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

**SERVICE APPEAL NO.922/2022**

Khyber Pakhtunkhwa  
Service Tribunal  
No. 5847  
Dated 6/6/2023

**GHULAM HAKEEM**

**V/S**

**IGP KP & OTHERS**

**REPLY ON BEHALF OF THE PRIVATE RESPONDENT**  
**NO.03**

**R/SHEWETH:**

**ON FACTS:**

*The private respondent submits as under:*

**Preliminary Objections:**

- a) That the appellant has no cause of action to file the instant appeal.
- b) That the appeal of the appellant is badly time barred.
- c) That the instant appeal is hit by the provisions of section 11 of CPC read with Rule 23 of Service Tribunal Rules 1974.
- d) That the appellant are estopped by their own conduct to file the instant appeal.
- e) That the instant appeal is not maintainable in its present form.
- f) That the instant appeal is bad for misjoinder and non-joinder of parties.
- g) That the instant appeal is based upon, malicious/vexatious and frivolous grounds.

**ON FACTS:**

- 1- Pertains to record of the appellant and official respondents.
- 2- Contents need no reply as the same is pertaining to the record of the appellant as well as the record of the official respondents.
- 3- Correct needs no reply however, the replying respondent was wrongly deprived, hence challenged the same through departmental appeal and followed by the service appeal No. 226/2018 and was allowed on 03.12.2019 and the promotion order of the appellant was set a naught being void ab-initio and the answering respondent was considered for promotion from the due date. Copy of the judgment dated 03.12.2019 is attached as annexure .....**A.**

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- 4- Correct, thus the instant appeal is not maintainable as the judgment in appeal No. 226/2018 has got finality and was upheld by the apex court of Pakistan.
- 5- Correct.
- 6- Incorrect, the appellant is not an aggrieved person and the subject appeal is also not maintainable.

**ON GROUNDS:**

- A. Incorrect and misconceiving, the promotion order of the answering respondent was issued in pursuance to the judgment of this august service tribunal which is in line with law and rules on the subject and the same has been upheld by the apex court of Pakistan.
- B. Incorrect and misconceived, the order dated 05.01.2022 was issued in compliance of the judgment of this august service tribunal.
- C. Need no reply.
- D. Incorrect already replied.
- E. Incorrect, the appellant has not been discriminated against.

It is therefore mostly humbly prayed that on acceptance of this reply the appeal of the appellant may kindly be dismissed with cost.

Dated: 02-06-2023

Through

*Bacha*  
**PRIVATE RESPONDENT NO.3**

**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

*Kamran Khan*  
**KAMRAN KHAN  
ADVOCATE**

**AFFIDAVIT**

I, Bacha Khan (Private Respondent No.3), do hereby solemnly affirm that the contents of this **reply** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court,

*It is further stated on oath that in this appeal the answering respondents neither been placed ex parte nor their defense struck off.*



*Bacha Khan*  
**DEPONENT**

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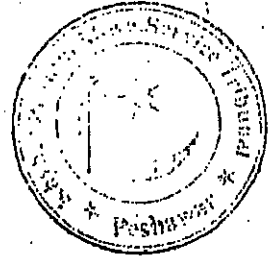
ISSUE 12.2019

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR  
AT CAMP COURT SWAT.**

Service Appeal No. 226/2018

Date of Institution ... 16.02.2018

Date of Decision ... 03.12.2019



Bacha Khan, Driver/Head Constable, Police Lines, Dir Upper.  
... (Appellant)

**VERSUS**

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and three others.  
... (Respondents)

- |  |            |                                       |
|--|------------|---------------------------------------|
| MR. SHAAZULLAH KHAN,<br>Advocate                           | ---        | For appellant.                        |
| MR. M. RIAZ KHAN PAINDAKHEL,<br>Assistant Advocate General | ---        | For respondents                       |
| Mr. MUHAMMAD KAMRAN KHAN<br>Advocate                       | ---        | For respondents no.4.                 |
| MR. AHMAD HASSAN,<br>MR. MUHAMMAD HAMID MUGHAL             | ---<br>--- | MEMBER(Executive)<br>MEMBER(Judicial) |

**JUDGMENT:**

**AHMAD HASSAN, MEMBER:-** Arguments of the learned counsel for the parties heard and record perused.

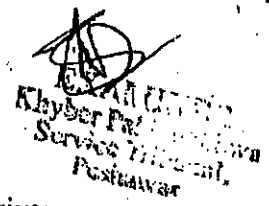
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**ARGUMENTS:**

02. Learned counsel for the appellant argued that he was appointed as Driver Constable vide order dated 16.08.1982. That while in service, he cleared requisite course for promotion as Head Driver and got promoted as Head Driver to the said post vide order dated 29.12.2014. That the respondents issued seniority list of Head Constable Drivers of District Dir in which the name of the appellant was missing. On the other hand, the respondents on the basis of disputed seniority list promoted

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private respondent no.4 to the rank of Driver ASI through impugned order dated 11.03.2015. The said order was upon his request was communicated to him on 19.10.2017. Feeling aggrieved, he filed departmental appeal on 20.10.2017 which remained unanswered, hence, the present service appeal. He further argued that he was appointed as Constable on 15.07.1982 whereas private respondent no.4 was appointed as Constable on 09.03.1999. Moreover, the said respondents appointment was made as Constable but the word "Driver" was inserted later on through fraud/forgery. His promotion as Head Constable was also not made on the recommendation of DPC and fell in the ambit of out of turn promotion. His adjustment as Driver Head Constable (BPS-07) vide order dated 22.04.2008 was also illegal.

03. Learned counsel for private respondent no.4 argued that private respondent no.4 was appointed as Driver Constable on 09.03.1999 and promoted as Head Constable vide order dated 09.12.2004 and confirmed as Head Constable on 22.04.2008. On the other hand, the appellant was appointed as general duty Constable on 16.08.1982 and later on transferred to Telecommunication Wing on 19.05.1999 and promoted to the rank of Head Constable vide order dated 29.12.2014, therefore, the private respondent was senior and rightly promoted through order dated 11.03.2015. He also raised the issue of limitation that the present appeal was barred by time.

04. Learned Assistant Advocate General relied on arguments advanced by the learned counsel for private respondent no.4.

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CONCLUSION:

05. As regards the issue of limitation raised by the learned counsel for private respondent no.4 was concerned, as the appellant was never considered for promotion so how could he get knowledge of the same? The plea taken by the appellant that he came to know about the said order on 19.10.2017 and filed departmental appeal on 20.10.2017 appeared to be convincing. This plea of the appellant has not been repelled by the respondents and it gives credence that his stance was not only correct but had the support of relevant documents. Moreover, issues relating to promotion, confirmation and seniority are not hit by limitation as held by superior court in numerous judgments. In addition to this it is against the principles of substantive justice to deprive a civil servant of his due right just on the strength of technicalities. In this case illegalities, favoritism and arbitrary acts of the respondents have been proved beyond any shadow of doubt, therefore, the appellant has every right to be treated according to merit.

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06. The respondents have no disputed the fact that the appellant was appointed as Constable vide order dated 16.08.1982 and was promoted to the rank of Head Constable vide order dated 29.12.2014. On the other hand private respondent no.4 was appointed as Driver Constable on 09.03.1999. It is clarified that perusal of his appointment order clearly indicates that the word "Driver" was inserted later on through fraudulent means/forgery. So far as his promotion as Head Constable made vide order dated 09.12.2004 was concerned, the same was made on out of turn basis which had been held to be illegal by the apex court and this Tribunal in numerous judgments. Score of employees of the Police Department were demoted on the strength of these judgments thus the said order was patently illegal and void. His order as Head Constable dated 22.04.2008 was also without legal backing. The respondents have not indicated whether he had undergone relevant course before

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 MEMBER  
 State Tribunal  
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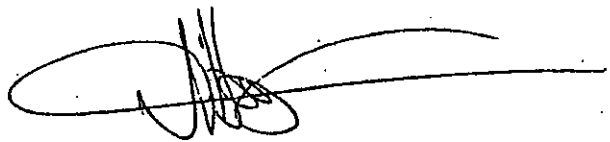
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promotion to the higher rank? Furthermore, order of his confirmation was also not produced by the respondents and in these circumstance, we believe that he was never confirmed in the relevant <sup>rank</sup> then how proper place in order of seniority was assigned to the private respondent? Resultantly promotion order of private respondent no.4 was illegal and void ab-inito and required to be struck down.

07. As a sequel to the above, the appeal is accepted, the impugned order dated 11.03.2015 are set aside and the respondents are directed to consider the case of promotion of the appellant from the due date. Parties are left to bear their own costs.

File be consigned to the record room.




(AHMAD HASSAN)  
Member  
Camp court Swat



(MUHAMMAD HAMID MUGHAL)  
Member

ANNOUNCED  
03.12.2019

Certified true copy  
  
Khyber Pakhtunkhwa  
Swat Tribunal,  
Peshawar

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