

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal
Entry No. 5054
Dated 3/10/23

Service Appeal No. 715 /2022.

Safdar Khan..... (Appellant)

VERSUS


Inspector General of Police, Khyber Pakhtunkhwa, Peshawar etc

.....
(Respondents)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-wise comments		1-8
2.	Affidavit		9
3.	Authority Letter		10
4.	Copy of Letter No. CPO/CPB/63 dated 13.02.2023	A	11-13
5.	Copy of Letter No. CPO/CPB/64 dated 13.02.2023	B	14-16

Respondents through



(TARIQ UMAR)
DSP/ Legal CPO,
Peshawar.

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 715/2023

Safdar Khan..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others

.....
(Respondents)

PARAWISE COMMENTS BY RESPONDENTS NO 1 & 2

PRELIMINARY OBJECTIONS

- a) That the appellant has got no cause of action to file the present appeal.
- b) That the appellant has got no locus standi.
- c) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- d) That the appeal is not maintainable in its present form.
- e) That the appellant is estopped to file the instant appeal.
- f) That the appellant has concealed real facts from Hon'ble Tribunal.

FACTS

S. NO	Para of Facts	Reply of Para
1.	That the Appellant through competition was selected and appointed on recommendation of the Khyber Pakhtunkhwa Public Service Commission as Assistant Sub Inspector on 29.12.1994 against vacancies for the Kohat Region and was placed first on merit in the region. On the province merit he stood No. 9 out of 54-selectees.	Correct to the extent of appointment as Assistant Sub Inspector on 29.12.1994.
2.	That the appellant completed his required basic training and prescribed probation period and was confirmed w.e.f 29.12.1994 but his name was brought on list 'E' on 12.01.1999 instead of 29.12.1999.	<p>Incorrect, misconceived and misleading. According to Police Rules, 1934, probation period is governed by Rule 13:18 and 12:8 while seniority and list 'E' is governed by Rule 12(2) and 13:10 of Police Rules, 1934. Appellant is lack of factual informations and misconceiving and misinterpreting the above rules.</p> <p>The two rules (12.8 and 19.25(5) of the Police Rules, 1934) clearly state that PASIs (ASIs appointed direct) shall be on probation for a period of three years after their appointment as such and that they <i>may be confirmed</i> in their appointments (appointment of being an ASI) <i>on the termination of the prescribed period of probation</i> for three years with immediate effect NOT with retrospective effect <i>i.e.</i> from the date of their appointment by the Range Deputy Inspector General of Police on the report of their respective District Police Officers provided they have completed the period of their probation of three years successfully in terms of the conditions laid down in the PR 19.25 (5) of the Police Rules, 1934.</p> <p>2. Moreover, under paragraph VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011. "promotion will always be notified with</p>

immediate effect." Drawing analogy from this rule, all PASIs might be so confirmed on conclusion of probationary period of three years with immediate effect (the date on which order of their confirmation is issued).

3. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in *Mushtaq Waraich Vs IG Punjab* (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the Apex Court, has held that "*reliance on Qayyum Nawaz* [a judgment of the Apex Court, reported as 1999 SCMR 1594] *that there is no difference between the date of appointment and date of confirmation under the police rules is absolutely misconceived and strongly dispelled*". The Apex court has further explained PR 12.3(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honourable Court further held that "*the practice of ante-dated confirmation and promotions have been put down in Raza Safdar Kazmi*" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters.).

4. It is, therefore, made clear that **PASIs on completion of 03 years' probation period shall NOT be brought on promotion list "E" from date of appointment.** Their names may be brought on the Promotion List E in the manner provided in PR 13.10 and 13.11 of the Police Rules, 1934 NOT from the date of appointment but from the date of confirmation which, essentially, is a date different from their dates of appointment and compulsorily falls on the termination of the period of their probation for three years under PR 12.8 and 19.25(5) of the Police Rules, 1934.

(a) Therefore, RPOs have been sensitized vide this office letter No CPO/CPB/64, dated 13.02.2022, that register that the Date of Appointment and Date of Confirmation of an Assistant Sub-Inspectors appointed direct (PASIs) are Not the Same, as has been misconceived by many, but are different from each other: Date of confirmation falls after three years of the date of appointment in case of an

Assistant Sub-Inspectors appointed direct (PASIs) and the same (date of confirmation) falls after two years in case of an Assistant Sub-Inspector promoted from ranks (Ranker ASI) according to PR 12.8, and 13.8 of the Police Rules, 1934 respectively.

(b) Withdraw all Changes Brought in the list E in compliance with this office letter No CPO/CPB/317 dated 08.12.2022 and Revise the List E of your Range and substitute all those dates of confirmation of all Assistant Sub-Inspectors appointed direct (PASIs) which were fixed retrospectively from the date of their appointment with those falling after the termination of the period of their probation for three years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6,7, and 8 above.

(c) ensure that ASIs appointed direct (PASIs) shall NOT be Confirmed from the Date of their Appointment but *might* be so confirmed "*On the termination of the prescribed period of probation*" of three years, with immediate effect (the date on which order of their confirmation was issued).

Similarly. ASIs promoted from ranks (Ranker ASIs) may be confirmed in their ranks "*on the conclusion of the probationary period*" of two years. They shall NOT be confirmed from the date of their promotion as ASIs from the lower rank of HC.

Moreover, under paragraph VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011, "*promotion will always be notified with immediate effect.*" Drawing analogy from this rule, all Ranker ASIs might be so confirmed on conclusion of probationary period of two years with immediate effect (the date on which order of their confirmation is issued).

5. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in *Mushtaq Waraich Vs IG Punjab (PLD 1985 SC 159)*. In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the Apex Court, has held that "*reliance on Qayyum Nawaz [a judgment of the Apex*

Court, reported as 1999 SCMR 1594] *that there is no difference between the date of appointment and date of confirmation under the police rules is absolutely misconceived and strongly dispelled*". The Apex court has further explained PR 12.3(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honourable Court further held that "*the practice of ante-dated confirmation and promotions have been put down in Raza Safdar Kazmi*" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters).

6. It is, therefore, made clear that **ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period NOT from the date of officiating promotion.** Their names may be brought on the Promotion List E in the manner provided in PR 13.10 and 13.11 of the Police Rules, 1934 NOT from the date of promotion but from the date of confirmation which, essentially, is a date different from their dates of promotion and compulsorily falls on the termination of the period of their probation of two years under PR 13.8 of the Police Rules, 1934.

7. Mode of bringing names of Assistant Sub-Inspectors (ASIs- both PASIs and Ranker ASIs) on promotion list E, confirmed in the manner provided above, is given in PR 13.10 and 13.11 of the Police Rules, 1934. Therefore, their names may be brought on the Promotion List E in the manner provided in the said two rules.

8. Keeping in view the above, this office letter No. CPO/CPB/317 dated 08.12.2022, that intended to create a parity between the dates of confirmation of ASIs appointed direct (PASIs) and those of the ASIs promoted from ranks (Ranker ASIs), is hereby withdrawn being against the letter and spirit of PR 12.8, 19.25 (5) Police Rules, 1934, in case of PASIs and against the PR 13.18 of the Police Rules, 1934 in case of the ASIs promoted from ranks (Ranker ASIs). The following was laid down in the said letter:

*"a. All PASIs
on
successful
completion
of 03 years'
probation
period shall
be brought*

on
promotion
list "E"
from date of
appointment.
b. All ASIs
promoted
from lower
rank shall be
brought on
promotion
list "E"
after
successful
completion
of 02 years'
probation
period from
date of
officiating
promotion."

9. You are, therefore, requested to:
- (a) register that the Date of Promotion and Date of Confirmation of a Ranker ASI are Not the Same, as has been misconceived by many, but are different from each other: Date of confirmation falls after two years of the date of promotion in case of Ranker ASI according to PR 12.8, and 13.8 of the Police Rules, 1934 respectively.
 - (b) Withdraw all Changes Brought in the List E in compliance with this office letter No CPO/CPB/317 dated 08.12.2022 and Revise the List E of your Range to substitute all those dates of confirmation of all Assistant Sub-Inspectors appointed by way of promotion from lower rank (Ranker ASIs) which were fixed retrospectively from the date of their Promotion with those falling after date of conclusion of the period of their probation for two years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6, & 7 above.
 - (c) ensure that ASIs promoted from ranks (Ranker ASIs) shall NOT be Confirmed from the Date of their Promotion (from the rank of Head Constable to ASI) rather, *might* be so confirmed "*on the conclusion of the probationary period*" of two years, with immediate effect (the date on which order

		of their confirmation was issued). (Copies of Letters No. CPO/CPB/63, dated 13.02.2023 & CPO/CPB/64, dated 13.02.2023 are annexed as Annexures "A" & "B").
3.	That the appellant did work with the satisfaction of competent authority and dedication towards his duty but even then was promoted to the rank of Sub Inspector on 29.08.2003 instead of 24.11.2001 and is confirmed on 29.08.2005 and is placed on list F on the same date, as on that the Departmental Promotion Committee promoted junior of him for unknown reason and this was the main cause for delay of the Appellant in list E and his promotion to the rank of Sub-Inspector. The delay promotion of the appellant in 29.08.2003 and his confirmation on 29.08.2005 is unjust and discriminatory so is impugned here as it has disturbed his seniority. The appellant served the United Nation Mention in 2002-2003 and was on deputation abroad. The Junior of the appellant are Taimoor Shah, Abdul Nawaz, Qaiser Khan and Mir Sarfaraz, all these are confirmed in 1995.	Incorrect, every Police officers is under obligation to serve and act in accordance with law/ rules without exception. Promotion of appellant on 29.08.2003 was subjected to seniority cum fitness basis and availability of vacancies in the region in accordance with Rule 12(2) of Police Rules, 1934. The appellant stance to be promoted on 24.11.2001 instead of 29.08.2003, is misconceived and self interpretation of Rule 12(2). Furthermore, anti dated confirmations and promotions practice has been put down by the Apex Court as explained in Para 4 of Letter No. CPO/CPB/64, dated 13.02.2022. Therefore, appellant has been treated in accordance with rules and no discrimination has been done with the appellant. Appellant seniority is under revision in light of policy recently issued by the competent authority in Para 2 and the final status shall be communicated to the Hon'ble Tribunal when received.
4.	That the appellant is promoted to the rank of Inspector on 05.03.2009.	Correct, pertain to record needs no comments.
5.	Those as per Rule 13.1(3) for the purpose of regular promotion amongst the enrolled Police office six promotion list A, B, C, D, E, and F are maintained. The list E is maintained in the office of Deputy Inspector General of Police now Called DPO as per Rule 13.10(1) and regulate the promotion to the rank of sub inspector. List F is maintained in the office of the Inspector General of Police as per Rule 13.15(1) and regulate promotion to the rank of Inspector.	Correct, pertain to Police Rules, 1934. needs no comments.
6.	That the appellant is promoted to the rank of Deputy Superintendent of 12.09.2014, is placed at Serial No. 72 instead of 22, and is currently on deputation to the Anti Corruption department and is placed as Assistant Director Anti Corruption Malakand.	Correct, pertain to record needs no comments.
7.	That recently on the direction of the KPK Service Tribunal rectified the seniority of all aggrieved police officer, undo the wrongs of the Department and granted them relief by revising the seniority which created a legitimate expectancy for the appellant to approach the competent Authority.	Pertain to Hon'ble Service Tribunal and Police record needs no comments. The seniority revision process in respect of the appellant is underway and the process will be completed soon which shall be communicated to the Court as and when received.
8.	That the appellant for rectification of his seniority ante- dated approached to the Competent Authority by filing a departmental appeal with reference of all rectification by the Service Tribunal recently and in the past couple of days but the Authority rejected the appeal on 29.08.2022 communicated and received by him on 12.11.2022.	Correct to the extent of departmental representation by the appellant but the same was rejected and filed by the competent authority on cogent grounds. The appellant has been treated in accordance with law/ rules, therefore, filling of instant appeal is not maintainable on the following Grounds.


GROUNDS

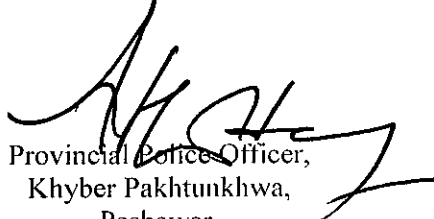
S. NO	Para of Grounds	Reply of Para
A.	That the impugned list of seniority of Deputy Superintendent of Police issued by the Respondent in may 2022 and communicated to the Appellant later on is against the rules and the appellant is wrongly placed at Serial No. 73 where his correct place of seniority as per comparison to this batch mater is 22 in the impugned list.	Incorrect, the impugned seniority list of DSPs (BS-17) of 2022 is under revision in light of policy recently devised by CPO and communicated to all Heads of Regions vide No. CPO/CPB/64, dated 13.02.2023. The outcome of the process in respect of the appellant shall be communicated to the Court as and when received.
B.	That if seniority of SI or Inspector is not made impugned by the appellant it was not intentional but due to non information in time and been posted for some time abroad	Incorrect, impugning the seniority of SI or Inspector at this belated stage is without reason, illegal time barred and without any force.
C.	That the notification issued by the Respondents to the extent whereby the appellant is not promoted, confirmed and granted seniority as per Rule as Sub Inspector, Inspector and Deputy Superintendent of Police is against Police 12(2) and 12(2)(11).	Incorrect and misconceived. The seniority of Appellant is in accordance with Rules and where rules have been undermined, the Competent Authority has already issued instructional policy to streamline the seniority issues with true spirit of Police Rules, 1934. The process of revision is underway and the outcome about the appellant shall be communicated to the Tribunal as and when received.
D.	That the Competent Authority has adopted the rules of fixation of seniority in accordance with merit of the Provincial Public Service Commission and then on the direction of the Hon'ble Tribunal which entitles the appellant for all such benefits along with his batch mates.	Incorrect and misconceived, the Competent Authority did not issue any instructions or policy regarding fixation of seniority in accordance with order of merit assigned by Public Service Commission. In-fact, the order of merit assigned by Public Service Commission has nothing to do with seniority of Police Officials rather it is governed by Special law i.e. Police Rules, 1934.
E.	That the appellant has not been treated in accordance with law, rules in force and merit despite he has a very good PERS.	Incorrect, appellant has been treated in accordance with law/ rules.
F.	That on the ratio of the Apex Court in 2009 SCMR 1, Hameed Akhtar Niazi case 1996 and on the principle of Consistency the appellant is entitled to promotion, confirmation, and seniority and ante date as prayed for.	Incorrect and misleading. Each case has its own Law points and facts which cannot be attributed as precedence for others. Moreover, Para 4 of policy letter mentioned in Para 2 of facts explicitly explains the fate of ante dated confirmations and promotions by the Hon'ble Apex Court of Pakistan.
G.	That when junior to the appellant is promoted before him then it is unjust and discriminatory and his deputation aboard shall not be a cause of punishment.	Incorrect, promotions are subject to seniority cum fitness basis in accordance with Police Rules, 1934 and no discrimination has been done by the answering respondents.
H.	With un-blemish service record and appointment on merit and good PER he has to be compensated at this stage of his service so that he and like him are not disappointed.	Incorrect, stance of the appellant is devoid of Police Rules, 1934. Respondents cannot act or commit contrary to the rules and policy.
I.	That the appellant is selected through Public Service Commission and is competent and experienced Police Officer and has served at different Police Stations as in-charge and independent position.	Merit and competency are good features each police officer should have in order to serve better and efficiently.
J.	That propriety demands that the appellant be compensated as he did suffer in the past and Appeals of similar nature are admitted and allowed by this Hon'ble Tribunal.	Incorrect, appellant's stance is devoid of law/ rules and merit, non of precedence can be attributed to the appellant's case except judgments in rim related to terms

		and conditions of services set by the Superior Judiciary.
K.	Article 4 of the Constitution of Islamic Republic of Pakistan lays down that every person shall be treated in accordance with law and Article 25 prevent discrimination.	Incorrect, respondent department acted in accordance with Article 4 of the Constitution and no violation of Article 25 has been committed in the case of appellant.

PRAYERS

Keeping in view the above facts and circumstances, it is therefore requested that the instant service appeal may kindly be dismissed with costs being devoid of merits and legal force, please.


Regional Police Officer,
Kohat.
(Respondent No. 2)


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7/5 /2022.

Safdar Khan..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar etc

.....
(Respondents)

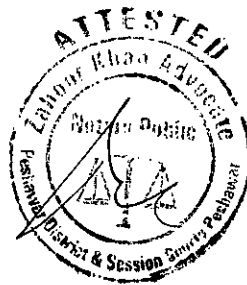
AFFIDAVIT

I, Tariq Umar Acting DSP/ Legal CPO, Peshawar do hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents No. 1 & 2 are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

DEPONENT



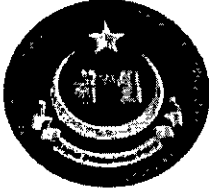
(TARIQ UMAR)
DSP/ Legal, CPO
17301-4997553-7
0333-8878882



AUTHORITY LETTER

Mr. Tariq Umar *DSP* / Legal, CPO is authorized to pursue the cases pertaining to Police Department in Honorable Peshawar High Court, Peshawar submission of Para-wise comments/ reply in Court on behalf of undersigned, please.

[Signature]
Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.



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

No. CPO/CPB/ 63Dated Peshawar 13 February 2023IMMEDIATE

To: The Regional Police Officer,
Hazara Region.

Subject: DATE OF CONFIRMATION OF ASIs PROMOTED FROM RANKS (RANKER ASIs)

Memo:

Reference your office letter No 29504/E dated 13.12.2022 wherein a legal advice was sought on the following law point:

- i. Whether all ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period from the date of officiating promotion or not?
2. ASIs promoted from ranks (Ranker ASIs) may be confirmed in their ranks "on the conclusion of the probationary period" of two years. They shall NOT be confirmed from the date of their promotion as ASIs from the lower rank of HC. PR 13.18 of Police Rules 1934 is hereby reproduced as a ready reference: -

Rule 13.18. Probationary Period of Promotion "all Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether the officer should be confirmed or reverted."

This rule shall not apply to constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules, 13.5 and 13.4."

3. Moreover, under paragraph VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011, "promotion will always be notified with immediate effect." Drawing analogy from this rule, all Ranker ASIs might be so confirmed on conclusion of probationary period of two years with immediate effect (the date on which order of their confirmation is issued).

4. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Waraich Vs IG Punjab (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the Apex Court, has held that "reliance on Qayyum Nawaz [a

ll
13/02/23

judgment of the Apex Court, reported as 1999 SCMR 1594] that there is no difference between the date of appointment and date of confirmation under the police rules is absolutely misconceived and strongly dispelled". The Apex court has further explained PR 12.3(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honourable Court further held that "the practice of ante-dated confirmation and promotions have been put down in *Ruza Safdar Kazmi*" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters).

5. It is, therefore, made clear that ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period NOT from the date of officiating promotion. Their names may be brought on the Promotion List E in the manner provided in PR 13.10 and 13.11 of the Police Rules, 1934 NOT from the date of promotion but from the date of confirmation which, essentially, is a date different from their dates of promotion and compulsorily falls on the termination of the period of their probation of two years under PR 13.8 of the Police Rules, 1934.

6. Mode of bringing names of Assistant Sub-Inspectors (ASIs- both PASIs and Ranker ASIs) on promotion list E, confirmed in the manner provided above, is given in PR 13.10 and 13.11 of the Police Rules, 1934. Therefore, their names may be brought on the Promotion List E in the manner provided in the said two rules.

7. Keeping in view the above, this office letter No. CPO/CPB/317 dated 08.12.2022, that intended to create a parity between the dates of confirmation of ASIs appointed direct (PASIs) and those of the ASIs promoted from ranks (Ranker ASIs), is hereby withdrawn being against the letter and spirit of PR 12.8, 19.25 (5) Police Rules, 1934, in case of PASIs and against the PR 13.18 of the Police Rules, 1934 in case of the ASIs promoted from ranks (Ranker ASIs). The following was laid down in the said letter:

"a. All PASIs on successful completion of 03 years' probation period shall be brought on promotion list "E" from date of appointment.

b. All ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period from date of officiating promotion."

8. You are, therefore, requested to:

- (a) register that the Date of Promotion and Date of Confirmation of a Ranker ASI are Not the Same, as has been misconceived by many, but are different from each other: Date of confirmation falls after two years of the date of promotion in case of Ranker ASI according to PR 12.8, and 13.8 of the Police Rules, 1934 respectively.
- (b) Withdraw all Changes Brought in the List E in compliance with this office letter No CPO/CPB/317 dated 08.12.2022 and Revise the List E of your Range to substitute all those dates of confirmation of all Assistant Sub-Inspectors appointed by way of

ll
13/02/23

promotion from lower rank (Ranker ASIs) which were fixed retrospectively from the date of their Promotion with those falling after date of conclusion of the period of their probation for two years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6, & 7 above.

- (c) ensure that ASIs promoted from ranks (Ranker ASIs) shall **NOT** be Confirmed from the Date of their Promotion (from the rank of Head Constable to ASI) rather, *might* be so confirmed "*on the conclusion of the probationary period*" of two years, with immediate effect (the date on which order of their confirmation was issued).
- (d) Send compliance report by 23.02.2023.



(SHAUKAT ABBAS) PSP
DIG/HQrs,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

Endst: No. and dated even

Copy of above is forwarded for information to the: -

1. Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
2. All Regional Police Officers in Khyber Pakhtunkhwa for compliance of the instructions given at Paragraph 8 of this letter by 23.02.2023.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa for compliance.
4. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
5. PA to Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
6. PA to AIG/Establishment Khyber Pakhtunkhwa.
7. Office Superintendent Establishment I, II and III CPO Peshawar.



(SHAUKAT ABBAS) PSP
DIG/HQrs,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar



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

No. CPO/CPB/ 64

Dated Peshawar 13 February 2023

IMMEDIATE

To: The Regional Police Officer,
Hazara Region.

Subject: **LEGAL ADVICE ON THE QUESTION OF DATE OF CONFIRMATION OF PASIs
(ASIs APPOINTED DIRECT)**

Memo:

Reference your office letter No. 29504/E dated 13.12.2022, wherein a legal advice was sought on the following law point: -

- i) Whether all PASIs on completion of 03 years' probation period shall be brought on promotion list "E" from date of appointment or not?
2. As per PR 12.8 of the Police Rules 1934, Assistant Sub-Inspectors appointed direct (Commonly known as PASIs) "will be considered to be on probation for three years" and that, under PR 19.25(5), "on the termination of the prescribed period of probation the Superintendent shall submit to the Deputy Inspector-General for final orders the full report required by Form 19.25(5) on the probationer's working and general conduct, with a recommendation as to whether he should or should not be confirmed in his appointment."
3. Both rules are hereby reproduced as a ready reference:

PR 12.8 Probationary nature of appointments. - (1) Inspectors, Sergeants, Sub-Inspectors and Assistant Sub-Inspectors who are directly appointed will be considered to be on probation for three years and are liable to be discharged at any time during or on the expiry of the period of their probation if they fail to pass the prescribed examinations including the riding test, or are guilty of grave misconduct or are deemed, for sufficient reason, to be unsuitable for service in the police. A probationary inspector shall be discharged by the Inspector-General and all other Upper Subordinates by Range Deputy Inspector-General and Assistant Inspector-General, Government Railway Police, Assistant Inspector-General, Provincial Additional Police (designated as Commandant, Provincial Additional Police). No appeal lies against an order of discharge. (2) The pay admissible to a probationary Inspector, Sergeant, Sub-Inspector or Assistant Sub-Inspector is shown in Appendix 10.64, Table A.

PR 19.25 Training of upper subordinates (1) "Inspectors, sub-inspectors, and Assistant Sub-Inspectors, who are directly appointed, shall be deputed to the Police Training School to undergo the course of training laid down for such officers in the Police Training School Manual and are liable to discharge if they fail to pass the prescribed examinations or are badly reported on."

(5) "On the termination of the prescribed period of probation the Superintendent shall submit to the Deputy Inspector-General for final orders the full report required by Form 19.25(5) on the probationer's working and general conduct, with a

ll
13/12/23

recommendation as to whether he should or should not be confirmed in his appointment. In the case of inspectors such reports shall be forwarded to the Inspector-General."

4. The two rules (12.8 and 19.25(5) of the Police Rules, 1934) clearly state that PASIs (ASIs appointed direct) shall be on probation for a period of three years after their appointment as such and that they *may be* confirmed in their appointments (appointment of being an ASI) *on the termination of the prescribed period of probation* for three years with immediate effect NOT with retrospective effect *i.e.* from the date of their appointment by the Range Deputy Inspector General of Police on the report of their respective District Police Officers provided they have completed the period of their probation of three years successfully in terms of the conditions laid down in the PR 19.25 (5) of the Police Rules, 1934.

5. Moreover, under paragraph VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011, "*promotion will always be notified with immediate effect.*" Drawing analogy from this rule, all PASIs might be so confirmed on conclusion of probationary period of three years with immediate effect (the date on which order of their confirmation is issued).

6. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in *Mushtaq Waraich Vs IG Punjab* (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the Apex Court, has held that "*reliance on Qayyum Nawaz* [a judgment of the Apex Court, reported as 1999 SCMR 1594] *that there is no difference between the date of appointment and date of confirmation under the police rules is absolutely misconceived and strongly dispelled*". The Apex court has further explained PR 12.3(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honourable Court further held that "*the practice of ante-dated confirmation and promotions have been put down in Raza Safdar Kazmi*" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters.).

ll
13/02/23
7. It is, therefore, made clear that PASIs on completion of 03 years' probation period shall NOT be brought on promotion list "E" from date of appointment. Their names may be brought on the Promotion List E in the manner provided in PR 13.10 and 13.11 of the Police Rules, 1934 NOT from the date of appointment but from the date of confirmation which, essentially, is a date different from their dates of appointment and compulsorily falls on the termination of the period of their probation for three years under PR 12.8 and 19.25(5) of the Police Rules, 1934.


8. Keeping in view the above, this office letter No. CPO/CPB/317 dated 08.12.2022, that intended to create a parity between the dates of confirmation of ASIs appointed direct (PASIs) and those of the ASIs promoted from ranks (Ranker ASIs), is hereby withdrawn being against the letter and spirit of PR 12.8, 19.25 (5) - Police Rules, 1934, in case of PASIs and against the PR 13.18 of the Police Rules, 1934 in case of the ASIs promoted from ranks (Ranker ASIs). The following was laid down in the said letter:

"a. All PASIs on successful completion of 03 years' probation period shall be brought on promotion list "E" from date of appointment.

b. All ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period from date of officiating promotion."

9. Keeping the above in view, you are, therefore, requested to:


- (a) register that the Date of Appointment and Date of Confirmation of an Assistant Sub-Inspectors appointed direct (PASIs) are Not the Same, as has been misconceived by many, but are different from each other: Date of confirmation falls after three years of the date of appointment in case of an Assistant Sub-Inspectors appointed direct (PASIs) and the same (date of confirmation) falls after two years in case of an Assistant Sub-Inspector promoted from ranks (Ranker ASI) according to PR 12.8, and 13.8 of the Police Rules, 1934 respectively.
- (b) Withdraw all Changes Brought in the list E in compliance with this office letter No CPO/CPB/317 dated 08.12.2022 and Revise the List E of your Range and substitute all those dates of confirmation of all Assistant Sub-Inspectors appointed direct (PASIs) which were fixed retrospectively from the date of their appointment with those falling after the termination of the period of their probation for three years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6, 7, and 8 above.
- (c) ensure that ASIs appointed direct (PASIs) shall NOT be Confirmed from the Date of their Appointment but *might* be so confirmed "*On the termination of the prescribed period of probation*" of three years, with immediate effect (the date on which order of their confirmation was issued).
- (d) Send compliance report by 23.02.2023.


 (SHAUKAT ABBAS) PSP
 DIG/HQrs,
 For Inspector General of Police,
 Khyber Pakhtunkhwa, Peshawar

Endst. No. and dated even

Copy of above is forwarded for information to the:

1. Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
2. All Regional Police Officers in Khyber Pakhtunkhwa for compliance of the instructions given at Paragraph 9 of this letter by 23.02.2023.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa.
4. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
5. PA to Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
6. PA to Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa.
7. Office Superintendent Establishment I, II and III CPO Peshawar.


 (SHAUKAT ABBAS) PSP
 DIG/HQrs,
 For Inspector General of Police,
 Khyber Pakhtunkhwa, Peshawar