

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Appeal No. 1898/2022

HAMAYUN

(Appellant)

VERSUS

GOVT. OF KPK & OTHERS

(Respondents)

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DEPONENT

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Appeal No.1898/2022

HAMAYUN

(Appellant)

VERSUS

PPO etc.

(Respondents)

Khyber Pakhtunkhwa
Service Tribunal

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 To 5

Diary No. 6437

Respectfully Sheweth

Dated 13/7/2023

The Respondents respectfully submit as under: -

PRELIMINARY OBJECTIONS.

1. That the Appellant has got no cause of action.
2. That the Appeal is not maintainable under the law.
3. That the Appeal is barred by law & limitation.
4. That the Appellant has not been discriminated in any way.
5. That the Appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the Appellant has approached the Honorable Tribunal with unclean hands.
7. That the Appellant has got no cause of action and locus-standi to file the instant Appeal.
8. That the Appellant has been estopped by his own conduct.

BRIEF FACTS:

1. Correct to the extent that the appellant is a citizen of Pakistan, rest of the para pertain to record.
2. Correct hence, need no comments
3. Correct to the extent that initially the Appellant was serving as a constable in levies\ khassadar force of sub division Wazir and subsequently merged in KP Police of sub Division Wazir in Bannu in 2019. Rest of the para pertains of record hence needs no comments.
4. Incorrect, the Appellant was not absorbed as an ASI but as a constable by the Home and Tribal Affairs Department. Incorrect, DPO Bannu constituted a Scrutiny Committee in order to probe into suspicious/controversial notification regarding absorption of Levis/ Khassadar Police Force. Appellant along with other 10 colleagues were directly absorbed as an ASI despite the truth that, no Scrutiny Committee (comprising DPO, DC/ AG/APA and DAO) had recommended their names for absorption in the Rank of ASI. (Enquiry report is annexed)
5. Pertains to record hence need no comments
6. Correct to the extent that on 11.8.2021 the Appellant was selected for 03 months basic Police training by the DPO Bannu and the list was forwarded to AIG Police Training.

7. Correct to the extent that DPO Bannu sent a general letter to Assistant Inspector General of Police Training regarding provision of data of Inspector/Sub-Inspector ASI/HC/Constable of newly merged Districts for the purpose of demand of vacancies of Inspector/sub-Inspector /HC/ Constable for training and not for verification. (Letter is annexed as annexure-A).
8. Correct to the extent, that RPO Bannu constituted an Enquiry Committee comprising Inspector Muhammad Farooq khan SDPO Cantt., Inspector Rizwan khan SDPO Rural-II and Senior Clerk Javed khan under the chairmanship of SDPO Cantt. They conducted impartial Enquiry and submitted a report to RPO, Bannu. The Enquiry report is enclosed as "A".
9. The absorption of the Appellant was found not proper, therefore the services of the Appellant was suspended on 25.11.2021 till arrival of proper verification from Home Department.
10. Correct hence no comments.
11. Pertains to record hence no comments.
12. Pertains to record hence no comments.
13. Pertains to record hence no comments.
14. Pertains to record hence no comments.
15. Correct to extent that the Appellant received commendation certificates due to his performance of duty.
16. Incorrect it was part of their duty.
17. Correct to the extent that DPO, Bannu constituted the committee to probe into suspicious/ controversial notifications. The Committee observed that the absorption of the Appellant along with other colleague was contrary to Levis &Khasadar Act,2019.
18. Correct to the extent that a major penalty was imposed on the Appellant along with 10 other colleagues after Enquiry proceedings conducted under the Chairmanship of Additional SP, Bannu.
19. Correct hence no comments.
20. Incorrect on the request of DPO, Bannu the Enquiry Committee was constituted at Provincial level to probe into the matter.
21. Incorrect, the appellant has got no cause of action to challenge the lawful order of respondents.

GROUND:


- A. Incorrect the impugned reversion order No. 3897-3906 dated 01.09.2022 is not against the law/ Rule/ Policy.
- B. Incorrect the fundamental right of the appellant has not been blatantly violated by issuing the reversion order of the Appellant rather was issued after scrutinizing the subject cases through Enquiry Committee and after the recommendation of E.O, the impugned order was issued.
- C. Incorrect the reversion order is not illegal/ un law full/ un natural and not null & void in eye of law.
- D. Incorrect, the impugned order was issued after completing codal formalities.

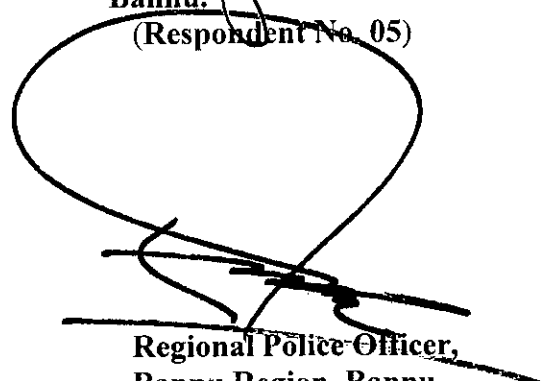
- E. Incorrect the legal maxim "Nemo debet bis vexari (No one could be vexed twice for the same offence)". This maxim is not applicable in the subject case. Fair & impartial Enquiry is the responsibility of the respondent department to dig out the real truth.
- F. Incorrect the Efficiency & Discipline Rule, 2011 is not applicable on Police Force being as it operates under Police Act, 2017 and all proceedings of Police Official is conducted according to the subject Act.
- G. Incorrect when the competent authority is ensured that there is no need of Enquiry and the subject case is based on malafide then the order was issued.
- H. Incorrect if the competent authority considers that fact finding Enquiry report is sufficient for passing the impugned order, in such cases there is no need of general Enquiry proceedings. Rest of the para pertains to record.
- I. The Appellant is reverted to the Rank of constable being his original rank on the basis of proper Enquiry conducted under the Chairmanship of the then Additional SP, Bannu.
- J. Incorrect the Appellant was initially absorbed as a constable in Police Department and in this respect necessary entry was made in his service record.
- K. Incorrect, although law demands that justice may not only be done but it should manifestly be done. Thus, the impugned reversion order No. 3897-3906, dated 01.09.2022 is according to law. It is pertinent to mention that no fundamental right granted by the Islamic Republic of Pakistan have been violated by the respondent but the order was issued after thorough probe by the Enquiry Committee and the establishment of illegality/ irregularity committed by the Appellant along with other colleagues.
- L. Incorrect there is a special law i.e Police Rules, 1975 which is applicable to all Police Officials and Civil Servant Act is not extendable to Police Force.
- M. Incorrect the impugned order is not unlawful against the vested right of the Appellant but was issued after proper enquiry by the respondent.
- N. Reply has already been given in the above para.
- O. Incorrect, no illegal action or omission has been committed by the Respondent Department to infringe the fundamental rights of the Appellant.
- P. Incorrect the appellant was provided all kinds of opportunity as provided under the relevant law, Rules & Policy.
- Q. Incorrect the Respondents have no personal grudges, malafide intension and ulterior motives to conduct second Enquiry but to dig out the real facts about the instant matter and the impugned order was issued after thorough probe.
- R. Incorrect illegal and unlawful action was taken by the respondents but regular Enquiry proceedings were conducted to dig out the real truth in respect of the matter at hand.
- S. As replied in above paras.
- T. Incorrect the actions taken by the respondent is quite legal and lawful.

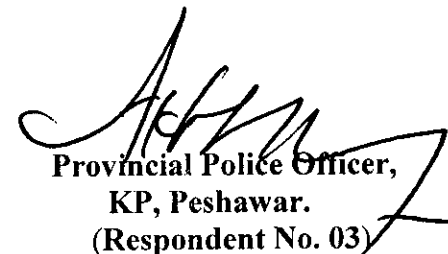
- U. Incorrect the conduct of the respondent is legal and lawful to order 03 Enquiry Committees at different forum is not beyond the mandate and constitutional parameter set by the law.
- V. Incorrect the respondent is bound to probe the matter at District level, Regional level as well as Provincial level.
- W. Pertains to record hence no comments.
- X. The Respondent department may kindly be allowed to raise additional ground at the time of arguments.

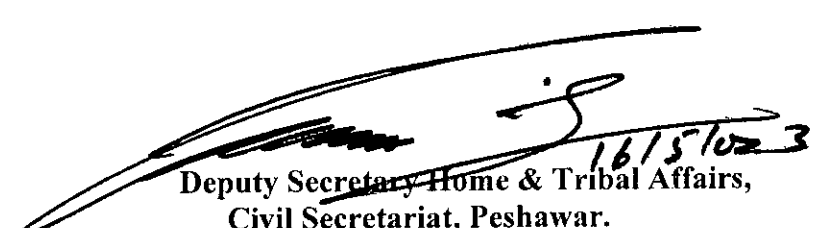
PRAYER:


It is therefore, most humbly prayed that the instant appeal may kindly be dismissed with cost.


District Police Officer,
Bannu.
(Respondent No. 05)


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No. 04)


Provincial Police Officer,
KP, Peshawar.
(Respondent No. 03)


Deputy Secretary Home & Tribal Affairs,
Civil Secretariat, Peshawar.
(Respondent No. 2)


Secretary Home & Tribal Affairs,
Civil Secretariat, Peshawar.
(Respondent No. 01)
Home Secretary,
Khyber Pakhtunkhwa

**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
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(Appellant)

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(Respondents)

AFFIDAVIT.

I MR. Muhammad Farooq Khan DSP Legal Bannu, representative for Respondent No.1 to 5 do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by us are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Honorable Tribunal.



DEPONENT

ATTESTED



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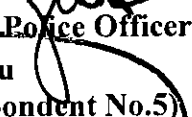
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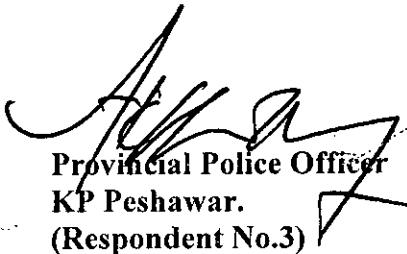
AUTHORITY LETTER.

Mr. Muhammad Farooq Khan DSP Legal Bannu, is hereby authorized to appear before Honorable Tribunal on behalf of the undersigned in the above cited Appeal.


He is authorized to submit and sign all documents pertaining to the present Appeal.


District Police Officer
Bannu
(Respondent No.5)

~~Regional Police Officer,
Bannu, Region Bannu
(Respondent No.4)~~


Provincial Police Officer
KP Peshawar.
(Respondent No.3)


16/5/23
Deputy Secretary Home & Tribal Affairs,
Civil Secretariat KP Peshawar.
(Respondent No. 2)


Home Secretary,
Khyber Pakhtunkhwa
Secretary Home & Tribal Affairs,
Civil Secretariat KP Peshawar.
(Respondent No. 1)