

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	25.09.2019	<p style="text-align: center;">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</p> <p style="text-align: center;"><u>Appeal No. 1207/2018</u></p> <p>Date of Institution ... 27.09.2018 Date of Decision ... 25.09.2019</p> <p style="text-align: center;">FazliGhufran Soil Conservation Assistant (BPS-17), Mardan -----Appellant</p> <p style="text-align: center;"><u>Versus</u></p> <p style="text-align: center;">The Chief Secretary Khyber Pakhtunkhwa Peshawar and other -----Respondents</p> <p style="text-align: center;">Mr. Muhammad Amin Khan Kundi.....Member (J) Mr. Hussain ShahMember (E)</p> <p>JUDGMENT</p> <p>MR. HUSSAIN SHAH:-Learned counsel for the appellant and Mr. Zia Ullah Learned Deputy District Attorney for the respondents present.</p> <p>2. The appellant preferred the service appeal against the impugned order of respondent No.2, passed on 29.05.2018 wherein the appellant was promoted as Soil Conservation Assistant in BPS-17 with immediate effect, against the post, allegedly vacant since 13.05.2015. He preferred Departmental Appeal on 21.06.2018 for antedating of his promotion from occurrence of the vacancy i.e. 31.05.2015 instead of 29.05.2018 which was not respondent within statutory period of Ninety (90) day hence the appellant preferred the service appeal on 01.10.2018</p> <p>3. In the first round of litigation the appellant filed a service appeal bearing No. 569/2016 in this Tribunal which was heard on 10.01.2018, the appeal was accepted with the direction to the respondents to consider the appellant for promotion against the available vacant post of Soil Conservation Assistant. Consequent upon the judgment of this Tribunal dated 10.01.2018 in appeal Bearing No. 569/2016 the appellant was</p>

ACCEPTED

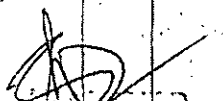

Member (J)
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

promoted against the post of Soil Conservation Assistant on 29.05.2018 with immediate effect. In the instant appeal the appellant has come up with the prayers that his promotion to the post of Soil Conservation Assistant BPS-17 may antedated w.e.f 13.05.2015 instead with immediate effect on the grounds mentioned in the appeal.

4. Learned counsel for the appellant argued the case of the appellant in the instant appeal and contended that the appellant was on the top of the seniority list circulated by the competent authority in the year 2015. A post of the Soil Conservation Assistant in (BPS-17) became vacant due to the retirement of one Aziz Ullah Khan vide notification dated 20.02.2015. Further contended that according to the Service Rules 25% quota of the post of Soil Conservation Assistant reserved for promotion of Conservation Inspector on the basis of Seniority-Cum-Fitness and atleast 10 years total service experience at his credit as Field Assistant and Soil Conservation Inspector. Further contended that the appellant was appointed as a Field Assistant on 11.08.1982 and was promoted as Soil Conservation Inspector vide order dated 27.03.2014 w.e.f. 01.01.2012 and as such the appellant was illegible for promotion being the senior most on the seniority list as well as fulfilling the 10 year service experience as required by the service rules of the post at the time when the post of Soil Conservation Assistant BPS-17 became vacant due to the retirement of one Mr. Aziz Ullah Khan. The learned counsel for the appellant relied upon the judgment of August Supreme Court of Pakistan reported as 2006 SCMR 1938 and the judgments of the Service Tribunal Appeal No. 1398/2010 Fazal Hussain vs Government and Service Appeal No. 1655/2010 Syed Masood Shah Vs Government. Learned counsel for the appellant also contended that the appeal may kindly be accepted with the prayers.

5. The Learned Deputy District Attorney contested the facts, grounds of

APPROVED


 Deputy District Attorney
 Faisalabad

the appeal and argument of the learned counsel for the appellant and contended that the respondent department ordered the promotion of the appellant against the post of Soil Conservation Assistant BPS-17 as directed by this Tribunal in its judgment dated 10.01.2018 & 29.03.2018. He further explained that vide judgment of 29.03.2018 the Tribunal made correction of Typographical mistake in its previous judgment on 10.01.2018, however in the said judgment the Tribunal did not issued any directions regarding the promotion of the appellant with back date. He further contended that the respondents department ordered the promotion of the appellant in accordance with the provision of the Civil Servant Act, and Rules made their under wherein appointment by promotion is always made with immediate effect as such the appeal may be dismissed with the cost as the same is devoid of any merit.

6. Arguments heard. File perused.

7. After the detailed scrutiny of the documents on record, arguments and counter arguments of the learned counsel of the appellant and the learned Deputy District Attorney this Tribunal observed that the appellant was on the top of the seniority list as circulated by the competent authority in the year 2015. A vacant post became available due to the retirement of one Mr. Aziz Ullah Khan vide notification dated 20.02.2015. The respondent department did not objected nor contradicted the availability of the vacant post during the arguments of the instant appeal as well as during the arguments of a previous appeal No.569/2016. Similarly it was also not challenged the eligibility of the appellant on the basis of qualification and the requisite service experience as prescribed in the service rules for the post of Soil Conservation Assistant. This Tribunal in its previous judgment in the appeal No. 569/2016 observed in its concluding portion of the judgment that " *We are of the view that it is a clear cut case of*

ATTENDED

Signature
Deputy District Attorney,
Peshawar

9

arbitrary use of official authority, injustice and the appellant is being denied the right of promotion on flimsy grounds."

8. The questioned before this Tribunal is that had the respondents No.2 &3 processed the case of promotion of the appellant to the competent forum of Provincial Selection Board (PSB) immediate after the vacant post became available for his promotion. This Tribunal seeks guidance from the judgment of August Supreme Court reported as 2006 SCMR 1938.

9. In view of the above discussion the appeal is accepted with the direction to the respondents to antedate the promotion of the appellant from the date of occurrence of vacancy for the purpose of Pay Fixation. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
(Muhammad Amin Khan Kundi)
Member

Hussain Shah
(Hussain Shah)
Member

ANNOUNCED

25.09.2019

Certified to be true copy

Muhammad Amin
Secretary
Peshawar

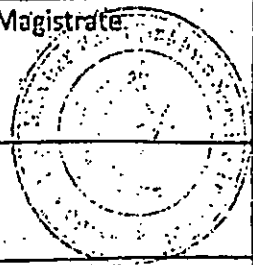
Date of Presentation 09-10-2019
Number of Pages 2000
Copy Fee 22-00
Urgent
Total 22-00
Name of
Date of
Date of Delivery of

Para-25758-9

For Appellant

1 (6)

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1207/2018

Date of Institution ... 27.09.2018
 Date of Decision ... 25.09.2019

Fazli Ghufraan Soil Conservation Assistant (BPS-17), Mardan Appellant

Versus

The Chief Secretary Khyber Pakhtunkhwa Peshawar and other Respondents

Mr. Muhammad Amin Khan Kundi.....Member (J)
 Mr. Hussain ShahMember (E)

25.09.2019

JUDGMENT

MR. HUSSAIN SHAH: Learned counsel for the appellant and Mr. Zia Ullah Learned Deputy District Attorney for the respondents present.

2. The appellant preferred the service appeal against the impugned order of respondent No.2, passed on 29.05.2018 wherein the appellant was promoted as Soil Conservation Assistant in BPS-17 with immediate effect, against the post, allegedly vacant since 13.05.2015. He preferred Departmental Appeal on 21.06.2018 for antedating of his promotion from occurrence of the vacancy i.e. 31.05.2015 instead of 29.05.2018 which was not respondent within statutory period of Ninety (90) day hence the appellant preferred the service appeal on 01.10.2018

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ACCEPTED

[Signature]
 Member
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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5. The Learned Deputy District Attorney contested the facts, grounds of

ATTESTED

Signature
Secretary
District
Peshawar

the appeal and argument of the learned counsel for the appellant and contended that the respondent department ordered the promotion of the appellant against the post of Soil Conservation Assistant, BPS-17 as directed by this Tribunal in its judgment dated 10.01.2018 & 29.03.2018. He further explained that vide judgment of 29.03.2018 the Tribunal made correction of Typographical mistake in its previous judgment on 10.01.2018, however in the said judgment the Tribunal did not issued any directions regarding the promotion of the appellant with back date. He further contended that the respondents department ordered the promotion of the appellant in accordance with the provision of the Civil Servant Act, and Rules made their under wherein appointment by promotion is always made with immediate effect as such the appeal may be dismissed with the cost as the same is devoid of any merit.

6. Arguments heard. File perused.

7. After the detailed scrutiny of the documents on record, arguments and counter arguments of the learned counsel of the appellant and the learned Deputy District Attorney this Tribunal observed that the appellant was on the top of the seniority list as circulated by the competent authority in the year 2015. A vacant post became available due to the retirement of one Mr. Aziz Ullah Khan vide notification dated 20.02.2015. The respondent department did not objected nor contradicted the availability of the vacant post during the arguments of the instant appeal as well as during the arguments of "previous appeal" No. 569/2016. Similarly it was also not challenged the eligibility of the appellant on the basis of qualification and the requisite service experience as prescribed in the service rules for the post of Soil Conservation Assistant. This Tribunal in its previous judgment in the appeal No. 569/2016 observed in its concluding portion of the judgment that "We are of the view that it is a clear cut case of

ATTACHED

[Signature]
 J. K. Chawla
 District Judge,
 Panchkula

9

arbitrary use of official authority, injustice and the appellant is being denied the right of promotion on flimsy grounds."

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Muhammad Amin
(Muhammad Amin Khan Kundi)
Member

Hussain Shah
(Hussain Shah)
Member

ANNOUNCED

25.09.2019

Certified to be true copy

[Signature]
Secretary
Peshawar

Date of Presentation	09-10-2019
Number of Pages	2000
Copy Fee	22-00
Urgent	-
Total	22-00
Name of	<i>[Signature]</i>
Date of	02-12-19
Date of Delivery	02-12-19

AS1 سے مندرجہ ذیل
اس کے لئے ضروری ہے کہ
اس کے داخل کرنا چاہیے

2019
P.L.C.S
1252

~~AS1~~ fine barred.
No condonation
of delay.

Para 7 of comments
department has
conceded

Abid

transferred to FSL P.4
26/12/09

Recommendation for P.5
transfer of lieu

lieu transferred P.6

در ترقی ہوئی تو سبٹ خالی ہوگی P.7

درخواست کی ترقی کر P.8

CPD کے ساتھ P.10

CPD کے ساتھ Accounts P.11/12

Recommended for P.12

اپیل کی P.13

29/6/17 - ترقی دی - P.19

فصلہ P.21

اپیل کی تو دوران اپیل ترقی دی -

تہ اپیل خارج ہو کر کیا اگر خفا و

تو وہ اپیل کے ساتھ - اب موجود

اپیل کے ساتھ immediate کے خلاف

کہ P.7 پر دوکے ترقی کر کے سبٹ

خالی تھی نہ کیا - اور 2017 سے

late ترقی دی

For Appeal

accorded permission/NOC vide letter No.LCS (Engg-TP)-1/93-P dated 11-2-2010 and letter No.LCS (Engg-TP)-S(9)/93 dated 24-2-2010; thereafter, the petitioners appeared in GRE Test and secured highest marks in the said test. The petitioners have joined the Ph.D. Programme and they have also submitted their Ph.D. Research Proposals and not only the petitioners have incurred expenses in taking admission in the said programme after obtaining due permission/NOC from the respondent; therefore, at this stage of their studies, by transferring the petitioners vide impugned order dated 8-3-2010 to far off places, i.e. Bahawalpur and Sadiqabad, depriving the petitioners of their right of getting higher studies when their proposals have been accepted and the supervisors have been appointed, would amount to deprive the petitioners of their fundamental rights guaranteed under the Constitution, therefore, the impugned order dated 8-3-2010 is unjustified and arbitrary and is to be considered to be illegal and void. In the case of Mrs. Abida Parveen Channar v. High Court of Sindh at Karachi 2009 SCMR 605, it has been held that "all the public powers must be exercised reasonably and honestly for the purpose for which the same are conferred"

8. In view of the above, this writ petition is accepted and the impugned order dated 8-3-2010 is declared illegal, void, arbitrary and has been issued without lawful authority and of no legal effect, therefore, the impugned order dated 8-3-2010, to the extent of the petitioners is set aside as the same amounts to deprive the petitioners of their fundamental rights provided under Articles 4, 8 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Even if any inquiry is pending against the petitioners, in those circumstances, the respondent could suspend the petitioners under section 6 of the PEEDA Act instead of transferring the petitioners.

M.H/R-23/L

Petition allowed.

2010 P L C (C.S.) 760

[Supreme Court of Pakistan]

Before Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ

MUHAMMAD AMJAD and others

versus

Dr. ISRAR AHMED and others

Civil Appeals Nos. 384 and 385 of 2003, decided on 14th April, 2010

PLC (Service)

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Sacr
C.A
disp
and
Pun
jud
PLC

4th April, 2010

This judgment shall dispose of Civil Appeal No. 384 of 2003 filed by Dr. Muhammad Amjad and another and Civil Appeal No. 385 of 2003 filed by Government of Punjab through Chief Secretary as they are directed against the same judgment passed by the Punjab Service Tribunal dated 15-10-2009 vide

2010

2010

Muhammad Amjad v. Israr Ahmad.
(Tassaduq Hussain Jillani, J)

761

(On appeal from the judgment of the Service Tribunal dated 15-10-2001 passed in Appeal No.775 of 1999).

Punjab Civil Servants Act (VIII of 1974)---

---S. 8---Promotion---Delay---Legitimate expectancy, principle of---Civil servant was not promoted despite availability of vacancy---Service Tribunal allowed the appeal filed by civil servant and directed the authorities to consider him for promotion from the date when he became eligible for the post as there was vacancy available then---Validity---State functionaries were mandated to act with certain amount of reasonableness---Such canon of due process of law was not observed in processing civil servant's promotion matter---Having acquired requisite experience and having authored number of articles required for post in question, the civil servant had legitimate expectancy for the post in question---Judgment passed by Service Tribunal was neither against the rules nor the law declared---Civil servant was eligible to be considered for promotion when substantive vacancy in promotion quota was available---Judgment passed by Service Tribunal directing the authorities to consider case of civil servant's promotion to post in question from the date when vacancy in his quota was available was unexceptionable---Supreme Court declined to interfere in the judgment passed by Service Tribunal---Appeal was dismissed. [pp. 765, 767, 768] A, B & C

Government of N.-W.F.P. v. Buner Khan 1985 SCMR 1158; Government of the Punjab v. Rana Ghulam Sarwar Khan 1997 SCMR 515; Muhammad Iqbal v. Executive District Officer (R) Lodhran 2007 SCMR 682; Sarwar Ali Khan v. Chief Secretary to Government of Sindh 1994 PLC (C.S.) 411; Luqman Zareen v. Secretary Education N.-W.F.P. 2006 SCMR 1938; Ch. Muhammad Siddique v. Director, Special Education 1998 SCMR 88 and Idrees Ahmed v. Hafiz Fida Khan PLD 1985 SC 376 ref.

Dr. A. Basit, Advocate Supreme Court (in C.A. 384), and Mr. Saeed Yousaf Khan, Additional Advocate-General for Appellants, (in C.A. 385 of 2003).

Mr. Shoaib Shaheen, Advocate Supreme Court for Respondents.

Date of hearing: 14th April, 2010.

JUDGMENT

TASSADUQ HUSSAIN JILLANI, J.--- This judgment shall dispose of Civil Appeal No.384 of 2003 filed by Dr. Muhammad Amjad and another and Civil Appeal No. 385 of 2003 filed by Government of Punjab through Chief Secretary as they are directed against the same judgment passed by the Punjab Service Tribunal dated 15-10-2001 vide

4th April, 2010.

which the appeal of the respondents was allowed and it was directed as follows:--

"Appellant's promotion to the post of Associate Professor (ENT) having been kept in abeyance till 3-12-1998 has affected his vested right of seniority vis-a-vis respondents Nos.3 and 4. I, therefore, accept the appeal, direct the respondents to consider the case of the appellant for promotion to the post of Associate Professor (ENT) in BS-19 w.e.f. the date when the vacancy, in his quota, became available and thereafter a joint seniority list of the officers directly recruited and those promoted shall be issued according to the rules".

2. Facts briefly stated are that respondent Dr. Israr Ahmad was appointed as Assistant Professor (ENT) in the Health Department on 13-1-1992. Admittedly as per the relevant rules 33% of the posts of Associate Professor were to be filled through direct recruitment and 2/3 by way of promotion. Respondents became eligible for promotion to the post of Associate Professor in February, 1997 when four posts were available in the promotion quota. However, the department did not consider his case for promotion till 3-12-1998 when he was promoted. He filed a representation and even that was not considered whereafter he approached the Service Tribunal. In the meanwhile, in June, 1998, the Punjab Public Service Commission had conducted interviews for two posts of Associate Professor, in which both the appellants were selected whereas respondent could not qualify. The Punjab Service Tribunal allowed respondent's appeal mainly on the ground that since a substantive post against promotion quota was available in 1997 and respondent was eligible to be considered, his promotion as Associate Professor should reckon from the date, the substantive post in the said quota was available.

3. Dr. Abdul Basit, learned counsel for the appellants in Civil Appeal No.384 of 2003 made the following submissions:--

(i) That it is admitted position that in terms of the Punjab Health Department (Medical and Dental Teaching Posts) Service Rules, 33% of the posts are to be filled in through direct recruitment and the remaining 2/3rd by promotion. The appellants along with respondents Dr. Israr Ahmad applied through Public Service Commission against the posts reserved for direct recruitment, the appellants qualified the test and interview in 1998 and on the recommendation of the Punjab Public Service Commission, they were selected against the posts of Associate Professor whereas the respondent could not qualify.

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(iii) that section 8 of the Punjab Civil Servants Act, 1974 was amended by Act III of 2005 and under the amended provision, no civil servant can claim pro forma promotion as of right.

4. Learned Additional Advocate-General adopted the arguments of learned counsel for the appellants (in Civil Appeal No.384 of 2003) and made following additional submissions:--

- (i) That the impugned judgment is violative of section 8 of the Punjab Civil Servants Act and cannot be sustained;
- (ii) that respondent Dr. Israr Ahmad was duly promoted on 3-12-1998 and although the post fell vacant earlier but the delay occurred due to procedural and unavoidable causes because the department sent the case for respondent's promotion only on the receipt of requisite documents; and
- (iii) that the respondent appeared along with appellants (in the connected appeal) before the Punjab Public Service Commission for appointment against the posts reserved for direct appointment wherein the former failed but appellants were declared selected. That being so, it was not open for the respondent to claim seniority over the appellants after having not being selected by the Commission.

5. Learned counsel for the respondent Mr. Shoab Shaheen who assisted the Court on behalf of respondent at the asking of the Court, submitted as under:--

- (i) That although the post for direct recruitment as Associate Professor fell vacant in February, 1997, and the case of respondent's promotion against the said post was pending decision in the department, yet, in the meanwhile the posts were filled through selectees of Punjab Public Service Commission on

27-7-1998 and respondent was promoted later on 3-12-1998 which was unfair, mala fide and discriminatory; and

- (ii) that respondent had a right to be considered for promotion against the post reserved for promotion quota as soon as the substantive vacancy was available and respondent could not have been condemned for inaction of the State functionaries. In support of the submissions made, learned counsel relied on Government of N.-W.F.P. v. Buner Khan 1985 SCMR 1158, Government of the Punjab v. Rana Ghulam Sarwar Khan 1997 SCMR 515 and Muhammad Iqbal v. Executive District Officer (R) Lodhran 2007 SCMR 682.

6. We have heard learned counsel for the appellants, learned Additional Advocate-General as also Mr. Shoab Shaheen, Advocate Supreme Court who assisted the Court on behalf of respondent at the asking of the Court.

7. In accepting respondent's appeal, the learned Service Tribunal considered the availability of substantive posts in the promotion quota, the eligibility of respondent to be considered in February, 1997 and the unreasonable delay caused by the department in processing his case. The Court found as follows:--

"In the comments submitted by respondent No.2, it was submitted that the post of Associate Professor (ENT) to be filled through promotion, when became available, the department started moving for filling the post by gathering documents from the prospective candidates and it was only after clearance that the competent authority, appellant was promoted as Associate Professor (ENT) on regular basis w.e.f. 3-12-1998. It is said that the delay which occurred, if any, was procedural and unavoidable because the case was prepared on receipt of documents from different quarters. Explanation given is hardly convincing. It means that spade work which commenced in February, 1997 ended in December, 1998 playing with the rights of civil servant in such an arbitrary manner is not only unpardonable but wholly unconsciousable. Appellant suffered and felt aggrieved, undoubtedly when the post of Associate Professor (ENT) was not being filled but the last nail was driven in the coffin on 27-7-1998 when the recently arrayed respondents Nos.3 and 4 were inducted through direct recruitment as Associate Professors (ENT)."

8. We specifically asked the Additional Advocate-General as to whether the respondent was eligible to be considered for promotion against the promotion quota by 3-2-1997, to which his answer was in the

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Muhammad Amjad v. Israr Ahmad.
(Tassaduq Hussain Jillani, J)

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9. In Sarwar Ali Khan v. Chief Secretary to Government of Sindh 1994 PLC (C.S.) 411, the appellant was working as a Superintendent (BS-16) in the Sindh Labour Appellate Tribunal when the said post was converted into that of Deputy Registrar in BS-17. However, the post was upgraded on the recommendation of the Departmental Promotion Committee. On 1-7-1988, the post of Registrar (BS-18) fell vacant and on 5-7-1988 he was appointed to the post in his own pay and status. Ultimately, he was promoted on regular basis to the post of Registrar (BS-18) on the recommendation of the Departmental Promotion Committee vide notification dated 30-6-1991. He applied for salary of BS-18 from the date when he was posted against the post of Registrar in his own pay and status i.e. 5-7-1988. His appeal was dismissed by the Service Tribunal merely on the ground that he did not challenge the notification dated 5-7-1988 in time, that the Departmental Selection Board had not cleared his case for promotion and that he had not been compensated by the grant of special pay. This Court allowed the appeal on the ground that his claim cannot be rejected merely on the ground of being time-barred; that there was no valid reason for the Selection Board to withhold clearance for regular promotion and in absence of any explanation, it was not fair and equitable to refuse the prayer.

10. In Government of the Punjab through Secretary Education v. Rana Ghulam Sarwar Khan 1997 SCMR 515, the brief facts are that there were 12092 posts in College Teachers Cadre. The Provincial Government decided to introduce a 4-tier structure for college teachers and with that object in view, it classified the posts in ratio of 1:15:1:15 in 4-tiers namely B.P.S 20, 19, 18 and 17. It was vide notification dated 1-9-1990. However, the department took two years to make appointments in accordance with the above ratio. On account of this promotion of civil servants from BS-18 to 19 was held up till 1992. The appellants represented before the Government that they should be promoted in accordance with the above ratio and in terms of notification

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Education Department could not carry out a fairly simple exercise within a reasonable period."

11. In *Government of N.-W.F.P. v. Buner Khan* 1985 SCMR 1158, the facts briefly stated are that 75% of the posts in Grade 18 in Provincial Education Department were to be filled in by promotion from among the Grade 17 officers of the said department and 25% by direct recruitment. However, no proper rotation of the vacancies for the purpose was maintained. The petitioners before this Court were directly recruited in BPS-18 on 30-12-1980 and 1-9-1982, whereas the respondents (who were promotees) were promoted to the said grade on 12-5-1984 and no joint seniority list in the said grade was notified with the result that some of the direct recruits were promoted to Grade 19 without the promotees being considered for the said promotion. The Tribunal allowed the appeal of the promotees and directed the Government to promote them in Grade 18 w.e.f. the date when the vacancies were available and a joint seniority list be issued accordingly. This judgment was challenged both by the Government and those who were directly recruited. This Court maintained the judgment of the Service Tribunal with a slight modification i.e. instead of direction by the Tribunal, "to promote", this Court directed that "the promotees shall be considered for promotion to Grade-18 post with effect from the dates when vacancies in their quota became available and that thereafter a joint seniority list of the officers directly recruited and those promoted shall be issued according to the rules."

12. In *Luqman Zareen v. Secretary Education N.-W.F.P.* 2006 SCMR 1938, several school teachers were allowed pro forma promotion w.e.f. the date when the substantive vacancies were available but they were not considered on account of, "the usual apathy, negligence and bureaucratic red-tapism which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others."

13. In *Ch. Muhammad Siddique v. Director, Special Education* 1998 SCMR 88, the civil servant who was a lady teacher was granted pro forma promotion because her case was not considered when the substantive post was available for no-fault of her own. The Court held as follows:—

"It has not been denied that the case of the respondent was placed before the D.P.C. on 23-7-1987 and was deferred due to certain deficiencies but she was later promoted on 15-5-1988. That being so, she was entitled to ask for promotion with effect from the date the post became available and/or the date when her case was deferred by D.P.C. The judgment of the Service

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4th April, 2010

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Tribunal, in our view, is quite just and fair and does not suffer from any illegality."

14. Considering the case of the respondent in the light of the judgments of this Court, to which reference has been made above, we find that it is nobody's case that respondent was not eligible to be considered for promotion when substantive vacancy in the promotional quota was available. That being so, the impugned judgment directing the appellants to consider the case of respondent's promotion to the post of Associate Professor in BPS-19 w.e.f. the date when the vacancy in his quota was available is unexceptionable.

15. So far as the argument of learned Additional Advocate-General with reference to section 8 of the Punjab Civil Servants Act, 1974 (VI of 1974) which was amended in terms of Act III of 2005 is considered, the same would be of no avail to the appellants because there is nothing in the amended provisions which makes it retrospective in effect. Reference to the amended provision would be in order which reads under:-

- "8. Promotion--- (1) A civil servant shall be eligible to be considered for appointment by promotion in the service or cadre to which he belongs in a manner as may be prescribed; provided that he possesses the prescribed qualifications.
- (2) Promotion including pro forma promotion shall not be claimed by any civil servant as of right.
- (3) Promotion shall be granted with immediate effect and actualized from the date of assumption of charge of the high post, and shall in no case be granted from the date of availability of post reserved for promotion.
- (4) A civil servant shall not be entitled to promotion from an earlier date except in the case of pro forma promotion.
- (5) A retired civil servant shall not be eligible for grant of promotion or pro forma promotion.
- (6) A post referred to in subsection (1) may either be a selection post or a non-selection post to which promotion shall be made as follows:--

4th April, 2010.

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amendment of a statute will not affect its previous operation unless the amended provision provides otherwise. The said section reads as under:--

- “6. Effect of repeal.-- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:
- (a) revive anything not in force of existing at the time at which the repeal takes effect; or
 - (b) affect the previous operation of any enactment so repealed of anything duly done or suffered thereunder; or
 - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

17. In *Idrees Ahmed v. Hafiz Fida Khan* PLD 1985 SC 376, the import of section 6 of the General Clauses Act came under consideration and the Court held as follows:--

“Unless different intention appears from repealing enactment, repeal ipso facto not to affect any right, privilege, obligation or liability acquired; accrued or incurred under any enactment so repealed, nor to influence any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeitures or punishment to be imposed as if repealing enactment having not been passed.”

18. For what has been discussed above, we do not find any merit in these appeals which are dismissed, with no order as to costs.

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Appeals dismissed

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accorded permission/NOC vide letter No.LCS (Engg-TP)-1/93-P dated 11-2-2010 and letter No.LCS (Engg-TP)-S(9)/93 dated 24-2-2010; thereafter, the petitioners appeared in GRE Test and secured highest marks in the said test. The petitioners have joined the Ph.D. Programme and they have also submitted their Ph.D. Research Proposals and not only the petitioners have incurred expenses in taking admission in the said programme after obtaining due permission/NOC from the respondent; therefore, at this stage of their studies, by transferring the petitioners vide impugned order dated 8-3-2010 to far off places, i.e. Bahawalpur and Sadiqabad, depriving the petitioners of their right of getting higher studies when their proposals have been accepted and the supervisors have been appointed, would amount to deprive the petitioners of their fundamental rights guaranteed under the Constitution, therefore, the impugned order dated 8-3-2010 is unjustified and arbitrary and is to be considered to be illegal and void. In the case of *Mrs. Abida Parveen Channar v. High Court of Sindh at Karachi* 2009 SCMR 605, it has been held that "all the public powers must be exercised reasonably and honestly for the purpose for which the same are conferred".

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8. In view of the above, this writ petition is accepted and the impugned order dated 8-3-2010 is declared illegal, void, arbitrary and has been issued without lawful authority and of no legal effect; therefore, the impugned order dated 8-3-2010 to the extent of the petitioners is set aside as the same amounts to deprive the petitioners of their fundamental rights provided under Articles 4, 8 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Even if any inquiry is pending against the petitioners in those circumstances, the respondent could suspend the petitioners under section 6 of the REEDA Act instead of transferring the petitioners.

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Petition allowed

2010 P L C (C.S.) 760

[Supreme Court of Pakistan]

Before Tassaduq Hussain Jilani and Asif Saeed Khan Khosa, JJ

MUHAMMAD AMJAD and others

versus

Dr. ISRAR AHMED and others

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"Appellant's promotion to the post of Associate Professor (ENT) having been kept in abeyance till 3-12-1998 has affected his vested right of seniority vis-a-vis respondents Nos.3 and 4. I, therefore, accept the appeal, direct the respondents to consider the case of the appellant for promotion to the post of Associate Professor (ENT) in BS-19 w.e.f. the date when the vacancy, in his quota, became available and thereafter a joint seniority list of the officers directly recruited and those promoted shall be issued according to the rules".

2. Facts briefly stated are that respondent Dr. Israr Ahmad was appointed as Assistant Professor (ENT) in the Health Department on 13-1-1992. Admittedly as per the relevant rules 33% of the posts of Associate Professor were to be filled through direct recruitment and 2/3 by way of promotion. Respondents became eligible for promotion to the post of Associate Professor in February, 1997 when four posts were available in the promotion quota. However, the department did not consider his case for promotion till 3-12-1998 when he was promoted. He filed a representation and even that was not considered whereafter he approached the Service Tribunal. In the meanwhile, in June, 1998, the Punjab Public Service Commission had conducted interviews for two posts of Associate Professor, in which both the appellants were selected whereas respondent could not qualify. The Punjab Service Tribunal allowed respondent's appeal mainly on the ground that since a substantive post against promotion quota was available in 1997 and respondent was eligible to be considered, his promotion as Associate Professor should reckon from the date, the substantive post in the said quota was available.

3. Dr. Abdul Basit, learned counsel for the appellants in Civil Appeal No.384 of 2003 made the following submissions:--

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(i) That although the post for direct recruitment as Associate Professor fell vacant in February, 1997, and the case of respondent's promotion against the said post was pending decision in the department, yet, in the meanwhile the posts were filled through selectees of Punjab Public Service Commission on

27-7-1998 and respondent was promoted later on 3-12-1998 which was unfair, mala fide and discriminatory; and

- (ii) that respondent had a right to be considered for promotion against the post reserved for promotion quota as soon as the substantive vacancy was available and respondent could not have been condemned for inaction of the State functionaries. In support of the submissions made, learned counsel relied on Government of N.-W.F.P. v. Buner Khan 1985 SCMR 1158, Government of the Punjab v. Rana Ghulam Sarwar Khan 1997 SCMR 515 and Muhammad Iqbal v. Executive District Officer (R) Lodhran 2007 SCMR 682.

6. We have heard learned counsel for the appellants, learned Additional Advocate-General as also Mr. Shoab Shaheen, Advocate Supreme Court who assisted the Court on behalf of respondent at the asking of the Court.

7. In accepting respondent's appeal, the learned Service Tribunal considered the availability of substantive posts in the promotion quota, the eligibility of respondent to be considered in February, 1997 and the unreasonable delay caused by the department in processing his case. The Court found as follows:--

"In the comments submitted by respondent No.2, it was submitted that the post of Associate Professor (ENT) to be filled through promotion, when became available, the department started moving for filling the post by gathering documents from the prospective candidates and it was only after clearance that the competent authority, appellant was promoted as Associate Professor (ENT) on regular basis w.e.f. 3-12-1998. It is said that the delay which occurred, if any, was procedural and unavoidable because the case was prepared on receipt of documents from different quarters. Explanation given is hardly convincing. It means that spade work which commenced in February, 1997 ended in December, 1998 playing with the rights of civil servant in such an arbitrary manner is not only unpardonable but wholly unconscionable. Appellant suffered and felt aggrieved, undoubtedly when the post of Associate Professor (ENT) was not being filled but the last nail was driven in the coffin on 27-7-1998 when the recently arrayed respondents Nos.3 and 4 were inducted through direct recruitment as Associate Professors (ENT)."

8. We specifically asked the Additional Advocate-General as to whether the respondent was eligible to be considered for promotion against the promotion quota by 3-2-1997, to which his answer was in the

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affirmative. He could not give any explanation tenable in law for non consideration of case by the Departmental Promotion Committee. The State functionaries are mandated to act with a certain amount of reasonableness which canon of due process of law was not observed in processing respondent's promotion matter. Having acquired the requisite experience and having authored the number of articles required for the post in question, respondent had legitimate expectancy for the post in question. The impugned judgment in these circumstances is neither against the rules nor the law declared.

9. In Sarwar Ali Khan v. Chief Secretary to Government of Sindh 1994 PLC (C.S.) 411, the appellant was working as a Superintendent (BS-16) in the Sindh Labour Appellate Tribunal when the said post was converted into that of Deputy Registrar in BS-17. However, the post was upgraded on the recommendation of the Departmental Promotion Committee. On 1-7-1988, the post of Registrar (BS-18) fell vacant and on 5-7-1988 he was appointed to the post in his own pay and status. Ultimately, he was promoted on regular basis to the post of Registrar (BS-18) on the recommendation of the Departmental Promotion Committee vide notification dated 30-6-1991. He applied for salary of BS-18 from the date when he was posted against the post of Registrar in his own pay and status i.e. 5-7-1988. His appeal was dismissed by the Service Tribunal merely on the ground that he did not challenge the notification dated 5-7-1988 in time, that the Departmental Selection Board had not cleared his case for promotion and that he had not been compensated by the grant of special pay. This Court allowed the appeal on the ground that his claim cannot be rejected merely on the ground of being time-barred; that there was no valid reason for the Selection Board to withhold clearance for regular promotion and in absence of any explanation, it was not fair and equitable to refuse the prayer.

10. In Government of the Punjab through Secretary Education v. Rana Ghulam Sarwar Khan 1997 SCMR 515, the brief facts are that there were 12092 posts in College Teachers Cadre. The Provincial Government decided to introduce a 4-tier structure for college teachers and with that object in view, it classified the posts in ratio of 1:15:15:15 in 4-tiers namely B.P.S 20, 19, 18 and 17. It was vide notification dated 1-9-1990. However, the department took two years to make appointments in accordance with the above ratio. On account of this, the promotion of civil servants from BS-18 to 19 was held up till 1992. The appellants represented before the Government that they should be promoted to the post of BS-19 immediately and in terms of notification dated 1-9-1990.

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Education Department could not carry out a fairly simple exercise within a reasonable period."

11. In *Government of N.-W.F.P. v. Buner Khan* 1985 SCMR 1158, the facts briefly stated are that 75% of the posts in Grade 18 in Provincial Education Department were to be filled in by promotion from among the Grade 17 officers of the said department and 25% by direct recruitment. However, no proper rotation of the vacancies for the purpose was maintained. The petitioners before this Court were directly recruited in BPS-18 on 30-12-1980 and 1-9-1982, whereas the respondents (who were promotees) were promoted to the said grade on 12-5-1984 and no joint seniority list in the said grade was notified with the result that some of the direct recruits were promoted to Grade 19 without the promotees being considered for the said promotion. The Tribunal allowed the appeal of the promotees and directed the Government to promote them in Grade 18 w.e.f. the date when the vacancies were available and a joint seniority list be issued accordingly. This judgment was challenged both by the Government and those who were directly recruited. This Court maintained the judgment of the Service Tribunal with a slight modification i.e. instead of direction by the Tribunal, "to promote", this Court directed that "the promotees shall be considered for promotion to Grade-18 post with effect from the dates when vacancies in their quota became available and that thereafter a joint seniority list of the officers directly recruited and those promoted shall be issued according to the rules."

12. In *Luqman Zareen v. Secretary Education N.-W.F.P.* 2006 SCMR 1938, several school teachers were allowed pro forma promotion w.e.f. the date when the substantive vacancies were available but they were not considered on account of, "the usual apathy, negligence and bureaucratic red-tapism which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others."

13. In *Ch. Muhammad Siddique v. Director, Special Education* 1998 SCMR 88, the civil servant who was a lady teacher was granted pro forma promotion because her case was not considered when the substantive post was available for no-fault of her own. The Court held as follows:--

"It has not been denied that the case of the respondent was placed before the D.P.C. on 23-7-1987 and was deferred due to certain deficiencies but she was later promoted on 15-5-1988. That being so, she was entitled to ask for promotion with effect from the date the post became available and/or the date when her case was deferred by D.P.C. The judgment of the Service

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simple exercise within

Tribunal, in our view, is quite just and fair and does not suffer from any illegality."

14. Considering the case of the respondent in the light of the judgments of this Court, to which reference has been made above, we find that it is nobody's case that respondent was not eligible to be considered for promotion when substantive vacancy in the promotional quota was available. That being so, the impugned judgment directing the appellants to consider the case of respondent's promotion to the post of Associate Professor in BPS-19 w.e.f. the date when the vacancy in his quota was available is unexceptionable.

15. So far as the argument of learned Additional Advocate-General with reference to section 8 of the Punjab Civil Servants Act, 1974 (VI of 1974) which was amended in terms of Act III of 2005 is considered, the same would be of no avail to the appellants because there is nothing in the amended provisions which makes it retrospective in effect. Reference to the amended provision would be in order which reads under:-

- "8. Promotion--- (1) A civil servant shall be eligible to be considered for appointment by promotion in the service or cadre to which he belongs in a manner as may be prescribed; provided that he possesses the prescribed qualifications.
- (2) Promotion including pro forma promotion shall not be claimed by any civil servant as of right.
- (3) Promotion shall be granted with immediate effect and actualized from the date of assumption of charge of the high post, and shall in no case be granted from the date of availability of post reserved for promotion.
- (4) A civil servant shall not be entitled to promotion from an earlier date except in the case of pro forma promotion.
- (5) A retired civil servant shall not be eligible for grant of promotion or pro forma promotion.
- (6) A post referred to in subsection (1) may either be a selection post or a non-selection post to which promotion shall be made as follows:--

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amendment of a statute will not affect its previous operation unless the amended provision provides otherwise. The said section reads as under:--

"6. Effect of repeal.-- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not:

- (a) revive anything not in force of existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed of anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

17. In *Idrees Ahmed v. Hafiz Fida Khan* PLD 1985 SC 376, the import of section 6 of the General Clauses Act came under consideration and the Court held as follows:--

"Unless different intention appears from repealing enactment, repeal ipso facto not to affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, nor to influence any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeitures or punishment to be imposed as if repealing enactment having not been passed."

18. For what has been discussed above, we do not find any merit in these appeals which are dismissed, with no order as to costs.

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Appeals dismissed

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