13.11.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Vide common judgment of today of this Tribunal placed on file, of service appeal No. 49/2017 filed by Ziarat Gul, the present service appeal is dismissed without costs with the directions to the respondents that the appellants shall not be kept deprived of their genuine due rights of promotion on the basis of their seniority and qualification. If need be special training/course be arranged for the appellants. Parties are left to bear their own costs. File e consigned to the record room.

(Muhammad Hamid Mughal)
Member

(Hussain Shah)
Member

ANNOUNCED
13.11.2019

18.07.2019 Clerk to counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Clerk to counsel for the appellant requested for adjournments as counsel for the appellant has proceeded to Saudi Arabia to perform hajj. Adjourned. To come up for arguments on 16.09.2019 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

16.09.2019 Clerk to counsel for the appellant present. Addl: AG alongwith Mr. Zubair Ali, ASI for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourn. To come up for arguments on 15.10.2019 before D.B.

Member

Member

29.10.2019 Due to incomplete bench the case is adjourned. To come up for the same on 13.11.2019 before D.B.

15.10.2019 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Shoaib Ali ASI present. Arguments heard. To come up for order on 29.10.2019 before D.B.

Reader

Member

Member

20.03.2019 Appellant in person and Addl: AG alongwith Mr. Zewar Khan, S.I for respondents present.

Due to general strike on the call of Bar Council, learned counsel for the appellant is not in attendance.

Adjourned to 06.05.2019 before D.B.

Member Chairman

06.05.2019 Mr. Rizwanullah, Advocate is present for Mr. Khushdil Khan, Advocate for appellant. Addl: AG alongwith Mr. Zewar Khan, SI for respondents present.

States that learned counsel for the appellant has proceeded to Islamabad for medical checkup. Adjournment is therefore sought.

Adjourned to 21.06.2019 for arguments before D.B.

Member Chairman

21.06.2019 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Zewar Khan SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on18.07.2019 before D.B.

Member Member

01.01.2019 Clerk to counsel for the appellant present. Mr. Zewar Khan, SI(Lgal) alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not available today. Granted. Case to come up for arguments on 13.02.2019 before D.B.

(Ahmad Hassan)
Member

(M. Hamid Mughal)
Member

13.02.2019 Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 22.03.2019 before D.B.

(Hussain Shah)
Member

(Muhammad Amin Khan Kund))
Member

20.03.2019 Appellant in person and Addl: AG alongwith Mr. Zewar Khan, S.I for respondents present.

Due to general strike on the call of Bar Council, learned counsel for the appellant is not in attendance.

Adjourned to 06.05.2019 before D.B.

Member

Chairman

20.07.2018 Due to engagement of the undersigned in judicial proceeding before S.B further proceeding in the case in hand could not be conducted. To come on 14.09.2018 before D.B.

Member(J)

14.09.2018 Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Zaiwar Khan S.I legal for the respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourned. To come up for arguments on 10.10.2018 before D.B

(Hussain Shah)
Member

(Muhammad Hamid Mughal)
Member

10.10.2018 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Zaiwar Khan S.I legal for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.11.2018 before D.B.

Member

Member

13.11.2018 Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 01.01.2019 before D.B.

Reader

08.01.2018 Clerk of the counsel for appellant present. Mr. Usman Ghani, District Attorney alongwith Zewar Khan, SI (Legal) for the respondents present. Clerk of the counsel for appellant seeks adjournment as counsel for the appellant is not in attendance today. Adjourned. To come up for arguments on 01.03.2018 before D.B.

Member Chairman

01.03.2018 Clerk to counsel for the appellant and Addl: AG alongwith Mr. Zewar Khan, SI (Legal) for respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 07.05.2018 before D.B.

Member Chairman

07.05.2018 Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 20.07.2018 before D.B.

Reader

25.08.2017 Clerk to counsel for the appellant and Addl:AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 4.12.17

(Gul Zeb Khan)
Member

(Ahmad Hassan)
Member

04.12.2017 Junior to counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Zewar Khan, S.I (Legal) for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.01.2018 before D.B.

Member
(Executive)

Member
(Judicial)

16.03.2017 Counsel for the appellant and Mr. Zaver Khan SI (Litigation) alongwith Addl: AG for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 8/05/2017 before D.B.

(AHMAD HASSAN)
MEMBER

08.05.2017 Clerk of the counsel for appellant present. Mr. Muzaffar Khan, S.I (legal) alongwith Mr. Muhammad Jan, Government Pleader for the respondents also present. Rejoinder submitted. Due to strike of the bar learned counsel for the appellant is not available today. Adjourned for arguments to 17.07.2017 before D.B.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

13.07.2017 Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Zewar Khan, SI(Legal) for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.08.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Ahmad Hassan)
Member

30.1.2017

Learned counsel for the appellant argued that the appellant was erroneously reverted to the rank of Constable vide impugned order dated 24.06.2016 as his case was not covered by the judgment of the august Supreme Court of Pakistan That similar service appeals including appeal No. 1186/2016 were already admitted by this Tribunal for regular hearing.

Points urged need consideration, Admit. Subject to deposit of security and process fee notices be issued to the respondents. To come up for written reply/comments on 08.02.2017

Chairman

08.02.2017

Counsel for the appellant and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 16.03.2017

(ASIFAQUE TAJ)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 55/2017

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge or Magistrate
1	2	3
1	19/01/2017	The appeal of Mr. Hamad Ali presented today by Mr. Khushdil Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	23-1-2017	This case is entrusted to S. Bench for preliminary hearing to be put up there on 30-1-2017. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 55 /2017

Hamad ali,
Head Constable, Belt No. 608,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

The District Police Officer,
Dir Lower at Timergara & others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-3
2.	Copy of office order thereby appellant was promoted to the rank of Head Constable.	02-10-2000	A	4 5 0-4
3.	Copy of the monthly pay role.		B	0-~~5~~6
4.	Copy of the impugned order thereby appellant was reverted to lower rank of constable.	24-06-2016	C	7 8 6-~~7~~
5.	Copy of Departmental Appeal filed by appellant before respondent No. 2.	22-11-2016	D	9 0-~~8~~
6.	Copy of office order thereby appeal of appellant was rejected by respondent No. 2 and received in the office of respondent No. 1 on 03-01-2017.	26-12-2016	E	10 0-~~9~~
7.	Copy of the judgment passed in Service Appeal No. 941/2003 with the order dated 08-06-2006.	29-11-2005	F	11 25 10-~~24~~
8.	Copy of judgment passed in Service Appeal No. 397/2006.	20-10-2006	G	26 30 25-~~29~~
9.	Wakalat Nama			

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of Pakistan

Dated: 17 /01 /2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 55 /2017

Hamad ali,
Head Constable, Belt No. 608,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

1. The District Police Officer,
   Dir Lower at Timergara.

2. The Regional Police Officer,
   Malakand Range, at Saidu Sharif, Swat.

3. Inspector General of Police,
   Khyber Pakhtunkhwa,
   Central Police Office, Peshawar.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 24-06-2016 THEREBY APPELLANT WAS REVERTED TO HIS SUBSTANTIVE RANK OF CONSTABLE AGAINST WHICH HE FILED DEPARTMENTAL APPEAL ON 22-11-2016 BEFORE THE RESPONDENT NO. 2 WHO FILED THE SAME VIDE LETTER DATED 26-12-2016 WHICH WAS RECEIVED IN THE OFFICE OF RESPONDENT NO. 1 ON 03-01-2017.

Filedto-day
Registrar
19/1/17

Respectfully Sheweth,

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

1. That appellant was initially appointed as Constable in the respondent department in the year 1987 and since then he was performing his duties efficiently, honestly, devotedly and without any complaint.

2. That respondent No. 1 issued an order dated 02-10-2000 **(Annexed-A)** thereby appellant was promoted to the post and rank of Head Constable and as such he was working as Head Constable and also getting the monthly salaries in the scale of the said post and rank with all admissible allowances as evident from pay role attached as **(Annexed-B)**.

3. That on 24-06-2016 **(Annexed-C)** the respondent No. 1 issued an office order vide OB No. 698/EC thereby appellant was reverted to lower rank of Constable without cogent reasons against which appellant filed departmental appeal on 22-11-2016 **(Annexed-D)** which was rejected on 26-12-2016 **(Annexed-E)** and copy of which was received in the office of respondent No. 1 on 03-01-2017.

Hence the present appeal is submitted on the following amongst other grounds:-

Grounds:

A. That that the promotion of appellant to the post and rank of Head Constable was made by competent authority and in the same capacity he served the force for more than 5 years efficiently, honestly and devotedly but he was reverted in colourful manner and against the prescribed procedure enunciated in the rules. Thus the impugned order is illegal, unjustified, unfair and not tenable under the rules.

B. That the principle of locus poenitentiae is applicable in the case of appellant because the order was acted upon, implemented and has got finality which cannot be rescinded at a single stroke of pen except adhering to law.

C. That appellant was neither served with any notice nor he was given any opportunity of defence and he was condemned unheard thus the impugned order is unlawful, invalid being violative of the principle of natural justice.

D. That this Hon'ble Tribunal in similar circumstances has allowed the service appeal No. 941/2003 **(Annexed-F)** along with other identical appeals against the respondent department and the decision was duly implemented vide office order 08-06-2006. This judgment was further adopted by this Hon'ble Tribunal in other like cases vide the service appeal No. 397/2006 dated 20-10-2006 **(Annexed-G)**. Thus the case of appellant is at par with the above referred cases and appellant is entitled to the same treatment.

E. That respondent No. 2 being appellate authority has not acted in accordance with law and rules on subject and filed the departmental appeal of the appellant without cogent reasons which is not sustainable under the law and liable to be set aside.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order of reversion of appellant to lower rank of Constable and appellate order may kindly be set aside and his rank and status of Head Constable may graciously be restored with all back benefits.

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

Hali

Appellant

Through

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 17 / 01 /2017

Better Copy

Annex: "A"
P. 4

ORDER:

Constable Hamad Ali No. 608 of Police Station Timergara while on duty at Bus Stand Timergara has rendered excellent and hazardous performance by arresting armed criminal namely Sher Zamin S/o Gul Azim r/o Barawal Bandi who fired at Mst: Hanifa widow of Akbar Hussain r/o Kotkey.

In-recognition of his efficient performance, he is hereby promoted as offg: Head Constable with immediate effect in the existing vacancy.

-S/d-
(NOOR-UL-HUDA KHAN)
Superintendent of Police, Dir
Lower at Timergara.

OB No. 1184
Dated 02-10-2000

Annex. "A"
P.4

O R D E R:

Constable Hamad Ali No.608 of Police Station Timergara while on duty at Bus Stand Timergara has rendered excellent and hazardous performance by arresting armed criminal namely Sher Zamin s/o Gul Zaib r/o Barawal Bandi who fired at Mst:Hanifa widow of [illegible] r/o Kotkey.

In-recognition of his efficient performance, he is hereby promoted as Offg:Head Constable with him dilto effect in the existing vacancy.

(NOOR-UL-[illegible])
Superintendent of Police, Dir
Lower at Timergara.

DPO 1184 2-10-2002

Better Copy

P.5

ORDER:

Consequent upon their promotion as offg: Head Constable BPS-7 (1480-81-2695) and giving option, they pay of the following Head Constables is here-by fixed as noted against their names after allowing them equal to one half and one premature increments on the eve of their promotion w.e.f 02-12-2000.

S. No.	Name Rank No.	Pay fixed on 02-12-2000
1.	HC Amir Zada No. 327	Rs. 2693/-PM
2.	HC Fazal Mabood No. 289	Rs. 2533/-PM
3.	HC Hamad Ali No. 608	Rs. 2452/-PM
4.	HC Ghulam Sadique No. 99	Rs. 2533/-PM
5.	HC Bakhtiar Mahammad No. 975	Rs. 2452/-PM

-S/d-

OB No. 1463
Dated 02-12-2000

Superintendent of Police,
Dir Lower at Timergara.

P.5

ORDER.

Consequent upon their promotion as On p.Head Constables DPS-7(1480-81-2695)and giving option,the pay of the following Head Constables is here-by fixed as noted against their names after allowing them equal to one and one premature increments on the eve of their promotion;w.e.f. 2.11.2000.

S.No.	Name Rank No.	Pay fixed on 3.12.2000
1.	HC Amir Zada No.327.	Rs.2695/-pm
2.	" Feeal Nebood No.289.	Rs.2533/-"
3.	" Hamd Ali No.605.	Rs.2452/-"
4.	" Ghulam Sadique No.99.	Rs.2533/-"
5.	" Bakhtier Mohammad No.975.	Rs.2452/-"

OB No. 1463
Dated 9-12-2000

Superintendent of Police,
Dir Lower at Timergara.

Annex "B" P.6

00268455 HAMAD ALI CNIC: 1540132195597 Desig: HEAD CONSTABLE (80113167) Grade: 07 NTN: Buckle No.: 608 Gazetted/Non-Gazetted: N

PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	18,695.00	3007 GPF Subscription - Rs	686.00-	GPF#: POLDA000976			322,184.00
1000 House Rent Allowance	1,059.00	3511 Addl Group Insurance	7.00-	INCOME TAX 2,371.20		198.00	2,173.60
1210 Convey Allowance 20	1,932.00	3530 Police wel:Fud BS-1 t	374.00-				
1300 Medical Allowance	1,500.00	3604 Group Insurance	67.00-				
1547 Ration Allowance	681.00	3609 Income Tax	198.00-				
1567 Washing Allowance	100.00						
1646 Constabilary R Allow	300.00						
1901 Risk Allowance (Poli	5,295.00						
1902 Special Incentive Al	775.00						
1923 UAA-OTHER 20%(1-15)	1,000.00						
1933 Special Risk Allowan	3,500.00						
2148 15% Adhoc Relief All	2,118.00						
2168 Fixed Daily Allowanc	2,730.00						
2174 Adhoc Relief Allow-2	1,412.00						
2199 Adhoc Relief Allow @	1,869.00						
PAYMENTS	42,966.00	DEDUCTIONS	1,332.00-	NET PAY	41,634.00	01.06.2016	30.06.2016

Branch Code:220480 DARGAI, MALAKAND. Habib Bank limited DARGAI, MALAKAND. MALAKAND Accnt.No: 04807900483403

Annex: C
P.7

OFFICE OF THE DISTRICT POLICE OFFICE DIR LOWER AT TIMERGARA.

ORDER.

In compliance with the directives CPO Peshawar Letter No.S/2262-2312/16, dated 21-03-2016, the following committee was constituted: -

1- Mr. Aziz Ur Rahman SP Investigation Dir Lower (Chairman).
2- Mr. Aqiq Hussain DSP HQrs Dir Lower. (Member)
3- Mr. Rashid Ahmad Inspector Legal Dir Lower. (Member)

The committee scrutinized the promotion cases under purview of Supreme Court decisions as quoted in PLD 1992 SC 207,2000 SCMR 207 and 1998 SCMR 882 ref: 2004 PLC (C.S) 392(A) which describes that when a Police Official had performed some extra ordinary act, he could be rewarded with cash or other material award, but no Police authority could be allowed to disturb the seniority of his colleagues, because seniority was a vested right Policy letter whereby out of turn promotion was granted to civil servants subsequently was withdrawn even otherwise any such letter could not supersede or even substitute the substantive legislation available in form of Police Rules, 1934, which did not allow any out of turn promotion. Illegal orders once passed would not come irrevocable and a close transaction. No perpetual right could be derived on the basis of such an order. Public authority which could pass an order was empowered to rescind it. Principle of locus poenitentiae as claimed by civil servant was not attracted in their case, in circumstances. Contention that civil servant had been condemned un-heard as no show –cause notice was issued to them before reverting them, was repelled because civil servant was who were not entitled to out of turn promotion could not seek protection of principle of natural justice. Civil servants had also not been subjected to discrimination. In absence of any legal sanction in promoting civil servants out of turn, civil rightly reverted.

In light of Police Rules 13.1, the following Head Constables have got out of turn promotion and they were not eligible for it.

Therefore, on the recommendation of committee coupled with the decisions of august Supreme Court of Pakistan, they are hereby reverted as per detail mentioned against their names : -

S.No	Name & rank	Remarks
1	HC Mumtaz Khan No.11	Being junior, un lawfully promoted and reverted to the rank of constable.
2	HC Gul Habib No.444	Being junior, un lawfully promoted and reverted to the rank of constable
3	HC Razi Shah No.501	Being junior, un lawfully promoted and reverted to the rank of constable
4	HC Muhd: Azim NO.1054	Being junior, un lawfully promoted and reverted to the rank of constable
5	HC Muhd: Zubair NO.675	Being junior, un lawfully promoted and reverted to the rank of constable
6	HC Said Zaman No.712	Being junior, un lawfully promoted and reverted to the rank of constable.
7	HC Sarzamin NO.89	Being junior, un lawfully promoted and reverted to the rank of constable.
8	HC Hamim Ul Hakim No.33	Being junior, un lawfully promoted and reverted to the rank of constable.
9	HC Hamad Ali NO.608	Being junior, un lawfully promoted and reverted to the rank of constable.
10	HC Fahim Khan No.217	Being junior, un lawfully promoted and reverted to the rank of constable.
11	HC Saif Ur Rahman No.81	Being junior, un lawfully promoted and reverted to the rank of constable.
12	HC Ayub Khan No.1048	Being junior, un lawfully promoted and reverted to the rank of constable.
13	HC Said Rahman No.235	Being junior, un lawfully promoted and reverted to the rank of constable.
14	HC Ziarat Gul No.118	Being junior, un lawfully promoted and reverted to the rank

P.8

16	HC Aman Ur Rahman NO.882	Being junior, un lawfully promoted and reverted to the rank of constable.
17	HC Zafar Ali No.780	Being junior, un lawfully promoted and reverted to the rank of constable.
18	HC Hama yoon No.57	Being junior, un lawfully promoted and reverted to the rank of constable.
19	HC Hazrat Said No.688	Being junior, un lawfully promoted and reverted to the rank of constable.
20	HC Khurshid No.34	Being junior, un lawfully promoted and reverted to the rank of constable.
21	HC Azam Khan No.1291	Being junior, un lawfully promoted and reverted to the rank of constable.
22	HC Sajjad Ahmad No.1162	Being junior, un lawfully promoted and reverted to the rank of constable.
23	HC Rab Nawaz Khan No.197	Being junior, un lawfully promoted and reverted to the rank of oonstable.
24	HC Mukhtair Ali No.1234	Being junior, un lawfully promoted and reverted to the rank of constable.
25	HC Ali Rahman No.828	Being junior, un lawfully promoted and reverted to the rank of constable.
26	HC Nizam Uddin No.389	Being junior, un lawfully promoted and reverted to the ran of constable.
27	HC Umar Farooq No.912	Being junior, un lawfully promoted and reverted to the ran of constable.
28	HC Muhd: Nawaz No.1877	Being junior, un lawfully promoted and reverted to the rar of constable.
29	HC Muhd: Ali Shah No.1408 1406	Being junior, un lawfully promoted and reverted to the ra of constable.

District Police Officer,
Dir Lower at Timergara
22/6

OB No. 698 /EC,
Dated 24/6 /2016.

No. 30040 **/EB, Dated Timergara, the** 24-6- **/2016.**

Copy Submitted to the Regional Police Officer, Malakand Swat for fa
of information, please.

Annex: "D"
P.9

درخواست برائے ہمدردانہ غور/دوبارہ بحالی ہیڈ کنٹل
بوساطت افسران بالا صاحبان

جناب عالی! گزارش ہیکہ سائیل محکمہ پولیس ضلع دیر لوئیر میں بحیثیت کنٹل سال 1987ء کا بھرتی شدہ ہے۔ سائیل تادم تحریر نہایت ایمانداری فرض شناسی سے فرائض منصبی انجام دی ہے۔ جسکا ثبوت سائیل کا اعلیناہ ہے۔

جناب عالی! سائیل نے گزشتہ حالیہ دھشت گردی میں نہایت ایمانداری فرض شناسی سے فرائض منصبی انجام دی ہے۔ جسکے بناء پر افسران بالا صاحبان نے سائیل کو بعہدہ ہیڈ کنٹل ترقیاب کرنے کا احکامات صادر فرمائے تھے۔ اب افسران بالا نے سائیل کو دوبارہ بعہدہ کنٹل تنزلی دی ہے۔ جو کہ ناانصافی ہے

لہذا بالا وجوہات کو مدنظر رکھ کر سائیل کو دوبارہ بعہدہ ہیڈ کنٹل ترقیاب کرنے کا احکامات صادر فرمائے۔ تو سائیل تاحیات دعاگو رہیگا۔

عین نوازش ہوگی۔

العارض

تاریخ 22/11/2016

نائب دار کنٹل حمد علی 608/FC متعینہ ضلع دیر لوئیر

Annex: E/7 p. 10
03/10/17

From : **The Regional Police Officer, Malakand, at Saidu Sharif, Swat.**

To : **The District Police Officer, Dir Lower.**

No. 10821 **/E, dated Saidu Sharif, the** 26-12- **/2016.**

Subject: **APPLICATION FOR RESTORATION OF RANKS.**

Memorandum:

Please refer to your office memo: No. 56803/EB, dated 14/12/2016.

Applications of the following Constables of Dir Lower District have been examined by Worthy Regional Police Officer, Malakand and filed:

1. FC Muhammad Fahim No. 217
2. FC Hamad Ali No. 608

(OFFICE SUPDT:)
for **Regional Police Officer,**
Malakand, at Saidu Sharif Swat

Copy 509 /EB
dt 04/01 /2017

To Inv. EC
Dir Lower
Reader's office
EC

District Police Officer
Dir Lower at Timergara

Annex. "F"
P. 11

Better Copy 1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 941/2003
Date of institution: 22.09.2003
Date of decision: 29.11.2005

Jumdad Khan, Ex-SI/Pc, FRP HQrs, Peshawar.....Appellant

VERSUS

1. Deputy Commandant, FRP, Peshawar.
2. Commandant, FRP, NWFP.
3. I.G.P, NWFP, Peshawar .....Respondents

Mr. Saadullah Khan Marwat, Advocate.....For Appellant

Mr. Zaffar Abbas Mirza, Acting Govt. Pleader..... For respondents

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ABDUL KARIM QASURIA ..... MEMBER

GHULAM FAROOQ KHAN..... MEMBER

JUDGMENT

ABDUL KARIM QASURIA, MEMBER:- This judgment will dispose off the appeal filed by Jamdad Khan appellant against the order dated 07-06-2003 of Deputy commandant FRP Peshawar, whereby he was reverted from the post of SI/PC (B-14) to the rank of Head Constable (B-7) in the FRP, Peshawar. The appellant has prayed that the impugned order may be set aside and he be re-instated in service with full back benefits.

ATTESTED

P.12

2. Brief facts of the case as narrated in the memo of appeal are that the appellant was initially appointed in the Force on 02-12-1979. He was promoted to the rank of Head Constable on 06-06-1987. He further promoted to the rank of S.I. on 04-06-1982. He was also granted selection grade. Without any reason and justification when the appellant was at the verge of retirement, he was reverted from the rank of S.I. to the rank of Head Constable vide the impugned order dated 07-06-2003 against which the appellant submitted a representation before respondent No.2 which met with dead response till date. The Force was brought on regular basis by the Provincial Government.

3. The grounds of appeal are that after the lapse of statutory period of 90 days, the appellant preferred the present appeal before the Tribunal challenging the impugned order as illegal, without lawful authority and having been passed in violation of the existing laws on the ground that the said post was still in existence. He was reverted straightaway from BS-14 to BS-7 while usually reversion order has to be made step by step. Selection Grad (B-9) as also recalled from him for no reason. The appellant was also promoted to the rank of SI/PC, being eligible, qualified and fit for the said post and he in the same capacity served the Force for 10/11 years but he reverted in colourful manner and against the prescribed procedure enunciated in the rules. In the years 2000, FRP was brought on permanent and regular basis and Standing Order No. 3 was not applicable in the case of appellant because the same was for administrative arrangements and has no legal sanctity as the same was not passed at that time by the competent forum. It must be kept in mind that the appellant served the Force for 10/11

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years as stated earlier without any complaint, so the principal of locus poenitentiae is applicable in his case because the order was acted upon, implemented and has got finality which cannot be rescinded at a single stroke of pen, except adhering to law. Much less the appellant was neither served with any notice nor he was given opportunity of defence what to speak of holding of enquiry in the matter. In similar circumstances while reverting the other officials, they were served with prior notices before the passing of the demotion orders. Legally reversion amounts to termination of service but such act was without re-coursing to law in similar circumstances this Tribunal was pleased to accept "Appeal No. 15/1980 of Fazal Hussain Vs. IGP NWFP and others and Appeal No. 70/1995 of Taj Muhammad Vs. Commandant FRP and others.

4. The respondents were served with notice who submitted their written statements by contesting the appeal on merit as well as on law points. Preliminary objections to the extent of limitation, mis-joinder and non-joinder of necessary parties, without cause of action and jurisdiction were raised.

5. On factual side, it was urged that the appellant was recruited as constable in Additional Police, which was later on converted into FRP as per record. He was promoted to the rank of SI/PC on officiating basis as such he was reverted to his substantive rank. The reversion from officiating rank is not punishment and no proceedings were required to be initiated against the appellant under the E&D Rules.

6. The appellant has submitted his replication in rebuttal. According to replication the appeal is well within time. No lacuna has been pointed out. No such party has been pointed out as to who was necessary party and the parties impleaded in the appeal are quite sufficient for the purpose. The appellant has a cause of action as not only he was reverted from the higher rank to lowest rank but his monthly pay was also reduced from Rs. 11,000/- to Rs.4,000/-. No element of unclean hands has ever been pointed out. The Tribunal has the exclusive jurisdiction in the matter.

7. On factual it has been submitted that every change in pay scale, whether temporary, officiating, stop gap arrangements, acting charge basis, etc amounts to promotion as per the judgments of the Hon'ble Supreme Court of Pakistan. Even grant of selection grade also amounts to promotion. The appellant was never served with any notice for the purpose. Till date, no rejection order has been received by the appellant. Even the same is not attached with the copy submitted before the Tribunal what to speak of supply of copy to the appellant. Standing order No. 3 has no legal force no there exists any difference in the orders of promotion of the appellant. The promotion of the appellant was on merit and is not open to fire. Apart from the above, in orders dated 11-04-2003 and 07-06-2003 numerous officials were promoted like appellant but they have not been reverted and are still serving as such. In order dated 11-05-1994, Khurshid Anwar SI/PC is still serving as promotee and has not been reverted and this order has been kept secret. In order dated 28-01-1998 at S. No. 1 and 2 Ali Hussain and Syed Asghar Ali are still serving as promotee ASIs, Riazuddin, Haq Dad Khan, Fazal Hussain, etc were given promotions on the same basis and retired as Inspectors. Some Inspectors were given warning of reversion but they have not been reverted as yet.

8. Arguments heard and record perused.

9. At the time of hearing, the Tribunal observed that apparently, the appeal is directed against the order of reversion issued by the Deputy Commandant, FRP, Peshawar (Respondent No. 1) but the order of promotion was made by the commandant, FRP, NWFP, Peshawar (Respondent No. 2). So legally and as is held by the apex superior courts, inferior authority cannot interfere with the order of the superior authority and was not amenable to any interference by the inferior authority. The post of SI/PC carries a higher pay scale B-14, status and responsibility as compared to the Head Constable and to say the least, the appellant was reverted from the post of SI/PC without any valid reason.

10. The preliminary objection raised by the Government Pleader on the behalf of the respondents were considered at length but they were ruled out of the contents. The appellant categorically mentioned in the para of the appeal that on 14-06-2003, the preferred and appeal to the Commandant, FRP, NWFP, Peshawar (Respondent No. 2), against the order dated 07-06-2003 of the respondent No.1 but the same is still pending before respondent No. 2 while more than 90 days have been elapsed. The respondents in their reply have mentioned that the representation of the appellant was rejected by the Authority but this was controverted on an affidavit and mentioned that the reply of the respondents is vague and incorrect in the sense that no order of the Authority in respect of the filing of the appeal have ever been communicated to him. On perusal of the record, there seem nothings that the order of rejection has even been communicated to the appellant, so the

appeal is well within time. Other preliminary objections raised by the respondents are also of flemiscal nature. It has been held in several cases that this Tribunal is competent to entertain appeals of the aggrieved officials because they are civil servants. Since this objection has been settled once for all and the Tribunal as well as apex higher courts have entertained such like cases in numbers, so we need not dwell upon the issue any more.

11. the appellant has a cause of action because his terms and conditions of service have been violated as he was reverted from the rank of SI/PC (B-14) straightaway to the rank of Head Constable (B-7) on no legal reason, so the appellant has cause of action and this Tribunal has the exclusive jurisdiction regarding the subject matter. The points impliedly are sufficient for the purpose to resolve the issue in hand. No element of un-clean hands has ever been pointed out.

12. While discussing the merit of the case, the learned counsel for the appellant contended that the appellant was promoted to Grade-14. After 11 years, he was reverted to Grade-7 without any rhyme or reason. Other Head Constables, who were promoted alongwith the appellant on completion of 10/11 years tenure were either kept in service or retired from service as SI/PCs instead of reverting them to the rank of Head Constables. In order dated 11-04-2003, the officials at S. No. 4, Gul Shaid Kha, Habibur Rehman at S.No. 16, Rehmant Ali at S.No. 17 were not reverted but are still serving as such. Similarly, in the order dated 28-01-1998 the officials at S.No. 3,4 and 5 have been reverted while the officials at S.No. 12 and 6 were not reverted and are still serving as such. Such is the position of the order of the year of 1995 wherein all the officials were retired from service in capacity of SI/PCs except at S.NO 16, Fazal Muhammad who was not reverted while at

S.No. 17 Gul Tazeer No. 872 was reverted. In order dated 04-06-1992, the appellant was reverted. Rest of the incumbents were retired from service in BS-14 while the incumbent at S.No. 2, namely Hayat Khan No. 41 was not reverted. In order dated 07-06-2003 incumbent at S.No. 9 Taj Hussain was not reverted and is still serving as such.

13. The learned counsel for the appellant drew the attention of this Tribunal to other officials namely Hamayun khan, Hayat Khan, Altaf Khan, Mian Zada who were promoted to the post of ASI/PCs on 01-07-1992 but they are still serving the Force as such. Similar other instances also exist. There is no provision in the Police Rules to the effect that Head Constable when promoted and posted as SI/PC would stand reverted after three years. In support of this contention he quoted authority of the Supreme Court of Pakistan, PLD-1965-Supreme Court, P-106 "Constitution of Pakistan 1962" Article 96 (Government Servants) service Rules not in existence- letters issued by Executive Authority regarding service matter, increments etc, cannot take the place of properly framed Rules (P-110-C).

14. That counsel for the appellant further contended that if it is presumed without conceding that the appellant was reverted after completion of normal tenure as SI/PC and this reversion was not by way of punishment even then the issue of show cause notice to the appellant was mandatory. In support of this contention reliance was placed on PLD-1958 Ka page -35 "(a) Constitution of Pakistan Article 181 (ii) reduction in rank – provision, show cause notice applied even if reduction is not by way of penalty or punishment P -40 (e) SCMR-1994-2232

15. The counsel for the appellant further claimed that the appellant was eligible and qualified for his promotion on the basis of seniority-cum-fitness as he has 26 years unblemished service record at his credit. As such he could not be reverted except by way of punishment and that too in accordance to law. Since the appellant did not commit any irregularity/illegality nor he was proceeded against under any rule, his reversion was without any lawful authority.

16 The Government pleader while replying to some of the points raised by the counsel for the appellant stated that the appellant was promoted on officiating basis and not on regular basis after completion of normal tenure of 6 years, he was reverted to Grade-7 in normal course. The temporary promotion cannot be claimed as a matter of right as it is not guaranteed. The counsel further argued that the provision does not exist in Police Rules with regards to the promotion of Head Constable to the rank of Sub-Inspector/Platoon Commander. The promotion is granted to the incumbents in the interest of administration as a temporary measure. Only those upper subordinate were allowed to remain in officiating capacity for a longer period who are qualified in the Intermediate as well as Upper School Courses. The appellant has not undergone that courses and as such, he could not be allowed to remain as officiating Sub-Inspector for ever. He was promoted as SI/PC in officiating capacity and on completion of three years tenure, he was considered for reversion to his substantive rank of Head Constable who was promoted to officiate as Sub-Inspector/Platoon for 6 years and was allowed to retire after completion of 25 years service on their own request. In the normal course, they had to be reverted to the rank of head Constable after completion of 3 years tenure.

17. while rebutting the stand of Government Pleader, the counsel for the appellant stated that "officiating" does not exist in the promotion order of the appellant but even if it is presumed without conceding that the promotion of the appellant was ordered on officiating/temporary basis, even then demotion from the post of Platoon Commander to that of Head Constable could not relied on High Court Judgment appearing in PLD-1958 (W.P) Karachi 35 which is set out as under:-

> Government Servant (Railways) Promotion by authority competent to Promote temporarily-promotion un-aware of restricted character of such authority order reverting Railway servant set aside in circumstances of case law of agency and estoppel.
>
> Constitution of Pakistan (1975), Art. 170. (P.805) A and SCMR 1994, 2232. (f) Constitution of Pakistan (1973), Art. 199. Maxim: "Audi Alteram partem" Employee of statutory corporation-Reversion-Absence of statutory rules-remedy. Corporation while taking action against its employee, neither issuing show cause notice to him nor giving him opportunity for personal hearing _____ justice, its action in reverting employee was declared to be without lawful authority and of no legal effect.

18. In view of the conflicting views and contradictory stands taken by the parties, it would be difficult to resolve the controversy unless a reference is made to promotion/demotion orders issued by the authorities from time to time. The first order of promotion was issued by the DIG Police Peshawar Rang on 4.6.1992. This order is silent about the nature of promotion i.e. regular or otherwise. It also does not mention that the appellant would be reverted as Head Constable after completion of fixed tenure of 3/6 years. We have considered this difference in the two orders on the same subject but we

have come to the conclusion that the orders issued by the higher authority i.e. DIG Peshawar would naturally take preference. The claim of the appellant that he was unaware of the restricted character of the promotion would therefore prevail. The appellant is thus entitled to the benefit of the judgment of the Dacca High Court in the Writ Petition No. 239 of 1961 (PLD-1963-Dacca 801) (Para 11)

19. The appellant was considered suitable for promotion by the DIG Peshawar Range. This suitability naturally meant seniority-cum-fitness. The appellant is un-doubtedly senior. He is also fit for promotion as he has 20,23 years service at his credit. The appellant possess more than satisfactory record of service. He has earned certificates and cash rewards on several occasions. Entries with regard to all these facts are available in the service documents of the appellant. The vacancies for promotion were also available at the relevant time.

20. The net result of the above discussion is that the appellant was promoted on regular basis and some orders of respondents, no doubt, bear the word "officiating" but since these orders were not endorsed in the appellant, he is entitled to the benefits of the judgment of Dacca High Court in Writ Petition of 239/1961. Moreover, the appellant could not be demoted on the basis of Standing Order because such letter had no force of law in view of the judgment of Hon'ble Supreme Court of Pakistan appearing in PLD-1965 (S.C) 16. It is also evident that the appellant became the victim of differential treatment. Other Head Constables who were promoted with the appellant were retired as Platoon Commanders whereas the appellant was reverted back as Head Constable.

21. The counsel for the appellant further contended that after expiry of the probationary period, an official on completion of probationary period become permanent and his probationary period automatically ceases. Reliance was placed on PLC-1994-CS-84-PLC-92 CS 1327.

22. That most of the orders of promotion to the next higher ranks have been passed by the Commandant, FRP (Respondent No. 2), while the orders of reversion to the lower ranks were promoted by the Deputy Commandant. FRP Peshawar, so the same have no legal value as subordinate authority cannot legally interfere with the orders of the higher authority. Only on this score, the impugned order is liable to be set aside.

23. That on 16-1-1988 the Finance Department circulated order of the Government of NWFP, Home & Tribal Affairs Department that all the Forces are hereby regularized.

Para No. 5 at Page-2 of the said order reads as under:-

"5. The location of staff created are shown in Annexure-B. The duties and responsibilities of the new set up will be the same as those of regular police elsewhere and its services will be governed by the police rules or any other rules applicable to their counter parts in regular police"

24. In view of the above discussion, the Tribunal agrees with the arguments advanced by the learned counsel for the appellant, accepts the appeal, set aside the impugned order and re-instates the appellant in service.

ATTESTED

25. This judgment will also dispose off the following connected appeals, as identical questions of law and facts are involved in all these cases:-

S. No.	Appeal No.	Name of appellant	Versus	Impugned order
1.	836/2003	Asal Khan	Dy.Commandant FRP etc	16.4.2003
2	896/2003	Nazir Badshah	-do-	7.6.2003
3	1185/2003	Farhad Khan	-do-	1.7.2003
4.	948/2003	Gulfaraz Khan	-do-	7.6.2003
5.	949/2003	Muhammad Irshad	-do-	7.6.2003
6.	950/2003	Abdul Rehman	-do-	7.6.2003
7.	951/2003	Nasrullah Khan	-do-	7.6.2003
8.	952/2003	Gul Tazar	-do-	7.6.2003
9.	169/2005	Saidur Rehman	-do-	18.10.2004
10.	170/2005	Hayatullah	-do-	18.10.2004
11.	171/2005	Musa Khan	-do-	18.10.2004
12.	172/2005	Fida Muhammad	-do-	18.10.2004
13.	173/2005	Mahir Khan	-do-	18.10.2004
14.	105/2005	Karim Khan	-do-	18.10.2004
15.	653/2004	Sher Akbar	-do-	7.6.2003
16.	796/2003	Malak Zada	-do-	24.5.2003
17.	264/2005	Farhad Khan	-do-	18.10.2004
18.	106/2005	Rajmali khan	-do-	18.10.2004
19.	107/2005	Raza Khan	-do-	18.10.2004
20.	108/2005	Haji Niaz Muhammad	-do-	18.10.2004
21.	109/2005	Yousaf Khan	-do-	18.10.2004
22.	942/2003	Sartaj Khan	-do-	7.6.2003

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23.	943/2003	Akbar Khan	-do-	7.6.2003
24.	944/2003	Alauddin	-do-	7.6.2003
25.	945/2003	Ghulam Akbar	-do-	7.6.2003
26.	946/2003	Abdul Haleem	-do-	7.6.2003
27.	947/2003	Luqman Hakim	-do-	7.6.2003
28.	953/2003	Ali Muhammad	-do-	7.6.2003
29.	954/2003	Mir Alam Khan	-do-	7.6.2003
30.	955/2003	Muhammad Gul	-do-	7.6.2003
31.	956/2003	Habibur Rehman	-do-	7.6.2003
32.	957/2003	Noor Bahadur	-do-	7.6.2003
33.	958/2003	Hastam Khan	-do-	7.6.2003
34.	706/2004	Amir Nawaz	SP FRP etc	24.8.2004

26. No order as to costs. File be consigned to the record.

ANNOUNCED

29.11.2005

(ABDUL KARIM QASRIA)
MEMBER

(GHULAM FAROOQ KHAN)
MEMBER

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 941/2003

Date of Institution ... 22.09.2003
Date of decision ... 29.11.2005

Jamdad Khan, Ex-SI/PC FRP Hqrs, Peshawar.....(Appellant)

VERSUS

1. Deputy Commandant, FRP Peshawar.
2. Commandant, FRP, NWFP Peshawar.
3. I.G.P. N.W.F.P, Peshawar.....(Respondents)

Mr. Saadullah Khan Marwat, Advocate.....For appellant.
Mr. Zaffar Abbas Mirza, Acting Govt. Pleader.....For respondents.

ABDUL KARIM QASURIA.....MEMBER.
GHULAM FAROOQ KHAN.....MEMBER.

JUDGMENT

ABDUL KARIM QASURIA, MEMBER.- This judgment will dispose off the appeal filed by Jamdad Khan appellant against the order dated 7.6.2003 of Deputy Commandant FRP Peshawar, whereby he was reverted from the post of SI/PC (B-14) to the rank of Head Constable (B-7) in the FRP, Peshawar. The appellant has prayed that the impugned order may be set aside and he be re-instated in service with full back benefits.

ATTESTED

2. Brief facts of the case as narrated in the memo of appeal are that the appellant was initially appointed in the Force on 2.12.1979. He was promoted to the rank of Head Constable on 6.6.1987. He was further promoted to the rank of S.I. on 4.6.1982. He was also granted selection grade. Without any reason and justification when the appellant was at the verge of retirement, he was reverted from the rank of S.I. to the rank of Head Constable vide the impugned order dated 7.6.2003 against which the appellant submitted a representation before respondent No. 2 which met with dead response till date. The Force was brought on regular basis by the Provincial Government.

3. The grounds of appeal are that after the lapse of statutory period of 90 days, the appellant preferred the present appeal before the Tribunal challenging the impugned order as illegal, without lawful authority and having been passed in violation of the existing laws on the grounds that the said post was still in existence. He was reverted straightaway from BS-14 to BS-7 while usually reversion order has to be made step by step. Selection Grade (BS-9) was also recalled from him for no reason. The appellant was also promoted to the rank of SI/PC, being eligible, qualified and fit for the said post and he in the same capacity served the Force for 10/11 years but he was reverted in colourful manner and against the prescribed procedure enunciated in the rules. In the year 2000, FRP was brought on permanent and regular basis and Standing Order No. 3 was not applicable in the case of

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appellant because the same was for administrative arrangements and has no legal sanctity as the same was not passed at that time by the competent forum. It must be kept in mind that the appellant served the Force for 10/11 years as stated earlier without any complaint, so the principle of locus poenitentiae is applicable in his case because the order was acted upon, implemented and has got finality which cannot be rescinded at a single stroke of pen, except adhering to law. Much less the appellant was neither served with any notice nor he was given opportunity of defence what to speak of holding of enquiry in the matter. In similar circumstances while reverting the other officials, they were served with prior notices before the passing of the demotion orders. Legally reversion amounts to termination of service but such act was without re-coursing to law and in similar circumstances this Tribunal was pleased to accept "Appeal No. 15/1980 of Fazal Hussain Vs. IGP NWFP and others and Appeal No. 70/1995 of Taj Muhammad Vs. Commandant FRP and others.

4. The respondents were served with notices who submitted their written statements by contesting the appeal on merit as well as on law points. Preliminary objections to the extent of limitation, mis-joinder and non joinder of necessary parties, without cause of action and jurisdiction were raised.

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On factual side, it was urged that the appellant was recruited as constable in Additional Police, which was later on converted into FRP as per record. He was promoted to the rank of SI/PC on officiating basis as such he was reverted to his substantive rank. The reversion from officiating rank is not punishment and no proceedings were required to be initiated against the appellant under the E&D Rules.

6. The appellant has submitted his replication in rebuttal. According to replication the appeal is well within time. No lacuna has been pointed out. No such party has been pointed out as to who was the necessary party and the parties impleaded in the appeal are quite sufficient for the purpose. The appellant has a cause of action as not only he was reverted from the higher rank to the lowest rank but his monthly pay was also reduced from Rs. 11,000/- to Rs. 4,000/-. No element of unclean hands has ever been pointed out. The Tribunal has the exclusive jurisdiction in the matter.

7. On factual it has been submitted that every change in pay scale, whether temporary, officiating, stop-gap arrangements, acting charge basis, etc amounts to promotion as per the judgments of the Hon'ble Supreme Court of Pakistan. Even grant of selection grade also amounts to promotion. The appellant was never served with any notice for the purpose. Till date, no rejection order has been received by the appellant. Even the same is not attached with the copy submitted before the Tribunal what to speak of

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supply of copy to the appellant. Standing order No. 3 has no legal force nor there exists any difference in the orders of promotion of the appellant. The promotion of the appellant was on merit and is not open to fire. Apart from the above, in orders dated 11.4.2003 and 7.6.2003 numerous officials were promoted like appellant but they have not been reverted and are still serving as such. In order dated 11.5.1994, Khurshid Anwar SI/PC is still serving as promotee and has not been reverted and this order has been kept secret. In order dated 28.1.1998 at S.No. 1 and 2 Ali Hussain and Syed Asghar Ali are still serving as promotees ASIs, Riaziddin, Haq Dad Khan, Fazal Hussain, etc were given promotions on the same basis and retired as Inspectors. Some Inspectors were given warning of reversion but they have not been reverted as yet.

8. Arguments heard and record perused.

9. At the time of hearing, the Tribunal observed that apparently, the appeal is directed against the order of reversion issued by the Deputy Commandant, FRP, Peshawar (Respondent No.1) but the order of promotion was made by the Commandant, FRP, NWFP, Peshawar (Respondent No.2). So legally and as is held by the apex superior courts, inferior authority cannot interfere with the order of the superior authority and was not amenable to any interference by the inferior authority. The post of SI/PC carries a higher pay scale B-14, status and responsibility as compared to th

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Head Constable and to say the least, the appellant was reverted from the post of SI/PC without any valid reason.

10. The preliminary objections raised by the Government Pleader on behalf of the respondents were considered at length but they were ruled out of the contents. The appellant categorically mentioned in the para of the appeal that on 14.6.2003, he preferred an appeal to the Commandant, FRP, NWFP, Peshawar (Respondent No. 2), against the order dated 7.6.2003 of respondent No. 1 but the same is still pending before respondent No. 2 while more than 90 days have been elapsed. The respondents in their reply have mentioned that the representation of the appellant was rejected by the Authority but this was controverted on an affidavit and mentioned that the reply of the respondents is vague and incorrect in the sense that no order of the Authority in respect of the filing of the appeal has ever been communicated to him. On perusal of the record, there seems nothing that the order of rejection has ever been communicated to the appellant, so the appeal is well within time. Other preliminary objections raised by the respondents are also of flemsical nature. It has been held in several cases that this Tribunal is competent to entertain appeals of the aggrieved officials because they are civil servants. Since this objection has been settled once for all and the Tribunal as well as apex higher courts have entertained such like cases in numbers, so we need not dwell upon the issue any more.

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11. The appellant has a cause of action because his terms and conditions of service have been violated as he was reverted from the rank of SI/PC (B-14) straightaway to the rank of Head Constable (B-7) on no legal reason, so the appellant has cause of action and this Tribunal has the exclusive jurisdiction regarding the subject matter. The points impliedly are sufficient for the purpose to resolve the issue in hand. No element of un-clean hands has ever been pointed out.

12. While discussing the merit of the case, the learned counsel for the appellant contended that the appellant was promoted to the Grade-14. After 11 years, he was reverted to Grade-7 without any rhyme or reason. Other Head Constables, who were promoted alongwith the appellant on completion of 10/11 years tenure were either kept in service or retired from service as SI/PCs instead of reverting them to the rank of Head Constables. In order dated 01.4.2003, the officials at S.No. 4, Gul Shaid Khan, Habibur Rehman at S.No. 16, Rehmat Ali at S.No. 17 were not reverted but are still serving as such. Similarly, in the order dated 28.1.1998 the officials at S.No. 3, 4, and 5 have been reverted while the officials at S.No. 12 and 6 were not reverted and are still serving as such. Such is the position of the order of the year of 1995 wherein all the officials were retired from service in capacity of SI/PCs except at S.No. 16, Fazal Muhammad who was not reverted while at S.No. 17 Gul Tazeer No. 872 was reverted. In order dated 4.6.1992, the appellant was reverted. Rest of the incumbents were retired from service in

ATTESTED

BS-14 while the incumbent at S.No. 7, namely Hayat Khan No. 41 was not reverted. In order dated 7.6.2003 incumbent at S.No. 9 Taj Hussain was not reverted and is still serving as such.

13. The learned counsel for the appellant drew the attention of this Tribunal to other officials namely Humayun Khan, Hayat Khan, Altaf Khan, Mian Zada who were promoted to the post of ASI/PCs on 1.7.1992 but they are still serving the Force as such. Similar other instances also exist. There is no provision in the Police Rules to the effect that Head Constable when promoted and posted as SI/PC would stand reverted after three years. In support of this contention he quoted authority of the Supreme Court of Pakistan, PLD-1965-SC,P-106 "Constitution of Pakistan, 1962" Article 96 (Government Servants) Service Rules not in existence - letters issued by Executive Authorities regarding service matter, increments, etc, cannot take the place of properly framed Rules (P-110-C).

14. The counsel for the appellant further contended that if it is presumed without conceeding that the appellant was reverted after completion of normal tenure as SI/PC and this reversion was not by way of punishment, even then the issue of show cause notice to the appellant was mandatory. In support of this contention reliance was placed on PLD-1958 Ka Page-35 "(a) Constitution of Pakistan, Article 181 (ii) reduction in rank - provision, show cause notice applied even if reduction "is not by way of penalty or punishment P-40 (e) SCMR-1994-2232.

15. The counsel for the appellant further claimed that the appellant was eligible and qualified for his promotion on the basis of seniority-cum-fitness as he has 26 years unblemished service record at his credit. As such he could not be reverted except by way of punishment and that too in accordance to law. Since the appellant did not commit any irregularity/illegality nor he was proceeded against under any rule, his reversion was without any lawful authority.

16. The Government Pleader while replying to some of the points raised by the counsel for the appellant stated that the appellant was promoted on officiating basis and not on regular basis after completion of normal tenure of 6 years, he was reverted to Grade-7 in normal course. The temporary promotion cannot be claimed as a matter of right as it is not guaranted. The counsel further argued that the provision does not exist in Police Rules with regards to the promotion of Head Constable to the rank of Sub Inspector/Platoon Commander. The promotion is granted to the incumbents in the interest of administration as a temporary measure. Only those upper subordinates were allowed to remain in officiating capacity for a longer period who are qualified in the Intermediate as well as Upper School Courses. The appellant has not undergone that courses and as such, he could not be allowed to remain as officiating Sub Inspector for ever. He was promoted as SI/PC in officiating capacity and on completion of three years tenure, he was considered for reversion to his substantive rank of Head Constable who was promoted to officiate as Sub Inspector/Platoon

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Commandant for 6 years and was allowed to retire after completion of 25 years service on their own request. In the normal course, they had to be reverted to the rank of head Constable after completion of 3 years tenure.

17. While rebutting the stand of Government Pleader, the counsel for the appellant stated that "officiating" does not exist in the promotion order of the appellant but even if it is presumed without conceding that the promotion of the appellant was ordered on officiating/temporary basis, even then demotion from the post of Platoon Commander to that of Head Constable could not be ordered without issuing show cause notice to the appellant. The appellant relied on High Court judgment appearing in PLD-1958 (W.P) Karachi 33 which is set out as under :-

"Government Servant (Railways) Promotion by authority competent to promote temporarily - Promotee un-aware of restricted character of such authority order, reverting Railway servant set aside in circumstances of case law of agency and estoppel --

Constitution of Pakistan (1975), Art. 170, (P.805)A and SCMR 1994 2232. (I) Constitution of Pakistan (1973), Art 199. Maxim: "Audi alteram partem" Employee of statutory corporation- Reversion – Absence of statutory rules - remedy. Corporation while taking action against its employee, either issuing show cause notice to him for giving him opportunity of hearing [illegible]

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justice, its action in reverting employee was declared to be without lawful authority and of no legal effect.

18. In view of the conflicting views and contradictory stands taken by the parties, it would be difficult to resolve the controversy unless a reference is made to promotion/demotion orders issued by the authorities from time to time. The first order of promotion was issued by the DIG Police Peshawar Range on 4.6.1992. This order is silent about the nature of promotion i.e. regular or otherwise. It also does not mention that the appellant would be reverted as Head Constable after completion of fixed tenure of 3/6 years. We have considered this difference in the two orders on the same subject but we have come to the conclusion that the orders issued by the higher authority i.e. DIG Peshawar would naturally take preference. The claim of the appellant that he was unaware of the restricted character of the promotion would therefore prevail. The appellant is thus entitled to the benefit of the judgment of the Dacca High Court in the Writ Petition No. 239 of 1961 (PLD-1963- Dacca 891) (para 11).

19. The appellant was considered suitable for promotion by the DIG Peshawar Range. This suitability naturally meant seniority-cum-fitness. The appellant is un-doubtedly senior. He is also fit for promotion as he has 23.10 years service at his credit. The appellant possess more than satisfactory record of service. He has earned certificates and cash rewards on several occasions. Entries with regard to all these facts are available in the service

ATTESTED

documents of the appellant. The vacancies for promotion were also available at the relevant time.

20. The net result of the above discussion is that the appellant was promoted on regular basis and some orders of respondents, no doubt, bear the word "officiating" but since these orders were not endorsed to the appellant, he is entitled to the benefit of the judgment of Dacca High Court in Writ Petition of 239/1961. Moreover, the appellant could not be demoted on the basis of a Standing Order because such letter had no force of law in view of the judgment of Hon'ble Supreme Court of Pakistan appearing in PLD-1965 (S.C) 16. It is also evident that the appellant became the victim of differential treatment. Other Head Constables who were promoted with the appellant were retired as Platoon Commanders whereas the appellant was reverted back as Head Constable.

21. The counsel for the appellant further contended that after expiry of the probationary period, an official on completion of probationary period becomes permanent and his probationary period automatically ceases. Reliance was placed on PLC-1994-CS-84-PLC-92 CS1327.

22. That most of the orders of promotion to the next higher ranks have been passed by the Commandant, FRP (Respondent No.2), while the orders of reversion to the lower ranks were prompted by the Deputy Commandant, FRP Peshawar, so the same have no legal value as subordinate authority can not legally interfere with the orders of the higher authority. Only on this score, the impugned order is liable to be set aside.

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23. That on 16.1.1988 the Finance Department circulated order of the Government of NWFP, Home & Tribal Affairs Department that all the Forces are hereby regularized.

Para No. 5 at Page-2 of the said order reads as under :-

"5. The location of staff created are shown in Annexure-B. The duties and responsibilities of the new set up will be the same as those of regular police else where and its services will be governed by the police rules or any other rules applicable to their counter parts in regular police."

24. In view of the above discussion, the Tribunal agrees with the arguments advanced by the learned counsel for the appellant, accepts the appeal, sets aside the impugned order and re-instates the appellant in service.

25. This judgment will also dispose off the following connected appeals, as identical questions of law and facts are involved in all these cases :-

S.No.	Appeal No.	Name of Appellant	Versus	Impugned order
1.	836/2003	Asal Khan	Dy.cammandan FRP etc.	16.4.2003
2.	896/2003	Nazir Badshah	-do-	7.6.2003
3.	1185/2003	Farhad Khan	-do-	1.7.2003
4.	948/2003	Gulfaraz Khan	-do-	7.6.2003
5.	949/2003	Muhammad Irshad	-do-	7.6.2003
6.	950/2003	Abdul Rehman	-do-	7.6.2003
7.	951/2003	Nasrullah Khan	-do-	7.6.2003
8.	952/2003	Gul Tazar	-do-	7.6.2003
9.	169/2005	Saidur Rehman	-do-	18.10.2004
10.	170/2005	Hayatullah	-do-	18.10.2004
11.	171/2005	Abdur Rehman	-do-	18.10.2004
12.	172/2005	Fida Muhammad	-do-	18.10.2004
13.	173/2005	Mahir Khan	-do-	18.10.2004

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14.	105/2005	Karim khan	-do-	18.10.2004
15.	653/2004	Sher Akbar	-do-	7.6.2003
16.	796/2003	Malak Zada	-do-	24.5.2003
17.	264/2005	Farhad Khan	-do-	18.10.2004
18.	106/2005	Rajmali Khan	-do-	18.10.2004
19.	107/2005	Raza Khan	-do-	18.10.2004
20.	108/2005	Haji Niaz Muhammad	-do-	18.10.2004
21.	109/2005	Yousaf Khan	-do-	18.10.2004
22.	942/2003	Sartaj Khan	-do-	7.6.2003
23.	943/2003	Akbar Khan	-do-	7.6.2003
24.	944/2003	Ajauddin	-do-	7.6.2003
25.	945/2003	Ghulam Akbar.	-do-	7.6.2003
26.	946/2003	Abdul Haleem	-do-	7.6.2003
27.	947/2003	Luqman Hakim	-do-	7.6.2003
28.	953/2003	Ali Muhammad	-do-	7.6.2003
29.	954/2003	Mir Alam Khan	-do-	7.6.2003
30.	955/2003	Muhammad Gul	-do-	7.6.2003
31.	956/2003	Habibur Rehman	-do-	7.6.2003
32.	957/2003	Noor Bahadur	-do-	7.6.2003
33.	958/2003	Hastam Khan	-do-	7.6.2003
34.	706/2004	Amir Nawaz	SP FRP etc	24.8.2004

26. No order as to costs. File be consigned to the record.

ANNOUNCED.
29.11.2005.

(ABDUL KARIM QASURIA)
MEMBER.

(GHULAM FAROOQ KHAN)
MEMBER.
29/11/05

Name of
Date of

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O R D E R .

As ordered by the Provincial Police Officer NWFP Peshawar vide letter No. 9600/E-I dated 27.5.2006, the decision of NWFP Service Tribunal dated 29.11.2005 is hereby Implemented & the SI/FCs/ASIs/FC are hereby Re-instated in the ranks as noted against their names from the date of their reversion:-

S.No.	Name	Rank in which re-instated.
1.	Habib-ur-Rehman	SI/PC
2.	Ali Mohammad	SI/PC
3.	Abdur Rehman	SI/PC
4.	Ghulam Akbar	SI/PC
5.	Akbar Khan	SI/PC
6.	Gul Tasir	SI/PC
7.	Nasrullah	SI/PC
8.	Sartaj	SI/PC
9.	Mohammad Gul	SI/PC
10.	Mohammad Irshad	SI/PC
11.	Sher Akbar	SI/PC
12.	Mir Alam	SI/PC
13.	Noor Bahadur	SI/PC
14.	Jamdad	SI/PC
15.	Farhad	SI/PC
16.	Gul Faraz	SI/PC
17.	Said Rahman	SI/PC
18.	Hayatullah	SI/PC
19.	Meru Khan	SI/PC
20.	Fida Mohammad	SI/PC
21.	Nahar Khan	SI/PC
22.	Karim Khan	SI/PC
23.	Raj Wali	SI/PC
24.	Reza Khan	SI/PC
25.	Haji Niaz Mohammad	SI/PC
26.	Yousaf Khan	SI/PC
27.	Alla-ud-Din	SI/PC
28.	Abdul Hafeez	SI/PC
29.	Luqman Hakeem	SI/PC
30.	Hastam Khan	SI/PC
31.	Amir Nawaz	SI/PC (Old SFL)
32.	Nazir Badshah	SI/PC
33.	Malik Zeda	ASI/PC
34.	Mohammad Tahir	ASI/PC
35.	Farhad	HC

The case of SI/FC Asal Khan will be decided seperately after finalization of his case of compulsorily retirement.

COMMANDANT
FRONTIER RESERVE POLICE NWFP
PESHAWAR.

No. 3460-69 /EC dated Peshawar the 8-6-2006.

Copy of above is forwarded for information & n/a to the:-

1. Provincial Police Officer, NWFP Peshawar, w/r to his letter quoted above.
2. All SsP FRP Range in NWFP.
3. Distt: Police Officer Batgram.
4. DSP/FRP/Hqrs: Peshawar.
5. Accountant/OASI/FRP/Hqrs:Peshawar.

Annex G.

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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 397/2006

Date of institution – 23.05.2006
Date of decision - 20.10.2006

Muhammad Nihar Head Constable,
Peshawar High Court, Peshawar.. .....(Appellant)

VERSUS

1. Deputy Commandant, FRP, Peshawar.
2. Commandant FRP, NWFP Peshawar.
3. I.G.P. NWFP Peshawar.....(Respondents)

Mr. Saadullah Khan Marwat, Advocate.....For appellant.
Mr. Zaffar Abbas Mirza, Acting Govt. Pleader.....For respondents.

MR. ABDUL KARIM QASURIA.....MEMBER.
MR. FAIZULLAH KHAN KHATTAK.....MEMBER.

JUDGMENT.

ABDUL KARIM QASURIA, MEMBER :- This appeal arises against the order dated 7/6/2003 of respondent No. 1 whereby the appellant was reverted from the rank of Platoon Commander to the Rank of Head Constable for no reason.

2. The facts of the case according to the appellant are that he was initially appointed as constable in the respondent department on 2.3.1982 and served the department to the best of his ability and entire satisfaction of his superiors. He was promoted as Head Constable vide order dated 26.6.1989 and he continued in that capacity when on 7.6.2003 he was promoted against the rank of S.I./P.C. on merit. He

ATTESTED
EXAMINER

was granted selection grade. That vide order dated 7.0.20[illegible] any rhyme or reason while he was at the verge of retirement was reverted to the rank of Head Constable from the rank of Platoon Commander. After exhausting the departmental remedy the appellant approached the Tribunal for the redressal of his grievance.

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3. Notices were served on the respondents. They turned up and contested the appeal by filing their joint written reply. Various factual and legal points were raised. It was also inter-alia alleged that the appellant has no cause of action and that the appeal is time barred. It was further alleged that the appellant was given promotion to the rank of S.I./PC as per Standing Order No. 3 of 1994, purely on temporary basis for two years and he was not given any selection grade. It was next alleged that the appellant was reverted to the rank of Head constable as he had completed the tenure of 6 years as per Standing Order No. 3 of 1999. Moreover, reversion from officiating rank is not a punishment as per rules. No replication was filed in rebuttal by the appellant.

4. Arguments heard and record perused.

5. The learned Counsel for the appellant vehemently argued that the Service Tribunal in similar circumstances had accepted the appeals of Jamdad Khan and others in Service Appeal No. 941/2003 and that the case of appellant is at par with them and he is also entitled to the same treatment which has been meted out to his colleagues. Reliance was also placed on authorities reported as 1996-SCMR-1185 and 2005-SCMR-499. It was next argued that on the basis of principle of locus poenitentiae a vested right had accrued to the appellant which cannot be taken back in a slipshod manner. Regarding limitation it was argued that the Supreme Court had always

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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encouraged the decision of cases on merits instead of deciding the same on technical grounds including the limitation.. Reliance was placed on authority reported as PLJ-2004 (SC)435. Lastly, it was argued that since Standing Order has not been adopted by the Provincial Government, therefore, it has no legal value and that there is no mentioning in the promotion order, regarding time limit as well as promotion on officiating basis, therefore, the impugned order being bad in law is liable to be set aside/reversed.

6. The learned Acting Government Pleader argued that the appellant was promoted purely on temporary basis under Standing Order 3 for a period of 2 years and was liable to be reverted after the expiry of the said period. That the instant appeal is hopelessly time barred therefore, liable to be dismissed.

7. The Tribunal holds that the claim of the appellant is bonafide. The Tribunal in service Appeal No. 941/2003 titled Jamdad Khan etc Vs. Deputy Commandant FRP etc while accepting the appeals set aside the reversion order. The case of the present appellant is also identical to that of his colleagues whose appeals were accepted. It has been held in Hameed Akhtar Niazi and Tara Chand's case that "when Tribunal or court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum... Article 25 of the Constitution was also explicit on the

ATTESTED

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point that all citizens were equal before law and were en[illegible] equal protection of law."

The delay in filing the appeal is condoned in the interest of justice in view of the authority reported as PLJ-2004-SC-435.

8. In view of the above discussion, the appellant has made out a case for indulgence of the Tribunal. The appellant is also entitled to the same treatment which has been meted out to his other colleagues. Accordingly the appeal is accepted and the impugned order is set aside by restoring the appellant to his original position with back benefits.

9. This judgment will also dispose of the other connected appeals bearing No.424/2006 Muhammad Islam, 425/2006 Mohabat Khan, 436/2006 Muhammad Saleem Khan, 437/2006 Fida Muhammad, 443/2006 Wazir Zada, 483/2006 Sher Ali, 547/2006 Aslam Khan, 548/2006 Karim Khan, 602/2006 Muhammad Aslam Khan Versus Deputy Commandant, FRP, Peshawar etc, in the same manner because in all these appeals common questions of law and facts are involved.

10. No order as to costs. File be consigned to the record.

ANNOUNCED.
20.10.2006.

(ABDUL KARIM QASURIA)
MEMBER.

(FAIZULLAH KHAN KHATTAK)
MEMBER.

Certified to be true copy
[illegible]
Service Tribunal
Peshawar

Date of Presentation of Applicant 7-11-06
Number of Words 1600
Copying Fee 10
Urgent 2
Total 12
Name of Copyist
Date of Copy 7.11.06

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BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 624 /2006

Muhammad Islam S/O Umar Zahid,
R/O Mena Batal, Dirstrict Dir.
H.C. No.31, Malakand Range, Swat. ..... APPELLANT

VERSUS

1. Deputy Commandant,
   Frontier Reserve Police, Peshawar.
2. Commandant, FRP, N.W.F.P, Peshawar.
3. Inspector General of Police,
   N.W.F.P, Peshawar. ..... RESPONDENTS

APPEAL AGAINST ORDER NO.472-74/PC DATED 19.01.2004 OF RESPONDENT NO.1, WHEREBY APPELLANT WAS REVERTED FROM THE RANK OF PLATOON COMMANDER/ SUB-INSPECTOR TO THE RANK OF HEAD CONSTABLE FOR NO REASON.

20.10.2006	Parties present with their counsel. Arguments heard. Vide our detailed judgment of today in Appeal No. 397/2006 titled Muhammad Nihar Head Constable Versus Deputy commandant, FRP NWFP Peshawar and others, this appeal is accepted. No order as to costs. File be consigned to the record. ANNOUNCED. 20.10.2006. Member. Member

WAKALAT NAMA

IN THE COURT OF In the K.P. Service Tribunal Peshawar

Hamad Ali Head Constable
Distt Dir Lower _____ *Appellant(s)/Petitioner(s)*

VERSUS

The District Police Officer
Dir Lower _____ *Respondent(s)*

I/We Hamad Ali _____ do hereby appoint **Mr. Khush Dil Khan, Advocate** Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.

2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.

3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Hali
Signature of Executants

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion
Off: Tel: 091-2213445

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 55/2017.

Ex Head Constable Hamad Ali No.608 r/o Lower Dir
..... Appellant.

VERSUS

1) *Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.*
2) *Regional Police Officer Malakand at Saidu Sharif, Swat.*
3) *District Police Officer Dir Lower.....Respondents.*

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

1) *That the present service appeal is not maintainable in its form.*
2) *That the appellant has not come to this August Tribunal with clean hands.*
3) *That the present appeal is badly time barred.*
4) *That this Honorable Service Tribunal has no jurisdiction to entertain the present service Appeal.*
5) *That the appellant has got no cause of action.*
6) *That the appellant has suppressed the material facts from this Honorable Tribunal.*

ON FACTS:

1. *Pertains to record, hence needs no comments.*
2. *Pertains to record, hence needs no comments.*
3. *Incorrect, the reversion of the appellant was based on the Judgment of Supreme Court of Pakistan, received vide order No. S/2262-2312/16 dated 21-03-2016. Copy enclosed as annexure "A". Not only the appellant but other more police personnel's were also reverted to the Lower rank.*

ON GROUND

(A). The first paragraph pertains to record. Upon receipt of Order from high ups to cancel the out of turn promotion in light of Supreme Court Judgment, the competent authority constituted a committee to Scrutinize the files of all relevant persons. The committee after proper scrutiny recommended that the appellant has been illegally promoted to high rank. No violation of any rule has been committed by respondent with the appellant.

(B). Incorrect, As replied in above paras.

(C). Incorrect, In compliance with the direction, a committee was constituted to examine the case of out of turn promotion of the executive staff. The committee in his finding recommended that the appellant being illegally promoted be reverted to Lower rank. Copy enclosed as annexure "B"& "C". No violation has been committed with appellant.

(D). Incorrect, every case has its own facts and merits. To comply the orders of Service Tribunal is binding in nature. The present case doesn't fall in the ambit of the referred judgment.

(E) Incorrect, there were no grounds available to decide the case in favour of the appellant, hence the same was decided on merit.

PRAYER:

It is therefore humbly prayed that on acceptance of this Para-wise reply the service appeal may kindly be dismissed with costs.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.

District Police Officer
Dir Lower at Timergara

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 55/2017.

Ex Head Constable Hamad Ali No.608 r/o Lower Dir
..... Appellant.

VERSUS

1) *Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.*
2) *Regional Police Officer Malakand at Saidu Sharif, Swat.*
3) *District Police Officer Dir Lower.....Respondents.*

AFFIDAVIT

We the following respondents do hereby solemnly affirm and declare on Oath that the contents of Para-wise reply are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.

District Police Officer
Dir Lower at Timergara

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 55/2017.

Ex Head Constable Hamad Ali No.608 r/o Lower Dir
..... Appellant.

VERSUS

1) *Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.*
2) *Regional Police Officer Malakand at Saidu Sharif, Swat.*
3) *District Police Officer Dir Lower.....Respondents.*

POWER OF ATTORNEY

We the following respondents do hereby authorize Mr. Zewar Khan SI Legal Dir Lower to appear on our behalf before the Honourable service Tribunal in the above Service appeal and pursue the case on each and every date.

He is also authorized to submit all the relevant documents in connection with the above case.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.

District Police Officer
Dir Lower

Annex "A"

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

No. S/22662-23/12/16, Dated Peshawar the 7/10/2016.

All Heads of Police offices
in Khyber Pakhtunkhwa.

Subject: ORDER

Memo

It is submitted that the appellants namely Muhammad Ijaz, Muhammad Tariq, Fazl-ur-Rehman, Humayun Khan, Nisar Muhammad and Shabir Ahmad (Computer Operator), while serving as HCs/ASIs/SI in Investigation CPO, were reverted to their substantive rank of Constables by the then Addl: IGP/Investigation Khyber Pakhtunkhwa Peshawar vide order dated 29.01.2014 because it was found that they have not undergone the basic promotion courses i.e lower Intermediate and were promoted in violation of rules.

The above mentioned officers filed Service Appeal No. 561, 562,563,537, 713 & 338/2014 respectively, which were vide consolidated judgement 16.11.2015 as referred to above. The relevant para of the judgement review is follows:-

"This cannot be disputed that the Crimes Branch is part and parcel of the Khyber Pakhtunkhwa police, being regulated by its rules for the purpose of promotion and maintaining the seniority list. Evidently this aspect of the matter was lost sight by the contestned officers who passed the promotion orders. Irony of the issue is that the appellant has served on the promoted post for sufficient time in the course of which they also received emoluments but nobody took notice of the same. This being so it would be also irony if the impugned cancellation order are found based on whims, likes and dislikes and pick and choose as alleged by the appellants that HC Shafiullah and Mujahid Hussain were left unlaunched. Since departmental appeal of the appellant has also not been responded, therefore, the Tribunal of the considered view that further indulgence by the Tribunal at this stage may cause further complications. Hence the appeal is remitted to the appellate authority with the direction to examine appeals of the appellants and decide the same strictly on merits without any discrimination"

Meeting of the Appeal/Review Board was held on 02.03.2016, and the appellants were heard in person. The cases were perused; lists obtained from Addl: IGP/Investigation, Khyber Pakhtunkhwa Peshawar was also perused/examined by the board. The Board decided that all promotions in the Investigation Wing/Computer Section as well as other Units have been done against law and rules. Therefore, the cases of these Constables may be filed with the recommendation that all such promotions in the light of the Supreme Court of Pakistan decision on out of turn promotions be cancelled.

This order is passed in the light of judgement of Servjee Tribunal Khyber Pakhtunkhwa Peshawar that all promotions in the Investigation Wing, SIs, ASIs, HCs & Constables as well as other Units of Police have been done against law and rules may be set aside/cancelled. All such promotions in the light of the Supreme Court of Pakistan decision on out of turn promotions may also be cancelled.

This order is issued with approval by the Competent Authority.

No 2832-43/E Dat 25-3-16
EC/All DPOs + Heads of Units
To ensure strict Compliance

(MUHAMMAD ALAM SHINWARI)
DIG/HQrs
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

EC
For n/a, Plz

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

Annex "B"

ORDER

In compliance with the order issued vide C.P.O Peshawar Memo: No. S/2262-2312/16, dated 21-03-2016 and subsequent Memo: No. S/3352-3408/16, dated 27-04-2016. A committee consisting of the following Police Officers is here by constituted to examine out of turn promotion of the Executive Staff, recommend them for reversion / cancellation of their out of turn promotion orders and submit their recommendation to the undersigned at the earliest:-

01. Mr. Aziz Ur Rahman S.P Investigation, Dir Lower. . . . . Chairman.
02. Mr. Aqeeq Hussain, DSP-Headquarter, Dir Lower . . . . . Member.
03. Mr. Rasheed Ahmad, Inspector Legal, Dir Lower. . . . . Member.

District Police Officer,
Dir Lower at Timergara

OFFICE OF THE DISTRICT POLICE OFFICER, DIR LOWER AT TIMERGARA

No. 23645-49/EB, dated Timergara the 2-5 /2016.

Copy submitted to the:-

01. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for favour of information with reference quoted above, please.
02. Regional Police Officer, Malakand at Saidu Sharif, Swat for favour of information with reference to Region Office Swat Endst: No. 2832-43/E, dated 25-03-2016 and subsequent Endst: No. 3973-80/E, dated 28-04-2016, please.
03. All concerned
04. Establishment Clerk & OSI with the direction to prepare list of those Upper & Lower Subordinates who's given such out of turn promotion and submit to the committee.

District Police Officer,
Dir Lower at Timergara

Annex "C"

OFFICE OF THE
DISTRICT POLICE OFFICE
DIR LOWER AT TIMERGARA.

ORDER.

In compliance with the directives CPO Peshawar Letter No.S/2262-2312/16, dated 21-03-2016, the following committee was constituted: -

1- Mr. Aziz Ur Rahman SP Investigation Dir Lower (Chairman).
2- Mr. Aqiq Hussain DSP HQrs Dir Lower: (Member)
3- Mr. Rashid Ahmad Inspector Legal Dir Lower. (Member)

The committee scrutinized the promotion cases under purview of Supreme Court decisions as quoted in PLD 1992 SC 207,2000 SCMR 207 and 1998 SCMR 882 ref: 2004 PLC (C.S) 392(A) which describes that when a Police Official had performed some extra ordinary act, he could be rewarded with cash or other material award, but no Police authority could be allowed to disturb the seniority of his colleagues, because seniority was a vested right Policy letter whereby out of turn promotion was granted to civil servants subsequently was withdrawn even otherwise any such letter could not supersede or even substitute the substantive legislation available in form of Police Rules, 1934, which did not allow any out of turn promotion. Illegal orders once passed would not come irrevocable and a close transaction. No perpetual right could be derived on the basis of such an order. Public authority which could pass an order was empowered to rescind it. Principle of locus poenitentiae as claimed by civil servant was not attracted in their case, in circumstances. Contention that civil servant had been condemned un-heard as no show –cause notice was issued to them before reverting them, was repelled because civil servant was who were not entitled to out of turn promotion could not seek protection of principle of natural justice. Civil servants had also not been subjected to discrimination. In absence of any legal sanction in promoting civil servants out of turn, civil rightly reverted.

In light of Police Rules 13.1, the following Head Constables have got out of turn promotion and they were not eligible for it.

Therefore, on the recommendation of committee coupled with the decisions of august Supreme Court of Pakistan, they are hereby reverted as per detail mentioned against their names : -

S.No	Name & rank	Remarks
1	HC Mumtaz Khan No.11	Being junior, un lawfully promoted and reverted to the rank of constable.
2	HC Gul Habib No.444	Being junior, un lawfully promoted and reverted to the rank of constable
3	HC Razi Shah No.501	Being junior, un lawfully promoted and reverted to the rank of constable
4	HC Muhd: Azim NO.1054	Being junior, un lawfully promoted and reverted to the rank of constable
5	HC Muhd: Zubair NO.675	Being junior, un lawfully promoted and reverted to the rank of constable
6	HC Said Zaman No.712	Being junior, un lawfully promoted and reverted to the rank of constable.
7	HC Sarzamin NO.89	Being junior, un lawfully promoted and reverted to the rank of constable.
8	HC Hamim Ul Hakim No.33	Being junior, un lawfully promoted and reverted to the rank of constable.
9	HC Hamad Ali NO.608	Being junior, un lawfully promoted and reverted to the rank of constable.
10	HC Fahim Khan No.217	Being junior, un lawfully promoted and reverted to the rank of constable.
11	HC Saif Ur Rahman No.81	Being junior, un lawfully promoted and reverted to the rank of constable.
12	HC Ayub Khan No.1048	Being junior, un lawfully promoted and reverted to the rank of constable.
13	HC Said Rahman No.235	Being junior, un lawfully promoted and reverted to the rank of constable.
14	HC Ziarat Gul No.118	Being junior, un lawfully promoted and reverted to the rank of constable.
15	HC Hussain Ahmad No.79	Being junior, un lawfully promoted and reverted to the rank of constable.

16	HC Aman Ur Rahman NO.882	Being junior, un lawfully promoted and reverted to the rank of constable.
17	HC Zafar Ali No.780	Being junior, un lawfully promoted and reverted to the rank of constable.
18	HC Hama yoon No.571	Being junior, un lawfully promoted and reverted to the rank of constable.
19	HC Hazrat Said No.688	Being junior, un lawfully promoted and reverted to the rank of constable.
20	HC Khurshid No.34	Being junior, un lawfully promoted and reverted to the rank of constable.
21	HC Azam Khan No.1291	Being junior, un lawfully promoted and reverted to the rank of constable
22	HC Sajjad Ahmad No.1162	Being junior, un lawfully promoted and reverted to the rank of constable.
23	HC Rab Nawaz Khan No.197	Being junior, un lawfully promoted and reverted to the rank of constable
24	HC Mukhtair Ali No.1234	Being junior, un lawfully promoted and reverted to the rank of constable.
25	HC Ali Rahman No.828	Being junior, un lawfully promoted and reverted to the rank of constable.
26	HC Nizam Uddin No.389	Being junior, un lawfully promoted and reverted to the rank of constable.
27	HC Umar Farooq No.912	Being junior, un lawfully promoted and reverted to the rank of constable.
28	HC Muhd: Nawaz No.1877	Being junior, un lawfully promoted and reverted to the rank of constable.
29	HC Muhd: Ali Shah No.1408 1606	Being junior, un lawfully promoted and reverted to the rank of constable.

District Police Officer,
Dir Lower at Timergara
22/6

OB No. 698 /EC,
Dated 24/6 /2016.

No. 30070 **/EB, Dated Timergara, the** 24-6- **/2016.**

Copy Submitted to the Regional Police Officer, Malakand Swat for favour of information, please.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 55/2017

Hamad Ali,
Head Constable, Belt No. 608,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

The District Police Officer,
Dir Lower at Timergara & others.....Respondents

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S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder.			1-4

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of Pakistan

Dated: 04/05/2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 55/2017

Hamad Ali,
Head Constable, Belt No. 608,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

The District Police Officer,
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REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO REPLY FILED BY RESPONDENTS.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

Preliminary objections raised by answering respondents are erroneous and frivolous which are denied in toto. The detail reply of each one is given as under:-

I. That the appeal is fully maintainable in all respects and the same was filed against the impugned order dated 24-06-2014 which was passed in glaring violation of principle of natural justice.

II. That grievances of appellant are genuine which he explained in the appeal in detail.

III. That the appeal is well within time and the same was filed after the rejection of the appellant's departmental appeal.

IV. That by impugned order, appellant was reverted to lower rank which is one of the terms and conditions of his service against which he rightly approached to this Hon'ble Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

V. That the service of appellant was adversely affected by the impugned order which given rise him cause of action and rightly filed this appeal.

VI. That the appeal of appellant is very clear and in proper language therein all the facts have been narrated clearly

REJOINDER TO REPLY OF FACTS:

1. That the answering respondents admitted that this para need no comments meaning thereby they have admitted the contents thereof.

2. That the answering respondents admitted that this para need no comments meaning thereby they have admitted the contents thereof.

3. That the answering respondents have wrongly based the impugned order on the judgment of Supreme Court of Pakistan which is totally distinguished from the case of appellant and not applicable to his case. Thus the impugned order is illegal and without lawful authority liable to be set aside.

REJOINDER TO REPLY OF GROUNDS:

A. That the answering respondents have misconceived the case of appellant and unlawfully dealt with the case appellant in view of judgment of Hon'ble Supreme Court of Pakistan. He was

properly promoted to higher post and rank on its own merit due to which none of his colleague has been suffered and objected by anyone else.

B. That the reply is totally incorrect so denied. The answering respondents have incorrectly treated the case of appellant at par with other cases though his promotion was made by competent authority in accordance with rules and policy on subject.

C. Furnished no reply so meaning thereby that answering respondents have admitted that appellant was condemned unheard and the order is unlawful being violative of the principle of natural justice.

D. That the reply is incorrect so denied. Neither committee has been appointed to scrutinize the case of appellant nor such recommendation/decision was ever communicated to appellant enabling him to defend his case. The answering respondents have shown that the requisite copies have been attached as Annexure B and C with the reply but the same were not available with the reply.

E. That the reply is incorrect so denied. The identical matter under similar circumstances was decided by this Hon'ble Tribunal therefore the same is binding upon the department to follow the same in the case of appellant also.

F. That the reply is incorrect so denied. The departmental appeal of appellant was rejected in arbitrary manner which is unfair and unjust.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of
Pakistan

Dated: 24/05/**2017**