

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5777

Dated 1/6/2023

Execution Petition No. 211/2021 in Service Appeal No. 991/2018

Abdul Hai(Appellant)

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

Execution Petition No. 211/2021 in Service Appeal No. 991/2018

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Subject: **OBJECTION PETITION ON JUDGMENT 17.12.2020**

The facts pertaining to objection petition are as under:-

1. That, the appellant had filed Service Appeal No. 991/2018, with the following prayers:-

"On acceptance of instant appeal, the impugned final seniority list dated 22.03.2018 may please be set aside and the appellant may be considered and placed at Serial No. 30 i.e above Mr. Tauhid Khan in accordance with seniority rules as envisaged in ESTA Codes and Civil Service regulations".

2. That, this Hon'ble Tribunal vide Judgment dated 17.12.2020 decided the Service Appeal in the following terms:-

"We are conscious of the fact that time limitation needs to be kept in mind, but in the light of Judgments of Supreme Court of Pakistan referred to above and in view of provisions of S. 23 of Limitation Act 1908, the appellant has a continuous cause of action and issuance of seniority list at belated stage by respondents created a fresh cause of action for the appellant, now knowing the fact that his late confirmation in 2006 would entail seniority issue at a later stage. In order to ascertain the actual situation, representative of RPO DI Khan was summoned by Court, who stated at bar that there was nothing adverse against the appellant during the time, but the change in seniority might be due to clerical mistake, which travelled along the seniority of the appellant and culminated into the final seniority list issued in 2018. We also did not find anything adverse on record except his late confirmation due to unknown reasons. It is also established from the prevailing rules that Civil Servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post. Moreover this Tribunal as well as Supreme Court of Pakistan in number of Judgments have granted relief in similar cases.

In the light of facts and circumstances of the present case, the impugned seniority list dated 22.03.2018 is set aside and the instant appeal is accepted as prayed for".

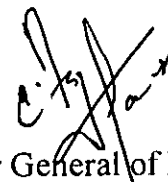
3. That, in compliance with the Judgment dated 17.12.2020, a Speaking Order has already been issued vide this office Letter No. 1505/Legal, dated 02.05.2023. (Annexure "A")
4. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Warich 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 appellant for seniority in accordance with order of merit of Public Service Commission is devoid of law/ rules/ merits and principles laid down by the Apex Court in above mentioned recent Judgments.

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 claim of appellant for seniority in accordance with order of merit of Public Service Commission is contrary to the Rules and against the Apex Court Judgments as mentioned above, therefore, Hon'ble Tribunal is requested to issue appropriate orders in this regard which is fixed for 31.05.2023, please.



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.



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

No. 1505 / Legal

dated the

02/05/2023

2023.

ORDER

In compliance with Judgment dated 17.12.2020, of Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 991/2018 titled Abdul Hai Khan DSP Vs Govt of Khyber Pakhtunkhwa etc, followed by Execution Petition No. 211/2021 and duly approved by the competent authority this speaking order is hereby issued in the following terms:-

2. The Apex Court of Pakistan differentiated explicitly the General law and Special law and their applications in case titled Mushtaq Warrach Vs IGP, Punjab (PLD 1985 SC 159). relevant part 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 Warrach and Arshad Hussain who have also suffered for all these years or others similarly placed. These appeals are, accordingly, dismissed with costs".

3. The Apex Court of Pakistan in its Judgment Mushtaq Ahmed Warrach Vs IGP reported as PLD 1985 SC 159 and Civil Appeal No. 1172 to 1178 of 2020 titled Syed Hammad Nabi Vs IGP.

Attested
witness
DSP Legal

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.

4. The two rule (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).

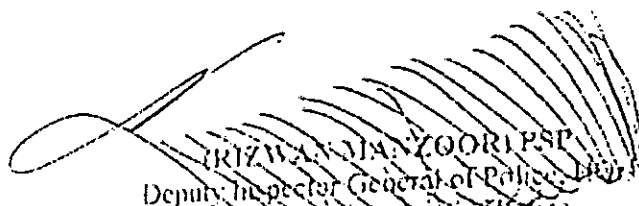
6. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in *Mushtaq Warich Vs IGP Punjab* (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 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).

7. The seniority case of Mr. Abdul Hai Khan SP was examined at the touch stone of the principles laid down by the apex Court of Pakistan in above mentioned judgments. He was afforded opportunity of personal hearing on 13.01.2023 wherein he requested to implement the Judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal. As Police Force has a Special status, therefore, Police Act, 2017 and Police Rules, 1934 both are Special Laws, shall prevail over General laws in

Attested
DSP Legal

application to Police Force. Confirmations and promotions within the ranks are subject to seniority and fitness and fulfillment of other requisite courses. Therefore, Khyber Pakhtunkhwa Police Rules, 1934 Rule 12-2 is the basic mandatory rule for determination of seniorities of Police officers of subordinate ranks, hence order of merit assigned at the time of recruitment cannot be attributed to individuals for their seniority positions which would be against the spirit of principles laid down by the Apex Court as well as prevailing Police Rules. Therefore, application of other than Police Rules, 1934 would distort and destroy the service structure and open vistas for others.

Keeping in view as above, request of Mr. Abdul Hai Khan SP (appellant) to assign him seniority in accordance with order of merit assigned by the Public Service Commission, is regretted being devoid of law, merit, rules and principles laid down by the Apex Court of Pakistan in recent judgments as explain hereinabove.


RIZWAN MANZOOR PSP
Deputy Inspector General of Police, D.I. Khan
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

C.C

- The Registrar, Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- All Additional Inspectors General of Police, Khyber Pakhtunkhwa.
- Regional Police Officer, DI Khan.
- PSO to W/ Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

Attested
nil
DSP Legal



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

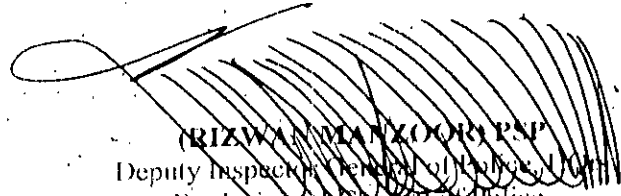
No. 2106 / Legal

dated the

01/06/2023.

CORRIGENDUM:

In continuation to this office order No.1505/Legal dated 02.05.2023, so far it relates to the words "regretted" may be read as "filed".


(RIZWAN MANZOOR) PSP
Deputy Inspector General of Police, I/O
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

CC

- The Registrar, Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- All Additional Inspectors General of Police, Khyber Pakhtunkhwa.
- Regional Police Officer, DI Khan.
- PSO to W/ Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

Attested
by
ASP Legal

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Execution Petition No. 211/2021 in Service Appeal No. 991/2018

Abdul Hai(Appellant)

Versus

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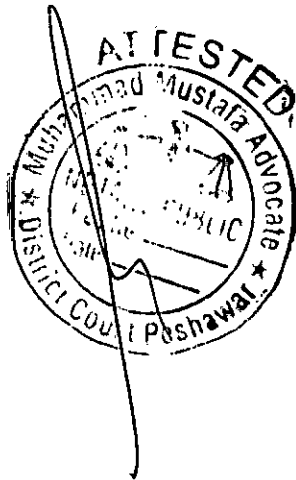
AFFIDAVIT

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

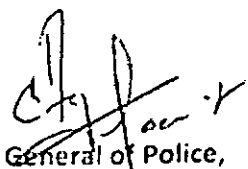


TARIQ UMAR
DSP/ Legal, CPO
17301-4997553-7
0333-8878882



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.