


# FORM OF ORDER SHEET

Court of \_\_\_\_\_

**Appeal No.** \_\_\_\_\_

**1405/2023**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/06/2023	<p>The appeal of Sahibzada Muhammad Qaiser presented today by Mr. Khaled Rehman Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1105/2023

Sahibzada Muhammad Qaiser ..... Appellant

Versus

Inspector General of Prisons KPK and others ..... Respondents

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5.	Order in Writ Petition No. 1133/2020	18.01.2021	C	13-14
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Through


  
Appellant

**Khaled Rahman**  
Advocates, Supreme Court

&

  
**Muhammad Amin Ayub**

&

  
**Muhammad Ghazanfar Ali**  
Advocates, High Court  
4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0313-9040434

Dated: 20/06/2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1405 /2023

**Sahibzada Muhammad Qaiser,**

S/o Sahibzada Muhammad Faridoon,

R/o Village Kota Tehsil & District Swabi presently,

AIG Prisons, RPO, Peshawar.....**Appellant**

VERSUS

1. **The Inspector of Prisons Khyber Pakhtunkhwa**  
Civil Secretariat, Peshawar.
2. **The Secretary,**  
Govt. of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department,  
Civil Secretariat, Peshawar.
3. **Mr. Umair Khan,**  
AIG/Superintendents District Jail/Deputy  
Commandant.
4. **Mr. Amin Shoaib,**  
AIG/Superintendents District Jail/Deputy  
Commandant.
5. **Mr. Najam Hussain Abbasi,**  
AIG/Superintendents District Jail/Deputy  
Commandant,  
Respondents No.3-5 through Respondent No.1.....**Respondents**

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**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED FINAL SENIORITY LIST OF BPS-18 OFFICERS CIRCULATED VIDE LETTER DATED 29.12.2022 WHEREBY THE APPELLANT HAS BEEN PLACED AT SERAIL NO.7 INSTEAD OF SERIAL NO.4 AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL APPEAL BUT THE SAME WAS NOT RESPONDED.**

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**PRAYER:**

On acceptance of the instant appeal, the impugned Seniority List dated 29.12.2022 of BPS-18 Officers may graciously be modified by placing the appellant senior to the Respondents No.3-5 being junior.

---

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. **That** appellant was initially appointed as Assistant Superintendent Jail on 16.02.1992. Later on, promoted as Senior Superintendent Jail vide order dated 07.07.2010 (*Annex:-A*).
2. **That** thereafter, appellant got promoted to the rank of Deputy Superintendent Jail (BPS-17) on acting charge basis vide order dated 28.04.2015 (*Annex:-B*) as appellant had dearth of service-length of 02 months & 09 days.
3. **That** appellant completed his length of service for regular promotion to the post of Deputy Superintendent Jail (BPS-17) on 07.07.2015. The Respondents Department was supposed to have promoted the appellant immediately on completion of the aforesaid period but it delayed the matter without any lawful justification. It is significant to mention here that during intervening period Respondents No.3-5 were directly appointed against the rank of Deputy Superintendent on 09.10.2015, who have now been placed at Serial No. 4,5 & 6 respectively in the impugned seniority list.
4. **That** appellant was regularly promoted to the rank of Deputy Superintendent Jail (BPS-17) on 09.02.2016 and thus due to the belated act on the part of the Respondents, the appellant lost his seniority to the Private Respondents No.3-5 for no fault of his own.
5. **That** thereafter, appellant filed a Writ Petition No. 1133/2020 in the Peshawar High Court, Mingora Bench for antedation of his promotion to the post of Deputy Superintendent Jail (BPS-17) w.e.f 07.07.2015. The Writ Petition was subsequently transferred to the principle seat at Peshawar and disposed of vide order dated 18.01.2021 (*Annex:-C*) on the point of jurisdiction with observation that the appellant should approach the proper forum i.e the Khyber Pakhtunkhwa Service Tribunal.
6. **That** since by then no fresh final Seniority List of BPS-17 Officers was issued, therefore, appellant could not approach the proper forum, however, in the meanwhile, the appellant alongwith others were promoted to the post of

AIG/Superintendent (BPS-18) without circulating the final seniority list of BPS-17 officers. The Impugned Final Seniority List of AIGs/Superintendents BPS-18 was circulated on 29.12.2022 (**Annex:-D**) wherein the name of the appellant has been placed at Serial No.7, below the names of Respondents No.3-4.

7. **That** being aggrieved of the impugned Final Seniority List *ibid*, appellant challenged the same through Departmental Representation (**Annex:-E**) through proper channel but the same has not been disposed of within the statutory period of 90 days, hence this appeal *inter-alia* on the following grounds:-

**Grounds:**

- A. **That** Respondents have not treated appellant in accordance with law, Rules and policy on subject and acted in violation of Article 4, 10A & 27 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully delayed the regular promotion of appellant and appointed Respondents No.3-5, which is unjust, unfair and hence not sustainable in the eye of law.
- B. **That** as per Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973: **a civil servant possessing such minimum qualifications as may be prescribed, shall be promoted against the next higher grade.** In the same tone, Rule 7(3) of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 mandates:- **persons possessing such qualification and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or Provincial Selection Board for promotion or transfer as the case may be.** Thus appellant was/is having an indefeasible right under the law for promotion. Admittedly appellant got promoted to the rank of Deputy Superintendent Jail BPS-17 on acting charge basis vide order dated 28.04.2015 as the he had dearth of service-length of 02 months & 09 days, therefore, appellant had to be permanently promoted to the subject post when he completed the prescribed period. Reliance is placed on Judgment 2013 PLC (CS) 786, 1985 SCMR 1158, 2000 PLC (CS) 697, 2021 PLC (CS) 362:

**2013 PLC (CS) 786 Supreme Court**

---Ante-dated promotion---Promotion with effect from date of availability of vacancy -- Civil servant (petitioner) was inducted in BS-17 and was subsequently given various assignments in BS-18 on current charge basis ---Grievance of civil servant was that he should have been considered for promotion with effect from the date when the post in BS-18 fell vacant --- Service Tribunal dismissed appeal filed by civil servant --- Validity --- Civil servant was inducted into service in BS-17 -- Subsequently he was promoted to BS-18 on current-charge basis, however by that time he was eligible and qualified to be promoted to BS-18 and even vacancies were available---Petition for leave to appeal to Supreme Court was converted into appeal and allowed, and competent authority was directed to consider civil servant for promotion to BS-18 with effect from the date when the vacancy occurred, provided he was qualified to be considered for the same.

#### 1985 SCMR 1158

---Seniority---Quota fixed for direct recruitment and promotion in filling vacancy in higher posts--Direct recruits and promotees--Joint seniority list--Promotees to be considered for promotion with effect from dates when vacancies in their quota became available--Joint seniority list of officers directly recruited and those promoted to be issued according to Rules. [p. -1159] A

#### 2000 PLC (CS) 697

---Rr.13.18 & 13.20---Punjab Service Tribunals Act (IX of 1974), S.4-- Constitution of Pakistan (1973), Art.4--Anti-dated promotion/confirmation---Entitlement---Civil servant despite being senior was ignored whereas juniors to him were granted anti-dated confirmation/promotion-- Service record of junior officers was not better than the civil servant and Authority had not given any valid reason or justification to give the civil servant a different treatment except that powers under Rr.13.18 & 13.20 of Punjab Police Rules, 1934 were discretionary and that Authority in his discretion did not find it fit case to permit period of officiating service to be counted towards period of probation---Powers of exercising discretion vesting in Authority, must be bounded by rules of equity, fairplay and justice and could not be exercised arbitrarily and capariciously---Failure to treat all like persons in like situations without any reasonable distinction would tantamount to discrimination which was not allowed by law and discrimination in like situation would offend against Art. 4 of the Constitution of Pakistan (1973) and also would be violative of principles of Sharia.

- C. That the regular promotion of the appellant was delayed without any just cause. It is settled principle of law that in case of direct recruitment and promotion, preference is to be given to promotion quota. Reference is made to the following judgments:-

#### 1993 SCMR 2258

---Promotion---Validity---Promotions as per General Principles of Seniority (ESTACODE, 1983, Serial No. 195), should be first filled in before filling in quota of direct recruitment---Such principal, however, would not vitiate promotion of employee as she could not be punished for any alleged lapse on the part of department concerned.

2017 PLC (CS) 242

*---Quota for initial appointment and departmental promotion---  
Distribution of posts---Procedure---If a candidate for direct recruitment and a candidate claiming promotion to a particular job simultaneously had contested for the job then the candidate claiming promotion should be given priority---Three posts existed in the department for which 50% quota had been provided for departmental promotion and 50% had been reserved for initial recruitment---If all three posts are divided between the two components then right of person claiming promotion should be considered on priority and second post should go to the quota reserved for direct recruitment and third post again would go to the departmental promotion---  
Out of three posts two would fall in favour of quota reserved for promotion and one post would fall for quota reserved for initial recruitment---Post reserved for departmental promotion should be filled first before making direct recruitment---One post had been rightly requisitioned by the department and after due process a candidate had been appointed against the advertised post on recommendation of Public Service Commission---  
Petitioner had no bone of contention to fight upon---Writ petition was dismissed in circumstances.*

- D. **That** it has now become settled law that appointment in the public sector is a trust and Authorities are supposed to fill the posts in accordance with law and Rules. Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 stipulates the method of appointment in the following modes: (i) Firstly by promotion or transfer in accordance with the provision contained in Part-II; and (ii) Secondly by initial recruitment in accordance with the provisions contained in Part-III thereof. However, Respondent Department badly failed to comply with the law. Reference is made to the following Judgment.

2003 SCMR 291

*"Appointment in public sector---Duties of public authorities---Scope---Such appointment is a trust in the hands of public authorities and it is their legal and moral duty to discharge their functions as trustee with complete transparency as per requirement of law so that no person who is eligible to hold such post is excluded from the selection and is deprived of his right of appointment in service."*

- E. **That** as per direction of the Hon'ble Apex Court all appointments, promotion and transfer are to be made strictly in accordance with law and Rules for the sake of good governance and to run the state affairs smoothly but only direct recruitment has been made which is not only against the policy in vogue but also against the dicta of the Hon'ble Apex Court. Moreover, appellant was/is eligible to be promoted against the subject post when he completed the length of service for regular promotion but he was unlawfully not promoted which amounts to usurp her right of career progression, which is also blatant violation

of Article-3 & 4 of the Constitution of the Islamic Republic of Pakistan, 1973.

- F. That appellant is eligible senior, over and above qualified for promotion to next higher grade but for no valid and justified reasons his case for promotion was withheld which caused financial loss to appellant on the one hand and damaged his career progression on the other. The unlawful omission on the part of the Respondents cannot be justified under any canon of law, justice and fair play.
- G. That it is cardinal principle of law no one is responsible for the acts of the public functionaries. The delay caused by the Respondents Department cannot be attributed to the appellant and therefore, for the actions of the Department, the appellant should not be made to suffer, therefore, appellant is entitled for his due seniority in accordance with law w.e.f 07.07.2015 and accordingly, the seniority needs to be modified to that effect.
- H. That appellant would like to offer some other additional grounds during the course of arguments when the stance of the Respondents is known to the appellant.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

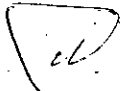
  
Appellant

**Khaled Rahman**  
Advocate, Supreme Court

&

  
**Muhammad Amin Ayub**

&

  
**Muhammad Ghazanfar Ali**  
Advocates, High Court

Dated: 30/06/2023



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2023

Sahibzada Muhammad Qaiser ..... Appellant

Versus

Inspector General of Prisons KPK and others ..... Respondents

Affidavit

I, Sahibzada Muhammad Qaiser, S/o Sahibzada Muhammad Faridooon, R/o Village Kota Tehsil & District Swabi presently, AIG Prisons, RPO, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

*Sahibzada Muhammad Qaiser*  
Deponent

Identified by: *[Signature]*  
Khaled Rahman  
ASC

ATTESTED  
Gui Daraz Khan  
Oath  
Commissioner  
Advocate High Court Peshawar  
*[Signature]*

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. \_\_\_\_\_/2023

Sahibzada Muhammad Qaiser ..... Appellant

Versus

Inspector General of Prisons KPK and others ..... Respondents

**Application for condonation of delay (if any) in filing the instant Service Appeal.**

Respectfully Sheweth,

1. That the titled appeal is being filed in this Hon'ble Tribunal which is yet to be fixed for hearing.
2. That appellant has called in question the Final Seniority List of BPS-18 Officers. It is submitted that owing to worst law & order situation in the Province specially in Peshawar where in recent past there was a Suicide Bomb blast at Peshawar Police Lines Mosque. Appellant being head of the Central Jail, Peshawar had to take necessary measures because notorious offenders are confined into the Centre Jail where the prevailing situation could create serious security risk for the Police Force as well as integrity of the motherland.
3. That due to aforesaid circumstances, appellant could not vigilantly pursue the instant matter. Moreover, it has been held time and again by the Apex Court that the question of limitation is a mixed question of facts and law and it should not be made a hurdle where the claim of the claimant is based upon legal footings and where there is clear apprehension that if the said relief was not granted to him, it will adversely affect the service career of an employee.
4. That valuable rights of the appellant are involved in the instant case and it is highly in the interest of justice to condone the delay otherwise the appellant will be put to dire troubles.
5. That it has become a settled legal principle that technicalities including limitation are to be avoided for the safe administration of justice.

It is, therefore, humbly prayed that the delay (if any) caused in filing the instant appeal may graciously be condoned.

*Sahibzada Muhammad Qaiser*

Applicant/Appellant

Through

Khaled Rahman,  
ASC

Dated: 20/06/2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2023

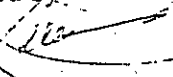
Sahibzada Muhammad Qaiser ..... Appellant

Versus

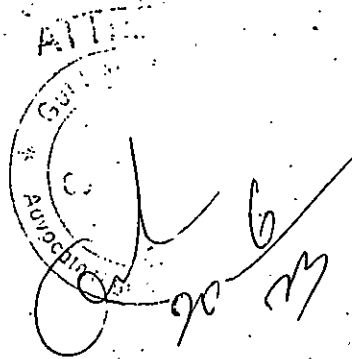
Inspector General of Prisons KPK and others ..... Respondents

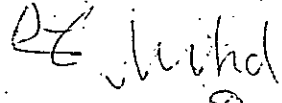
Affidavit

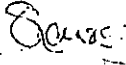
I, Sahibzada Muhammad Qaiser, S/o Sahibzada Muhammad Faridooon, R/o Village Kota Tehsil & District Swabi presently, AIG Prisons, RPO, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this Application are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

Identified by 

Khaled Rahman  
ASC





Deponent 

10

ANNEXURE "A"

OFFICE OF THE  
INSPECTOR GENERAL OF PRISONS  
KHYBER PAKHTUN KHWA PESHAWAR

No. 13446

Dated 07-07-2011

ORDER

In pursuance to the recommendation of Departmental Promotion Committee meeting held on 03-06-2011, the following Assistant Superintendant Jail (BPS-14) are hereby promoted to the rank of Senior Assistant Superintendant Jail (BPS-16) on regular basis with immediate effect:-

1. Mr. ... Ahmad
2. Mr. ...
3. Mr. ...
4. Mr. ...
5. Mr. ...
6. Mr. ...
7. Mr. ...
8. Mr. ...
9. Mr. ...
10. Mr. ...
11. Mr. ...
12. Mr. ...
13. Mr. ...
14. Mr. ...
15. Mr. ...
16. Mr. ...
17. Mr. ...
18. Mr. ...
19. Mr. ...
20. Mr. ...
21. Mr. ...
22. Mr. ...
23. Mr. ...
24. Mr. ...
25. Mr. ...
26. Mr. ...
27. Mr. ...
28. Mr. ...

DS-1/112 Prof. B...  
Prof. ...  
Prof. ...

2/11/11  
7/7/11

The above named officers will be on probation for a period of one year in term of Section 6(2) of Khyber Pakhtun Khwa Civil Service Act 1975. Their posting order will be issued separately.

INSPECTOR GENERAL OF PRISONS,  
KHYBER PAKHTUN KHWA PESHAWAR.

13447-13449

Copy of the above is forwarded to:-

1. The Secretary to Government of Khyber Pakhtun Khwa Home and T.As Department Peshawar for information with reference to Home Department letter No.12-SOP/HR/1011 dated 27.6.11
2. All Superintendents of Jails Lockups in the Khyber Pakhtun Khwa for information please.
3. The Commissioner General Khyber Pakhtun Khwa Peshawar.
4. All District Accounts Officers in Khyber Pakhtun Khwa for information.

(SALIMZADA FAZEL-UL-HAQ)  
ADMINISTRATIVE OFFICER  
FOR INSPECTOR GENERAL OF PRISONS,  
KHYBER PAKHTUN KHWA PESHAWAR.

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etc

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A

OFFICE OF THE  
INSPECTOR GENERAL OF PRISONS  
KHYBER PAKHTUNKHWA  
No. 13446/-  
Dated 07-7-2010/-

ORDER:

In pursuance to the recommendation of departmental promotion committee meeting held on 09/06/2010, the following assistant superintendent Jail (BPS-14), hereby promoted to the rank of senior assistant superintendent Jail (BPS-16) on regular basis with immediate effect:-

1. Mr. Fayaz Ahmad
2. Mr. Mukhtiar Haidar
3. Mr. Khalid Wahab
4. Mr. Junaid Muhammad
5. Mr. Sahibzada Muhammad Qasir
6. Mr. Saeed Ahmad
7. Mr. Alam Zeb
8. Mr. Falak Sher
9. Mr. Abdul Bari
10. Mr. Muhammadi Arif Khan
11. Mr. Aseem Khan
12. Mr. Hashmatullah
13. Mr. Muhammadi Naseem S/o Nasrullah Jan
14. Mr. Sayyar Ahmad
15. Mr. Jalat Khan
16. Mr. Dilawar Khan
17. Mr. Amin Ul Haq
18. Mr. Muhammad Naseem S/o Abdur Rahman
19. Mst. Fauzia Taj
20. Mr. Zahoor Elahi
21. Mr. Baitullah
22. Mr. Bakht Rawan
23. Mr. Syed Akhtar Hussain Shah
24. Mr. Zafarullah Jan
25. Mr. Noor UL Basar
26. Mr. Muhammad Jamil
27. Mr. Muhammad ISrar
28. Mr. Jangrez Khan
29. Mr. Gul Alam.

The above named officers will be on probation for a period of one year in term of section 6 (2) of Khyber Pakhtunkhwa civil servant act 1973. Their posting order will be issued separately.

INSPECTOR GENERAL OF PRISONS  
KHYBER PAKHTUNKHWA PESHAWAR

Endsi No. 13447-13491,  
Copy of the above is forwarded to:-

1. The secretary to Government of Khyber Pakhtunkhwa Home and Tribal T.As department Peshawar for information with reference to Home department letter No. 1/5-SO(Pesh)D/ dated 2-7-2010.
2. All superintendent of jail/lockups in the Khyber Pakhtunkhwa for information please.
3. The accountant General of Khyber Pakhtunkhwa Peshawar.
4. All district accounts officers in Khyber Pakhtunkhwa for information.

(SAHIBZADA FAZLI RAHMAN)  
ADMINISTRATIVE OFFICER  
INSPECTOR GENERAL OF PRISONS  
KHYBER PAKHTUNKHWA PESHAWAR

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12  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

ANNEXURE B

NOTIFICATION PRISONS DEPARTMENT

Inspector General of Prisons

No. SO(Prisons)-HD/I-2/2015/Vol-V/BC-137262. The Competent Authority in consultation with the Departmental Promotion Committee is pleased to appoint the following Senior Assistant Superintendent Jail (BPS-16) as Deputy Superintendent Jail (BPS-17) on acting charge basis with immediate effect in the Khyber Pakhtunkhwa Prisons Department:-

1. Mr. Fayaz Ahmad, attached to Central Prisons Peshawar.
2. Mr. Mukhtiar Haider, Attached to District Jail Lakki Marwat.
3. Mr. Khalid Wahab, attached to District Jail Abbottabad.
4. Sahibzada Muhammad Qaiser, attached to Central Prison Peshawar.
5. Mr. Saood Ahmed, attached to District Jail Mardan.
6. Muhammed Ayub, attached to Central Prison Haripur.

The services of the above named officers are hereby placed at the disposal of Inspector General of Prisons Khyber Pakhtunkhwa for their further posting as Deputy Superintendent Jail (BPS-17).

Secretary to Government of  
Khyber Pakhtunkhwa Home & T.As  
Department Peshawar

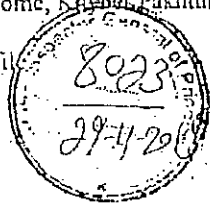
Dated the, 28<sup>th</sup> April, 2015, Peshawar.

(Rehmat Ali Wazir)  
SECTION OFFICER (PRISONS)

No. SO(Prisons)-HD/I-2/2015/Vol-V/BC-137262.- Dated the, 28<sup>th</sup> April, 2015,  
Peshawar.

A copy is forwarded for information and necessary action to:-

1. Inspector General of Prisons Khyber Pakhtunkhwa Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar, for information and necessary action.
3. District Accounts Officers, Lakki Marwat, Abbottabad, Mardan and Haripur.
4. Director IT, Home & TAs Department, Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Home, Khyber Pakhtunkhwa.
6. PS to Special Secretary Home, Khyber Pakhtunkhwa.
7. Officer Concerned.
8. Master file/Office Order file



SECTION OFFICER (PRISONS)

APPROVED

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etc

B

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H.A.C.

# PESHAWAR HIGH COURT, PESHAWAR

## FORM OF ORDER SHEET

Court of.....

Case No.....of.....



Serial No. of Order of Proceedings	Date of Order of Proceedings	Order or other Proceedings with Signature of Judge*
1	2	3
	18.01.2021	<p><b><u>Writ petition No. 1133-P/2020</u></b></p> <p>Present: Mr. Khalid Rehman, Advocate, for the petitioner. *****</p> <p><b><u>MUHAMMAD NAEEM ANWAR, J.-</u></b> Sahibzada Muhammad Qaiser, the petitioner, through the instant constitutional petition has asked for issuance of an appropriate writ directing the respondents to consider his five year tenure for the purpose of his regular promotion as Deputy Superintendent Jail (BPS-17) and his promotion be counted from 07.07.2015.</p> <p>2. We have gone through the available record carefully and considered the submissions made by the learned counsel for the petitioner.</p> <p>3. The case of the petitioner is that he was initially appointed as Assistant Superintendent Jail on 16.02.1992, and, later on, promoted as Senior Assistant Superintendent Jail, vice order dated 07.07.2010. After completing the requisite period for promotion, he was notified as Deputy Superintendent Jail on 29.04.2015; accordingly, he was posted at Swat on acting charge basis as Deputy</p>

~~ATTESTED~~

ATTESTED  
EXAMINER  
Peshawar High Court.

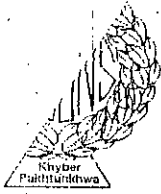
		<p>Superintendent and, now, the grievance of the petitioner is that though he was promoted on regular basis to the Post of Deputy Superintendent Jail (BPS 17) but from 09.02.2016 while, as per rule, he was required to be promoted from 07.07.2017.</p> <p>4. Admittedly, the petitioner is Government Servant and sought promotion against the post of Deputy Superintendent Jail w.e.f. 07.07.2015 on regular basis. Since, in essence and substance, the matter in hand, being related to the terms and conditions of service, therefore, can well be urged before the departmental authority in the first instance and then before the Service Tribunal, and this Court, in view of bar contained in Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 can't intervyene in such like matters, thus, we don't feel persuaded to admit this writ petition to regular hearing, which would amount to an exercise in futility and wastage of Court's time.</p> <p>5. So, in view of the above discussion, the instant petition being without any substance is hereby dismissed in <i>limine</i>.</p> <p><u>Announced.</u> 18.01.2021</p> <p style="text-align: right;">JUDGE  JUDGE</p> <p style="text-align: center;">DB. (Hon'able Mr. Justice Muhammad Nasir Mehfooz &amp; Hon'able Mr. Justice Muhammad Naeem Anwar.</p>
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No. 23906  
 Date of Pre. 26/11/2021  
 No of L. 2  
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 Total 2  
 Date of Pre. 30/11/2021  
 Date of Dec. 30/11/2021  
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 30 JAN 2021





**INSPECTORATE GENERAL OF PRISONS  
KHYBER PAKHTUNKHWA PESHAWAR**

091-9210334, 9210406 091-9213445

No. <sup>15</sup> 48/24-J-22 - 47853-62 I-WE

Dated 29-12-2022

To,

The Superintendents:

1. Regional Prisons Office Peshawar.
2. Central Prison Peshawar, Mardan, Haripur, D.I Khan, Karak & Bannu.
3. District Jail-Timergara, Mansehra, Kohat.

Subject: **FINAL SENIORITY LIST OF AIG / SUPERINTENDENT JAIL (BPS-18) AS  
STOOD ON 01-08-2022/NOTIFICATION.**

Memo:

I am directed to refer to the subject and to forward herewith a copy of Notification No:SO (Prison-I) HD/1-57/Seniority BPS-18/2022 dated 26-12-2022 received from Government of Khyber Pakhtunkhwa Home & T.As Department, on the captioned subject (self-explanatory) for information of the officers concerned please.

DEPUTY DIRECTOR(E)  
INSPECTORATE GENERAL OF PRISONS,  
KHYBER PAKHTUNKHWA PESHAWAR

Endst: No. \_\_\_\_\_ /-

Copy of the above is forwarded to Secretary to Government of Khyber Pakhtunkhwa Home & TA's Department Peshawar notification referred to above.

DEPUTY DIRECTOR(E)  
INSPECTORATE GENERAL OF PRISONS,  
KHYBER PAKHTUNKHWA PESHAWAR

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16



**NOTIFICATION**

**Prisons (Prison-II) HD/1-57/Seniority BPS-18/2021**: In pursuance of Section-8(1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1980, Final Seniority list of A.I.G./Superintendents District Jail/Deputy Commandant (BPS-18) as it stood on 01-08-2021 is notified/circulated for general information of the officers concerned.

A.I.G Prisons (BPS-18).....	=08 posts
Deputy Commandant (BPS-18).....	=01 post
Superintendent District Jail (BPS-18).....	=10 posts

Total Sanctioned strength (BPS-18) ..... = 16 posts

Sl. No.	Name of Officer	Academic Qualification	Date of Birth & Domicile	Date of first entry into Govt service	Regular appointment/promotion to present post			Present posting	Remarks
					Date	BPS	Method of Recruitment		
1.	Masood ur Rehman	(MA/IR/LLB)	10-03-1964 Kohat	18-01-1986 (ASJ BS-11)	14-12-2017	18	By promotion	Supdt. Jail Peshawar BPS-19 on a.c.w.e.f 11-03-2021.	The inter-se-seniority in respect of officers from S.No.01 to 10 are maintained as in the lower cadre i.e Deputy Superintendent Jail.
2.	Samiullah Khan.	(BA/LLB)	18-3-1982 Kohat.	23-6-2010 DSJ BS-17	06-10-2021	18	By promotion	Supdt. DJ Kohat	
3.	Tahir Shahbaz Khan Wazir	(MA Political science/LLB)	10-2-1979 FR Bannu	23-4-2013 DSJ BS-17	05-10-2021	18	By promotion	Supdt. CP Bannu(OPS).	
4.	Umair Khan.	(MSc/M.Phil/LLB)	01-10-1987 D.I.Khan.	09-10-2015 DSJ BS-17	04-10-2021	18	By promotion	Inspectorate of Prisons Peshawar	
5.	Amin Shuaib.	B.A/LLM	04-2-1985 Dir Upper.	14-10-2015 DSJ BS-17	01-10-2021	18	By promotion	Supdt. DJ Timergara	
6.	Najam Hussain Abbasi.	BA/LLB	20-5-1986 Haripur.	09-10-2015 DSJ BS-17	06-10-2021	18	By promotion	Supdt. DJ Mansehra	
	Sahibzada Muhammad Qaiser	(B.A/LLB)	10-1-1970 Swabi	16-2-1992 ASJ BS-11	01-10-2021	18	By promotion	A.I.G Prisons at RPO Peshawar	

C/O P-2

C/O P-2

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**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT**

**NOTIFICATION**

**(Prison-I) HD/1-57/Seniority BPS-18/2022.** In pursuance of Section-8 (1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion & Transfer) Rules, 1989. Final Seniority list of A.I.G./ Superintendent District Jail/Deputy Commandant (BPS-18) as it stood on 01.08.2022 is notified/circulated for general information of the officers concerned.

A.I.G Prisons (BPS-18).....=05 posts

Deputy Commandant (BPS-18).....=01 posts **Total Sanctioned strength (BPS-18).....=16 posts**

Superintendent District Jail (BPS-18).....= 10 posts

S#	Name of Officer	Academic Qualification	Date of Birth & Domicile	Date of first entry into Govt. Service	Regular appointment/promotion to present posts			Present Posting	Remarks
					Date	BPS	Method of Recruitment		
1.	Maqsood Ur Rehman	MA.IR/LLB	10.03.1964 Kohat	18.01.1986 ASJ BS-11	14.12.2017	18	By Promotion	Supt: Jail Peshawar BPS-19 on a.o.b.w.e.f 11.08.2021	The inter-seniority in respect of officers from S. No. 01 to 10 are maintained as in the lower cadre i.e deputy Superintended Jail C/O P-2
2.	Samiullah Khan	BA/LLB	18.03.1982 Kohat	23.06.2010 DSJ BP-17	06.10.2021	18	By Promotion	Supt: DJ Kohat	
3.	Tahir Shahbaz	MA Political Science/LLB	10.02.1979	23.04.2013 DSJ BS-17	05.10.2021	18	By Promotion	Supt: CP Bannue OPS	
4.	Umair Khan	MSc/M.Phil/LLB	01.10.1987 DI Khan	09.10.2015 DSJ BS-17	04.10.2021	18	By Promotion	Inspectorate of Prisons Peshawar	
5.	Amin Shuaib	BA/LLM	04.02.1985 Dir Upper	14.10.2015 DSJ BS-17	01.10.2021	18	By Promotion	Supt: DJ Timergara	
6.	Najam Hussian Abbasi	BA/LLB	20.05.1986 Haripur	09.10.2015 DSJ BS-17	06.10.2021	18	By Promotion	Supt: DJ Mansehra	
7.	Sahibzada Muhammad Qaiser	BA/LLB	15.01.1970 Swabi	16.02.1992 ASJ BS-11	01.10.2021	18	By Promotion	A.I.G Prisons at RPO Peshawar	

16-A)

16B



GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT

Sl. No.	Name of Officer	Academic Qualification	Date of Birth - Domicile	Date of First entry into service	Regular appointment/ promotion to present post			Present Posting	Remarks
					Date	BPS	Method of Recruitment		
8.	Muhammed Riaz.	MA (English/ LLB)	3-3-1985 Mohmand.	3-8-2016 DSJ BS-17	27-05-2022	18	By promotion	Supdt, DJ Buner at Daggar	
9.	Muhammed Waseem Khan.	LLB (Hon)	31-12-1989 Chasralda	3-8-2016 DSJ BS-17	03-06-2022	18	By promotion	Supdt, D.J Abbottabad	
10.	Abdul Bari	(M.A)	9-4-1967 Mardan	17-2-1992 ASJ BS-11	26-05-2022	18	By promotion	A.I.G Prisons at RPO Mardan	

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA,  
HOME & TRIBAL AFFAIRS DEPARTMENT.

Encls: even No. & date.

Copy forwarded to :-

- 1) The Inspector General of Prisons Khyber Pakhtunkhwa.
- 2) Officers concerned.

27/11/22  
27/12/22

SECTION OFFICER-(PRISON-F)  
29/12/22

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**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME AND TRIBAL AFFAIRS DEPARTMENT**

(16-B)

S#	Name of Officer	Academic Qualification	Date of Birth & Domicile	Date of first entry into Govt. Service	Regular appointment/promotion to present posts			Present Posting	Remarks
					Date	BPS	Method of Recruitment		
8.	Muhammad Riaz	MA.(English /LLB)	03.03.1985 Mohmand	3.08.1985 BS-17	27.05.2022	18	By Promotion	Supt: DJ Buner at Daggar	
9.	Muhammad Waseem Khan	LLB	31.12.1989 Charsadda	03.08.2016 DSJ BP-17	08.06.2022	18	By Promotion	Supt: DJ Abbottabad	
10.	Abdul Bari	MA	09.04.1967 Mardan	17.02.1992 ASJ BS-11	26.05.2022	18	By Promotion	A.I.G Prisons. at RPO Mardan	

Endst: Even No. & Dated

Copy forwarded to:

1. The Inspector General of Prisons Khyber Pakhtunkhwa
2. Officers concerned

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

SECTION OFFICER PRISON



OFFICE OF THE  
DEPUTY INSPECTOR GENERAL OF PRISONS  
REGIONAL PRISON OFFICE PESHAWAR

No. 72/100 Dt: 12-01-2023

To,

The Inspector General of Prison,  
Khyber Pakhtunkhwa, Peshawar.

- 17

*Amir E*

**SUBJECT:- DEPARTMENTAL REPRESENTATION AGAINST THE FINAL SENIORITY LIST OF BPS - 18 OFFICERS CIRCULATED VIDE LETTER DATED 29-12-2022 WHEREBY THE APPELLANT HAS BEEN PLACED AT SERIAL NO. 07 INSTEAD OF SERIAL NO. 04**

Enclosed, please find herewith an application (self – explanatory) in respect of Mr. Sahib Zada Muhammad Qaiser, DIG Regional Prison Office, Peshawar for further necessary action, please.

*S. T. M. Qaiser*  
DEPUTY INSPECTOR GENERAL OF PRISONS  
REGIONAL PRISON OFFICE PESHAWAR

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To

The Inspector General of Prisons,  
Khyber Pakhtunkhwa, Peshawar.

**Subject: Departmental Representation against the Final Seniority List of BPS-18 Officers circulated vide letter dated 29.12.2022 whereby the appellant has been placed at Serial No.7 instead of Serial No.4.**

Respected Sir,

1. That appellant was initially appointed as Assistant Superintendent Jail on 16.02.1992. Later on, promoted as Senior Superintendent Jail vide order dated 07.07.2010. Thereafter, appellant got promoted to the rank of Deputy Superintendent Jail (BPS-17) on acting charge basis vide order dated 28.04.2015 as the appellant had dearth of service-length of 02 months & 09 days.
2. That the appellant completed his length of service for regular promotion to the post of Deputy Superintendent Jail (BPS-17) on 07.07.2015. The Department was required to have promoted the appellant immediately on completion of the aforesaid period but it delayed the matter without any lawful justification and during the intervening period 03 new Deputy Superintendents were appointed namely Mr. Umair Khan on 09.10.2015, Mr. Amin Shoaib on 14.10.2015 and Mr. Najam Hussain Abbasi on 09.10.2015, who have now been placed at Serial No.4, 5 & 6 respectively in the impugned Seniority List.
3. That appellant was regularly promoted to the rank of Deputy Superintendent Jail (BPS-17) on 09.02.2016 and thus due to the belated act on the part of the Department, the appellant lost his seniority to the three Officers mentioned above for no fault of his own.
4. That the appellant filed a Writ Petition No.1133-M/2020 in the Peshawar High Court, Mingora Bench for antedation of his promotion to the post of Deputy Superintendent Jail (BPS-17) w.e.f. 07.07.2015. The Writ Petition was subsequently transferred to the principle seat at Peshawar and disposed of vide order dated 18.01.2021 on the point of jurisdiction with observation that the appellant should approach the proper forum i.e. The Khyber Pakhtunkhwa Service Tribunal.
5. That since by then no fresh Final Seniority List of BPS-17 Officers was issued, therefore, the appellant could not approach the proper forum, however, in the meanwhile, the appellant alongwith others were promoted to the post of AIG/Superintendent (BPS-18) without circulating the Final Seniority List of BPS-17 officers.
6. That now the impugned Final Seniority List of AIGs/Superintendents (BPS-18) has been issued vide letter dated 29.12.2022 wherein the name of the appellant has been placed at Serial No.7, while the three officers mentioned above have been placed senior to the appellant at Serial Nos.4, 5 & 6 respectively.

ATTESTED

7. That the appellant is aggrieved of the impugned Final Seniority List of BPS-18 officers circulated vide letter dated 29.12.2022 and therefore, requests your good-self for its modification on the following grounds inter-alia:-

**Grounds:**

- A. That the regular promotion of the appellant was delayed without any just cause. It is settled legal principle that the promotion quota is to be observed first and then the quota for initial recruitment is to be followed. In view of the Judgment of the Supreme Court of Pakistan **1993 SCMR 2258**.
- B. That it is also settled law that an officer is entitled for promotion with effect from the availability of the vacancy or with effect from his eligibility for the post in terms of Section-9(1) of the Civil Servants Act, 1973 read with Rule-7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. However, the promotion of the appellant was delayed which adversely affected his service career. Reliance is placed **2010 PLC (CS) 760**.
- C. That no one is responsible for the acts of the public functionaries. The delay caused by the Department cannot be attributed to the appellant and therefore, for the actions of the Department, the appellant cannot be made to suffer. **2005 SCMR 177**.
- D. That the appellant is entitled for his due seniority in accordance with law and accordingly the Seniority List needs to be modified to that effect.

It is, therefore, humbly requested that on acceptance of this Departmental Representation, the Final Seniority List *ibid.* may kindly be modified by placing the name of the appellant above the names of three officers mentioned above at Serial No.4.

Yours faithfully

*Sahibzada Muhammad Qaiser*  
**Sahibzada Muhammad Qaiser,**  
AIG Prisons, RPO, Peshawar

Dated: \_\_\_/01/2023

ATTESSED  
*[Signature]*



WAKALAT NAMA

IN THE COURT OF MP Service Tribunal Peshawar

Sahibzada Muhammad Baizer

Appellant(s)/Petitioner(s)

Govt. of VERSUS

Respondent(s)

I/We Appellant do hereby appoint  
Mr. Khaled Rehman, Advocate, Supreme Court, Mr. Muhammad  
Amin Ayub & Muhammad Ghazanfar Ali, Advocates in the above  
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

**AND hereby agree:-**

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Sahibzada Baizer  
Signature of Executants

Khaled Rahman,  
Advocate,  
Supreme Court of Pakistan

&

Muhammad Amin Ayub  
Advocate, High Court

&

Muhammad Ghazanfar Ali  
Advocate, High Court

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off. Tel: 091-2592458.