

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 183/2019

HIS/3 No. 6559

Sabir Khan(Appellant) Dated 18/07/13

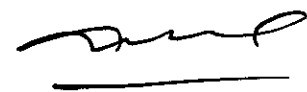
Versus

Provincial Police Officer, Khyber Pakhtunkhwa etc.....(Respondents)

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Respondent through



DSP/ Legal,
CPO, Peshawar.



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

Service Appeal No. 183/2019

Sabir Khan(Appellant)

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Subject: **OBJECTION PETITION ON JUDGMENT 17.10.2022**

The facts pertaining to objection petition are as under:-

1. That, the appellant had filed Service Appeal No. 183/2019, with the following prayers:-

“On acceptance of instant appeal, the impugned office Order No. 16/CPB, dated 09.01.2019 of the office of AIG/ Establishment Police Khyber Pakhtunkhwa whereby the departmental representation of the appellant was dismissed and filed, may graciously be set aside and by doing so the appellant be given his ante dated promotion to the rank of confirmed SI w.e.f 19.11.2003 and thereafter to the rank of DSP w.e.f 31.03.2012 instead 29.11.2018 with all back benefits”.

2. That, this Hon’ble Tribunal vide Judgment dated 17.10.2022 decided the Service Appeal in the following terms:-

“When confronted with the situation the learned AAG as well as learned counsel for the appellant agreed that the matter might be remitted the matter to department for consideration of the case of the appellant in the light of judgment of the august Supreme Court of Pakistan after providing him opportunity of hearing and then pass a speaking order in accordance with law/ rules and judgments of the august Supreme Court of Pakistan within sixty days from the receipt of this order under intimation to this Tribunal through its Registrar. The appeal is disposed in the above terms”.

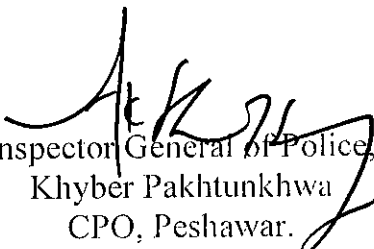
3. That, in compliance with the Judgment dated 17.10.2022, a Speaking Order has been issued vide this office Letter No. 2030/Legal, dated 29.05.2023.
4. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Warich Vs IGP Punjab (PLD 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 ante dated promotion and confirmation is baseless, illegal and against the norm of Law/ Rules rather alien to Rules ibid besides contrary to the principles laid down by the Apex Court of Pakistan in its Judgments. The Apex Court Judgments mentioned above have overruling effect over the Judgments mentioned by Tribunal in its Judgment dated 17.10.2022 being latest therefore, complying with Tribunal Judgment, defies the above mentioned Judgments of Apex Court.

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 seniority of appellant has been revised in accordance with law/ rules and Apex Court Judgments. The claim of appellant of ante dated promotion and confirmation is contrary to the Rules and against the Apex Court Judgments, therefore, Hon'ble Tribunal is requested to issue appropriate orders in this regard, please.


Inspector General of Police,
Khyber Pakhtunkhwa
CPO, Peshawar.

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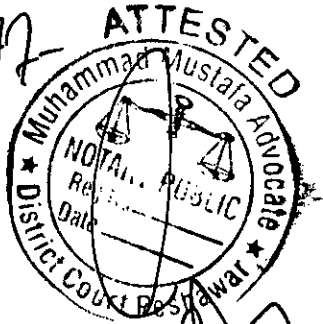
AFFIDAVIT

I, Tariq Umar DSP/ Legal, CPO do hereby solemnly affirm on oath that the contents of accompanying Objection Petition on behalf of Respondent i.e. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar is correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

It is further stated on oath that in this appeal the answers defendants have written have been placed on Page no their defence has been struck off

DEPONENT

[Signature]
(TARIQ UMAR)
DSP/ Legal, CPO
17301-4997553-7
0333-8878882



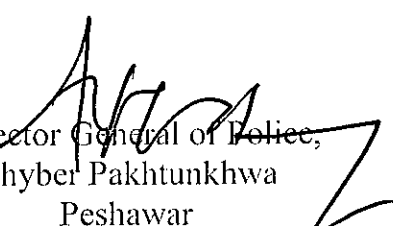
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AUTHORITY LETTER

Mr. Tariq Umar DSP/ Legal, CPO, Peshawar is authorized to submit CM application in above captioned Service Appeal on behalf of undersigned in Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.


Inspector General of Police,
Khyber Pakhtunkhwa
Peshawar



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

No. 2030 / Legal

dated the 29 / 05 / 2023.

ORDER

In compliance with Judgment dated 17.10.2022 in Service Appeal No. 183/2019 titled Sabir Khan Vs Police Department wherein the Hon'ble Tribunal and after the approval of Competent Authority this order is issued in the following terms:-

2. Perusal of record in respect of Mr. Sabir Khan Retired DSP (hereinafter referred as appellant) reveals that he was deferred on account of period deficiency in terms of Rule 13.10(2) of amended Police Rules 2017, in the DPC held dated 28.02.2005. Later on, he was confirmed in the rank of SI on 30.06.2008. He was brought on list 'F' and promoted as Inspector on 05.03.2009 and confirmed as Inspector w.e.f 05.04.2010. He was dismissed from service on 08.06.2015 and upon his departmental appeal, his dismissal order was converted into reduction in rank from Inspector to Sub Inspector on 29.01.2016. On acceptance of his Service Appeal No. 217/2016 dated 31.11.2017 whereby his punishment was set aside and after denovo enquiry he was restored back to the rank of Inspector vide Order dated 16.02.2018. He was promoted to DSP rank on 29.11.2018 and retired on superannuation dated 07.12.2018.

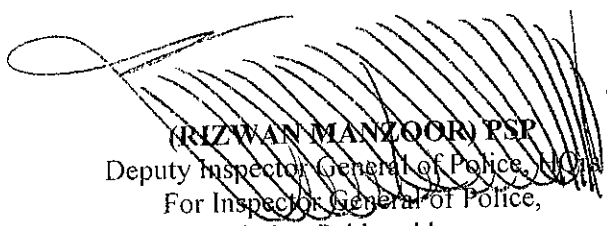
3. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Warich Vs IGP Punjab (PLD 1985 SC 159). In a recent Judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to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

4. 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).

5. 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.

6. Before passing the Order, the appellant was provided an opportunity of personal hearing. The claim of ante-dated confirmation w.e.f 19.11.2003 in the rank of SI and ante-dated promotion to the rank of DSP w.e.f 31.03.2012 is neither supported by rules and law nor any authority of Apex Court of Pakistan.

7. Keeping in view as above, his claim of ante dated promotion and confirmation do not stand merits viz-a-viz the norms of Laws/ Rules and alien to Rules ibid. Moreover, his claims are contrary to the principles laid down by the Apex Court of Pakistan in its Judgments as well.


(RIZWAN MANZOOR) PSP
Deputy Inspector General of Police, HQs
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.
- Capital City Police Officer, Peshawar.
- AIG/ Establishment, Khyber Pakhtunkhwa, Peshawar.
- PSO to W/ Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- PA to DIG/ HQrs: Khyber Pakhtunkhwa, Peshawar.