BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Objection Petition In Execution No. 154/2022
in
Service Appeal No. 12438/2020

Furqan Javed .....(Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa .....(Respondent)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Objection Petition		1-3
2.	Copy of Order dated 18.11.2022	A	4
3.	Copy of Letter dated 05.05.2023	B	5
4.	Affidavit		6

Respondents through

DSP/ Legal (BPS-17)
CPO, Peshawar

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Execution No. 154/2022
in
Service Appeal No. 12438/2020

Furqan Javed .....(Appellant)
Versus
Govt: of Khyber Pakhtunkhwa etc..... ..... (Respondents)

Subject: **OBJECTION PETITION ON JUDGMENT 30.11.2021**

The facts pertaining to objection petition are as under:-

1. That, the appellant had filed Service Appeal No. 12438/2020, with the following prayers:-

"on acceptance of instant appeal, impugned decision/ order dated 20.05.2020 of respondent No. 3 may be set aside and seniority list 'E' bearing No. 1633 dated 14.06.2018 be revised and appellant be admitted to list 'E' with effect from the date of appointment i.e. 10.02.2011, and in view whereof, his officiating promotion Notification dated 03.06.2016 to the rank of Sub Inspector be revised, be given effect from the date of his eligibility and be confirmed, as Sub-Inspector, under 13.18 Police Rules, 1934 with all consequential benefits, so as to avoid discriminatory treatment and to secure the ends of justice".

2. That, this Hon'ble Tribunal vide Judgment dated 30.11.2021 accepted the Service Appeal. The operating Para is reproduced as under:-

"In view of the verdict of the apex Court, the respondents were required to extend the same benefit to the appellant as well, which however was not granted to the appellant and which was not warranted. The issue of confirmation from the date of appointment has already been decided in similar cases vide Judgment reported as 2001 PLC (CS)245 as well as judgment dated 07.12.2017 of this Tribunal in Service Appeal No. 573/2016 and judgment dated 18.03.201 in Service Appeal NO. 800/2018. In view of the clear Judgments and report dated 31.08.2017 of the committee constituted for the purpose, case of the appellant squarely falls within the purview of similarly placed employees and the department cannot ignore the appellant from extending the benefit of that very Judgments.

In view of the foregoing discussion, the instant Service Appeal is accepted as prayed for".

3. That, in compliance of Hon'ble Tribunal judgment dated 30.11.2021, the appellant confirmation in the rank of Assistant Sub-Inspector was revised and brought on list 'E' from the date of confirmation i.e. 10.02.2011 vide OB No. 353, dated

18.11.2022 & Endst: No. 4516-19/EC, dated 18.11.2022. (Copy of Notification is enclosed as **"A"**).

4. That, CPO, Peshawar issued guidelines regarding confirmation in the rank of ASI and SI vide No. 1638-41/Legal, dated 05.05.2023 were also communicated to the Regional Police Officer, Bannu. (Copy enclosed as **"B"**).

5. That, the Apex Court of Pakistan differentiated explicitly the General law and Special law and their applications in case titled Mushtaq Warraich Vs IGP, Punjab (PLD 1985 SC 159), relevant para is reproduced as under:-

"Here comparing the two statutes, I find that provisions of special law are of disciplinary characters and enacted with object to fulfill the requirements of the discipline force, which purpose cannot be achieved if the provisions of the general law were to be applied to them. The field of operation of special law is, therefore, all together different and limited to one subject, that is, the Police Force, hence, there cannot be any possibility of any collision to attract the doctrine of "implied repeal.

For the foregoing reasons, I agree with Tribunal in applying Rule 12.2 of Punjab Police Rules in determining the seniority of Police Officers of the subordinate ranks. However, I would observe that the cases of these promoted because of misapplication of the Rule of seniority by the Provincial Government and have served in the higher ranks till date, also deserve consideration against these posts, if available, but this should not be at the cost of the respondents namely, Mushtaq Ahmed Warraich and Arshad Hussain who have also suffered for all these years or others similarly placed. These appeals are, accordingly, dismissed with costs".

6. That 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 PR 12.2 of Police Rules, 1934 is the basic mandatory Rule for determination of seniorities of Police Officers of subordinate ranks.

7. 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.

8. 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).

9. 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 PR 12.2(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 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).

10. That, the Apex Court Judgments mentioned above are recent and overruling the Judgments mentioned in the Judgment dated 30.11.2021 of the Hon'ble Tribunal. Therefore, complying with the Tribunal Judgment dated 30.11.2021 defies the above mentioned latest Apex Court Judgments in the case.

PRAYERS

Therefore, keeping in view the above facts and circumstances, it is therefore, requested that the Hon'ble Tribunal may issue appropriate orders in the instant case to avoid further complications, please.

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

(4)

PROVISIONAL ORDER:

In pursuance of Judgment dated 30.11.2021 of Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.12438/2021 and CPO Peshawar letter No.159/Legal, dated 11.01.2022, SI Liaqat Javed No.1074 is hereby brought on list ~~of~~ from the date of confirmation as ASI i.e. 10.02.2011. However, his seniority will be considered at par with his batch mates and he will be considered junior to all those Officers in the same rank who are otherwise senior to him.

ORDER ANNOUNCED

OB No. 353

Dated: 18 / 11 /2022

Regional Police Officer 18/11/22
Bannu Region,
Bannu

No. 4516-19 /E/C, dated Bannu the 18 /11/2022

Copy of above is forwarded to:

1. The Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa, Peshawar for favour of information.
2. The Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa, Peshawar for favour of information.
3. The Assistant Inspector General of Police, Legal Khyber Pakhtunkhwa, Peshawar.
4. The District Police Officer, Bannu.

For necessary action.

Regional Police Officer
Bannu Region,
Bannu

Attested
DSP Legal

(5)

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

No. 16354/ Legal dated the 05 / 05 / 2023.

To: The Regional Police Officer,
Bannu.

Subject: **GUIDELINES REGARDING CONFIRMATION IN THE RANK OF ASI AND SI**

Memo:

Please refer to the subject cited above.

CPO Peshawar vide letter No. CPO/CPB/63 dated 13.02.2023 had conveyed to all regions that ASIs promoted from a lower rank shall be confirmed on the termination of 02 years of probation period with immediate effect i.e. on the date his probation period actually completes and not from the date of officiating promotion as ASI in the light of Rule 13.18 of Police Rules, 1934. Similarly, vide CPO/CPB/64 dated 13.02.2023, it has been conveyed that Assistant Sub Inspectors appointed direct (PASIs) shall be confirmed in their appointments on the termination of three years probationary period with immediate effect, not with retrospective effect that is from the date of their appointments by the Range Deputy Inspector General of Police in the spirit of Rules 12.18 and Rules 19.25(5) of Police Rules, 1934.

In this regard, the Hon'ble Supreme Court of Pakistan vide its Judgment in Mushtaq Warraich case Vs IGP Punjab (PLD 1985 SC 159), has underlined the difference between the date of appointment and date of confirmation and has further held that the final seniority of the Officers will be reckoned from the date of confirmation of the Officers, not from the date of appointment.

Moreover, CPO Peshawar letter No. CPO/CPB/68 dated 28.02.2022 is also in field vide which directions were issued to all regions' unit heads of Khyber Pakhtunkhwa Police regarding confirmation in the light of Rule 13.18 of Police Rules, 1934.

Therefore, instructions contained in the above letters may be followed in letter and spirit, please.

(SABIR AHMAD) PSP
Additional Inspector General of Police,
Headquarters, Khyber Pakhtunkhwa,
Peshawar.

Attested

- PSO to W/ IGP, Khyber Pakhtunkhwa, Peshawar.
- PA to DIG/ HQrs: Khyber Pakhtunkhwa, Peshawar.
- Incharge, CP Branch, CPO, Peshawar.

DSP Legal

(6)

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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

ATTESTED
Muhammad Mustafa Advocate
NOTARY PUBLIC
Reg No
Date
District Court Peshawar

(7)

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.