

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Objection Petition in Service Appeal No. 183/2019

Diary No. 5772

Sabir Khan(Appellant) dated 1/6/2023

Versus

Provincial Police Officer, Khyber Pakhtunkhwa etc.....(Respondents)

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Respondents through

DSP/ Legal (BPS-17)
CPO, Peshawar

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

Service Appeal No. 183/2019

Sabir Khan(Appellant)
Versus
Provincial Police Officer, Khyber Pakhtunkhwa etc.....(Respondents)

Subject: **OBJECTION PETITION ON JUDGMENT 17.10.2022**

The facts pertaining to objection petition are as under:-

1. That, the appellant had filed Service Appeal No. 183/2019, with the following prayers:-

“On acceptance of instant appeal, the impugned office Order No. 16/CPB, dated 09.01.2019 of the office of AIG/ Establishment Police Khyber Pakhtunkhwa whereby the departmental representation of the appellant was dismissed and filed, may graciously be set aside and by doing so the appellant be given his ante dated promotion to the rank of confirmed SI w.e.f 19.11.2003 and thereafter to the rank of DSP w.e.f 31.03.2012 instead 29.11.2018 with all back benefits”.

2. That, this Hon’ble Tribunal vide Judgment dated 17.10.2022 decided the Service Appeal in the following terms:-

“When confronted with the situation the learned AAG as well as learned counsel for the appellant agreed that the matter might be remitted the matter to department for consideration of the case of the appellant in the light of judgment of the august Supreme Court of Pakistan after providing him opportunity of hearing and then pass a speaking order in accordance with law/ rules and judgments of the august Supreme Court of Pakistan within sixty days from the receipt of this order under intimation to this Tribunal through its Registrar. The appeal is disposed in the above terms”.

3. That, in compliance with the Judgment dated 17.10.2022, a Speaking Order has been issued vide this office Letter No. 2030/Legal, dated 29.05.2023.

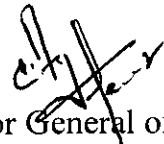
4. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Warich Vs IGP Punjab (PLD 1985 SC 159). In a recent Judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 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 that Police Rule 12.2(3) of Police Rules, 1934 stipulates that the final seniority of officers will be reckoned from the date of confirmation of the officer and not from the date of appointment. The Hon’ble 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).

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 Apex Court of Pakistan in its Judgment Musthaq Ahmed Warraich Vs IGP reported as PLD 1985 SC 159 and Civil Appeal No. 1172 to 1178 of 2020 titled Syed Hammad Nabi Vs IGP, Punjab has declared that Rule 12.2 of Rules ibid is the basic criteria for determination of seniorities of Police Officers of subordinate ranks.
7. That claim of ante dated promotion and confirmation is baseless, illegal and against the norm of Law/ Rules rather alien to Rules ibid besides contrary to the principles laid down by the Apex Court of Pakistan in its Judgments. The Apex Court Judgments mentioned above have overruling effect over the Judgments mentioned by Tribunal in its Judgment dated 17.10.2022 being latest therefore, complying with Tribunal Judgment, defies the above mentioned Judgments of Apex Court.

PRAYERS

Therefore, keeping in view the above facts and circumstances, Department is determined to comply with Hon'ble Tribunal orders in true letter and spirit. The seniority of appellant has been revised in accordance with law/ rules and Apex Court Judgments. The claim of appellant of ante dated promotion and confirmation is contrary to the Rules and against the Apex Court Judgments, therefore, Hon'ble Tribunal is requested to issue appropriate orders in this regard, please.


 Inspector General of Police,
 Khyber Pakhtunkhwa
 CPO, Peshawar.
 30.05.2023

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AFFIDAVIT

I, Tariq Umar DSP/ Legal CPO, Peshawar (BPS-17) do hereby solemnly affirm on oath that the contents of Objection Petitions on behalf of respondent department is correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

DEPONENT



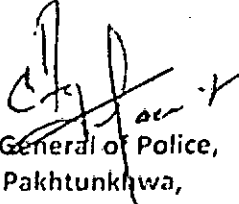
TARIQ UMAR
DSP/ Legal, CPO
17301-4997553-7
0333-8878882



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AUTHORITY LETTER

Mr. Tariq Umar DSP/ Legal, CPO, Peshawar is authorized to defend and submission of Para-wise comments/ replies in service appeals on behalf of undersigned in Khyber Pakhtunkhwa, Service Tribunal, Peshawar.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.