

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.893 /2023.


SI Saif Ur Rehman No.368/P of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

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**DSP/Legal,
CCP, Peshawar.**

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 893/2023.

SI Saif Ur Rehman No.368/P of CCP Peshawar..... **Appellant.**

7096
21/8/23

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

REPLY BY RESPONDENTS NO. 1, 2 & 3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Pertains to record.
2. Pertains to record.
3. Pertains to record, however, confirmation in the rank of SI is subject to seniority cum fitness basis and fulfilling the requisite criteria envisaged in Rule 13-10(2) & standing Order No. 21/2014 now amended Rule 13-10(2) of 2017 in Police Rules 1934. Equal opportunities are available to all members of Police to undergo their mandatory courses or periods through proper channel applications. Now, if a member of a Police is deficient in some mandatory period the same rules do not allow his confirmation or promotion in violation of that rule. The Apex Court of Pakistan rightly pointed out that for the sake of organizational justice Police Department should be spared to be governed by its own special law to achieve the goals of peace, efficiency and good service. The relevant para of judgment dated 02.11.2022 of justice Mansoor Ali Shah and justice Aisha Malik in Civil Appeals No. 1172 to 1178 of 2020 is reproduced as under:-

“It is best if the Police Force is allowed to be regulated by its statutory framework i.e. the Police Order 2002 and the Police Rules which provide a complete code of internal governance. Disputes, if any, amongst the Police Officers must first be resolved by the Inspector General of Police or his representatives. Only in case of any legal interpretation or blatant abuse of the process provided under the Police Order or Rules should the Court interfere in the working of the Police Force so that the force can maintain its functioning, autonomy, independence and efficiency which is essential for Police which is charged with the onerous responsibility of maintaining law and order and with the onerous obligation to protect the life and property of the citizens of this country. More than any other organization which is fully autonomous and independent in regulating its internal

governance. Strong and smart Police force requires organizational justice firmly entrenched in the institution so that its officers are assured that they work for an institution that firmly stands for Rule, fairness, transparency and efficiency. This upholds the morale of the Police Officers, especially junior Police Officers who are required to undertake dangerous and strenuous assignments on a daily basis and also uplifts the institution by making it more vibrant and progressive”.

4. Pertains to record needs no comments.
5. Pertains to record, however, each confirmation or promotion is subject to seniority cum fitness basis plus requisite criteria envisaged in different rules of the Police Rules, 1934. If the appellant do not want to do it in time then his confirmation or promotion could not be recommended being deficiency in terms of rules.
6. Pertains to record. As soon as he fulfilled deficient period, he was confirmed subsequently in accordance with rules. Reason was that he was not eligible for confirmation in terms of Rule 13-10(2) of Police Rules, 1934 amended 2017, each time when DPCs commenced earlier.
7. Incorrect. It seems appellant after a long hibernation approached the Hon'ble Tribunal without lawful reasons, besides the record is silent about such a departmental appeal which is devoid of merits/law and Rules.
8. Incorrect. The Notification dated 08.12.2022 is quite in accordance with law/rules and Apex Court judgment while appellant's claim is meritless, devoid of law/rules and Apex Court judgments. In amended Police Rules 13-10(2) it is clear that:-

“No Sub Inspector shall be confirmed in a substantive vacancy unless he has been tested for at least a year as an officiating Sub-Inspector independent charge of a Police Station, a notified Police Post, or as in-charge investigation of a Police Station or in Counter Terrorism Department. Provide further that he shall also have to spend one year in any other Unit excluding the period spent on long leave, deputation or promotional training course i.e. upper college course”.(Copy of rule 13-10(2) is annexed as A)

The two rules (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 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 that they have completed the period of their probation of three years successfully in terms of the condition laid down in the PR 19.25(5) of the Police Rules 1934.

Moreover, under paragraph VI of the promotion policy, provided in the ESTA 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).

The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq waraich vs IG Punjab (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil

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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 appointment and date of confirmation under the police rules is absolutely misconceived and strongly dispelled”. The apex court has further explained PR 12.3(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 antedated confirmation and promotion have been put down in Raza Sadar Kazmi” (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Service Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 and other connected matters).

Keeping in view as above the claim of appellant to be confirmed as SI w.e.f. 22.09.2002 and set aside notification dated 08.12.2022, is illegal, violation of Apex Court judgment wherein antedated confirmation and promotion have been declared as void ab-initio and null as explained herein above. Furthermore, nowhere in Police Rules, 1934, there is any rule of antedated confirmation or promotions, hence such a claim is violation of Police Rules 1934 as well, hence, instant service appeal being devoid of merits law may kindly be dismissed on the following grounds.

REPLY ON GROUNDS:-

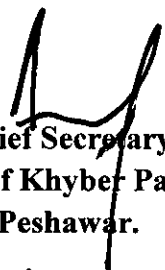
- A. Incorrect. The Notification dated 08.12.2022 issued is just legal and has been passed in accordance with law/rules. Moreover, the concept of ante-dated confirmation and promotion has been repealed by the Supreme Court of Pakistan.
- B. Incorrect and denied on the ground that appellant has been treated strictly in accordance with law/rules and no legal and fundamental right has ever been violated by the respondents.
- C. Incorrect. The point raised by the appellant having no legal footage. However it is worth to clarify that promotion and confirmation amongst employees of respondent department have been made in accordance with law/rules and no pick and choose formula is followed. Actually only those colleagues of the appellant were confirmed in the next ranks who fulfilled the laid down criteria and no one considered without completion of requisite criteria.
- D. Incorrect. As per contention of appellant his other colleagues have been promoted to the next higher rank, so he was also at liberty to qualify the courses mandatory for the promotion, but due to incomplete mandatory period for promotion to the next higher rank, the appellant was not considered for promotion by the answering respondents.
- E. Incorrect. Para already explained in the proceedings paras.
- F. Incorrect. Appellant has never been deprived of his due right nor treated with discrimination. Furthermore, the appellant was not interested to complete the mandatory courses required for promotion to the next higher rank.
- G. Incorrect, para is already explained in Para No. 08 of Facts. Moreover, the respondents have acted in accordance with law/ rules/ judgment of apex Court.
- H. Incorrect. The replying respondents are duty bound to comply the specific orders/judgment of this Honorable Service Tribunal passed time to time and have never ever acted against any

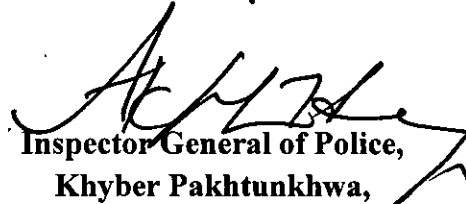
of the directions addressed to the respondent department in each and every facts regarding the Service matter. As per Apex Court judgment antedate confirmation and promotion have been declared as void ab-initio and null as explained in the above Paras.

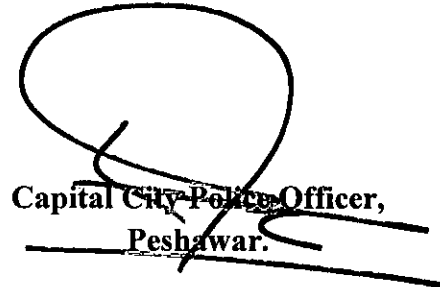
- I. Incorrect. As per record the service of appellant is not up to the mark.

PRAYERS:-

It is, therefore, most humbly prayed that in light of the above facts and quoted judgments the appeal of the appellant is being devoid of merits and legal footing and may kindly be dismissed with cost, please.


Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 293/2023.


SI Saif Ur Rehman No.368/P of CCP Peshawar..... **Appellant.**

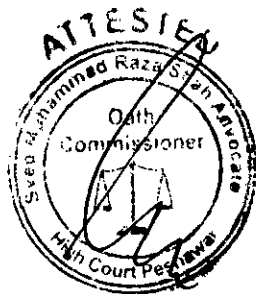
VERSUS

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AFFIDAVIT.

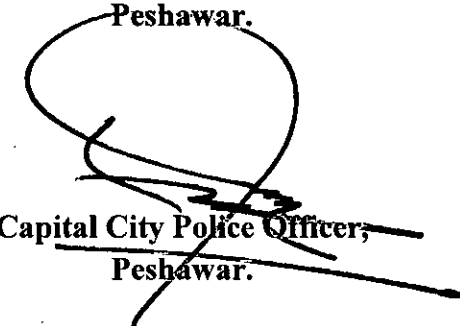
We respondents 1, 2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck off. /cost


**Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.**



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**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 893/2023.

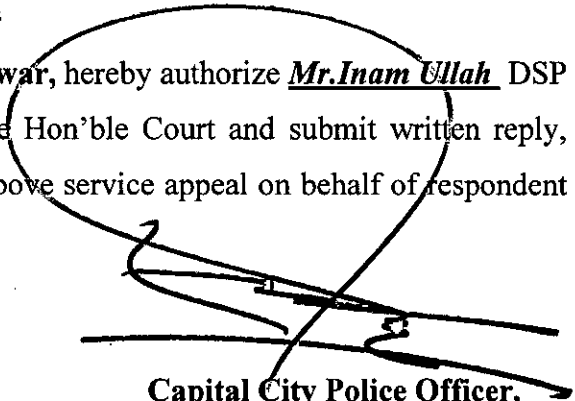
SI Saif Ur Rehman No.368/P of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr. Inam Ullah** DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.



**Capital City Police Officer,
Peshawar.**

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10. In rule 13.10, for sub rule (2) the following shall be substituted namely:
 "(2) No Sub-Inspector shall be confirmed in a substantive vacancy unless he has been tested for at least a year as an officiating Sub-Inspector in independent charge of a Police Station, a notified Police Post, or as in-charge Investigation of a Police Station or in Counter Terrorism Department:

Provided further that he shall also have to spend one year in any other Unit excluding the period spent on long leave, deputation or promotional training course i.e. upper college course".

11. After rule 13.16, the following new rule shall be added, namely:
"13.16A. One year mandatory tenure for promotion to Deputy Superintendent of Police.---An Inspector shall be promoted to the post of Deputy Superintendent of Police after successful completion of mandatory training i.e. Advance Course and completion of one year tenure as Inspector in the Investigation Branch, or Counter Terrorism Department, or Special Branch, or any police training institution."

12. After Form No. 13.7, the following new Appendices shall be added, namely:

"Appendix 13.7A (I)
 (See sub-rule (1) of rule 13.7A)

S.No	SUBJECTS	MARKS
1.	Approved Syllabus of Recruit Course	200
2.	Basic General Knowledge (General Knowledge regarding Pakistan & Khyber Pakhtunkhwa)	30
3.	English Communication	20

Appendix 13.7B (I)
 (See sub-rule (2) of rule 13.7A)

S.No	SUBJECTS	MARKS
1.	LAWS i. Pakistan Penal Code ii. Criminal Procedure Code iii. Local and Special Laws iv. Qanoon-e- Shahdat v. Khyber Pakhtunkhwa Police Act, 2017 vi. Huddood Laws	60
2.	Police Rules, 1934	50
3.	English Translation	30
4.	General Knowledge	30
5.	Police Initiatives	30

Note: The subjects mentioned at serial No. 1 and 2 shall include selected portion of the relevant laws to be approved by the Provincial Police Officer."

13. In rule 19.2, after sub-clause (2), the following new sub-rule shall be added, namely:
 "(3) Written examination of recruit course shall be conducted through an accredited testing agency approved by the Provincial Police Officer."

Attested
