

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1225/2017

Date of Institution ... 06.11.2017

Date of Decision ... 10.01.2022

Shafqat Ullah, No. 392/SB Sub Inspector Special Branch Police Department  
... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,  
Peshawar and two others. ... (Respondents)

Muhammad Alamzeb Khan,  
Advocate

... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

**SALAH-UD-DIN**

...

**MEMBER (JUDICIAL)**

**ATIQ-UR-REHMAN WAZIR**

...

**MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** This single judgment shall

dispose of the instant service appeal, as well as connected Service Appeals bearing No. 1167/2017 "titled Mumtaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1177/2017 "titled Imtiaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1192/2017 "titled Samin Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1193/2017 "titled Saeed Khan Versus Government of Khyber Pakhtunkhwa through Chief

Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1196/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1197/2017 "titled Israil Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1204/2017 "titled Muhammad Iqbal Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1228/2017 "titled Muhammad Ashraf Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1235/2017 "titled Muhammad Asif Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1236/2017 "titled Habibullah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1237/2017 "titled Asif Saleem Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others" and Service Appeal bearing No. 1238/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", as common questions of law and facts are involved therein.

02. Brief history of the case is that the appellants are employees of special branch of police department, which is the most un-attractive off branch shoot of the department. In order to make it attractive, certain incentives were offered to the employees, particularly the lower staff and one step promotion was one of them. The appellants were basically constables, but while joining special branch, they were granted one step promotion, who subsequently reached to the posts of Assistant Sub Inspectors (ASI) and Sub Inspectors (SI) in due course of time and

after due process. The incentives so offered were given legal cover in shape of a standing order of 1996 issued on 24-01-1996. In the wake of judgment of August Supreme Court of Pakistan reported as 2013 SCMR 1752, respondent No. 2 issued instructions to all heads of police offices vide the impugned order dated 21-03-2016 to done away with out of turn promotions. In pursuance of the instructions, respondent No. 3 issued the impugned order dated 27-04-2016, whereby all orders issued regarding second and third step promotions to the officials of special branch including the appellants, were withdrawn. Feeling aggrieved, the appellants filed departmental appeals followed by writ petition No 2088-P/2016, which was dismissed vide judgment dated 12-01-2017 on the ground of jurisdiction, leaving the appellants at liberty to approach proper forum for redressal of their grievance. The appellants then filed the instant appeals, with prayer that the impugned orders dated 21-03-2016 and 27-04-2016 may be set aside and the appellants may be restored to their respective positions alongwith all back benefits.

03. Learned counsel for the appellants has contended that judgment of supreme court of Pakistan has been misinterpreted and has wrongly been applied upon appellants, as promotions of the appellants were made on merit after due process and in due course of time; that judgment was announced in 2013, whereas the same has been executed upon appellants in 2016 and the appellants have been penalized for no good reason; that such promotions were made after fulfilling all the codal formalities in accordance with law, which cannot be termed as out of turn promotions; that such promotions have not affected rights of any other person, otherwise they would have challenged such promotions; that the appellants were otherwise fit for promotions like their other colleagues in regular police; that their other colleagues in regular police have reached the position of inspectors, whereas the appellants were demoted to the rank of head constables,

inspite of the fact that all the appellants are having more than 35 years of service at their credit; that valuable and fundamental rights of the appellants are involved in the matter and is a case of public importance; that the impugned orders are without jurisdiction, arbitrary in nature, hence not tenable in the eye of law; that the impugned orders are unfair, as the appellants has been condemned unheard.

04. On the other hand learned Deputy District Attorney for the respondents has contended that it is correct that incentives of one step promotions were allowed to the police officials who voluntarily opted for transfer to special branch; that it is also correct that in view of standing order of 1996, those officials, who had spent more than five years in special branch, were further promoted to the rank of ASIs and SIs after observing the codal formalities; that it is also correct that such promotions were granted in due course of time against existing vacancies; that such promotions were considered as legal until pronouncement of judgment of the supreme court of Pakistan reported as 2013 SCMR 1752 and in light of the said judgment, such promotions were declared as out of turn, as the appellants though were otherwise eligible for promotion, but were not equipped with the mandatory trainings, which are necessary for promotion to the next grade, therefore in light of the said judgment, second and third step promotions availed by police officials in special branch were withdrawn.

05. We have heard learned counsel for the parties and have perused the record.

06. In order to properly understand the issue in hand, it would be useful to have a glimpse of the background of the case. Special branch being an important wing of the police department remained one of the neglected and un-attractive areas for police personnel and nobody would opt to be transferred to special branch in any rank. In order to make it attractive, 20% special allowance was



allowed for officials serving in special branch, but it did not work, hence the respondents went one step ahead and issued a standing order of 1996. Salient features of such order would elucidate that there is no defined standard for bringing police personnel on deputation to special branch and normally unfavorite employees or those who were not considered as efficient, had been transferred to special branch on deputation with certain time period, thus the special branch became hub of unwilling workers, adversely affecting efficiency level of the institution. In order to improve the status of special branch, it was felt eminent to regulate such transfers by devising rules and regulations for special branch. For the purpose, standing order of 1996 was brought into force, where inter-alia, incentives of adhoc promotions were offered to such employees, who were willing to serve for a period of five years in special branch, but on return to their respective districts, they will be reverted to their previous positions and their seniority will be maintained in their respective districts. Those who stay beyond the period of five years, will be granted regular promotions and to this effect a case will be submitted to the government for establishment of a training school in collaboration with intelligence bureau school, which ultimately would impart necessary trainings to employees of special branch, pertaining to intelligence courses, VVIP security training and many others, so as to enable them to handle their respective jobs efficiently as well as to equip them to be promoted on regular basis without qualifying police courses and such practice of promotion will continue till establishment of such training school for special branch.

07. As per practice in vogue in special branch and subsequently, in light of standing order of 1996, a written agreement was required to be signed between the employee and the special branch, containing the conditions that his seniority will be maintained in his respective district and his promotion would be on officiating/adhoc basis and on return to his respective district, he will be reverted

to his original position. Record reveals that police personnel were normally transferred to special branch on deputation basis with the option to return to their respective districts, but the appellants are amongst those, who had decided to remain in special branch until their retirement. Since cases of the appellants are similar in nature having common questions of law and facts, so case of one Mr. Mumtaz Ali is taken as an example, who joined police force as Constable on 20-10-1975. On 04-11-1981, he was transferred to special branch and was granted one-step promotion as Head Constable. After 15 years, on 11-06-1996 he was promoted as Assistant Sub Inspector (ASI) and on 04-09-2002, he was promoted as Sub Inspector (SI). Record would suggest that such promotions had been made by promotion committees against the available sanctioned posts purely on officiating/adhoc basis only as an incentive to such employees, who would opt to remain in special branch for a period of more than five years. Mr. Mumtaz Ali travelled a long way in earning promotion to the post of SI and it took almost 27 long years for him to reach to the post of SI and that too on officiating/adhoc basis, which was good only for monitory consideration in terms of enhanced salary, which ultimately would yield benefit in case of pension. During the course of litigation, six of the appellants retired from service upon reaching their age of superannuation, while others are serving as head constables and are at the verge of retirement.

08. With such considerations, the appellants opted to remain in special branch with anticipation that they had signed a written agreement with respondent No. 3 wherein it was mentioned that such arrangements would continue until alternate arrangements are made. Record is silent as to whether any alternate arrangements were made or not, but subsequently in order to make the special branch functional, promotions of subordinate ranks in regular police were made conditional with mandatory stay for certain period in special branch, which was/is

mandatory for all but in wake of announcement of Judgment of Supreme Court of Pakistan reported as 2013 SCMR 1752, the provincial police officer issued directives vide order dated 19-06-2013 that special case promotions should be discontinued in future to provide level playing field for all police personnel in career progression. Such letter was addressed to all heads of police offices, but no adverse action was taken against employees of special branch, as such directives were meant for future. In another developing story, this tribunal in service appeals No. 561, 562, 563, 537, 715 & 538, in similar nature cases pertaining to investigation wing of the police, vide its judgment dated 16-11-2015, remitted their appeals to respondents with direction to the respondents to examine appeals of the appellants and decide the same strictly on merit without any discrimination. The appellate authority (Provincial Police Officer) examined such appeals in light of judgment of Supreme Court of Pakistan and decided that the present appellants as well as all such promotions in other units have been made against the law and rule, hence may be done away with it. Such instructions were issued vide order dated 21-03-2016 and in compliance, respondent No. 3, issued order dated 27-04-2016, whereby orders regarding second and third step promotions were declared as out of turn promotions, hence were withdrawn with immediate effect and the appellants were left with one step promotion as head constables.

09. In order to reach to a logical conclusion, it would be useful to briefly introduce the judgment in question. While disposing of constitutional petitions challenging vires of statutes, the supreme court of Pakistan, declared impugned legislations and benefits extended thereunder by government for being violative of the Constitution. It was the Government of Sindh, which empowered the Chief Minister to grant out of turn promotion to civil servants by bringing amendment in civil servants Act, 1973 through promulgation of ordinances, where non-civil

servants and non-cadre civil servants were transferred to cadre posts in Sindh government by way of deputation and their absorption against cadre posts with backdated seniority by chief minister pursuant to Sindh Civil Servants Act, 1973 as amended by Sindh civil servants (second amendment) Ordinance 2012, Sindh Civil Servants (Amendment) Act, 2013 and Sindh Civil Servants (second amendment) Act, 2013. Such deputationists, despite not having matching qualifications to cadre in which they were transferred and liable to be repatriated, had been absorbed against cadre posts against language of section-10 of Sindh Civil Servants Act, 1973 on the basis of legislations so made. The supreme court of Pakistan in its judgment in question has held that neither a non-civil servant nor a civil servant from non-cadre post could be transferred to a cadre post in government by way of deputation as same would affect rights of civil servants serving in government and create sense of insecurity in them. The impugned legislation meant for specific class of persons was declared violative of Article-25, 143 and 240 of the Constitution, which ultimately would encourage nepotism and discourage transparent process of appointment of civil servants in prescribed manner. Further held that benefits extended to different employees or civil servants through impugned legislations would not attract principle of locus poenitentiae, hence the Supreme Court struck down such legislations and withdrew the benefits of out of turn promotions. The judgment so announced was sent to all chief secretaries of the province for compliance.

10. Now the moot question before us is as to whether the promotions of the appellant were illegal and the same come under the parameters drawn for out of turn promotions. For the purpose, we have carefully examined the judgment in question, which has delineated various aspects involving out of turn promotions, relevant portion of which is reproduced as under:

*"We are of the considered opinion that a person/litigant, who has availed benefit for promotion under Article-9-A without application of the criteria laid down under Rule-8-B by way of underhand means or by any mode other than merit, cannot get protection on such benefit on the principle of locus poenitentiae, unless he could show that the benefit availed by him was in accordance with law; in good faith and without ulterior motive or malafide."*

The verdict provides for a chance to the beneficiaries to show as to whether the benefits so availed were in accordance with law or otherwise. The same would equally apply to the appellants, who were required to be afforded an opportunity to defend their cause, which however was not granted by the respondents and without proper examination of the judgment as well as without application of independent mind, competent authority unilaterally decided their cases. The principle of Audi alteram partem has always been considered as mandatory in such cases, as no adverse action can be taken against any one without providing him an opportunity to defend himself. The appellants however is having as strong case on merit, as their promotions were duly protected by standing order of 1996, which were made after fulfilling the required codal formalities and such promotions were not promotions in real meaning, rather it was an incentive granted to the appellants in lieu of services rendered in special branch, with a tacit understanding between the appellants and the respondents. The appellants served in special branch due to such incentives, otherwise they would have earn such promotions, if they were in their respective districts, like their other colleagues in their respective districts, who had elevated to the post of inspectors, hence such promotions cannot be termed as out of turn promotions.

11. For the purpose, we need to understand as to what is out of turn promotion. Out of turn, promotion is a promotion, when it is not your turn, but in the instant case, the appellants were promoted in their own turn and nobody else

were affected by such promotions nor they were given any benefit of seniority over their seniors. The supreme court of Pakistan in the judgment in question has held as under;

*"Grant of out of turn promotion were class specific, prejudicial to public interest and not based on intelligible differentia, rather having distorted service structure, affected inter-se-seniority between officers serving on cadre posts after acquiring jobs through competitive process."*

12. We have observed that promotions in the instant case are neither class specific nor prejudicial to public interest or affected seniority of others, rather such promotions were made amongst the deputationists in light of standing order of 1996. The appellants in the instant case are not the deputationists in a sense, which has been discussed in the judgment in question. The appellants spent their whole lives serving in an un-attractive place only for the purpose of getting promotions, but in the last leg of their service, they were reverted back to the post of head constables. For the sake of comparison of the case of the appellants with those discussed in the judgment, relevant portion of the judgment is reproduced as under:

*"The procedure provided under the ESTACODE requires that a person who is transferred and appointed on deputation must be a government servant and such transfer should be made through the process of selection. The borrowing government has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in government must have matching qualifications, expertise in the field with required experience. In absence of these conditions, the government cannot appoint anyone by transfer on deputation."*

In the instant case, the appellants are regular police personnel and their transfers on deputation were made on solid reasons and in exigency of service by

the special branch by offering them incentives of officiating promotions. The appellants having matching qualifications, expertise as well as the required experience, thus they were fit to be appointed on deputation in special branch. In the instant case, neither they were absorbed against posts infringing rights of other employees, nor were they promoted through bypassing of their colleagues. In nutshell, case of the appellants is distinguished from the one discussed in the judgment in question. In the judgments reported as PLD 1993 SC 109 and PLD 1961(WP) Lahore 78, worthy superior courts have graciously held that while taking something as a precedent and while considering the value of the principles of a case, emphasis has to be placed on material facts, before the court, for such facts may serve as a guide for the reasons for pronouncement of law by the judge or the statement of rule of law followed by him; that precedents primarily apply to their own fact and can have but little weight where facts are different. August supreme Court of Pakistan in the judgment in question has held as under:

*"The provincial assembly (Sindh) through the impugned instruments pronounced a legislative judgment with the sole object to accommodate their blue-eyed, who were neither civil servants nor government servants. The deputationists brought in were not recruited through the process of the competitive exams and were appointed on deputation to the cadre posts, which appointments affected the rights of the civil servants serving in different government departments, as their promotions were blocked."*

In the instant case, the situation is totally different, as the appellants were brought in to special branch through incentives of officiating promotions, against which they served for considerable time period and such incentives were withdrawn wrongfully under the pretext of the judgment in question without proper examination of such judgment, which however was not warranted. In last Para of the judgment in question, it has been ordered that copy of the same be

sent to all Chief Secretaries of the provinces with direction to streamline the service structure of civil servants in line with the principles laid down in the judgment. In light of the said judgment, the respondents were required to have streamlined service structure of the employees of special branch, however instead of doing so, the respondents have wrongly and illegally withdrawn promotions granted to the appellants by complying the required legal formalities.

13. Provincial Police Officer, Punjab, while deriving wisdom from the judgment of supreme court of Pakistan reported as 2015 SCMR 456, extended the same benefit to SI Abdul Ghani, whose case was similar to that of the appellants vide order dated 09-04-2020. On the same analogy, the IG Islamabad vide order dated 29-09-2020 extended the same benefit to SI Muhammad Zahid, where he was granted promotions on the same dates, when his erstwhile colleagues were promoted. Relevant portion of the judgment is reproduced as under:

*"..... the officers/officials who have been repatriated to their parent departments shall be entitled to salaries and other benefits from the date they were relieved to join their parent departments. Their seniority shall be maintained in their parent departments with their batch-mates as if they were never relieved from their parent departments. Expiry of period lien shall not come in the way of the officers to deprive them from joining the parent department....."*

14. We have observed that in the said judgment, though repatriation to parent departments have been upheld but rights of promotion and seniority of the affectees have been taken care of, as their cases were not considered in the category of out of turn promotions. The instant case is eccentric to the effect that appellants were not repatriated to their parents department, but were only downgraded and kept absorbed in the special branch. In a manner, they were deprived of the benefits, which were accrued to them, if repatriated to their parent departments. We are of the considered opinion that the appellants



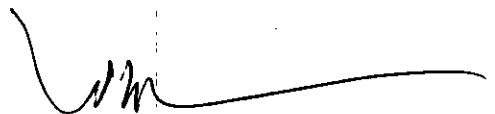
suffered twice, as on one hand, they were not repatriated to their parent departments, hence deprived them of the opportunity to re-gain their seniority and promotions in their parent department and on the other hand, their ad-hoc promotions were also withdrawn, which were good only to the extent of monetary benefits in lieu of the services rendered by appellants in special branch. In such a situation, natural justice demands that the appellants shall not suffer for any wrongdoing of the respondents. We are of the considered opinion that judgment of the supreme court of Pakistan reported as 2013 SCMR 1752 has been misinterpreted and erroneously made applicable upon the promotion cases of the appellants because such promotions cannot be termed as out of turn promotions.

15. In view of the foregoing discussion, the instant service appeal as well as connected Service Appeals bearing No. 1167/2017 "titled Mumtaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1177/2017 "titled Imtiaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1192/2017 "titled Samin Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1193/2017 "titled Saeed Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1196/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1197/2017 "titled Israil Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1204/2017 "titled Muhammad Iqbal Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No.

1228/2017 "titled Muhammad Ashraf Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1235/2017 "titled Muhammad Asif Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1236/2017 "titled Habibullah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1237/2017 "titled Asif Saleem Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others" and Service Appeal bearing No. 1238/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

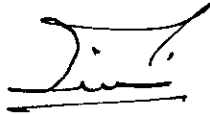
ANNOUNCED  
10.01.2022

  
(SALAH-UD-DIN)  
MEMBER (J)

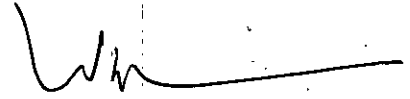
  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1236/2017 "titled Habibullah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1237/2017 "titled Asif Saleem Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others" and Service Appeal bearing No. 1238/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
10.01.2022



(SALAH-UD-DIN)  
MEMBER (J)



(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

ORDER

10.01.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant service appeal as well as connected Service Appeals bearing No. 1167/2017 "titled Mumtaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1177/2017 "titled Imtiaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1192/2017 "titled Samin Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1193/2017 "titled Saeed Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1196/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1197/2017 "titled Israil Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1204/2017 "titled Muhammad Iqbal Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1228/2017 "titled Muhammad Ashraf Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1235/2017 "titled Muhammad Asif Versus Government of Khyber

15.12.2021

Mr. Muhammad Alamzeb Khan, Advocate, for the appellant present. Mr. Shah Hussain, Personal Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Partial arguments heard. To come up for remaining arguments on 16.12.2021 before this D.B.



(Atiq-ur-Rehman Wazir)  
Member (E)

(Salah-ud-Din)  
Member (J)

16.12.2021

Mr. Muhammad Alam Zeb Khan, Advocate for the appellant present. Mr. Shah Hussain, Personal Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Arguments heard. To come up for order before the D.B on 05.01.2022.



(Atiq-Ur-Rehman Wazir)  
Member (E)

(Salah-ud-Din)  
Member (J)

05.01.2022

Mr. Muhammad Alam Zeb Khan, Advocate for the appellant present. Mr. Shah Hussain, Personal Assistant, alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Learned Member Judicial (Mr. Salah-ud-din) is on official tour, therefore, order could not be announced. To come up for order before the D.B on 10.01.2022.



(Atiq-Ur-Rehman Wazir)  
Member (E)

01.07.2021

Learned counsel for the appellant present. Mr. Sohail Aziz H.C alongwith Muhammad Adeel Butt, Additional Advocate General for the respondents present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 20.10.2021



(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

20.10.2021

Appellant with counsel present.

Mr. Muhammad Rasheed, Deputy District Attorney, alongwith Mr. Shah Hussain, Junior Clerk for respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 15.12.2021 before D.B.



(Atiq-Ur-Rehman Wazir)  
Member (E)



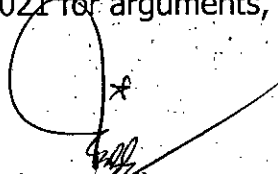
(Rozina Rehman)  
Member (J)

11.11.2020

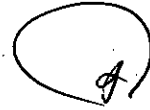
Appellant in person present.

Kabir Ullah Khattak learned Additional Advocate General  
alongwith Sulaiman Reader for respondents present.

Lawyers are on general strike, therefore, case is adjourned  
to 19.01.2021 for arguments, before D.B.



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

19.01.2021

Due to COVID-19, the case is adjourned to 05.04.2021 for  
the same.



Reader

05.04.2021

Junior to counsel for appellant present.

Asif Masood Ali Shah learned Deputy District Attorney  
for respondents present.

Lawyers are on general strike, therefore, case is  
adjourned. To come up for arguments on 11/7/2021  
before D.B.



(Atiq ur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

15.09.2020

Appellant in person present.

Mr. Muhammad Jan, learned Deputy District Attorney for respondents present.

In the instant case, partial arguments were heard by D.B-II (Mr. Muhammad Jamal Khan Member Judicial and Mr. Mian Muhammad Member Executive) and time was given to learned counsel to render assistance to the bench on the point of limitation only. As such, case is adjourned to 29.09.2020 for arguments before the D.B mentioned above.



(Atiq ur Rehman)  
Member (E)



(Rozina Rehman)  
Member (J)

29.09.2020

Appellant himself alongwith Mr. Alamzeb Khan, Advocate, are present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith representative of the department Mr. Suleman, Reader are also present.

Remaining arguments to some extent on the point of limitation heard. Learned counsel for appellant is seeking time for rendering assistance on the point of limitation in response to the arguments addressed by the Learned Assistant Advocate General. Time is given. File to come up for remaining arguments on the point of limitation on 11.11.2020 before D.B.



(Atiq-ur-Rehman Wazir)  
Member (Executive)



(Muhammad Jamal Khan)  
Member (Judicial)



29-4.2020

Due to COVID19, the case is adjourned to  
13/7/2020 for the same as before.

Reader

13.07.2020

Due to COVID-19, the case is adjourned to 03.09.2020  
for the same.

Reader

03.09.2020

Appellant Shafqat Ali is present in person alongwith his  
counsel. Mr. Riaz Ahmad Paindakheil, Assistant Advocate  
General alongwith representative of the department Mr.  
Javed Iqbal, DSP (Legal) are also present.

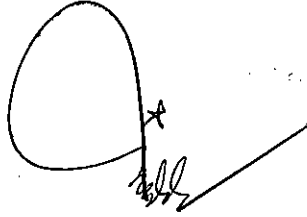
Arguments of the instant appeal heard. Learned  
counsel for appellant is seeking time to render assistance to  
the bench on the point of limitation involved in the present  
appeal as per preliminary objection raised by the learned  
Assistant Advocate General. Time is given and the learned  
counsel for appellant is directed to ensure his availability for  
completion of his arguments. File to come up for same on  
15.09.2020 before D.B.

(Mian Muhammad)  
Member (Executive)

(Muhammad Jamal Khan)  
Member (Judicial)

18.03.2020

Counsel for the appellant present, Mr. Muhammad Jan, DDA alongwith Mr. Suleman, H.C for respondents present. Learned counsel for the appellant is directed to submit member copy of the instant appeal. Adjourned. To come up for arguments on 29.04.2020 before D.B.



(MAIN MUHAMMAD)  
MEMBER




(M.AMIN KHAN KUNDI)  
MEMBER

01.11.2019

Counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 12.12.2019 for arguments before D.B.


  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

12.12.2019


Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith M/S Nisar Khan, SP and Wisal Khan for the respondents present. Adjourned to 11.02.2020 for arguments before D.B.


  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member


11.02.2020

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. . To come up for arguments on 18.03.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

19.08.2019 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Arguments heard. To come up for order on 21.08.2019 before D.B

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

21.08.2019 Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Naem Hussain, Inspector (Legal) for the respondents present. The appeal was fixed for order today, however, learned counsel for the appellant appeared and requested for adjournment on the ground that he want to argue some further points. The request of learned counsel for the appellant is accepted. Case to come up for arguments on 30.09.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

30.09.2019 Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 01.11.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

01.04.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Muhammad Asif, DSP (Legal) for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief.

Adjourned to 26.04.2019 before the D.B.



Member



Chairman

29.04.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 19.06.2019 before D.B.



Member



Member

19.06.2019

Clerk to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Suleman Reader for the respondents present. Clerk to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 19.08.2019 before D.B.



Member



Member

21.11.2018

Since 21.11.2018 has been declared as public holiday on account of 12<sup>th</sup> Rabi-ul-Awal. Therefore, the case is adjourn. To come on 10.01.2019 before D.B.

  
Reader

10.01.2019

Counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General alongwith Mr. Muhammad Asif DSP (legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments alongwith connected appeal on 15.02.2019 before D.B

  
Member

  
Member

15.02.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Suleman Reader for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.04.2019 before D.B

  
(Hussain Shah)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

Service Appeal No. 879/2017

02.05.2018

None present for appellant. Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 25.06.2018.

  
Reader

25.06.2018

Neither the appellant nor his counsel present. Mr. Muhammad Jan, DDA alongwith Mr. Masroor Ahmad, Junior Clerk & Mr. Zaki Ullah, Senior Auditor on behalf of official respondents present. Written reply submitted on behalf of official respondents which is placed on file. To come up for rejoinder, if any, arguments on 15.08.2018 before D.B.

  
Chairman

15.08.2018

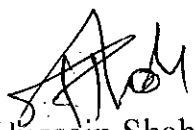
Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Due to general strike of the bar, the case is adjourned. To come up on 09.10.2018 before D.B.


  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

09.10.2018

Learned counsel for appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 21.11.2018 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

10.04.2018

Junior counsel for the appellant and Addl: AG alongwith Javed Khan, Sub-Inspector for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 24.04.2018 before S.B.



Member


24.04.2018

Clerk of the counsel for appellant and Addl: AG alongwith Mr. Javed Khan, Sub-Inspector for the respondents present. Written reply submitted on behalf of respondents No. 2 & 3 and stated at the bar that respondent No. 1 relied on the same. To come up for rejoinder and arguments on 11.07.2018 before D.B.

  
Chairman

11.07.2018

Clerk to counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney alongwith Mr. Suleman H.C present. Due to general strike of the bar, the case is adjourned. To come up on 17.08.2018 before D.B.

  
(Ahmad Hassan)  
Member  
(Muhammad Hamid Mughal)  
Member

17.08.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Suleman H.C for the respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 09.10.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member  
(Muhammad Hamid Mughal)  
Member



1225/17

16.03.2018

Counsel for the appellants present. Preliminary arguments heard in the instant service appeal as well connected service appeals No. 1228/2017 Muhammad Ashraf, No. 1235/2017 Muhammad Asif, No. 1236/2017 Habibullah, No. 1237/2017 Asif Saleem and No. 1238/2017 Hamayun Khan.

The learned counsel for the appellant argued that similar nature service appeal No. 1167/2017 entitled "Mumtaz Ali Vs. Government and others" has been admitted to regular hearing on 09.11.2017. That the points involved in the present appeals and the said appeal are common.

The Points raised need consideration. These appeals are also admitted to regular hearing. The appellants are directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 10.04.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman

~~For counsel for the appellants Addl. AG along with  
Mr. Javed, Sub-Inspector of the respondents present written reply  
submitted. It is ordered that the court be adjourned to come up for  
hearing on 10.04.2018 before S.B.~~

Shafqatullah

DEA

21.08.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Naeem Hussain, Inspector (Legal) for the respondents present. The appeal was fixed for order today, however, learned counsel for the appellant appeared ~~today~~ and requested for adjournment on the ground that he want to argue some further points. The request of learned counsel for the appellant is accepted. Case to come up for arguments on 30.09.2019 before D.B.

(Hussain Shah)  
Member

(M. Amin Khan Kundi)  
Member

The concerned ADO has reported him but no action has been taken against the culprit. The Service Book of the teacher is also not available in circle record.

The teacher is absent from 1-9-2006

Recommendation: The following recommendations are hereby suggested.

① Show cause may please be issued to the teacher without any delaying tactics.

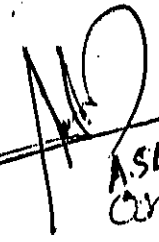
② He may please be terminated from service

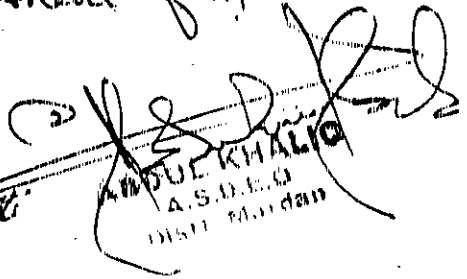
③ Action may also be taken against the officials who caused obstacles to take action against the culprit teacher.

Note: The following annexures are attached with the Report

- ① Attendance Register attested photocopy
- ② Statement of ADO
- ③ Statement of the

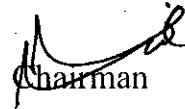
Enquiry Committee.

①   
ASDEO,  
Circle Shreeyasthali

②   
ASDEO,  
A.S.D.E.O  
Dist. Muzdan

26.12.2017

None present for the appellant. To come up for preliminary hearing on 11.01.2018 before the S.B.

  
Chairman


11.01.2018

None present on behalf of the appellant. Notice be issued to appellant and his counsel for attendance and preliminary hearing for 31.01.2018 before S.B.

01.02.2018


Appellant in person present and seeks adjournment as his counsel is not available due to general strike of the Bar. Adjourned. To come up for preliminary hearing on 28.02.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

  
(Ahmad Hassan)  
Member(E)

28.02.2018



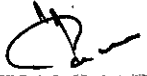
Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 16.03.2018 before S.B.

  
(Ahmad Hassan)  
Member (E)

**Form-A**  
**FORM OF ORDERSHEET**

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

Case No. 1225/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/11/2017	<p>The appeal of Mr. Shafqatullah presented today by Mr. Muhammad Alam Zeb Khan Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 6/11/17</p>
2-	13/11/17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/11/17</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
27.11.2017		<p>None present on behalf of the appellant.</p> <p>Lawyers on strike. Adjourned. To come up for preliminary hearing on 26.12.2017 before S.B.</p> <p style="text-align: center;"> (MUHAMMAD HAMID MUGHAL) MEMBER</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR.

S.A. No. 1225/2017

Shafqat Ullah,..... Appellant

Versus

Government of Khyber Pakhtunkhwa  
through Chief Secretary and others..... Respondents

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4.	Application for condonation of delay		8-9
5.	Standing order No.1 of 1996	A	10-12
6.	List of Sub Inspectors 2 and 3 steps promotion.	B	13-15
7.	Directive regarding promotion.	C	16-17
8.	Impugned order.	D	18
9.	Departmental appeal	E	19-22
10.	Comments of special Branch	F	23-25
11.	Order of High Court dated 12.01.2017	G	26-29
12.	Appeal to Service Tribunal.	H	30-35
13.	Wakalatnama.		36

*Shafqat*  
Appellant

Through

*A. Zib*  
Muhammad Alamzeb Khan  
Advocate, Peshawar  
Cell: 0333-9171362

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,

PESHAWAR.

S.A. No. 1225/2017

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1267

Dated 06-11-2017

Shafqat Ullah, No.392/ SB  
Sub Inspector Special Branch Police Department.....Appellant

**Versus**

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary,  
Civil Secretariat, Peshawar.
- 2) ✓ Provincial Police Officer (Inspector General of Police), Govt. of  
KPK, Central Police Office, Peshawar.
- 3) ✓ Additional Inspector General of Police (Special Branch) KPK,  
Peshawar..... Respondents

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APPEAL UNDER SECTION 4 OF SERVICE  
TRIBUNAL ACT, 1974 TO THE EFFECT  
THAT IMPUGNED ORDER OF  
RESPONDENTS NO.2 AND 3 NO.2445/EB  
DATED PESHAWAR THE 27.04.2016 IS  
WRONG, ILLEGAL, AGAINST FACTS,  
CORAM NON-JUDICE, INEFFECTIVE ON  
RIGHTS OF APPELLANTS AND HENCE  
LIABLE TO BE SET ASIDE/  
CANCELLED.

---

**Filed to-day**

**Registrar**

6/11/17

**Respectfully submitted that;**

- 1) The appellant is police official of Special Branch Department.
- 2) It is to be particularly noted that special branch of police  
department is highly sensitive and technical branch and is the most  
unattractive offshoot of police department. Hence to make it

attractive, certain incentives were offered to the employees particularly to lower staff. Out of which one step promotion was one of them, hence the appellant who basically was constable, joined Special Branch as head constables (i.e. on one step promotion).

- 3) Maximum tenure in special branch was 5 years but whoever wished to remain in special branch got promotion till Assistant Sub Inspector and Sub Inspector with passage of time on merits. Some of the appellants are now at the verge of retirement.
- 4) In Sind province certain illegalities and irregularities were committed by the provincial Govt. in police department, to which illegalities. Legal covers were granted by Sind Govt. through certain enactments, which act of provincial government of Sind was challenged in Supreme Court of Pakistan wherein the matter was elaborately discussed and the malafide acts and enactments were set aside by Hon'ble Supreme Court of Pakistan vide SCMR 2013 Page (1752)
- 5) The respondents taking shelter of judgment of Supreme Court and by misinterpreting the same, demoted appellant again as Head Constable, which extremely is injustice and punishment for no fault of appellants with no offence from appellant's side constrained from which situation writ petition No.2088-P/2016 was filed before Hon'ble Peshawar High Court, Peshawar, which was dismissed being not maintainable and directed the appellants to approach the proper forum for the redressal of their grievance and hence the present appeal.

**GROUND FOR SETTING ASIDE IMPUGNED ORDERS OF RESPONDENTS NO.S/2262-2312116 DATED 21.03.2016 AND NO.2445/EB DATED PESHAWAR THE 27.04.2016.**

- A. The Supreme Court judgment has been misinterpreted and wrongly applied on appellant as the promotion of appellant is on merits and with the passage of time the appellant has been



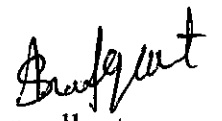

promoted and so such promotion is not out of turn promotions, hence the impugned orders are illegal and unjustified.

- B. The Supreme Court judgment is of 2013 and now in 2016 it has been executed on appellant. The appellant has been penalized and demoted to the rank of head constable for no reasons and rhyme.
- C. That the promotion of appellant is on merits and at their own turn and with the passage of time the appellant has been promoted without adopting any illegal mode, other than merits. No underhand means applied in such promotions and is purely on merits.
- D. That the promotion of appellant has been made in accordance with law and in good faith without any ulterior motives or malafides. These promotions are not out of turn promotions.
- E. Had there been any affectees, they would have challenged the promotions and absorption in Special Branch before services tribunal.
- F. That the appellants have got the matching qualifications for the posts and such promotions are not out of turn promotions.
- G. Valuable and fundamental rights of the appellants are involved in the matter and is a case of public importance.
- H. The impugned orders are without jurisdiction, arbitrary in nature, contradictory one and so void ab-initio.
- I. For no reason and rhyme, the appellant has been demoted and been penalized, which act of respondents is against the rules of natural justice.
- J. The acts of respondents through impugned orders are perverse and vitiated from its very inception.
- K. The impugned orders are unfair, malafide one, capricious in nature as the case of appellant has been dealt with not permitted by law, moreover, the appellant has been condemned unheard.

- L. The impugned orders are prejudice in nature, the laws and rules have been transgressed. The case has never been dealt with objectively and passionately.
- M. No reasons for demotion given nor substantiated nor any nexus between appellant case and supreme court judgment established.

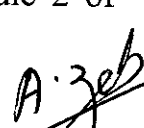
PRAYER:

Hence for the above stated reasons and in interest of justice the impugned orders of demotion be set aside along with any other appropriate remedy deemed fit by this Hon'ble Tribunal.

  
 Appellant  
 Through  
  
**Muhammad Alamzeb Khan**  
 Advocate, Peshawar

CERTIFICATE:

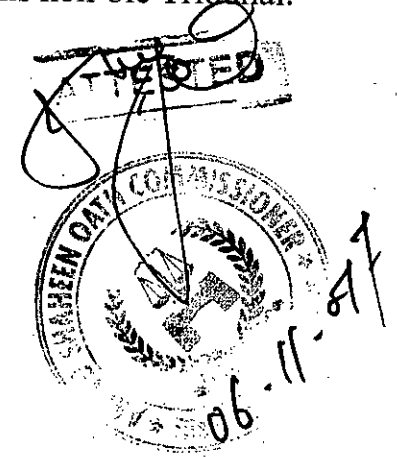
Certified that as per information and instructions furnished by my client such like appeal has earlier been filed by the appellant on the subject in this hon'ble Tribunal which was returned under Rule 3 sub rule 2 of Service Appeal Rules 1986 for filing separate appeal.

  
 Advocate

AFFIDAVIT

I, do hereby affirm and declare as per information furnished by my clients that the contents of the **Appeal** are true and correct and nothing has been concealed from this hon'ble Tribunal.

  
 Deponent



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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

S.A. No. \_\_\_\_\_ 2017

Shafqat Ullah..... Appellant

Versus

Government of Khyber Pakhtunkhwa  
through Chief Secretary and others..... Respondents

**ADDRESSES OF THE PARTIES**

**APPELLANT:**

Shafqat Ullah, No.392/ SB  
Sub Inspector Special Branch Police Department.

**RESPONDENTS:**

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary,  
Civil Secretariat, Peshawar.
- 2) Provincial Police Officer (Inspector General of Police), Govt. of  
KPK, Central Police Office, Peshawar.
- 3) Additional Inspector General of Police (Special Branch) KPK,  
Peshawar

*Shafqat*  
Appellant

Through

*A. Zeb*  
**Muhammad Alamzeb Khan**  
Advocate, Peshawar

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

S.A. No. \_\_\_\_\_ 2017

Shafqat Ullah, ..... Appellant

Versus

Government of Khyber Pakhtunkhwa  
through Chief Secretary and others..... Respondents

APPLICATION FOR SUSPENSION OF  
IMPUGNED ORDERS TILL FINAL  
DECISION OF ACCOMPANYING APPEAL.

*Respectfully Sheweth;*

- 1) That the above noted appeal is being filed today before this hon'ble Tribunal.
- 2) That grounds of appeal may be read as part and parcel of this application.
- 3) That prima facie case exists in favour of appellant/ petitioner and are sanguine about its success.
- 4) That balance of convenience also lies in favour of suspension of impugned orders.
- 5) That if the operation of impugned orders/ judgments are not suspended, petitioners will suffer irreparable loss.

2

It is therefore, prayed that on acceptance of this application, operation of impugned orders may kindly be suspended, till final disposal of accompanying appeal.

*Arafqat*

Appellant

Through

*Azib*

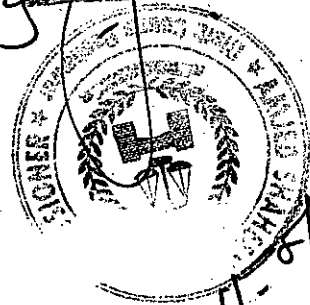
**Muhammad Alamzeb Khan**  
Advocate, Peshawar

AFFIDAVIT

I, do hereby affirm and declare as per information furnished by my clients that the contents of the **Application** are true and correct and nothing has been concealed from this hon'ble Tribunal.

*Arafqat*

DEPONENT

*Arafqat*  
ATTESTED  
  
06-11-2017

181

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

S.A. No. \_\_\_\_\_ 2017

Shafqat Ullah, ..... Appellant

Versus

Government of Khyber Pakhtunkhwa  
through Chief Secretary and others..... Respondents

APPLICATION FOR CONDONATION OF DELAY

*Respectfully Sheweth;*

- 1) That the above titled appeal is being filed before this Hon'ble Tribunal which next date has not yet been fixed.
- 2) That earlier the appellant filed writ petition before Peshawar High Court, Peshawar against the impugned orders of demotion along with interim relief which was fixed on 12.01.2017 and the hon'ble High Court directed the appellant to approach the proper forum for the redressal of their grievance.
- 3) That the appellant with other appellants filed appeal at the directions/ order of Peshawar High Court, which was returned to the appellant for filing separate appeals.
- 4) That the appellants are numerous in number and communication to them was not possible, hence the petitioner request for condonation of delay.

9

It is, therefore, prayed that on acceptance of this application, the delay, if any, in filing the instant appeal may kindly be condoned and the case may kindly be decided on its own merits, in the interest of justice.

*Shafiqat*

Appellant

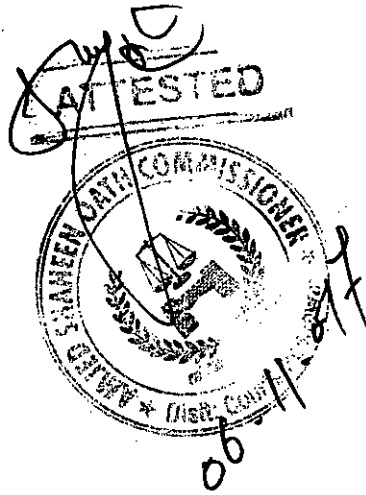
Through

*A. Zub*  
**Muhammad Alamzeb Khan**  
Advocate, Peshawar

AFFIDAVIT

I, do hereby affirm and declare as per information furnished by my clients that the contents of the **Application** are true and correct and nothing has been concealed from this hon'ble Tribunal.

*Shafiqat*  
DEPONENT



پروگرام آبرائے ذرائع افراد سپیشل برانچ

پیس منسٹر "A"

ریگولر پولیس سے ریٹائریشن پر سپیشل برانچ آنے والے پولیس اہلکاروں کیلئے کوئی مخصوص معیار مقرر نہیں ہے۔ تاہم مشاہدہ ہے کہ ناپسندیدہ اہلکار یا ایسے اہلکار سپیشل برانچ بھیج دیئے جاتے ہیں جو خود جانا نہیں چاہتے۔ ریٹائریشن کی مجدد مدت، ٹریننگ اور مہارت کے فقدان کی وجہ سے سپیشل برانچ مستقل طور پر مسائل کے تسلسل کا شکار ہے۔

مقصد :- Object :-

یہ نیا ضروری ہے کہ حکومت کے متعدد، منظم تربیت یافتہ اور نچلے تحقیقاتی ادارے ہوتے چاہئے جو حالات و واقعات کے متعلق بروقت اور قابل از وقت اہم اطلاعات اکٹھا کرنے اور بروقت حکومت کو پہنچانے کی صلاحیت رکھتے ہوں تاکہ حکومت امن عامہ کی خاطر بروقت فیصلہ صادر کرے اسی طرح سفید پارچا میں سکیموں، مشتبہ اور غیر ملکی اشخاص کی نگرانی اور ڈاک سنسر شپ نہایت بڑی تکنیکی شعبے ہیں۔ ایسے رضاکار اور موزوں اہلکاروں کو سپیشل برانچ میں شامل کرنے کیلئے قواعد و ضوابط وضع کرنے کی اشد ضرورت محسوس کی گئی ہے۔

طریقہ کار :- Method :-

ہر سال جنوری کے مہینے میں پولیس کے تمام شعبہ جات سے ایسے پولیس اہلکار (سیاہی سب انسپکٹرنک) جو بخوشی خود سپیشل برانچ میں آنا چاہتے ہوں کے نام بھجوانے کی استدعا کی جائیگی۔

سپیشل برانچ میں ملازمت کا کم از کم دو رانیہ پانچ سال ہوگا جس میں دو سال خزانہ

ملازمت کی جائیگی۔

FA/FSc سرٹیفیکیٹ رکھنے والے اہلکاروں کیلئے ملازمت کی معیاد تین برس ہوگی جس میں ایک سال خزانہ سرورس کی جائیگی۔ گز جوٹس یا اعلیٰ تعلیم یافتہ اہلکاروں کیلئے سپیشل برانچ میں ملازمت کا دو رانیہ دو سال ہوگا۔ تمام اہلکار جنکو سپیشل برانچ میں شامل کیا جائیگا سپیشل برانچ سے اجازت جاسا کرنے کے پابند ہونگے۔

سپیشل برانچ میں شمولیت کے خواہشمند اہلکار اردو، انگریزی، مضمون نویسی، جرنل نالیج اور انٹرویو دینے کے پابند ہونگے تاکہ انکی سپیشل برانچ کیلئے موزنیت اور مہارت کا اندازہ لگایا جاسکے۔ تعلیم رکھنے والوں کو اضافی نمبرات دیئے جائیگی۔

(ورق الیے)

ATTESTED

Gobind Alameer Rao  
Advocate High Court  
Peshawar.



اور ذمہ دارانہ رویہ مہیا کرنا چاہیگا۔ ATS تربیت یافتہ اہلکار کو ترجیح دی جائیگی۔  
 پولیس ڈولر (21-25) کے تحت DIG سپیشل برانچ اعلیٰ مہارت اور تازگی رکھنے والے افراد کو کنٹریکٹ بنیادوں پر بھرتی کر سکتے ہیں تاہم جنکی تعداد سپیشل برانچ کے کسی بھی یونٹ میں منظور شدہ تعداد کی 20 فیصد سے زائد نہ ہوگی۔ ایسین، سرولینس اور سکیورٹی کیلئے کوئی کوئی

ایسی بھرتی نہیں کی جائیگی۔  
**تحقیق تحقیقاتی اور سکیورٹی کورسز :-**

پولیسکل برانچ، سپیشل اینٹیلی جنس یونٹ، رائے عامہ سروے یونٹ، سینئر شپ ایسین برانچ، سرورے اور سرولینس کیلئے جن اہلکاروں کا چناؤ ہوگا۔ وہ مندرجہ ذیل کورسز کیلئے بھیجے جائیں گے۔

۱۔ اینٹیلی جنس (تعمیری اور اصول) Counter Sabotage ، Counter Espionage

Counter Intelligence

- ۱۲۔ مقابلہ اینٹیلی جنس، مقابلہ جاسوسی، مقابلہ دہشت گردی کی ٹریننگ دی جائیگی۔
- ۱۳۔ اطلاعات، اشخاص، دستاویزات اور VVIP کے سکیورٹی ٹریننگ
- ۱۴۔ بین الاقوامی سیاسی تحقیقاتی کورسز
- ۱۵۔ ساکت اور وڈیو فوٹو گرافی، سماعی آلات کے استعمال اور اعلیٰ ٹیکنالوجی ٹریننگ۔
- ۱۶۔ سرولینس ڈرائیور کورس، ڈرائیونگ لائسنس رکھنے والوں اور ریگولر ڈرائیوروں کیلئے ٹریننگ
- ۱۷۔ کمپیوٹر اور مائیکرو فلپنگ کی ٹریننگ
- ۱۸۔ انسٹرکٹر ٹریننگ کورسز اور عملی کارروائی کے ٹریننگ
- ۱۹۔ متذکرہ کورسز کیلئے انسٹرکٹر کورسز

سپیشل کے اہلکاروں پر کوئی پابندی نہیں ہوگی۔ کہ وہ PTC، PTC، پلوشنرہ، ATS، سہیلی ڈیم یا CID ٹریننگ سکول سموات میں ریگولر پولیس ٹریننگ سرانجام دیں

**سپیشل برانچ میں مدت تعیناتی :-**

ایسے تمام اہلکار (FC سے SI تک) جنہیں سپیشل برانچ میں شامل کیا جائے (5) کم از کم پانچ سال ملازمت کرنے کے معاہدے پر دستخط کریں گے۔ معاہدہ کی خلاف ورزی کرنے پر اسکے خلاف چیکمانہ کارروائی کی جائیگی۔  
 ترقی : Promotions :-

متعلقہ ضلعوں اور ریجنوں میں ترقی پانے والے اہلکار سپیشل برانچ میں ترقی پا جائیں گے۔

کارکردگی اور سنیارٹی پر  
متعلقہ شعبہ میں اعلیٰ تعلیم پر

وہ اہلکار جو سپیشل براج میں 5 پانچ سال کیلئے ملازمت کرنا چاہتے ہوں انکو فارسی  
ایڈھاک بنیادوں پر ترقی دی جائیگی لیکن اپنے متعلقہ ضلعوں کو واپس بھیجے جانے کی صورت  
میں وہ اپنے سابقہ عہدے اور سنیارٹی پر Reverse کیے جائینگے۔  
ایسے اہلکار جو 5 سال مدت پوری کرنے کے بعد بھی سپیشل براج میں ملازمت  
کرنا چاہتے ہوں انکو ریگولر ترقی دی جائیگی۔  
اس سلسلے میں حکومت کو ایک کیس پیش کیا جائیگا تاکہ اعلیٰ پولیس ٹریننگ کیساتھ  
B-1 سکول میں سپیشل براج کے اہلکار ٹریننگ حاصل کر سکے اور پولیس کورسز کیلئے  
مستقل بنیادوں پر ترقی دینے کے مواقع فراہم کیے جاسکیں یہ سلسلہ سپیشل براج  
ٹریننگ سکول کے قیام تک جاری رہیگا۔

دستخط: سید مسعود شاہ  
آئی جی پی سرحد

No. 521-24 /EB, Dated Peshawar the, 24-1- /1996.

Copy of above is forwarded to All SAs, in  
Special Branch for circulation amongst the staff.

Handwritten signatures and notes on the left side of the page, including names like 'S. Z. 27' and 'F/O'.

FOR BY: INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, NWFP, PESHAWAR.

Handwritten signature and stamp on the right side of the page.

List of Sub Inspector (Granted 2 & 3 step promotion in SB)

S. No	Name & No	D/O appoin:	D/O Posting in SB	D/O Promotion	Rank in SB	Reverted to	Substantive Rank	Place of posting	Date of Present posting
1	Mumtaz Ali No.23/SB	20.10.1975	01.11.1981	As HC 04.11.1981 As ASI 11.06.1996 As SI 04.09.2002	SI	HC	Constable	Peshawar Airport	11.04.2016
2	Muhammad Ashraf	05.03.1976	08.06.1982	As HC 01.12.1985 As ASI 01.09.1987 As SI 01.01.2005	SI	HC	Constable	CM House	06.02.2015
3	Syed Attaullah Shah	08.06.1976	24.04.1985	As ASI 21.09.2002 As SI 13.10.2009	SI	ASI	Head Constable	R & A Section	11.05.2015
4	Pervez (Driver)	08.01.1991	08.01.1991	As HC 13.08.1995 As ASI 26.12.1995 As SI 04.09.2002	SI	HC	Constable	CM Squad	
5	Nascer Khan	01.04.1990	30.04.1993	As HC 11.06.1996 As ASI 21.09.2002 As SI 13.10.2009	SI	HC	Constable	AGO Kohat	04.02.2015
6	Muhammad Iqbal No.431	28.03.1994	28.03.1994	As HC 01.04.1995 As ASI 11.11.1996 As SI 01.01.2005	SI	HC	Constable	Allien	29.01.2011
7	Hamayoun Khan 231	08.09.1991	01.06.1995	As HC 01.01.2002 As ASI 01.05.2006 As SI 01.12.2008	SI	HC	Constable	Provincial Assembly	07-09-15
8	Imtiaz Ali 312/SB	10.07.1991	10.06.1996	As HC 01.06.2002 As ASI 01.01.2005 As SI 13.10.2009	SI	HC	Constable	LO	11.06.2012
9	Muhammad Asif.173	12.02.1996	12.02.1996	As HC 01.01.2002 As ASI 01.01.2005 As SI 15.12.2008	SI	HC	Constable	Reader to Director Tech	07.01.2013
10	Asif Saleem 348	24.11.1994	07.04.2005	As HC 15.07.2005 As ASI 24.11.2003 As SI 09.04.2010	SI	HC	Constable Computer Operator	DSR Section	07.04.2005
11	Asfandiyar	25.02.1992	18.02.2006	As ASI 20.02.2006 As SI 13.10.2009	SI	ASI	HC	SB/HQ	18.02.2006
12	Shafqat Ullah No.392	10.11.1990	28.05.2010	As HC 26.06.2006 As ASI 24.07.2012 As SI 15.04.2013	SI	ASI	HC	Admn: Section T/M to IGP	28.05.2010

13

"B"

ATTESTED

Muhammad Afroz Khan  
Advocate High Court  
Dera Ismail Khan


1981  
60  
2041

1924  
60  
1981

ATTESTED

List of Assistant Sub Inspector (Granted 2 step promotion in SB)

S. #	Name & No	D/O appoin:	D/O Posting in SB	D/O Promotion	Rank in SB	Reverted to	Substantive Rank	Place of posting	Date of Present posting
1	Samin Khan	02.04.1979	25.02.1982	As HC 14.02.1983 AS ASI 21.09.2002	ASI	HC	Constable	AGO Malakand	31.01.2014
2	Zahidullah 240	30.12.1985	09.09.1990	As HC 08.07.1996 As ASI 01.01.2007	ASI	HC	Constable	Provincial Assembly	16.01.2015
3	Muhammad Siddique	10.08.1991	10.08.1991	As HC 08.07.1996 As ASI 21.09.2002	ASI	HC	Constable	Governor Squad	10.08.1991
4	Niazbeen .186	31.12.1987	21.12.1991	As HC 31.05.1995 As ASI 21.09.2002	ASI	HC	Constable	AGO Warsak Road	13.08.2015
5	Mohammad Javid.270	30.06.1988	05.07.1992	As HC 31.05.1995 As ASI 01.11.2006	ASI	HC	Constable	AGO Nowshera	11.10.1995
6	Habib Ullah.122	28.12.1985	03.04.1994	As HC 08.07.1996 As ASI 21.09.2002	ASI	HC	Constable	CM Sectt:	23.02.2012
7	Hamayun Khan 502	30.05.1996	30.05.1996	As HC 01.01.2002 As ASI 15.12.2008	ASI	HC	Constable	DSR Section	30.05.1996
8	Mohammad Kausar.204	01.10.1996	01.10.1996	As HC 01.03.2002 As ASI 15.12.2008	ASI	HC	Constable	Computer	07.02.2013
9	Tariq Khan.458	27.11.1996	27.11.1996	As HC 23.10.2002 As ASI 01.02.2007	ASI	HC	Constable	AGO Cantt	29-08-14
10	Naseem Ullah.58	01.12.1996	01.12.1996	As HC 01.01.2002 As ASI.01.09.2008	ASI	HC	Constable	Censor GPO Peshawar Cantt	03.10.2014
11	Wali Gul.272	17.06.1996	21.05.1998	As HC 01.06.2002 As ASI.01.08.2008	ASI	HC	Constable	SB/HQ	01-12-14
12	Muhammad Ali 573	24.09.1991	31.01.1999	As HC 23.10.2002 As ASI 13.06.2008	ASI	HC	Constable	AGO Mardan	23.10.2002
13	Saeed Ullah 356	02.09.1991	10.08.1999	As HC 01.06.2002 As ASI 15.12.2008	ASI	HC	Constable	SB/HQ	15-08-12
14	Waheed Khan 516	01.09.1993	05.12.2001	As HC 23.10.2002 As ASI 09.08.2008	ASI	HC	Constable	AGO Hangu	19-01-10
15	Mohammad Nadeem 406	11.10.1993	03.03.2003	As HC 01.01.2005 As ASI 22.01.2008	ASI	HC	Constable	AGO DIKhan	03.03.2003
16	Abdul Halim.325	21.01.1991	21.01.1991	As HC 01.06.2002 As ASI 26.08.2008	ASI	HC	Constable	Admn: HQ	24.10.2001
17	Farid Khan.445	10.08.1991	10.08.1991	As HC 08.07.1996 As ASI 13.10.2009	ASI	HC	Constable	SB/HQ	07.11.2014
18	Abudl Hami 430	24.05.1992	24.05.1992	As HC 01.06.2002 As ASI 13.10.2009	ASI	HC	Constable	AGO Nowshera	08.10.2003

APPROVED  
  
 A. J. Khan  
 District Officer

6/17

19	Hareon Samad.439	01.10.1994	01.10.1994	As HC 13.11.1996 As ASI 13.10.2009	ASI	HC	Constable	I/C GG Section	116.06.2010
20	Saeed Khan. 489	26.06.1996	22.04.2003	As HC 15.07.2005 As ASI 15.06.2009	ASI	HC	Constable	SB/HQ	28.10.2013
21	Israil Khan. 101	28.09.1988	17.06.2009	As HC 01.08.2005 As ASI 25.07.2009	ASI	HC	Constable	SB/HQ	19-02-16
22	Ihsanul-Haq 83	01.10.1980	13.04.1988	As HC 08.07.1996 As ASI 13.10.2009	ASI	HC	Constable	AGO Charsadda	25.06.2004
23	Israr Khan.297	11.10.1994	06.04.2002	As HC 01.06.2002 As ASI 09.04.2010	ASI	HC	Constable	Control Room	06.04.2002
24	Shuaib Zada.477	16.09.1991	14.05.2004	As HC 01.03.2007 As ASI 10.04.2010	ASI	HC	Constable	SB/HQ	14.11.2012
25	Alamzeb. 45	02.12.1994	28.08.2002	As HC 23.10.2002 As ASI 12.07.2010	ASI	HC	Constable	SB/HQ	14.11.2012
26	Muhammad Mushtaq. 72	02.11.1995	26.08.2000	As HC 01.06.2002 As ASI 25.08.2010	ASI	HC	Constable	AGO City	19.12.2009
27	Afsar Ali. 179	15.09.1991	08.07.2012	As HC 09.04.2009 As ASI 09.10.2009	ASI	HC	Constable	SB/HQ	10.07.2015

AM

17/11/14

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO: 45/2015 \*  
Date of institution ... 14.01.2015  
Date of judgment ... 17.05.2016

Nawab Ali, LHC No. 834  
Police Line, District Nowshera.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Government of Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Mardan Region-I Mardan.
3. The District Police Officer, Nowshera.

... (Respondents)

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APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE DEMOTION ORDER NO. 1498 DATED 2.12.2014 PASSED BY THE DISTRICT POLICE OFFICER, NOWSHERA (RESPONDENT NO.3) WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF REDUCTION IN RANK FROM THE POST OF HEAD CONSTABLE (B.7) TO THE POST OF CONSTABLE (B.5) AND ALSO AGAINST THE ORDER NO. 8545-46 DATED 29.12.2014 PASSED BY THE RESPONDENT NO.2 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS "FILED" WITHOUT COGENT REASONS.

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Mr. Rizwanullah, Advocate. .. For appellant.  
Mr. Muhammad Adeel Butt, Additional Advocate General,  
Mr. Ziaullah, Government Pleader. .. For respondents.

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MR. MUHAMMAD AAMIR NAZIR .. MEMBER (JUDICIAL)  
MR. PIR BAKHSH SHAH .. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: The appellant Nawab Ali, LHC No. 834 Police Line, District Nowshera through instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 02.12.2014 vide which the appellant was reverted from the post of Head Constable(BS.7) to the post of Constable (BS.5). The appellant has also impugned order dated 29.12.2014 passed by respondent No.2 vide

which the departmental appeal submitted by the appellant against the above referred impugned order was filed without cogent reasons.

2. Brief facts of the case giving rise to the instant appeal are that the appellant joined Police Department as Constable (BPS-5) on 09.07.1991 and finally he was promoted as Head Constable C-II (BS.7) w.e.f 10.09.2011 on account of his dedication, devotion and outstanding performance. That the appellant was performing his duty in the higher scale but astonishingly he was reduced in rank from the post of Head Constable to the post of constable vide impugned order dated 02.12.2014 passed by respondent No.3. That the impugned order was passed without serving any charge sheet alongwith statement of allegations upon the appellant. Similarly, no inquiry what so ever was conducted nor any show cause notice was served upon the appellant before demoting him to the post of Constable. Moreover, the appellant has not been provided any opportunity of personal hearing before passing impugned order which is mandatory requirement of law. That the appellant felling aggrieved from the above referred impugned order filed departmental appeal, however the same was also filed by respondent No.2 without any cogent reasons vide order dated 29.12.2014. Feeling aggrieved from the impugned orders referred above, the appellant filed the present appeal.

3. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General as well as Government Pleader for the respondents and have gone through the record available on file.

4. From the record it is quite evident that the appellant was appointed as Constable (BS.5) in the Police Department and after performing duties as a Constable he was promoted to the rank of Head Constable C-II (BS.7) on account of his outstanding performance vide order dated 10.09.2011. Thereafter, the appellant started performing his duties in the next higher rank for about three years when in the meanwhile the appellant alongwith eight others were reverted to their substantive rank i.e Constable with immediate effect. Against the impugned reversion order, the appellant filed departmental appeal to the appellate authority, however the same was filed vide order dated 29.12.2014.

rank as constable vide impugned order dated 02.12.2014 upon the recommendation of the committee. Record further depict that the appellant has not been awarded the penalty of reduction in rank, rather those constables who alongwith the appellant were promoted as C-II Head Constables out of turn, were placed in their substantive rank and those constables who were senior to the appellant and were entitled to be promoted on the basis of seniority and cum-fitness were given their due right of promotion in the light of standing order No. 6/2014. Award of benefit to a person in violation of law would not attract principle of locus poenitentiae. Similarly, as laid down in 2010 PLC (C.S) 924 “Out of turn promotion is not only against the Constitution, but also against Injunction of Islam. Out of turn promotion in a public department generates frustration and thereby diminishes the spirit of public service. It generates undue preference in a public service. Element of reward and award is good to install the spirit of service of community but it should not be made basis of accelerated promotion.” Hence, keeping in to consideration the above stated circumstances and dictum of august Court, we held that the respondents have rightly reverted the appellant alongwith others to their substantive ranks as constables by setting aside their accelerated promotion orders in order to provide due right to the constables senior to them, who are otherwise entitled to promotion as C-II Head Constable (BS.7) on the basis of seniority-cum-fitness. We see no force in the present appeal, which is hereby dismissed. Parties are, however, left to bear their own costs. File be consigned to the record room.

8. Our this single judgment will also dispose of in the same manner appeals No. 45/2015 titled Badshah Khan, No. 47/2015 titled Muhamamd Javed, No.143/2015 titled Jamshid Khan and No. 162/2015 titled Said Ali Shah where common question of law and facts are involved.

ANNOUNCED  
17.05.2016

( *sd* )  
MEMBER

( *sd* )  
MEMBER



16

"C"

*1/2/2011*

ORDER.

It has been observed that officials of various ranks have gained promotion from one rank to another without any prescribed qualification, criteria or any other intelligence course. In some of the cases even Constable of substantive rank has been given promotion to the rank of Inspector resultantly the efficiency of the organization has adversely been effected.

Therefore all officials serving in Special Branch will be given option to do the Intelligence Course. The officials must obtain 50 % marks in the course and those failing to qualify the course/securing less than 50 % marks will be reverted to his substantive rank and be given option to stay in Special Branch or to go back to his parent District.



ADDITIONAL INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, KHYBER PAKHTUNKHAWA,  
PESHAWAR.

No. 3188-93 IEB, dated Peshawar the 17-5 2011.

Copy of above is forwarded to :-

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. All concerned.

**ATTESTED**  
*[Signature]*

**ATTESTED**

*[Signature]*  
Advocate High Court  
Peshawar



From The Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

To All Heads of Police in Khyber Pakhtunkhwa.

No. 11222-325 dated Peshawar, the 19.6.2013.

Subject :- DIRECTIVES OF PROVINCIAL POLICE OFFICER ON SPECIAL CASE PROMOTION.

MEMORANDUM.

The Worthy Provincial Police Officer has ordered that Special Case promotion should be discontinued in future to provide a level playing field for all police personnel in career progression. If a Police Officer performs an act of gallantry, he should be rewarded through cash prizes, certificates, excellent annual reports, nomination for gallantry awards such as P.P.M., Q.P.M., Tamgha-ic-Shujjat etc.

*[Signature]*

PSO  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

Copy to DIG/Mardan w/r to his office No. 1736/ES dated 12.06.2013 with the direction to decide the appeal of the applicants on merit keeping in view their seniority position and rules on the subject.

*not hearing*  
9/5/2013

PSO  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

No. 11222-325  
12/06/13  
Investigation/Traffic  
Cond. - CPC

*[Handwritten signatures and notes]*  
for further  
action

CCPO Peshawar  
19/6/13

*[Handwritten notes and stamps]*



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

17A

No. S/2262-2312/16, Dated Peshawar, the 27/03/2016.

To: All Heads of Police offices  
in Khyber Pakhtunkhwa.

Subject:- ORDER

Memo:

It is submitted that the appellants namely Muhammad Ijaz, Muhammad Tariq, Fazlur-Rahman, Hamayun Khan, Nizar Muhammad and Shabir Ahmad (Computer Operator), while serving as ASIs/SI in Investigation CPO, were reverted to their substantive rank of Constables by the then Addl. IGP/Investigation Khyber Pakhtunkhwa Peshawar vide order dated 29.01.2014 because it was found that they have not undergone the basic promotion courses i.e lower intermediate and were promoted in violation of rules.

The above mentioned officers filed Service Appeal No. 561, 562, 563, 537, 715 & 538/2014 respectively, which were vide consolidated judgement 16.11.2015 as referred to above. The relevant para of the judgement review as follows:-

*'This cannot be disputed that the Crimes Branch is part and parcel of the Khyber Pakhtunkhwa police, being regulated by its rules for the purpose of promotion and maintaining the seniority list. Evidently this aspect of the matter was lost sight by the concerned officers who passed the promotion orders. Irony of the issue is that the appellant has served on the promoted post for sufficient time in the course of which they also received emoluments but nobody took notice of the same. This being so it would be also irony if the impugned cancellation order are found based on whims, likes and dislikes and pick and choose as alleged by the appellants that HC Shafiullah and Mujahid Hussain were left untouched. Since departmental appeal of the appellant has also not been responded, therefore, the Tribunal of the considered view that further indulgence by the Tribunal at this stage may cause further complications. Hence the appeal is remitted to the appellate authority with the direction to examine appeals of the appellants and decide the same strictly on merits without any discrimination'*

Meeting of the Appeal/Review Board was held on 02.03.2016, and the appellants were heard in person. The cases were perused; lists obtained from Addl. IGP/Investigation, Khyber Pakhtunkhwa Peshawar was also perused/examined by the board. The Board decided that all promotions in the Investigation Wing/Computer Section as well as other Units have been done against law and rules. Therefore, the cases of these Constables may be filed with the recommendation that all such promotions in the light of the Supreme Court of Pakistan decision on out of turn promotions be cancelled.

This order is passed in the light of judgement of Service Tribunal Khyber Pakhtunkhwa Peshawar that all promotions in the Investigation Wing, SIs, ASIs, HCs & Constables as well as other Units of Police have been done against law and rules may be set aside/cancelled. All such promotions in the light of the Supreme Court of Pakistan decision on out of turn promotions may also be cancelled.

This order is issued with approval by the Competent Authority.

(MUHAMMAD ALAM SHINWARI)  
DIG/HQs:

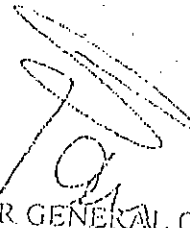
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

"D"

18

ORDER.

In compliance with the orders of Inspector General of Police K1 Pakhtunkhwa Peshawar vide his Order No. S/2262-2312/16, dated 21.03.2016, issued in the light of Supreme Court Order, all orders issued regarding *second and third* step of turn promotions to the officials of Special Branch from their substantive ranks hereby withdrawn with immediate effect.

  
ADDL; INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, KHYBER PAKHTUNKHWA,  
PESHAWAR.

NO. 2445/EB, dated Peshawar the 27 / 4 /2016.  
Copy forwarded to:-

1. DIG/HQrs, CPO, Khyber Pakhtunkhwa Peshawar.
2. The AIG/Establishment, CPO Peshawar.
3. PA to Addl: IGP/Special Branch
4. E.C/Accountant.

ATTESTED





ORDER.

In compliance with the orders of Inspector General of Police Khyber Pakhtunkhwa Peshawar vide his Order No. S/2262-2312/16, dated 21.03.2016, issued in the light of Supreme Court Order, all orders issued regarding second and third steps out of turn promotions to the officials of Special Branch from their substantive ranks are hereby withdrawn with immediate effect.

Sd/xxxxx  
ADDL: INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, KHYBER PAKHTUNKHWA,  
PESHAWAR.

No. 2445/EB, dated Peshawar the 27-4-2016

Copy forwarded to:-

1. DIG/HQrs, CPO, Khyber Pakhtunkhwa, Peshawar.
2. The AIG/Establishment, CPO Peshawar.
3. PA to Addl: IGP/Special Branch.
4. E.C/Accountant.

**ACCEPTED**  
**Advocate High Comm**  
**Peshawar**

19

"E"

To

**Inspector General of Police,**

**Khyber Pakhtunkhwa, Peshawar.**

**DEPARTMENTAL APPEAL**

Sir,

Respectfully stated that

Judgment of Supreme Court of Pakistan has wrongly been applied on us for the reason that:-

1. Our promotion has been made on Merits at different times intervals when our promotion became matured/ due with afflux of time.
2. Our promotion are not out of turn promotion but on merits and at its own time.
3. For our promotion, different courses has been done by the appellants and after due process of law.
4. Majority of appellants are at the verge of retirement which would be worst set back to appellants and their children.
5. The judgment of Supreme Court of Pakistan has once been implemented by Ex-I.G.P K.P.K vide letter dated 19.06.2013, hence against it's implementation through letters dated 27.04.2016 is unjustified, illegal & untenable.
6. Special Branch Police was an unattracted area of police. So, one step promotion as an incentive was granted to the appellants to join this Branch.
7. Had there been some aggrieved persons from such promotions they would have challenge the same at competent forums. Meaning thereby that the promotion of appellants are on merits and no one

APPEALS  
High Court  
Peshawar

was aggrieved of such promotions hence not out of turn promotions.

- 8. These promotions of appellants did not confer right of seniority to any one.
- 9. It is worth mentioning here that judgment of Supreme Court of Pakistan is regarding High ups in police department & not regarding sepoyees/ constables & Head Constables.
- 10. The promotions of appellants were temporary & in event of deputation to their parent districts the appellants would have lost their promotions.
- 11. Hence for the above stated reasons the impugned order of withdrawal of promotion orders of appellants be set aside and to mitigate the agonies of appellants.

Appellants

- 1) Mumtaz Ali, No.23  
Sub Inspector Special Branch Police Department.
- 2) Parvez,  
Sub Inspector Special Branch Police Department.
- 3) Naseer Khan,  
Sub Inspector Special Branch Police Department.
- 4) Muhammad Iqbal No.481,  
Sub Inspector Special Branch Police Department.
- 5) Hamayoun Khan No.231,  
Sub Inspector Special Branch Police Department.
- 6) Imtiaz Ali No.3121,  
Sub Inspector Special Branch Police Department.

*Mumtaz Ali* 30/4  
*Parvez*

*Naseer*

*Muhammad Iqbal*  
*Hamayoun*

*Imtiaz Ali*

REGISTERED

*[Signature]*

- 21
- Asif
- Asif
- AS Feroze
- ~~Shafqat~~
- Samin Khan
- Ma
- Hawa yon
- Tosir 30/4
- No. Saem.
- M. Ali.
- ~~Saeed~~
- ~~Waheed~~
- Asif
- 30/4
- 1) Muhammad Asif No.178,  
Sub Inspector Special Branch Police Department.
- 2) Asif Saleem No.348,  
Sub Inspector Special Branch Police Department.
- 3) Asfandiyar,  
Sub Inspector Special Branch Police Department.
- 4) Shafqat Ullah No.392,  
Sub Inspector Special Branch Police Department.
- 5) Samin Khan,  
Assistant Sub Inspector, Special Branch Police Department.
- 6) Muhammad Javid No.27,  
Assistant Sub Inspector, Special Branch Police Department.
- 7) Hamayon,  
Assistant Sub Inspector, Special Branch Police Department.
- 8) Tariq Khan No.458,  
Assistant Sub Inspector, Special Branch Police Department.
- 9) Naseem Ullah No.58,  
Assistant Sub Inspector, Special Branch Police Department.
- 10) Muhammad Ali No.573,  
Assistant Sub Inspector, Special Branch Police Department.
- 11) Saeed Ullah No.356,  
Assistant Sub Inspector, Special Branch Police Department.
- 12) Waheed Khan No.516,  
Assistant Sub Inspector, Special Branch Police Department.
- 13) Abdul Halim No.325,  
Assistant Sub Inspector, Special Branch Police Department.



22

- 20) Farid Khan No.445,  
Assistant Sub Inspector, Special Branch Police Department.
- 21) Saeed Khan No.489,  
Assistant Sub Inspector, Special Branch Police Department.
- 22) Israil Khan No.101,  
Assistant Sub Inspector, Special Branch Police Department.
- 23) Ihsan ul Haq No.83,  
Assistant Sub Inspector, Special Branch Police Department.
- 24) Israr Khan No.297,  
Assistant Sub Inspector, Special Branch Police Department.
- 25) Shuaib Zada No.477,  
Assistant Sub Inspector, Special Branch Police Department.
- 26) Afsar Ali No.179,  
Assistant Sub Inspector, Special Branch Police Department

Farid -

Saeed

Israil

IHSAN

ISRAR KHAN

Shuaib Zada

AP

30/4/16

**ATTESTED**

Mohammad Ahsanul Koo.  
Advocate High Court  
Rawalpindi

"F" 23 "O"

B

Respected Sir,

Kindly refer to Order No. S/2262-2312/16 dated 21.03.2016 received from Central Police Office, Khyber Pakhtunkhwa, Peshawar wherein all Units have been directed to do the out of turn promotions.

In order to ensure compliance of the above orders received from CPO, a search was made to find out whether anyone is availing out of turn promotions in Special Branch or not. The scrutiny and perusal of the record revealed that the Special Branch was un-attracted area/unit of Police and almost all the members of regular Police were reluctant to serve the Special Branch in any rank. The Police Officers use to exert political or other extraneous pressures for cancellation of their transfer orders to Special Branch.

The high ups of the Police department in order to create attraction in Special Branch service approached the Provincial Government for sanction of special allowance. The government was pleased to allow twenty percent (20 %) special allowance for the Police officers serving in the Special Branch. However these incentives did not prove effective, therefore, the authorities in order to create charming in service of Special Branch allowed promotions to next ranks on ad-hoc and officiating basis.

Worthy Inspector General of Police Khyber Pakhtunkhwa first issued Standing Order No. 1/1996 which provides ad-hoc and officiating promotions for the Police Officers who submit written option of service in Special Branch for five (05) years or beyond five (05) years on ad-hoc and officiating basis respectively. (Copy of standing order is enclosed as F/A).

In pursuance of the Standing Order mentioned above, Police Officers serving in Special Branch were granted ad-hoc and officiating promotions who are still availing the promotions. In addition to grant of promotions, the Standing Order also provide that a vacancy may be chalked out for selection of Special Branch officers for technical courses in Intelligence Bureau training school so that Special Branch officers may be able to earn

ATTACHED

MAJORS/MAJORS  
MAJORS/MAJORS  
MAJORS/MAJORS

ATTACHED

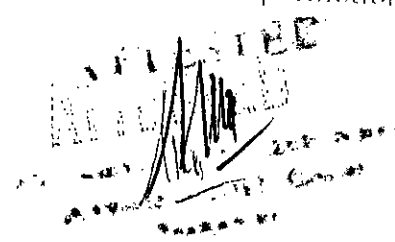
regular promotion. However such idea contained in the Standing Order was not implemented and materialized in true prospective.

In the year 2011, the issue of demotion of officers serving in Special Branch cropped up, therefore. Additional Inspector General of Police Special Branch issued Order bearing No. 3188-93/EB dated 17.05.2011 (Copy enclosed at F/B), that the promotions allowed to Special Branch officials have adversely affected the efficiency, therefore, the officials serving in Special Branch will be given option for selection for Intelligence courses. The officers who qualify the Intelligence courses will be allowed to stay in Special Branch. The copy of the order was submitted to the office of Worthy Inspector General of Police, Khyber Pakhtunkhwa and he was pleased to pass the following remarks on the Order.

*"Para 2 may apply to future inductees. The officers who are already serving should not be disturbed. However if the Additional Inspector General of Police Special Branch wants that the services of a particular staff is not required any more he is at liberty to surrender after coordinating with the Additional Inspector General of Police."*

The remarks of Worthy Inspector General of Police were conveyed to Additional Inspector General of Police Special Branch vide letter No. 1475/Legal dated 03.06.2011. (Copy enclosed as F/C).

In view of the position explained above, it is clear that the promotions made in Special Branch do not amount to out of turn promotions as the same have been made by the competent authority in compliance with Standing Order and Orders of Worthy Inspector General of Police mentioned above. This is also important to pinpoint that still no one has challenged the promotion orders of Special Branch officials in Departmental appeals, Service Appeals and Writ petitions meaning thereby that no one is aggrieved of the promotion orders. Therefore such promotions could not be held out of turn promotions. Furthermore, the competent authorities while issuing the promotion order has mentioned in clear terms that officers will not claim seniority. A promotion order which do not confer right of seniority cannot be termed as out of turn promotions. As


*Dr*  



regard the reference of Hon'ble Supreme Court of Pakistan Judgment in the order received from CPO, it is worth mentioning that the Supreme Court took adverse notice of the out turn promotions made in senior posts of Police in the province of the Sindh. <sup>where</sup> The spirit of the ruling does not prohibit out of turn promotion had affected the seniority of numerous police officers who knocked at the doors of Supreme Court of Pakistan. In the same vein your promotions without grant of seniority in any un-attracted area. The good officer is appraised that personal up-gradation was allowed to about three hundred (300) Police officers and civil servants who served at Swat during operation period. The promotion is reverted to his parent district. It is also suggested that in future there will be no promotions in Special Branch are also personal/temporary as the officer loose the promotion a clear policy may be chalked out that in future there will be no promotions. In case the promotions of Special Branch officials are irregular promotions, then it will not only disturb the smooth function of Special Branch but will also open a flood gate to encourage the officials serving in Special Branch. This act will also open a flood gate to litigation. Moreover the duties of Special Branch are technical in nature and officers will not deliver to the satisfaction of high ups.

30

It is also advisable that AIG Legal may be approached in the matter for proper opinion if approved.

Submitted please

ATTENDED  


**ATTENDED**  
  
**Mohammed Atamzeb Khan**  
**Advocate High Court**  
**Peshawar**

Respected Sir,

Kindly refer to Order No. s/2262-2312/16 dated 21.03.2016 received from Central Police Office, Khyber Pakhtunkhwa, Peshawar wherein all Units have been directed to undo the out of turn promotions.

In order to ensure compliance of the above orders received from CPO, a search was made to find out whether anyone is availing out of turn promotions in Special Branch or not. The scrutiny and perusal of the record revealed that the Special Branch was un-attracted area/unit of Police and almost all the members of regular Police were reluctant to serve the Special Branch in any rank. The Police Officers use to exert political or other extraneous pressures for cancellation of their transfer order to Special Branch.

The high ups of the Police department in order to create attraction in Special Branch service approached the Provincial Government for sanction of special allowance. The government was pleased to allow twenty percent (20 %) special allowance for the police officers serving in the Special Branch. However these incentives did not prove positive, therefore, the authorities in order to create charm in service of Special Branch allowed promotions to next ranks on ad-hoc and officiating basis.

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ADVOCATE  
OF RIGHTS  
Mohammad Iqbal Khan  
Advocate High Court  
Advocate High Court  
\*\*\*\*\*

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APPROVED  
[Signature]  
[Stamp]

ORDER.

It has been observed that officials of various ranks have gained promotion from one rank to another without any prescribed qualification criteria or any other intelligence course. In some of the cases even Constable of substantive rank has been given promotion to the rank of Inspector resultantly the efficiency of the organization has adversely been effected.

Therefore all officials serving in Special Branch will be given option to do the Intelligence Course. The officials must obtain 50 % marks in the course and those ailing to qualify the course/securing less than 50 % marks will be reverted to his substantive rank and be given option to stay in Special Branch or to go to his parent District.

Sd/xxxxx


ADDL: INSPECTOR GENERAL OF POLICE  
SPECIAL BRANCH, KHYBER PAKHTUNKHWA  
PESHAWAR.

No. 3188/93/EB, dated Peshawar the 17-5-2011

Copy of above is forwarded to:-

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. All concerned.

**ATTESTED**

  
MAHMOUD AHMED KHAN  
MAJOR  
PESHAWAR

Constables in the Police Department  
 whereafter they joined the Special  
 Branch pursuant to the incentive of one  
 step promotion announced by the  
 Government. Subsequently further out of  
 turn promotions were also given to them,  
 which have been withdrawn by the  
 respondents through order impugned in  
 the instant petition.

4. Comments were called for from  
 the respondents, which have been so  
 furnished, wherein, issuance of the  
 desired writ has been opposed.

5. Learned counsel for the petitioners  
 argued that the impugned order is bad in  
 law as on no account the petitioners' out  
 of turn promotions were hit by the  
 judgment delivered by the Hon'ble  
 Supreme Court of Pakistan, which  
 has been made a base by the  
 respondents for passing the impugned  
 order.

6. As against the above, learned  
 AAG defended the order questioned by

*Gain*

**ATTESTED**

Advocate High Court

**ATTESTED**

EXAMINER  
 Peshawar High Court

27 JAN 2017



the petitioners for its being in line with the judgment of the apex court.

7. Arguments heard and record gone through.

8. Perusal of the case record would reveal that admittedly petitioners are civil servants and promotion is one of the terms and conditions of service of civil servants within the meaning of Chapter-I of the Khyber Pakhtunkhwa Civil Servants Act, 1973. According to Section 3 of the Act *ibid*, a Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants. Furthermore, according to Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, this court cannot entertain a case relating to the terms and conditions of service of a civil servant because for resolution of such issues, a Service Tribunal has been constituted where the aggrieved civil servant can agitate his grievance.

*Qin*

ATTEST

*[Signature]*

ATTEST  
EXAMINER  
Peshawar

27/11/20

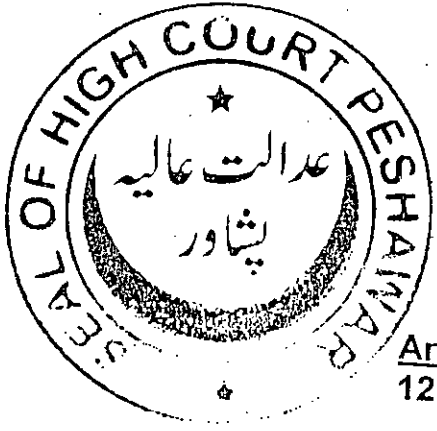
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9. For what has been discussed above, without touching merit of case, we dismiss this petition for its being not maintainable before this court leaving the petitioners at their liberty to approach the proper forum for the redressal of their grievance. COC No.2088-P of 2016 and C.M.No.1360-P of 2016 having become redundant also stand dismissed.

*Sd/- Waqar Ahmad Shah -*  
*Ad-hoc Senior Advocate*

JUDGE

*Sd/-*  
JUDGE



Announced  
12.01.2017.

ATTESTED

*Sd/-*  
Advocate High Court  
Peshawar

CERTIFIED TO BE TRUE COPY  
EXAMINER  
Peshawar High Court, Peshawar  
27 JAN 2017

No. 14815  
Date of Presentation of Application 23/1/17  
No of Page 78  
Copying fee \_\_\_\_\_  
Urgent Fee \_\_\_\_\_  
Total 14-00  
Date of Preparation of Copy 23/1/17  
Date Given For Delivery 23/1/17  
Date of Delivery of Copy 1/2/17

Sadia Shah PS

30 "H"

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Khyber Pakhtunkhwa  
Services Tribunal

Diary No. 221

Dated 01-3-2017

S.A. No. \_\_\_\_\_ 2017



- 1) Mumtaz Ali, No.23 Sub Inspector Special Branch Police Department.
- 2) Muhammad Ashraf, Sub Inspector Special Branch Police Department.
- 3) Parvez, Sub Inspector Special Branch Police Department.
- 4) Naseer Khan, Sub Inspector Special Branch Police Department.
- 5) Muhammad Iqbal No.481, Sub Inspector Special Branch Police Department.
- 6) Hamayoun Khan No.231, Sub Inspector Special Branch Police Department.
- 7) Imtiaz Ali No.3121, Sub Inspector Special Branch Police Department.
- 8) Muhammad Asif No.178, Sub Inspector Special Branch Police Department.
- 9) Asif Saleem No.348, Sub Inspector Special Branch Police Department.
- 10) Asfandiyar, Sub Inspector Special Branch Police Department.
- 11) Shafqat Ullah No.392, Sub Inspector Special Branch Police Department.
- 12) Samin Khan, Assistant Sub Inspector, Special Branch Police Department.
- 13) Zahid Ullah No.240, Assistant Sub Inspector, Special Branch Police Department.
- 14) Niazbeen No.186, Assistant Sub Inspector, Special Branch Police Department.

Filed to-day  
Registrar  
01/3/17

ATTESTED  
Sahibzada Atiqul Karim  
Advocate High Court  
Peshawar  
ATTESTED  
Khyber Pakhtunkhwa  
Services Tribunal

- 15) Muhammad Javid No.27, Assistant Sub Inspector, Special Branch Police Department.
- 16) Hamayon, Assistant Sub Inspector, Special Branch Police Department.
- 17) Tariq Khan No.458, Assistant Sub Inspector, Special Branch Police Department.
- 18) Naseem Ullah No.58, Assistant Sub Inspector, Special Branch Police Department.
- 19) Saeed Ullah No.356, Assistant Sub Inspector, Special Branch Police Department.
- 20) Waheed Khan No.516, Assistant Sub Inspector, Special Branch Police Department.
- 21) Farid Khan No.445, Assistant Sub Inspector, Special Branch Police Department.
- 22) Saeed Khan No.489, Assistant Sub Inspector, Special Branch Police Department.
- 23) Israil Khan No.101, Assistant Sub Inspector, Special Branch Police Department.
- 24) Ihsan ul Haq No.83, Assistant Sub Inspector, Special Branch Police Department.
- 25) Israr Khan No.297, Assistant Sub Inspector, Special Branch Police Department.
- 26) Shuaib Zada No.477, Assistant Sub Inspector, Special Branch Police Department.
- 27) Afsar Ali No.179, Assistant Sub Inspector, Special Branch Police Department.

Appellants

Versus

ATTESTED

*[Signature]*

EXAMINER  
Khayee Farhananwa  
Service Tribunal,  
Peshawar

ATTESTED

*[Signature]*

201 201 201

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Provincial Police Officer (Inspector General of Police), Govt. of KPK, Central Police Office, Peshawar.
- 3) Additional Inspector General of Police (Special Branch) KPK, Peshawar..... Respondents

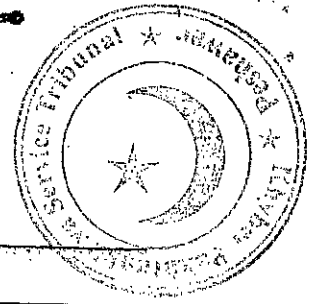
APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 TO THE EFFECT THAT IMPUGNED ORDER OF RESPONDENTS NO.2 AND 3 NO.2445/EB DATED PESHAWAR THE 27.04.2016 IS WRONG, ILLEGAL, AGAINST FACTS, CORAM NON JUDICE, INEFFECTIVE ON RIGHTS OF APPELLANTS AND HENCE LIABLE TO BE SET ASIDE./ CANCELLED.

*Respectfully submitted that;*

- 1) The appellants are police officials of Special Branch Department.
- 2) It is to be particularly noted that special branch of police department is highly sensitive and technical branch and is the most unattractive offshoot of police department. Hence to make it attractive, certain incentives were offered to the employees particularly to lower staff. Out of which one step promotion was one of them, hence the appellants who basically were constables, joined Special Branch as head constables (i.e. on one step promotion).
- 3) Maximum tenure in special branch was 5 years but whoever wished to remain in special branch got promotion till Assistant Sub



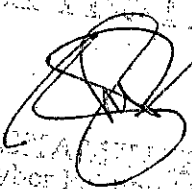

ATTORNEY  
  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar.

Form- A  
FORM OF ORDER SHEET



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

Case No. \_\_\_\_\_ /2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/04/2017	<p>As per direction of the Worthy Chairman this case is submitted to the S, Bench for decision on office objection. To be put up there on <u>04-05-2017</u></p> <p style="text-align: right;"> REGISTRAR</p> <p>Counsel for the appellant present. Seeks adjournment. Adjoined for arguments on office objection on 16.5.2017 before S.B.</p> <p style="text-align: right;"> Chairman</p> <p style="text-align: center;"><b>ATTENDED</b></p> <p style="text-align: center;"> Advocate High Court Peshawar</p> <p style="text-align: right;"><b>ATTENDED</b>  Advocate High Court Peshawar</p>

34

Mumtaz Ali & others vs Govt 34

16.05.2017

Counsel for the appellant present and requested for adjournment. Adjourned. To come up for preliminary hearing on 07.06.2017 before S.B.

(Ahmad Hassan)  
Member

07.06.2017

Clerk to counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 04.07.2017 before S.B.

(Ahmad Hassan)  
Member

04.07.2017

Counsel for the appellant present and requested for adjournment. Adjourned. To come up for arguments on office objection on 11.07.2017 before S.B.

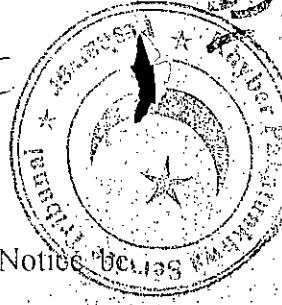
(Ahmad Hassan)  
Member

ATTESTED

Attestor  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 07.06.2017 before S.B.

Munitaz Ali & others vs Govt



31.08.2017

No one present on behalf of appellant. Notice issued to the appellant and his counsel for attendance. To come up for preliminary hearing on 20.09.2017 before S.B.

(Muhammad Hamid Mughal)  
Member (J)

20/09/2017

Counsel for the appellant present. Learned counsel for the appellant was heard on office objection, who stated that as a common point is involved, hence, there is no need of separate appeals.

Sub Rule (2) of Rule 3, of Appeal Rules 1986 provides that every affected civil servant shall prefer the appeal separately under the prescribed rules.

In view of the above, the office objection sustains

Certified to be true copy  
MAHAMMAD  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

(Ahmad Hassan)  
Member

Date of Presentation of Application 26-9-17

Number of Wards 3600

Copying Fee 20/-

Urgent 20

Total 22

Name of Copy [Signature]

Date of Completion of Copy 26-9-17

Date of Delivery of Copy 26-9-17

No one present on behalf of appellant. Notice issued to the appellant and his counsel for attendance. To come up for preliminary hearing on 20.09.2017 before S.B.



11.07.2017

Counsel for the appellant present and requested for adjournment. Adjourned. To come up for arguments on office objection on 09.08.2017 before S.B.

(Munir Ahmad Khan) Member

09.08.2017

Counsel for the appellant present and seeks adjournment. Notice be issued to the parties for date fixed as Adjourned. To come up for arguments on office objection on 16.08.2017 before S.B.

(Ahmad Hassan) Member

16.08.2017

Appellant in person present and seeks adjournment as his counsel is not in attendance. Adjourned. To come up preliminary hearing on 31.08.2017 before S.B.

(Ahmad Hassan) Member

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*[Handwritten signature and stamp]*

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

Service Appeal No. 1225/2017

Shafqat Ullah No. 392/SB Sub Inspector Special Branch Police Department  
.....(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Provincial Police Officer (Inspector General of Police), Govt of KPK, Central Police Office, Peshawar.
3. Additional Inspector General of Police (Special Branch) KPK, Peshawar  
..... (Respondents)

Subject:- **COMMENTS ON BEHALF OF RESPONDENTS No. 2 & 3**

**Respectfully Sheweth!**

**Preliminary Objections:-**

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for non-joinder and mis-joinder of necessary parties.
- d) The appellant is estopped to file the appeal.
- e) The appellant has got no cause of action to file the appeal.
- f) The appellant has not come to the Honorable Service Tribunal with clean hands.

**FACTS:-**

1. Needs no comments as it pertains to service record of the appellant.
2. Correct to the extent that in past incentives of one step promotion were allowed to the Police Officers who voluntarily opt for transfer to Special Branch. Since the Hon'ble Supreme Court of Pakistan declared out of turn promotion as illegal and unconstitutional, therefore the said incentives being availed by Police Officers on the eve of their transfer to Special Branch were withdrawn.
3. Incorrect, only one step promotion was allowed, therefore the second and third step promotion availed by the Police Officers during their posting period in Special Branch were withdrawn in

compliance with the Judgment of the Hon'ble Supreme Court of Pakistan.

4. Needs no comments as this Para pertains to verdict of the Hon'ble Supreme Court of Pakistan. Anyhow the appellant has admitted the order of the Hon'ble Supreme Court of Pakistan.
5. Incorrect, Respondents in order to comply with the order of Hon'ble Supreme Court of Pakistan issued withdrawal order of out of turn and irregular promotions earned by Police Officers.

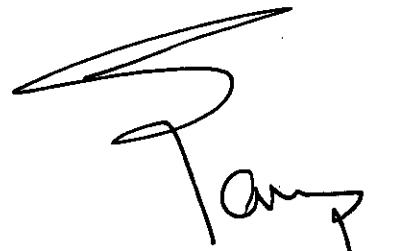
**GROUND:-**

- A. Incorrect, the Judgment of Hon'ble Supreme Court of Pakistan was circulated to all concerned for implementation.
- B. Incorrect, the order of Hon'ble Supreme Court of Pakistan is still intact, therefore Respondents have correctly issued the withdrawal order of promotion availed by Police Officers without qualifying the promotion courses.
- C. Incorrect, the appellants had earned out of turn and irregular promotions, therefore the Respondents in order to implement the Judgment of Hon'ble Supreme Court of Pakistan passed the impugned order.
- D. Incorrect, the seniority of Police Officers is maintained in the respective districts and regions. Furthermore the appellant has not qualified the promotion courses.
- E. Incorrect, the appellant was promoted on the strength of Special Branch therefore no one made any complaint against the appellant.
- F. Incorrect, appellant does not possess the matching qualification. Furthermore appellant will claim seniority/ promotion in district and region level.
- G. Incorrect, no valuable and fundamental rights of the appellant ~~are~~ involved in the matter by implementing the verdict of Hon'ble Supreme Court of Pakistan.
- H. Incorrect, the impugned order is just legal and has been passed in accordance with law and rules.
- I. Incorrect, appellant was availing irregular and out of turn promotions, therefore the same were correctly withdrawn.
- J. Incorrect, the impugned order was passed in compliance with the order of Hon'ble Supreme Court of Pakistan.

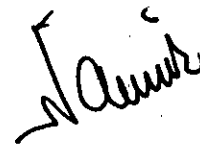
- K.** Incorrect, the impugned order was passed with the sole aim of implementing the Judgment of Hon'ble Supreme Court of Pakistan.
- L.** Incorrect, the impugned order is just and has been passed with sole aim of implementing the Judgment of Hon'ble Supreme Court of Pakistan.
- M.** Incorrect, appellant has availed out of turn promotions therefore his promotion orders were withdrawn.

**Prayer:**

It is therefore humbly prayed that keeping in view of aforementioned submissions, the subject Appeal may please be dismissed.



Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.2)



Additional Inspector General of Police  
Special Branch, Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No.3)

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

Service Appeal No. 1225/2017

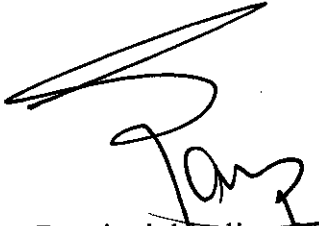
Shafqat Ullah No. 392/SB Sub Inspector Special Branch Police Department  
.....(Appellant)


Versus

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Provincial Police Officer (Inspector General of Police), Govt of KPK, Central Police Office, Peshawar.
3. Additional Inspector General of Police (Special Branch) KPK, Peshawar  
..... (Respondents)

**AUTHORITY LETTER**

Muhammad Asif DSP Legal, Special Branch, Khyber Pakhtunkhwa Peshawar is hereby authorized to appear on behalf of the Respondents No. 2 & 3 before the Hon'ble Service Tribunal Peshawar. He is authorized to submit all required documents and replies etc. pertaining to the appeal through the Government Pleader.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.2)

  
Additional Inspector General of Police  
Special Branch, Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No.3)

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

Service Appeal No. 1225/2017

Shafqat Ullah No. 392/SB Sub Inspector Special Branch Police Department  
.....(Appellant)

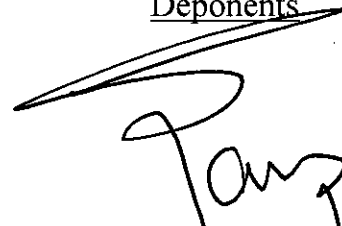
Versus

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3. Additional Inspector General of Police (Special Branch) KPK, Peshawar  
..... (Respondents)

**AFFIDAVIT**

We the deponents do hereby declare that the contents of the written reply is true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

Deponents



Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.2)



Additional Inspector General of Police  
Special Branch, Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No.3)

JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
(Judicial Department)

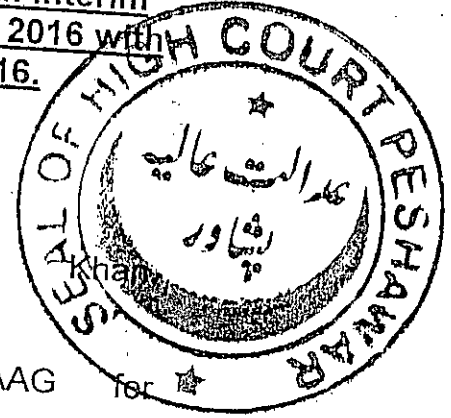
26

W.P. No.2088-P of 2016 with interim  
relief with COC NO.391-P of 2016 with  
C.M.No.1360-P of 2016.

Date of hearing: 12.01.2017.

Petitioner (Mumtaz Ali etc) by  
Mr. Muhammad Alamzeb  
advocate.

Mr. Mujahid Ali Khan, AAG for  
respondents.



JUDGMENT

LAL JAN KHATTAK, J.-

Petitioners through the instant  
petition under Article 199 of the  
Constitution of Islamic Republic of  
Pakistan, 1973 have prayed for issuance  
of a writ to declare order  
dated 27.04.2016 as illegal and unlawful  
whereunder their 2<sup>nd</sup> and 3<sup>rd</sup> out of turn  
promotions have been withdrawn.

3. Brief facts of the case are that the  
petitioners are serving in the Special  
Branch of Police Department,  
Government of Khyber Pakhtunkhwa.  
They were initially enlisted as

*Open*

ATTESTED  
*[Signature]*  
Advocate High Court  
Peshawar

ATTESTED  
EXAMINER  
Peshawar High Court  
27 JAN 2017

regard the reference of Hon'ble Supreme Court of Pakistan Judgment in the order received from CPO, it is worth mentioning that the Supreme Court took adverse notice of the out turn promotions made in senior posts of Police in the province of the Sindh. Out of turn promotion has affected the seniority of numerous police officers who knocked at the doors of Supreme Court of Pakistan. The spirit of the ruling does not prohibit promotions without grant of seniority in any un-attracted area. In the same vein your good office is appraised that personal up-gradation was allowed to about three hundred (300) Police Officers and civil servants who served at Swat during operation period. The promotions in Special Branch are also personal/temporary as the officer loose the promotion n reverted to his parent district. It is also suggested that in order to stop out of turn promotions, a clear policy may be chalked out that in future there will be on regular promotions. In case the promotions of Special Branch officials then it will not only disturb the smooth function of Special Branch but will encourage the officials serving in Special Branch. This act will also open a flood

litigation. Moreover the duties of Special Branch are technical in nature and will not deliver to the satisfaction of high ups.

It is also advisable that AIG Legal may be approached in the matter for proper if approved.

Submitted please.

**ATTESTED**  
*[Signature]*  
**Genarino Alimzed A. S. S.**  
**Advocate High Court**  
**Peshawar**



DDA

idgenet...

<http://www.pakistanlawsite.com/LawOnline/law/content21.asp?Case...>

2017 S C M R 206

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, C.J., Amir Hani Muslim, Ejaz Afzal Khan, Mushir Alam and Ijaz-ul-Ahsan, JJ

C.R.P. 49/2016, CRL. O.P. No.186, 193 of 2016, C.M.As.1681/2016, 7575/2016, 8132/2016, 8143/2016, 8144/2016, 8146/2016, 8147/2016, 8148/2016 in C.R.P.49/2016 in C.A.184-L/2013 and C.M.A. 8177/2016

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

SHAHID PERVAIZ---Petitioner

Versus

EJAZ AHMAD and others---Respondents

C.R.P.50/2016 in C.A. 184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MANZOOR AHMED and others---Petitioners

Versus

RPO GUJRANWALA and others---Respondents

C.R.P. 51/2016 in C.A. 184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

JAMIL AHMED---Petitioner

Versus

RPO GUJRANWALA and others---Respondents

C.R.P. 52/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MALIK M. SARWAR AWAN and others---Petitioners

Versus

GOVERNMENT OF PUNJAB and others---Respondents

C.R.P.83/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

Judgment

**AWAIS MALIK and others---Petitioners**

Versus

**EJAZ AHMAD and others---Respondents****C.R.P.84/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**Mst. RASHIDA BASHIR and another---Petitioners**

Versus

**REGIONAL POLICE OFFICER, GUJRANWALA and another---Respondents****C.R.P.85/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**Syed JAMAT ALI BOKHARI and others---Petitioners**

Versus

**EJAZ AHMED and others---Respondents****C.R.P.89/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**MUHAMMAD NAWAZ and others---Petitioners**

Versus

**CHIEF SECY. GOVT. OF PUNJAB and others---Respondents****C.R.P.91/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**GHULAM DASTGIR and others---Petitioners**

Versus

**EJAZ AHMAD and others---Respondents****C.R.P.92/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**MUHAMMAD AZAM---Petitioner**

Versus

Judgment

**EJAZ AHMED and others---Respondents****C.R.P.52/2016 in Crl. O.P.89/2011**

(On review from the judgment dated 12-06-2013 passed by this Court in Crl. O.P.89/2013)

**AWAIS MALIK and others---Petitioners**

Versus

**CHIEF SECY. PUNJAB and another---Respondents****C.R.L.O.P.123/2016 in C.P.1446-L/1997**

(Contempt proceedings arising out of order of this Court passed in Civil Petition No.1446-L/1997)

**AKHITAR UMER HAYAT LALAYKA---Petitioner**

Versus

**MUSHTAQ AHMED SUKHAIRA, IG PUNJAB, LAHORE---Respondent****CIVIL MSIC. APPLICATION NO.4435/2016**

(Application against out of turn promotions in the Province of Punjab)

**C.R.P.382/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**MUHAMMAD AMI TAIMOOR and others---Petitioners**

Versus

**PROVINCE OF PUNJAB and others---Respondents****C.R.P.383/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**MAHMOOD-UL-HASSAN RANA and others---Petitioners**

Versus

**PROVINCE OF PUNJAB and others---Respondents****C.R.P.454/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**ABRAR AHMAD KHALIL and others---Petitioners**

Versus

judgment

**GOVT. OF PUNJAB and others---Respondents**

**CRI.R.P.174/2016 in Crl.O.P.89/2011**

(On review from the judgment dated 12-06-2013 passed by this Court in Crl.O.P.89/2013)

**GHULAM DASTGIR and others---Petitioners**

**Versus**

**CHIEF SECRETARY, GOVT. OF PUNJAB and others---Respondents**

**CRL.O.P.186/2016 in C.A.184-L/2013**

(Contempt proceedings arising out of judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**MUHAMMAD AZAM---Petitioner**

**Versus**

**MUSHTAQ AHMAD SUKHERA and others---Respondents**

**Crl.O.P.193/2016 in Crl.O.P.86/2016 in C.P.1000-L/2005**

(Contempt proceedings arising out of the order dated 4.10.2016 passed by this Court in Crl. O.P.86/2016 in C.P.1000-L/2005)

**SHAHID PERVAIZ---Petitioner**

**Versus**

**MUSHTAQ AHMED SUKHERA, IG PUNJAB, LAHORE---Respondent**

**Crl.O.P.195/2016 in C.A.184-L/2013**

(Contempt proceedings arising out of the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**IMTIAZ SARWAR---Petitioner**

**Versus**

**ZAHID SAEED, CHIEF SECRETARY PUNJAB and others---Respondents**

**C.R.P.479/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**TAHIR SIKANDAR and others---Petitioners**

**Versus**

**THE INSPECTOR GENERAL OF POLICE, PUNJAB and others---Respondents**

gement

**C.R.P.480/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**MUHAMMAD WASEEM IJAZ---Petitioner**

**Versus**

**IGP PUNJAB and others---Respondents**

**C.R.P.481/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**KHALID MEHMOOD AFZAL and others---Petitioners**

**Versus**

**IGP PUNJAB and others---Respondents**

**C.R.P.482/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

**Malik MUHAMMAD SABIR---Petitioner**

**Versus**

**IGP PUNJAB and others---Respondents**

**CrI.R.P.191/2016 in CrI.O.P.89/2011**

(On review from the judgment dated 12-06-2013 passed by this Court in CrI.O.P.89/2013)

**SHAHID PERVAIZ, SP---Petitioner**

**Versus**

**CHIEF SECRETARY, GOVT. OF PUNJAB and others---Respondents**

C.R.P. 49/2016, CrI. O.P. No.186, 193 of 2016, C.M.As.1681/2016, 7575/2016, 8132/2016, 8143/2016, 8144/2016, 8146/2016, 8147/2016, 8148/2016 in C.R.P.49/2016 in C.A.184-L/2013 and C.M.A. 8177/2016, C.R.P. 50/2016 in C.A. 184-L/2013, C.R.P.51/2016 in C.A. 184-L/2013, C.R.P.52/2016 in C.A. 184-L/2013, C.R.P. 83/2016 in C.A. 184-L/2013, C.R.P. 84/2016 in C.A. 184-L/2013, C.R.P. 85/2016 in C.A. 184-L/2013, C.R.P. 89/2016 in C.A. 184-L/2013, C.R.P. 91/2016 in C.A. 184-L/2013, C.R.P. 92/2016 in C.A. 184-L of 2013, CrI. R.P. 52/2016 in CrI. O.P. 89/2011, CrI. O.P. 123/2016 in C.P. 1446-L/1997, Civil Misc. Application No. 4435/2016, C.R.P. 382/2016 in C.A. 184-L/2013, C.R.P. 383/2016 in C.A. 184-L of 2013, C.R.P. 454/2016 in C.A. 184-L/2013, CrI. R.P. 174/2016 in CrI. O.P. 89/2011, CrI. O.P. 186/2016 in C.A. 184-L/2013, CrI. O.P. 193/2016 in CrI. O.P. 86/2016 in C.P. 1000-L/2005, CrI. O.P. 195/2016 in C.A. 184-L/2013, C.R.P. 479/2016 in C.A. 184-L of 2013, C.R.P. 480/2016 in C.A. 184-L/2013, C.R.P. 481/2016 in C.A. 184-L/2013, C.R.P. 482/2016 in C.A. 184-L/2013 and CrI. R.P. 191/2016 in CrI. O.P. 89/2011, decided on 30th December, 2016.

dgement

**(a) Punjab Civil Servants Act (VIII of 1974)---**

---S. 8-A [since omitted]---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 14-A [since omitted]---Sindh Civil Servants Act (XIV of 1973), S. 9-A [since omitted]---Constitution of Pakistan, Arts. 9, 14 & 188---Review of Supreme Court judgment---Out of turn promotion to police personnel on basis of gallantry---Constitutionality and legality---Out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam---Each out of turn promotion necessarily damaged the career of a corresponding deserving officer---Acts of gallantry did not justify out-of-turn promotions as they necessarily lead to impingement of the Fundamental Rights of fellow officers in terms of blocking their smooth progression of careers and impinging their respect and honour---Supreme Court directed the concerned officials and authorities to fix the seniority of all the police officers who were given out of turn promotion along with their batch-mates, as if they were never given out of turn promotion---Review petition was dismissed accordingly.

Out of turn promotions were inherently destructive of the rights of other officers who, though senior and entitled to be considered for promotion before the beneficiaries of out of turn promotions, were bypassed as a result of out of turn promotions. Each out of turn promotion necessarily had a corresponding affected officer, who suffered due to such exercise despite being completely blameless. He suffered for no fault of his own when he was bypassed in favour of the beneficiary of such an exercise. Unless he voluntarily waived his rights, in which case the promotion could no longer be described as out of turn, the courts ought not to ignore his rights in matters brought before it for adjudication, irrespective of his presence or absence before the Court in a particular case.

Out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam. Reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

Muhammad Nadeem Arif v. I.G. of Police 2011 SCMR 408; Ghulam Shabbir v. Muhammad Munir Abbasi PED 2011 SC 516 and Contempt proceedings against Chief Secretary, Sindh 2013 SCMR 1752 ref.

~~Basis of out of turn promotions was always borne by the individual officers who were bypassed. The damaging effect on the careers of deserving officers who suffered due to out of turn promotions continued during service and even after retirement in terms of pensionary benefits. If the beneficiaries of such illegal exercise were reverted to the positions to which they would have been entitled to, on their respective merit and promotion, it would immediately open up vistas of promotion for those deserving officers who were earlier bypassed due to out of turn promotions.~~

~~Acts of gallantry, no matter how commendable and appreciated by the society, did not justify out of turn promotions as they necessarily lead to impingement of the Fundamental Rights of fellow officers in terms of blocking their smooth progression of careers and impinging their respect and honour as protected under Articles 9 and 14 of the Constitution.~~

Supreme Court directed the concerned officials and authorities to fix the seniority of all the police officers who were given out of turn promotion along with their batch-mates, as if they were never given out of turn promotion. Review petition was dismissed accordingly.

**(b) Constitution of Pakistan---**

---Art. 189---Decisions of Supreme Court binding on other courts---Scope---Under Article 189 of the

Constitution, the Supreme Court was the court of last resort and laws declared or principles enunciated by it were binding on all subordinate courts and authorities in the country---All the courts and public institutions were bound to follow the principles laid down by the Supreme Court.

Farhat Azeem v. Waheed Rasul PLD 2000 SC 18 ref.

**(c) Constitution of Pakistan---**

---Art. 189---Decisions of Supreme Court binding on other courts---Scope---Decisions of the Supreme Court laying down propositions in law were laws binding on all, regardless whether they were party to the proceedings before the Supreme Court or not. [p. 254] D

Messrs Star Diamond Co. v. Union of India PTCL 1988 FC 229 ref.

**(d) Constitution of Pakistan---**

---Art. 189---Decisions of the Supreme Court---Doctrine of stare decisis, applicability of---Said doctrine was not applicable to the Supreme Court---Supreme Court was not a slave of the doctrine of stare decisis and could change or modify its view with the passage of time.

Hitachi Limited v. Rupali Polyester 1998 SCMR 1618 ref.

**(e) Punjab Civil Servants Act (VIII of 1974)---**

---S. 8-A [since omitted]---Sindh Civil Servants Act (XIV of 1973), S. 9-A [since omitted]---Constitution of Pakistan Arts. 4, 9, 14, 18, 25, 240 & 242---Out of turn promotion---Constitutionality and legality---Similarities between S. 8-A of Punjab Civil Servants Act, 1974 and S. 9-A of Sindh Civil Servants Act, 1973---Both provisions were substantively similar in nature and catered to the same purpose, i.e., out-of-turn promotion, which was unconstitutional and a nullity ab initio; both provisions created a new exception or category of promotion to the existing framework of service rules, in the name of out of turn promotion, which was alien to the concept and scheme of civil service rules, read with Arts. 4, 9, 14, 18, 25, 240 & 242 of the Constitution; both provisions overtly militated against the settled law and principles of promotion based on merit, inter se seniority, annual performance reports etc.; both provisions were discriminatory and violative of the Fundamental Rights of other civil servants who had been affected by out of turn promotions, despite the fact that they may stand a notch up in merit, inter se seniority and even competence from the beneficiary of such promotions.

**(f) Vires of statute---**

---Rules framed under a statute---Scope---Operation of a statute or any statutory provision was not dependent upon framing of the Rules---Absence of Rules may affect the enforceability or operation of the statute, however, for considering the constitutionality or otherwise of a statute on the touchstone of the Constitution or Fundamental Rights, framing or non-framing of the Rules under that statute could hardly be relevant.

**(g) Vires of statute---**

---Benefits conferred under an unconstitutional statute, reversal of---Scope---Once a statute had been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same were to be stopped---When a statute (whether existing or repealed) was found to be ultra vires the Constitution, the Court was empowered to examine whether any person continued to enjoy the

benefits of the ultra vires statute, or whether any state of affairs continued to exist as a result, and if it was found so, the Court was mandated to undo/reverse the same, provided that the benefit or state of affairs in question was not a past and closed transaction.

Dr. Mobashir Hassan v. Federation of Pakistan PLD 2010 SC 265 ref.

**(h) Vires of statute---**

---Legislative competence---Scope---Legislature enjoyed much leeway and competence in matters of legislation, but every law enacted may not necessarily be tenable on the touchstone of the Constitution---Legislative competence was not enough to make a law valid---Law must also pass the test at the touchstone of constitutionality to be enforceable, failing which it became invalid and unenforceable.

**(i) Constitution of Pakistan---**

---Art. 184(3)---Judicial review by the Supreme Court---Scope---Supreme Court had the jurisdiction under the law and the Constitution to look into the fairness and constitutionality of an enactment and even declare it non est, if it was found to be in conflict with the provisions of the Constitution.

**(j) Vires of statute---**

---Doctrine of severance---Scope---Normally the courts made utmost efforts to save a piece of legislation from becoming invalid, but in certain cases, the courts also applied, the doctrine of severance to remove a piece of legislation that distorted the scheme of a parent law, or deviated from the provisions of the Constitution.

**(k) Past and closed transaction, doctrine of---**

---Applicability---Vested rights---Scope---Vested rights were generated only under a valid and uncontested instrument of law---Doctrine of 'past and closed transaction' would apply in cases where rights were created under a valid law, even if such law was allowed to lapse or was removed from the statute book, however, an instrument that was still born or treated by the court as non est was barred from creating any vested rights, let alone being protected under the doctrine of 'past and closed transaction'---Court was duty bound to protect the rights and interests created under a law and also to deny the enjoyment of rights created under an invalid law---Where a party was claiming the protection of rights that were created under a law that failed to pass the test of constitutionality, as determined by the court, it could not take the plea of 'past and closed transaction'.

**(l) Constitution of Pakistan---**

---Art. 184(3) & Part II, Chap. 1 [Arts. 8 to 28]---Power of court to examine vires of a repealed statute---Scope---When a repealed statute was invoked or raised in support of any claim, right, office or act, before the Supreme Court, the Court would always be entitled to examine its validity on the touchstone of the Constitution and Fundamental Rights.

Whenever any right, obligation, privilege or liability acquired, accrued or incurred under a repealed law was raised, the courts were necessarily required to examine the provisions of the repealed statute. Neither any reason in principle nor any precedent barred the courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights. Any other conclusion would lead to



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the absurd consequences that while the statute remained on the statute book, the courts could examine its vires but once it was repealed by a subsequent statute, its effect, even if ex facie inconsistent with the Constitution or Fundamental Rights went beyond the realm of judicial review.

**(m) Constitution of Pakistan---**

---Art. 184(3) & Part II, Chap. 1 [Arts. 8 to 28]---Power of the Supreme Court to examine vires of a (repealed or existing) statute---Scope---Benefits acquired under an unconstitutional statute---'Past and closed transaction' doctrine of---Applicability---Supreme Court could not be refrained from examining the constitutionality of a law merely because of lapse of time or because of the doctrine of 'past and closed transaction'---Consequences of holding otherwise enumerated.

Following were some of the consequences that would arise if the Supreme Court was refrained from examining the constitutionality of a law because of lapse of time or because of the doctrine of 'past and closed transaction':

- i. Citizens would lose their legitimate rights to usurpers merely by the lapse of time and under the garb of 'past and closed transaction';
- ii. In practical terms, declaring a law void and non est would make no difference as the undue benefits would continue to be enjoyed by the undeserving persons, under the garb of 'past and closed transaction', and at the cost of deserving persons;
- iii. The aims of justice would be defeated at the hands of a mechanical force of time; in other words, a mere operation of time would upstage the operation of law;
- iv. The Supreme Court may come to lose its inherent jurisdiction to review a previous judgment, or any aspect of it, which may have remained hidden in the procedural or technical folds or escaped the testing at the altar of constitutional law;
- v. If allowed to be hampered by procedural niceties, the Supreme Court, or High Courts, may find it difficult to exercise their discretionary powers to render justice to the victims of an invalid law or of a law that had been declared void ab initio by the Supreme Court;
- vi. Annuling a law on constitutional grounds and yet protecting the rights created there under would create an absurd situation, requiring the courts to enforce the provisions of substantive/constitutional laws, without disturbing the principle of 'past and closed transaction';
- vii. The blind application of the principle of 'past and closed transaction' may also lead to defeat the very intent of legislature, in addition to causing hardship cases;
- viii. Upholding a prima facie unconstitutional provision merely on the grounds of 'past and closed transaction' would subjugate the rules of judicious construction to a mindless adherence to temporal considerations, whereas the very concepts of retrospectivity and prospectivity of laws were rooted in the golden tenets of equity and fairness, not in the mechanical passage of time.

**(n) Constitution of Pakistan---**

---Art. 189---Obiter dictum of the Supreme Court---Scope---Due to the position of the Supreme Court

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in the hierarchy of courts, even its obiter dictum enjoyed a highly respected position as if it contained a definite expression of the Court's view on a legal principle, or the meaning of law.

**(o) Constitution of Pakistan---**

---Art. 27(1)---Safeguard against discrimination in service---Scope---Ambit of Art. 27(1) of the Constitution was confined only to initial appointments and not the appointments by way of promotion, therefore, to stretch it any further would contort or destroy the very spirit of the said Article.

**(p) Constitution of Pakistan---**

---Art. 184(3)---Statute---Declaration of unconstitutionality by the Supreme Court---Effect---Law which was declared by the Supreme Court as un-constitutional from the date of its inception could not be treated as being so from a date when it was omitted or repealed (by the Legislature).

**(q) (Police) Sports Policy, 1982---**

---Cl. VI(b)(5)---Punjab Civil Servants Act (VIII of 1974), S. 8---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 10---Accelerated promotions in police on sports basis---Constitutionality and legality---Promotions of police officers were to be fixed/decided on the basis of the required standards provided in the service rules---Accelerated promotions could not be accorded on the basis of an officer's performance in a sports competition---Policy to the extent of accelerated promotions on sports basis was not sustainable, being violative of the service laws and the provisions of the Constitution.

Accelerated promotions in terms of Clause VI(b)(5) of the Sports Policy, 1982 were in conflict with the provisions of Punjab Civil Servants Act, 1974, and the rules framed thereunder. No justification existed to allow the police officers to enjoy accelerated promotion for sports activities, when out of turn promotions granted on basis of a statute for proven gallantry were held to be ultra vires the provisions of the Constitution. Besides, promoting sports at the cost of professionalism within the police force would lead to ominous consequences. Efficient police officers would be demoralized if they were superseded by their junior colleagues, which in turn would also affect the overall performance of police in maintaining law and order. Policy to the extent of accelerated promotions on sports basis was not sustainable, being violative of the service laws and the provisions of the Constitution. Review petition was dismissed accordingly.

**(r) Constitution of Pakistan---**

---Arts. 184(3) & 199 & Pt. II, Chap. 1 [Arts. 8 to 28]---Judicial review of Government policy---Scope---Policy making was the domain of the Executive and the courts normally did not interfere in such matters; but when a policy is violative of the Fundamental Rights of individuals, the courts were obliged to examine such policy in judicial review.

Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad PLD 2015 SC 6; Dossani Travels (Pvt.) Ltd. v. Travels Shop (Pvt.) Ltd. PLD 2014 SC 1; Iqbal Zafar Jhagra and Senator Rukhsana Zuberi v. Federation of Pakistan 2014 PTD 243; OGRA through Secretary v. Midway II, CNG Station 2014 SCMR 220; Watan Party v. Federation of Pakistan PLD 2013 SC 167; Alleged Corruption in Rental Power Plants and others 2012 SCMR 773; Dr. Akhtar Hassan Khan v. Federation of Pakistan 2012 SCMR 455; Executive District Officer (Revenue), District Khushab at Jauharabad v. Ijaz Hussain 2011 SCMR 1864; Al-Raham Travels and Tours (Pvt.) Ltd. v. Ministry of Religious Affairs, Hajj, Zakat and Ushr 2011 SCMR 1621; Punjab

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Public Service Commission v. Mst. Aisha Nawaz 2011 SCMR 1602; Suo Motu Case No. 10 of 2007 PLD 2008 SC 673 and Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad PLD 2006 SC 697 ref.

Ashtar Ausaf, Attorney General for Pakistan and M. Waqar Rana, Addl. Attorney General for Federal Government.

Barrister Khalid Waheed, Assistant AG Punjab for Government of Punjab.

Ayaz Swati, Addl. AG for Government of Balochistan.

Shehyar Kazi, Addl. AG Sindh for Government of Sindh.

Mian Arshad Jan, Addl. AG for Government of Khyber Pakhtunkhwa.

Mian Abdul Rauf, AG for ICT.

Syed Ali Zafar, Advocate Supreme Court, Zahid Nawaz Cheema, Advocate Supreme Court and M. Akram Sheikh, Senior Advocate Supreme Court (for Respondent No.6 in CRP.85/16) (in C.R.P. 49/2016, C.R.P. 191/16 and C.R.P. 85 of 2016).

Kh. Haris Ahmed, Senior Advocate Supreme Court (in Crl. R.P. 52/2016 and C.R.P. 83 of 2016).

Ms. Asma Jahangir, Advocate Supreme Court (in C.R.P. 89 of 2016).

Hamid Khan, Senior Advocate Supreme Court and M. S. Khattak, Advocate-on-Record (in C.R.P. 92/2016, 382-383, 480/2016 and Crl. O. 186 of 2016).

Talat Farooq Sheikh, Advocate Supreme Court and Khalid-Ibn-i-Aziz, Advocate Supreme Court (in C.R.P. 50 and 52/2016, 454/2016 and C.M.A. 132 of 2016).

Nemo (in C.R.P. 89/16, 91/16, Crl. RP.174/16, Crl. O.P. 195/16, C.R.P.479/16, 84/16 and C.M.A.4435 of 2016)

Jamil Ahmed in person (in C.R.P. 51 of 2016).

Malik M. Qayyum, Senior Advocate Supreme Court (in Crl. O.P.123/16).

Rashid A. Rizvi, Senior Advocate Supreme Court, Qausain Faisal, Advocate Supreme Court and Syed Razaqat Hussain Shah, Advocate-on-Record (in Crl. O.P.193/2016).

Nemo (in C.R.P.481/2016).

S. A. Mahmood Sadozai, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record (in C.R.P. 482 of 2016).

Nemo (in C.M.A.7575/2016 in C.P.49/2016).

Baleegh-uz-Zaman Jawad, Advocate Supreme Court (in C.M.A.8177/2016 in C.R.P.Nil/2016)

Mian Qamar-uz-Zaman, Advocate Supreme Court and Raja Abdul Ghafoor, Advocate-

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on-Record (in C.M.As.8132, 8146, 8147/2016)

Nemo (in C.M.As.8143-8144/2016)

Ch. Akhtar Ali, Advocate-on-Record/Advocate Supreme Court (in C.M.A.8148/16 in C.R.P.49/2016)

Kamran Adil, AAIG (Legal), Sajjad Hussain, SP, Shaban Mehmood, DSP Legal, M. Jamshed, SC RPO Office DGK and Mushtaq Hussain, SSP for the Department.

Dates of hearing: 8th, 16th, 29th November, 1st, 8th and 14th December, 2016.

**JUDGMENT**

**AMIR HANI MUSLIM, J---**

**C.R.P. 49/2016 etc.**

Shahid Pervaiz v. Ejaz Ahmad and others

The facts relevant for the present proceedings are that on 04.03.1984, the Petitioner was appointed as Assistant Sub-Inspector in the Punjab Police, promoted as Sub-Inspector on 05.07.1987 and then as Inspector on 05.03.1990. In the year 1996, while he was posted as SHO Hanjarwal, the Petitioner participated in an operation for the arrest of notorious outlaws Mujahid @ Musa and others, who were involved in the murder case of deceased Mureeb Abbas Yazdani. The accused were alleged to have started indiscriminate firing at the time of Fajar Prayer in Masjid Alkhair at Multan which resulted in the murder of many people and injuries to others.

2. It is pleaded that as a corollary of this gallantry performance, the Police party which carried out the operation was recommended for accelerated promotion by the D.I.G, vide letter dated 30.11.1996, under section 8-A of the Punjab Civil Servants Act, 1974. The Petitioner was recommended for promotion as DSP. It is claimed that the committee formed under section 8-A read with Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, recommended out of turn promotion of all the members of the raiding team including the Petitioner. It is further claimed that all the members of the Police Party were promoted out of turn except the Petitioner. It has been further pleaded that the Petitioner approached the Lahore High Court, by filing Writ Petition No.28879 of 1997, with the prayer that he may also be given out of turn promotion like the other members of the raiding party.

3. The Writ Petition No.28879/1997 of the Petitioner was clubbed with an identical Writ Petition No.8147 of 1998, which were allowed and the learned High Court directed the Respondent-Department to grant one step out of turn promotion to the Petitioner. However, the Department did not accept the decision of the High Court and approached this Court through Civil Appeal No.259-L of 2000, which was dismissed on the ground of limitation. It is pleaded that on dismissal of Appeal of the Government on the ground of limitation, the relevant committee was formed under section 8-A read with Rule 14-A, which also recommended out of turn promotion of the Petitioner and he was granted one step out of turn promotion as DSP, vide Notification dated 24.05.2001, with a rider that the Petitioner would be allowed to wear the rank of Deputy Superintendent of Police subject to the condition that his substantive promotion would be allowed in the course after his seniors get promotion.

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4. It is further pleaded that against the above condition, the Petitioner filed another Writ Petition before the Lahore High Court, which was allowed and it was directed that a civil servant is entitled to promotion from the date he performed his duties as recognized by section 8-A, therefore, the condition incorporated in the Notification dated 24.05.2001 was violative of section 8-A. The Department filed Civil Petition for Leave to Appeal before this Court, which was dismissed.

5. After dismissal of the Petition of the Department by this Court, the Petitioner made a representation to the Government and accordingly he was given out of turn promotion, vide Notification dated 16.08.2007, with effect from 24.10.1996.

6. It was in the year 2013, that this Court in its judgment reported as Contempt Proceedings against Chief Secretary, Government of Sindh (2013 SCMR 1752), declared the practice/concept of out of turn promotions as unconstitutional and against the fundamental rights of the individuals.

7. It is pertinent to mention here that after the above-judgment, the aggrieved persons filed Review Petitions directly which were also dismissed by this Court vide judgment reported as Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456). It is also worthwhile to mention here that both the aforesaid judgments were ordered to be sent to the Chief Secretaries of the Provinces as well as the Secretary, Establishment Division, with the direction to streamline the civil structure in conformity with the principles enunciated in the aforesaid judgments.

8. The present proceedings emanate from an order of this Court, which was passed on 26.01.2016 in Civil Appeal No.184-L of 2013, wherein this Court has ordered as under:-

We expect that all out of turn promotions granted either to the police personnel on gallantry award or otherwise shall be undone within four weeks from today and their seniority be re-fixed with their batch mates in terms of the directions contained in the aforesaid judgments. Out of turn promotions ranging from constable to any gazetted officers shall be streamlined in terms of the aforesaid two judgments. On completion of the exercise, the I.G. Police Punjab, Home Secretary, Punjab and Chief Secretary, Punjab, shall submit compliance report with the Assistant Registrar of the Court for our perusal in chambers. This order shall be communicated to the I.G. Punjab, Home Secretary, Punjab and Chief Secretary, Punjab, for their information and compliance and non-compliance of this judgment shall expose the concerned officials to contempt proceedings.

9. After the passage of this Order, the Petitioner was relegated to the post of DSP, by applying the principles of the aforesaid judgments. It is against this order that the Petitioner along with others has directly approached this Court through Civil Miscellaneous Applications, which came up for hearing on 22.02.2016 and were ordered to be registered as a Review Petition.

**Civil Review Petition No.51 of 2016 in C.A.No.184-L/13.**

10. In this Review Petition, it has been pleaded that the Petitioner was appointed as Assistant Sub-Inspector in the year 1998, following which he had earned a reputation of being a dedicated and fearless Police Officer. Being instrumental in causing arrest of wanted terrorists, he was granted out of turn promotion in the year 1991 as Sub-Inspector and then out of turn promotion as Inspector in the year 1998, under Section 8-A of the Punjab Civil Servants Act, 1974. It has been further pleaded that even in the year 1999, the Petitioner was recommended for out of turn promotion as DSP, which recommendation was not considered, therefore, he filed numerous writ petitions and contempt applications before the Lahore High Court and eventually he was promoted as DSP on 20.09.2010.

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11. It has been pleaded that after an observation made by this Court on 26.01.2016, in the case of Civil Appeal No.184-L of 2013, the Petitioner is relegated to the post of A.S.I.

**Civil Review Petition No.52 of 2016 in C.A.No.184-L/13.**

12. It has been pleaded that the Petitioner was appointed as Assistant Sub-Inspector in the year 1998 and was promoted as officiating Sub-Inspector in the year 1990. Later, he was granted one step out of turn promotion as Inspector under section 8-A of the Punjab Civil Servants Act, 1974 read with Rule 14-A, which was not implemented, therefore, the Petitioner filed Writ Petition No.8147 of 1998, which was allowed, by judgment dated 22.06.1996. However, the Department challenged the judgment of the learned High Court before this Court through Civil Petition No.226-L of 2000, which was dismissed, vide judgment dated 26.04.2000. In the intervening period, the Petitioner was promoted as DSP and SP. More or less the case of the other Respondents is identical to that of the Petitioner.

**Civil Review Petition No.83 of 2016 in C.A.No.184-L/2013.**

13. It has been pleaded in this Petition that on 22.06.1982, the Petitioner joined the Police Department as Assistant Sub-Inspector and was promoted as Sub-Inspector on 29.06.1987. On 16.11.1995, he was further promoted to the rank of Inspector. On 18.01.1997, the Petitioner suffered injuries in a bomb blast which took place in the premises of the Sessions Court, in which the Chief of a banned outfit and fifteen officers lost their lives. It is pleaded that in view of his excellent performance, the Petitioner was recommended for out of turn promotion as DSP, by the Inspector General of Police, Punjab, under section 8-A of the Punjab Civil Servants Act, 1974, read with Rule 14-A, which recommendation was not executed, therefore, the Petitioner filed Writ Petition before the Lahore High Court. The learned High Court disposed of the Writ Petition of the Petitioner with the direction to issue formal notification of promotion of the Petitioner as DSP. Thereafter, the Department filed two Civil Petitions Nos.443 and 584-E of 2001 before this Court, which was dismissed on the ground of limitation. After dismissal of the Petitions of the Department by this Court, the Petitioner made a representation to the Home Secretary, Punjab, and eventually he was given out of turn promotion as DSP, vide notification dated 27.06.2008, w.e.f. 18.01.1997 i.e the date of incident. The case of the other Petitioners is almost identical to that of the Petitioner.

**Crl. Original Petition No.123 of 2016 in C.P.No.1446-L/1997.**

14. The Petitioner joined the Punjab Police as Inspector in the year 1989. While posted as S.H.O Piplan, District Mianwali, he eliminated a proclaimed offender namely Ahmad Nawaz @ Barbari, a fugitive from law since 1979, who was wanted in more than twenty murder and harabba cases. The Petitioner was recommended for out of turn promotion under section 8-A read with Rule 14-A, but this recommendation for his out of turn promotion was not implemented, therefore, he filed Constitution Petition No.2445 of 1995 before the Lahore High Court, with a prayer to grant him out of turn promotion as DSP, which was allowed. The Department filed Civil Petition for Leave to Appeal No.1446 of 1997 before this Court, which was dismissed, vide order dated 18.04.1998. It has been pleaded that the Government of Punjab in compliance with the judgment of the Lahore High Court, promoted the Petitioner as DSP vide Notification dated 17.10.1997, effective from 08.05.1993. In the interregnum, the Petitioner rose to the rank of Deputy Inspector General of Police. However, in view of the observations made on 26.01.2016, by this Court in Civil Appeal No.184-L of 2013, the out of turn promotion granted to the Petitioner as DSP, vide Notification dated 17.10.1997, has been revoked.

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15. More or less, the case of all the other Petitioners/Applicants is almost identical to that of the Petitioners whose cases have been given in detail above.

16. Syed Ali Zafar, learned ASC, Counsel for the Petitioner in Civil Review Petitions Nos.49 and 85 of 2016, has contended that on 08.11.1987, section 8-A was inserted in the Punjab Civil Servants Act, 1974, to grant out of turn promotion to a civil servant who provenly exhibits exemplary intellectual, moral and financial integrity and high standard of honesty and gives extraordinary performance in the discharge of his duties, and was omitted on 17.10.2006. He submits that this Section was regulated by Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. He next contended that out of turn promotions under the said section were declared to have been made lawfully by this Court. In support of his contention to establish that this Court, in different cases, directed the competent authority to implement the orders passed under section 8-A of the Act, he has relied on the cases of Capt. (Retd). Abdul Qayyum v. Muhammad Iqbal (PLD 1992 SC 184), Government of Punjab v. Shamsheer Ali Khan, Additional Commissioner Multan (1992 SCMR 1388), Chief Secretary, Government of Punjab v. Mumtaz Ahmed (1996 SCMR 1945), Abdul Ghaffar v. Deputy Inspector General (1997 PLC (C.S.) 1150), Government of Punjab v. Muhammad Iqbal (1997 SCMR 1429), I.G Police Lahore v. Qayyum Nawaz Khan (1999 SCMR 1594) Javed Hussain Shah v. Government of the Punjab (2005 PLC (C.S.) 974) and Sardar Zafar Iqbal Dogar v. Secretary of the Government of the Punjab, Home Department (2006 PLC (C.S.) 164).

17. He then referred to the case of Muhammad Nadeem Arif v. I.G of Police (2011 SCMR 408), wherein this Court has observed that the concept of out of turn promotion is against the Constitution as well as the injunctions of Islam. He submits that the view taken by this Court in the case of Muhammad Nadeem Arif (supra) was an obiter dicta, as in this case, the vires of section 8-A were not challenged and only the orders/instructions passed by the I.G.P were set aside. The view taken in this Judgment was followed in another case reported as Ghulam Shabbir v. Muhammad Munir Abbasi (PLD 2011 SC 516).

18. He has further contended that the language of section 9-A of Sindh Civil Servants Act, which has been interpreted by this Court in the case of Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752), was distinct from Section 8-A of the Punjab Civil Servants Act. He contended that the section 8-A was regulated by the Rule 14-A, whereas in Sindh no rules were framed to regulate out of turn promotions under section 9-A, which was inserted on 21.02.2002. He further submitted that for a short period of three months starting from 10.02.2005 to 11.05.2005, Rule 8-B was inserted in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, to regulate the provisions of section 9-A. On 31.03.2009, the High Court of Sindh in C.P 1595/2005 had declared the out of turn promotions as unlawful and directed to re-examine them by a Committee. Consequently, Appeals arising out of said judgment came up for hearing before this Court and were dismissed as withdrawn. Thereafter six (06) validating laws were promulgated which had been examined on the touchstone of constitutional provisions by this Court and declared unconstitutional in the case of Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and then in review Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456).

19. He next contended that this Court did not strike down the whole section 9-A in its entirety, but only declared the out of turn promotions to be unconstitutional, however, the award/reward conferred under this Section were kept intact.

20. The learned ASC has further submitted that this Court on 26.01.2016, while disposing of Civil Appeal No. 184-L of 2013, has observed that the judgments of this Court referred to hereinabove were not being followed in letter and spirit in the other provinces. Therefore, he has now filed review



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against the said part of the order.

21. He next contended that Section 8-A of the Punjab Civil Servants Act, 1974, had not been set-aside by any of the judgments of this Court, although section 9-A of the Sindh Civil Servants Act, 1973, which was *par materia*, had been declared unconstitutional. Moreover, in C.R.P 49/2016, the Petitioner Shahid Pervaz, who joined service on 04.03.1984, was promoted on grounds of having judgments of this Court in his favour. He has contended that now the question would be whether the declaratory judgments of this Court would have any binding effect on the case of the Petitioner on basis of the principle of *res judicata*.

22. He further submitted that a statute could only be declared as non-est, if the legislature is not competent to legislate that law. He submitted that law becomes unenforceable so long as a conflict exists with a fundamental right and if the fundamental right is for some reasons or the other disappears, the law becomes operative again on the basis of doctrine of eclipse. In this regard, he referred to the cases of *The Province of East Pakistan v. MD. Mehdi Ali Khan* (PLD 1959 SC 387) and *Abul A'la Maudoodi v. Government of West Pakistan* (PLD 1964 SC 673) and *State of Gujarat v. Shri Ambica Mills Ltd.* (AIR 1974 SC 1300).

23. He has further contended that the effect of a judgment which declares a law to be unconstitutional will have to be examined on pending cases as well as on future cases. He has contended that even if a Court declares a law to be unconstitutional, it does not affect the past and ~~closed transactions and the cases wherein vested rights have been created in support of his~~ contention, he has relied on the cases of *Muhammad Yousaf v. Chief Settlement and Rehabilitation Commissioner* (PLD 1968 SC 101), *Nabi Ahmed v. Home Secretary, Government of West Pakistan, Lahore* (PLD 1969 SC 599), *Income-tax Officer, Central Circle II, Karachi v. Cement Agencies Ltd.* (PLD 1969 SC 322), *Miss Asma Jilani v. Government of the Punjab* (PLD 1972 SC 139), *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 SC 324), *Asad Ali v. Federation of Pakistan*, (PLD 1998 SC 161), *Jamat-i-Islami Pakistan v. Federation of Pakistan* (PLD 2000 SC 111), *Muhammad Mubeenus-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence* (PLD 2006 SC 602), *Begum Nusrat Ali Gonda v. Federation of Pakistan* (PLD 2013 SC 829), *Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi* (PLD 1969 SC 407), *Mehram Ali v. Federation of Pakistan* (PLD 1998 SC 1445), *Liaquat Hussain v. Federation of Pakistan* (PLD 1999 SC 504); *Zafar Ali Shah v. Pervez Musharraf Chief Executive of Pakistan* (PLD 2000 SC 869), *Attiyya Bibi Khan v. Federation of Pakistan* (2001 SCMR 1161), *Hussain Badshah v. Akhtar Zaman* (2006 SCMR 1163), *Muhammad Idrees v. Agricultural Development Bank of Pakistan* (PLD 2007 SC 681), *Imran v. Presiding Officer, Punjab Special Court* (PLD 1996 Lahore 542), *Chenab Cement Products v. Banking Tribunal* (PLD 1996 Lahore 672), *Muhammad Aslam v. Muhammad Hayat* (PLD 1998 SC 165), *Collector of Customs and Central Excise v. Oriental Timber Industries* (1985 SCR(3) 475), *Union of India v. Godfrey Philips* (1985 SCR Supl.(3) 123), *West Bengal Hosiery Association v. State of Bihar* (1998 71 STC 298 (CS)), *Video Electronics Pvt. Ltd. v. State of Rajasthan* (1998 71 STC 304 (SC)), *Hi-Beam Electronics Pvt. Ltd. v. State of Andhra Pradesh* (1998 71 STC 305 (SC)), *Besta Electronics Pvt. Ltd. v. State of Madhya Pradesh* (1998 71 STC 307 (SC)), *Indian Cement Case* (1998 69 STC 305 (SC)), *Blue Star Limited v. State of Andhra Pradesh* (1990 78 STC 48) and the cases of *Govindaraju Chetty* (1968 22 STC 46), *Kil Kotagiri Tea Coffee* (1988 174 ITR 579 (KER), *Suresh Babu (res-judicata)* (ILR 1998 KAR 3885), *Gokaraju Case* (1995 Supp 1 SC 271), *Avatar Sindh Case* (AIR 1979 SC 1991), *Upendra Nath v. Lal* (AIR 1945 PC 222), *I.C. Golak Nath's case* (AIR 1967 1643), *Coromandel Fertilizers Ltd. v. Dy. Commissioner of Income-Tax* (1992 (1) ALT 327), *Brindavan Roller Flour Mills Pvt. Ltd. v. Joint Commissioner of Commercial Taxes* (ILR 1994 KAR 2196), *Managing Director, ECIL, Hyderabad v. B. Karunakar* (AIR 1994 SC 1074), *Superintendent and Legal v. Corporation of Calcutta* (AIR 1967 SC 997), *D. P. Sharma v. State*



Transport Authority (ILR 1987 KAR 3255), *Beddington v. British Transport Police* (1998) 2 AC 143, *Kleinwort Benson Ltd. v. Lincoln City Council* (1998) 3 WLR 1095, *Hislop v. Canada* (2007) 1 SCR 429, *Murphy and Murphy v. The Attorney General* (1982) 1 I.R.).

24. He contends that where rights were created under or in pursuance of a judgment rendered which attained finality irrespective of the fact that the Courts have declared such law to be void in a later judgment, does not open the issue resolved in a past and closed transaction on the principle of res judicata. In this behalf, he relied on the cases of *Mir Afzal and others v. Qalandar and others* (PLD 1976 AJ&K 26), *Ch. Rehmat Ali v. Haji Jan Muhammad* (1983 SCMR 1109), *Atiq-ur-Rehman v. Muhammad Ibrahim* (1984 SCMR 1469), *Noor Muhammad v. Muhammad Iqbal Khan* (1985 CLC 1280), *Mst. Amina Bai v. Karachi Municipal Corporation* (1985 CLC 1979), *Pir Baksh v. The Chairman, Allotment Committee* (PLD 1987 SC 145), *Kohinoor Sugar Mills Ltd. v. Pakistan* (1989 SCMR 2044), *Muhammad Anwar v. Messrs Associated Trading Co. Ltd.* (1989 MLD 4750), *Kharati and others v. Muhammad Ibrahim* (1989 CLC 894), *Shahzad Hussain v. Hajra Bibi* (PLD 1990 Lahore 222), *Nazam Din v. Deputy Settlement Commissioner* (1990 SCMR 239), *Engineer-in-Chief Branch v. Lalaluddin* (PLD 1992 SC 207), *Feroze Din v. Administrator* (1992 CLC 2430), *Khadim Hussain v. Government of Punjab* (1993 SCMR 1869), *Rahat Mehmood v. Tariq Rasheed* (PLD 1993 Kar. 648), *Malik Gul Hassan and Co. v. Federation of Pakistan* (1995 CLC 1662), *Muhammad Younis v. Province of Punjab* (1995 CLC 1834), *Messrs Tank Steel and Re-Rolling Mills Pvt. Ltd. Dera Ismail Khan v. The Federation of Pakistan* (PLD 1996 SC 77), *Muhammad Sohail v. Government of NWFP* (1996 SCMR 218), *Muhammad Naqi v. Mst. Rasheeda Begum* (1997 MLD 900), *Shah Zareen Khan v. Sada Gul* (1997 MLD 903), *Nazir Ahmad v. Abdullah* (1997 SCMR 2881), *Amanul Mulk v. Ghafoor-ur-Rehman* (1997 SCMR 1796), *Muhammad Ali Naqvi v. Sindh Employees Social Security* (1999 PLC (C.S.) 893), *Quetta Textile Mills Limited, Nadir House, Karachi v. Pakistan* (2000 YLR 2683), *Allah Dawaya v. Additional District Judge* (2002 SCMR 1183), *Rukhsana Tabassum v. Kazim Imam Jan* (2003 CLC 189), *Hameeda Shamim v. Deputy Commissioner, Karachi* (2003 CLC 53), *Ch. Riaz Ahmad v. Punjab Text Book Board, Lahore* (2004 PLC (C.S.) 1243), *Mustafa Kamal v. Daud Khan* (PLD 2004 SC 178), *Mst. Bashiran Bibi v. State Life Insurance Corporation of Pakistan* (2004 CLC 1392), *Ghulam Hassan v. Munawar Hussain* (2005 CLC 773), *Muhammad Saleem v. Additional District Judge, Gujranwala* (PLD 2005 SC 511), *Messrs Gadoon Textile Mills v. Chairman, Area Electricity Board, WAPDA, Peshawar* (PLD 2005 SC 430), *Ch. Riaz Ahmad v. Punjab Text Book Board* (2006 SCMR 867), *Nasir Khan v. Province of Punjab* (2006 YLR 87), *District Coordination Officer Pakistan* (2006 MLD 1), *Ms. Mumtaz Maqsood v. Secretary, Revenue Division and others* (2010 YLR 1869), *Afiab Ahmad v. Muhammad Riaz* (2010 MLD 240), *Trustees of the Port of Karachi v. Karachi International Container Terminal Ltd.* (2010 CLC 1666), *Dr. Hassan Bux Rind v. Province of Sindh* (2010 PLC (C.S.) 228), *Syed Ghazanffar Hussain v. Nooruddin* (2011 CLC 1303), *Sanaullah v. Mst. Naseem Begum* (2012 MLD 1675), *Punoo Khan v. Mst. Iqbal Begum* (2012 MLD 1678), *Ghulam Akbar Lang v. Dewan Ashiq Hussain Bukhari* (2012 SCMR 366), *Abdul Rauf Khan v. Muhammad Hanif* (2013 CLC 219), *Arshad Ali v. Muhammad Tufail* (2013 CLC 632), *Zakir Ullah v. Muhammad Reham* (2014 CLC 1026), *Ch. Muhammad Siddique v. Executive Engineer Electricity Department AJ&K Bhimber* (2015 CLC 60), *B.C. International (Pvt.) Ltd. v. Tahfeen Qayyum* (2015 MLD 1347), *Jamia Masjid Habiba v. Dhoraji Cooperative Housing Society* (PLD 2015 Sindh 39), *Muhammad Nadeem v. Government of Balochistan* (2015 PLC (C.S.) 1143), *Upendra Nath v. Lal* (AIR 1940 PC 222), *Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another* (AIR 1940 SC 941), *Badri Narayan Singh v. Kamdeo Prasad Singh* (AIR 1962 SC 338), *Amalgamated Goalfields Ltd and another Janapada Sabha Chhindwara and others* (AIR 1964 SC 1013), *Sheodan Singh v. Daryao Kunwar* (AIR 1966 SC 1332), *Virudhunagar Steel Rolling Mills Ltd v. Government of Madras* (AIR 1968 SC 1196), *Ramagya Prasad Gupta v. Murli Prasad* (AIR 1974 SC 1320), *State of Uttar Pradesh v. Nawab Hussain* (1977 SC 1680), *Muhammad Mustafa v. Mansoor and others* (AIR 1977 Allahabad

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239), Avtar Sindh and others v. Jagjit Singh and another (AIR 1979 SC 1911), Rangarao v. Kamalakant (1995 Supp (1) SCC 271), Suresh Babu v. Smt. S. Susheela Thimmegowda (ILR 1998 KAR 3885), R. v. Sarson [1996] 2 RCS, Canada (Attorney General) v. Hislop [2007] 1 SCR 429, Harper v. Virginia Department of Taxation (509 US 86 (1993), Norton v. Shelby County 118 US 425 (1886), R v. Kirby (1957 95 CLR 529), Boddington v. British Transport Police (1998 2 AC 143), Regina v. Governor of Her Majesty's Prison Brockhill, (2000) 3 WLR 843, Murphy v. Murphy (Attorney General) (1982 IR 241), Thomson v. St. Catherine's, College Cambridge, Henson v. Folkestone Waterworks Co., R v. Unger (1997 2 NSWLR 990).

25. He further contended that people want certainty in their daily life issues, so that they can regulate their life; therefore, law should only be revisited in exceptional circumstances, and that although this Court has the power to do so, but such power must be exercised sparingly. He, in support of his submission, has relied upon the case of Nabi Ahmed v. Home Secretary, Government of West Pakistan, Lahore (PLD 1969 SC 599) on the issue of retrospective effect of judgments.

26. He next contended that in a number of judgments, this Court has held that even if a law is declared unconstitutional, the benefits accrued thereunder would be protected on the basis of the principle of res judicata, therefore, rights created under or in pursuance of judgments rendered which have attained finality, would not open past and closed transactions. He submits that the binding decisions could not be re-opened and the past could not be erased by a judgment of the Court. Justice demands prospective overruling.

27. Mr. Talat Farooq Shaikh, learned ASC, appeared in C.R.P 50 and 52/2016 and adopted the arguments of Syed Ali Zafar, ASC and submitted that except the Petitioner No. 6, Naveed, who was given ante-dated promotion, all other Petitioners were promoted out of turn.

28. Mr. Talat Farooq Shaikh, learned ASC for the Petitioners in C.R.P.No.454 of 2016, has filed written arguments contending that the promotions were granted to the Petitioners in pursuance of the Court orders; moreover, the seniority of the Petitioners has been disturbed without any legal justification, considering it out of turn promotion though they were never granted any out of turn promotion. He also contended that the Department has itself issued a list dated 17.06.2016, of the ~~Superintendents of Police, who were granted out of turn promotion, but the names of the Petitioners do not figure therein.~~ It was next submitted that the list of SPs, who were not promoted out of turn was also issued and the names of the Petitioners appeared at Sl. Nos.20, 23 and 24 of the list, hence the order of withdrawal of promotion dated 26.9.2016, was without any lawful authority, because the Petitioners were regularly promoted by orders of the Courts in accordance with Punjab Civil Servants Act and the Rules. The learned Counsel has also adopted the arguments of Syed Ali Zafar, learned Sr. ASC in addition to his own submissions.

29. Khawaja Haris Ahmed, learned Sr. ASC, appeared in C.R.P. 83/2016 and CrI.R.P 52/2016 and has contended that in both the judgments i.e Contempt proceedings (Supra) and Ali Azhar Khan Baloch (Supra), the Petitioners were not party. He submits that section 8-A of the Punjab Civil Servants Act, 1974, came into existence in the year 1987 in the province of Punjab and its vires were neither challenged nor examined by this Court in any of the judgments. He submitted that he does not challenge the findings recorded in the judgment of Contempt Proceedings (Supra). He next contended that section 8-A of the Act was regulated by the Rule 14-A, whereas in Sindh, there was no rule to regulate section 9-A that provided for out of turn promotion, therefore, the judgments given in peculiar facts and circumstances were not applicable to the other provinces. According to the learned Counsel, section 9-A of the Sindh Civil Servants Act in Sindh stood alone but section 8-A was to be regulated through the rules so they were not pari materia. Rule 14-A (ibid) had structured the

discretion of the competent authority.

30. He then pointed out that even no notice was ever issued to the Advocates General of the other provinces in terms of Order XXVII-A of the Code of Civil Procedure, 1908, and without notice, the application of the aforesaid judgments could not be extended to the other provinces.

31. On this objection of the learned Counsel, the Court has passed the following order:-

Messrs Syed Ali Zafar and Talat Farooq Sheikh, learned ASCs, have made their submissions on behalf of their respective review petitioners represented by them in C.R.Ps. Nos. 49, 50 and 52/2016.

2. During the submissions Kh. Haris Ahmed, learned Sr. ASC for the review petitioners in C.R.P. No. 83/2016 and Crl. R.P. No. 52/2016, has raised objection with reference to notice under Order XXVII-A, C.P.C. We deem it appropriate that before proceeding further with these connected review petitions, let notice of these proceedings be issued to the learned Advocate Generals of all the four Provinces, learned Advocate General for Islamabad Capital Territory and also to learned Attorney General for Pakistan to render assistance on the constitutional points involved in these petitions. Re-list on 16.11.2016.

3. C.M.As. Nos. 4240, 6936 and 7261/2016 and Crl. M. A. No.338/2016: All these applications for grant of permission to file review petitions and to argue the same are allowed subject to all just exceptions, therefore, all such review petitions be assigned proper numbers and be put up in Court on the next date of hearing.

32. Khawaja Haris Ahmed, the learned Sr. ASC, has contended that the application of judgments of this Court reported as Contempt Proceedings Against Chief Secretary (2013 SCMR 1752) and Ali Azhar Khan Baloch v Province of Sindh (2015 SCMR 456), could not be extended to the other Provinces, particularly the Province of Punjab. He submits that he has sought, inter alia, the review of paragraph 183 of the judgment reported as 2013 SCMR 1752, wherein a direction was given to all the Chief Secretaries of the Provinces including the Secretary, Establishment Division, Government of Pakistan, to streamline the service structure of civil servants in line with the principles laid down in the said judgment whereby the term 'out of turn promotion' was declared against the spirit of the Constitution as well as the injunctions of Islam.

33. He next contended that the provisions of section 8A of the Punjab Civil Servants Act, 1974, relating to the out of turn promotion were neither examined nor considered by this Court while ~~concluding the aforesaid judgment to make the principles enunciated therein applicable to the other~~ provinces and the Federal Government. He submitted that such a direction contained in paragraph 183 of the judgment is violative of Article 10A of the Constitution, which protects the civil rights and obligations of the citizens in granting them a fair trial and due process. The Civil Servants of the Punjab were not given the opportunity of hearing before reaching such a conclusion by this Court, therefore, the findings recorded on the issue of 'out of turn promotion' contained in the aforesaid judgment could not be made applicable to the Province of Punjab.

34. While formulating his arguments, he further submitted that the circumstances prevalent in the Province of Sindh were distinct, which perhaps has influenced the Court to reach such a conclusion whereas in Punjab the provisions of Section 8-A were regulated by Rule 14-A of the (Appointment and Conditions of Services) Rules, 1974, therefore, grant of out of turn promotion to the Petitioners, in any way, could be set at naught. He attempted to make a distinction between the provisions of out

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of turn promotion in section 9-A of Sindh Civil Servants Act and section 8-A of Punjab Civil Servants Act. He stated that in Punjab statute, the discretion conferred under section 8-A was structured and regulated by Rule 14-A, however, in the Sindh Civil Servants Act no Rule was enacted to regulate the provision of 'out of turn promotion', except for a limited period of three months. Therefore, the facts as well as the law of the province of Punjab were not *pari materia* with the province of Sindh which was declared un-constitutional.

35. He next contended that the aforesaid judgment did not take notice of some of the provisions of the Constitution, which have direct bearing on the findings recorded by this Court. In this connection, he has referred to Article 27(1) of the Constitution, which envisages that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the grounds of only of race, religion, caste, sex, residence or place of birth. He submitted that Article 27(1) is an exception to Article 25 of the Constitution. According to him, Article 27(1) has direct nexus to the discrimination in service and ought to have been considered while passing the judgment in review.

36. He further contended that Article 8(3)(a) of the Constitution, excludes the application of any law relating to the members of the Armed Forces or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them, was overlooked while recording findings on the issue of out of turn promotion. He submits that section 8-A or section 9-A of both the Provinces were police specific and are covered by the exclusion clause of Article 8(3)(a) of the Constitution.

37. He next referred to the provision of section 6 of the General Clauses Act and submitted that Section 8-A of the Punjab Civil Servants Act was omitted and has the same effect as that of repeal of a statute. In support of his contention, he has relied upon the cases of Muhammad Tariq Badr v. National Bank of Pakistan (2013 SCMR 314), Dr. Mukhtar Ahmed Shah v. Government of Punjab (PLD 2002 SC 757). He concluded that the effect of repeal of a provision of law is very much clear, which means that a law ceases to have effect but, by no means, it can be said to have undone the prior acts effectuated by that provision of law.

38. On the point of cut of date, he contended that in the province of Punjab, it would be the date when Section 8-A of the Punjab Civil Servants Act was omitted which is 17.10.2006, and not the date when it was inserted in the Punjab Civil Servants Act.

39. Khawaja Haris Ahmad, Sr. ASC argued that the judgment of this Court in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) was rendered, keeping in view the peculiar facts as well as the law in the province of Sindh and the application of the same could not be extended to the other provinces, particularly the province of Punjab.

40. He next contended that the out of turn promotions under section 8-A were never held to be unconstitutional during its life time and the out of turn promotions made under this Section were protected by this Court through various judgments. Moreover, the views of the Courts kept on changing by the afflux of time. Military Courts which were not considered Constitutional at one time have been validated by this Court established through amendment in the Constitution. In support of his contentions, he has relied upon the judgments of this Court, which according to him, declared out of turn promotions as lawful Government of Punjab v. Shamsher Ali (1992 SCMR 1388), Abdul Qayyum v. Muhammad Iqbal Khokhar (PLD 1992 SC 184), Government of Punjab v. Raja Muhammad Iqbal (1993 SCMR 1814), Chief Secretary Government of Punjab v. Raja Mumtaz Ahmed (1996 SCMR 1945), Government of Punjab v. Muhammad Iqbal (1997 SCMR 1428),

Inspector General of Police v. Qayyum Nawaz Khan (1999 SCMR 1594), Muhammad Gulshan Khan v. Secretary Establishment Division (PLD 2003 SC 102), Province of Punjab v. Javed Hussain Shah, Inspector General of Police v. Muhammad Iqbal (2007 SCMR 1864).

41. He further submitted that later on the trend changed and the out of turn promotions were questioned, however, the law was never struck down. He referred to the case of Farhat Abbas v. Inspector General (2009 SCMR 245), wherein it was observed that performance of duty with due diligence and efficiently deserves due appreciation but it cannot be over appreciated out of proportion so as to make out case of grievance to the other employees in service of the department. In the case of Muhammad Nadeem Arif v. Inspector General of Police (2011 SCMR 408) this Court observed that rules should be framed to regulate the out of turn promotion to save the agony of the police officials/officers as well as to save the public exchequer from unnecessary litigation. He also referred to the cases of Government of Punjab v. Sardar Zafar Iqbal Dogar (2011 SCMR 1239), Ghulam Shabbir v. Muhammad Munir Abbasi (2011 PLC (C.S.) 763), Muhammad Fahim Soomro v. Waqar Ahmed Qadri (2012 SCMR 680) to substantiate that the law on the point was never struck down despite observing it unconstitutional and against the injunctions of Islam. This was only done so in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) on 12.06.2013.

42. Mr. Mohammad Akram Sheikh, learned Sr. ASC, appeared for the Petitioner No.6 in C.R.P.No.85 of 2016 and contended that notice in terms of Order XXVII-A, C.P.C. was not issued to the Advocate General Punjab and subsequent issuance of this notice would not cure this inherent defect. Therefore, the judgment under review was per incuriam. In this behalf he relied on the case of Federation of Pakistan v. Aftab Ahmed Khan-Sherpao (PLD 1992 SC 723).

43. He next contended that though the principle of stare decisis does not apply to this Court, but the rights and benefits accrued to the individuals through earlier judgments would remain protected. He referred to the case of Pir Baksh v. The Chairman Allotment Committee (PLD 1987 SC 145).

44. He further contended that the bar envisaged in Article 8(3)(a) would apply to the law relating to the police and such law is exempted from the scrutiny of this Court, as the police force has been dealt with differently as compared to the other civil servants. He referred to the cases of Inspector General of Police v. Mushtaq Ahmed Warriach (PLD 1985 SC 159) and Lt. Col. Anwar Aziz v. Federation of Pakistan (PLD 2001 SC 549).

45. He next contended that the case of the Petitioner falls within the ambit of term "past and closed transaction" and rights accrued in favour of the Petitioner could not be taken away by change of law unless specifically declared to be applied retrospectively. He referred to the case of Quetta Textile Mills reported in 2000 YLR 2683.

46. He submitted that in paragraph 183 of the judgment reported as (2013 SCMR 1752), the Chief Secretary of the Government of Sindh was directed to implement the judgment whereas the Chief Secretaries of the other provinces and the Secretary, Establishment Division, Government of Pakistan, were directed to streamline the service structure in line with the principles laid down in the said judgment. He submitted that there was no direction to the other provinces and the Federation to implement the said judgment retrospectively, therefore, the Punjab Government should not have implemented the judgment.

47. He then contended that the concept of out of turn promotion is not against the injunction of Islam and the Federal Shariat Court is expressly empowered by the Constitution in this behalf to consider the validity of the law on the touchstone of the injunctions of Islam. He in this behalf placed

before this Court an extract from the book titled Seerat Encyclopedia, Volume 10 which reads as under:-

سرتیہ اسامہ کا پس منظر یہ تھا کہ رومی حکومت کو یہ گھمراہ تھا کہ وہ اسلام اور اہل اسلام کے زبردہ رہنے کا حق تسلیم کرے۔ اگر وہاں کوئی مسلمان ہو جاتا تو اس کی شہادت آجاتی اور جان محفوظ نہ رہتی۔ اس حکومت کا غرور اور غرور سے کئے گئے لیے رسول اللہ ﷺ نے صفر ۱۱ ہجری کے آخر میں ایک بڑے لشکر کی تیاری شروع فرمائی، سیدنا اسامہ رضی اللہ عنہما کو امیر لشکر مقرر کیا اور حکم دیا کہ بلقاء اور روم کا علاقہ روند آؤ۔ اس کارروائی کا مقصد یہ تھا کہ رومیوں کو خوف زدہ کر کے ان کی حدود پر موجود عرب قبائل کا اعتماد بحال کیا جائے اور کسی مغرور کھوپڑی میں یہ نشہ باقی نہ رہے کہ ہم رومی لوگوں کا ناقابل تہنیز ہیں۔ ہم جہ چاہیں کرتے پھریں، کوئی مائی کا لال ہم سے کسی طرح کا کوئی مواخذہ یا بازار پر سن کرنے والا نہیں۔

حافظ ابن حجر رحمہ اللہ کہتے ہیں: امام بخاری رحمہ اللہ نے اس عنوان کو رسول اللہ ﷺ کے مرض الموت اور آپ کی وفات کے حالات میں بیان کیا ہے کیونکہ رسول اللہ ﷺ نے وفات سے دو دن پہلے ہفتے کے روز لشکر اسامہ کو روانہ کیا تھا جبکہ اس کی تیاری کا آغاز آپ ﷺ کی بیماری سے پہلے ہی ہو چکا تھا۔ آپ کا سبنا ان شاء اللہ ﷺ کو امیر لشکر بنانا اور شام کی طرف روانہ فرمانے کا فیصلہ بہت سی حکمتوں، غلٹوں اور برکتوں پر مبنی تھا۔ چونکہ سیدنا اسامہ رضی اللہ عنہما کے والد گرامی سیدنا زید رضی اللہ عنہما اس سرزمین میں شہید کر دیے گئے تھے، اس لیے آپ ﷺ نے اسامہ رضی اللہ عنہما کی دلجوئی فرمائی تاکہ وہ اپنے والد کے تانکوں پر ٹوٹ پڑیں اور اللہ کے دشمنوں کو خاک و خون میں ملا کر اسلام کا پرچم بلند کر دیں۔ اس لشکر میں عام مہاجرین و انصار کے ساتھ ساتھ سیدنا ابوبکر اور سیدنا عمر رضی اللہ عنہما جیسے گرانمایاں اکابر بھی شامل تھے۔

سیدنا اسامہ رضی اللہ عنہما کی عمر اس وقت صرف اٹھارہ سال تھی۔ بعض لوگوں نے اعتراض کیا کہ اس لشکر میں بڑے بڑے انصار و مہاجرین موجود ہیں تو اس چھوٹی سی عمر والے اور آزاد کردہ غلام (کے بیٹے) کو امیر کیوں بنایا جا رہا ہے؟ مگر رسول اللہ ﷺ نے اسامہ رضی اللہ عنہما کی امارت پر اٹھائے گئے تمام اعتراضات بلا تامل مسترد کر دیے۔

آپ ﷺ نے ارشاد فرمایا:

«إِنَّ تِلْكَ نَوَائِي، إِمَارَتِهِ، فَقَدْ كُنْتُمْ تَطَاعُونَنِي فِي إِمَارَةِ أَبِي دَاوُدَ مِنْ قَبْلُ، وَأَيْمُ اللَّهِ إِنْ كَانَ الْخَلِيفَةُ لِيْلِمَارَةِ، وَإِنْ كَانَ لِيْمِنْ أَحَبِّ النَّاسِ إِلَيَّ، وَإِنْ هَذَا لِيْمِنْ أَحَبِّ النَّاسِ إِلَيَّ بَعْدَهُ»

”اگر تم اسامہ کی امارت پر اعتراض کرتے ہو تو تم نے اس سے پہلے اس کے باپ کی امارت پر بھی اعتراض کیا تھا۔ اللہ کی قسم! وہ امارت کے لائق تھا اور وہ سب لوگوں میں سے مجھے زیادہ پیارا تھا۔ اب اس کا یہ بیٹا (اسامہ) مجھے سب لوگوں میں سے زیادہ پیارا ہے۔“<sup>2</sup>

بہر حال صحابہ کرام رضی اللہ عنہم سیدنا اسامہ رضی اللہ عنہما کے گرد گرد جمع ہو کر ان کے لشکر میں شامل ہو گئے۔ لشکر روانہ ہو کر مدینہ طیبہ سے تین میل دور مقام جرف میں خیمہ زن ہو گیا لیکن رسول اللہ ﷺ کی بیماری کے سلسلے میں خبروں کی وجہ سے آگے نہ بڑھ سکا بلکہ اللہ کے فیصلے کے انتظار میں وہیں ٹھہرنے پر مجبور ہو گیا۔ اللہ کا ارادہ یہ تھا کہ یہ لشکر سیدنا ابوبکر صدیق رضی اللہ عنہما کے دور خلافت کی پہلی مہم قرار پائے، چنانچہ رسول اللہ ﷺ کی وفات کے بعد جب



ابوبکر ٹھٹھار کی بیعت کی گئی تو انہوں نے سیدنا اسامہ رضی اللہ عنہما کو حکم دیا کہ وہ لنگر لے کر چلے جائیں۔ ان دنوں کی قیادت میں لنگر رواتہ ہوا۔ وہ بیس روز چلتے رہے آخر کار روہیوں پر حملہ کیا، جس کے بعد وہاں گردن اٹھانے سے منع کر دیا گیا۔

48. He submitted that picking best of the best is prerogative of the Commander of a Force. Moreover, all the powers are sacred trust whether it be executive, legislative or judicial, therefore, heavy duty lies on the shoulders of the Hon'ble Judges of this Court to discharge their duty. In the present case the out of the turn promotion of the Petitioner was declared to be lawful up to this Court and now after so many years it would not be justified to apply the judgment of this Court retrospectively to undo such promotion. The concept that the judgment is not time bound has no sanctity in the eyes of law as vested rights have been accrued in favour of the Petitioner.

49. Mr. Muhammad Akram Sheikh, learned Senior ASC, has submitted written synopsis on behalf of the Petitioners in Civil Review Petition No.479 of 2016 in Civil Appeal No.184-L/2013, and contended that the direction contained in para No. 1 of C.A 184-L/2013 is not relevant to the case of the Petitioners, as interpreted by the Inspector General of Police, Punjab (IGPP), while issuing order dated 18.10.2016, whereby promotion of the Petitioners as DSP and in lower ranks was undone, holding that the same were made ante dating their seniority, which was held in C.A 184-L/2013, as violative of the law. He further contended that the order dated 26.01.2016 of this Court passed in C.A. 184-L/2013, deals with cases of out of turn/accelerated promotion/back dated seniority to non-cadre officers in the regular cadres and the case of the Petitioners does not fall in any of these categories. He has also submitted that terms and conditions of service of the officers of Punjab Police upto the rank of Inspector (BS-16) are governed by the Punjab Police Rules, 1934. He referred to the Rules 12.8, 13.1(3) and 13.18 and submitted that in the case of Gul Hasan Jatoi and others v. Faqir Mohammad Jatoi and others (2016 SCMR 1254) it has been held by this Court that "those police personnel who have completed their statutory period of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued."

50. He next contended that every case is to be decided on its own peculiar facts and circumstances, therefore, while passing the order dated 26.01.2016 no opportunity was provided to the Police Officers who were likely to be adversely affected. He has relied on the case of Muhammad Nadeem Arif v. Inspector-General of Police, Punjab Lahore (2010 PLC (C.S.) 924). He next contended that the principle of locus poenitentiae will be applicable in the case in hand. He has adopted the arguments advanced by Mr. Abdul Rahim Bhatti, learned ASC in C.R.P 384/2016 (Muhammad Anwar v. IGP Punjab and others) and prayed that Respondent No. 1 (IGPP) should be directed to review his orders after hearing the Petitioners.

51. The Petitioner, Jamil Ahmed, in Civil Review Petition No.51 of 2016, has appeared in person and filed a written statement, stating therein that he adopts the arguments of Messrs Khawaja Haris Ahmed and M. Akram Sheikh, learned Sr. ASCs.

52. Ms. Asma Jahangir, ASC appearing in C.R.P 89/2016 in C.A. 184-L/2013 on behalf of the Petitioners had adopted the arguments of Khawaja Haris Ahmad, ASC except his contentions on Article 27 of the Constitution of Pakistan. She contended that there were many errors floating on the surface of the impugned judgments, justifying the review. Firstly, the Petitioners were never heard before passing the judgments of this Court sought to be reviewed. Secondly, no notice in terms of Order XXVII-A of the Code of Civil Procedure, 1908 was given to the Advocate General, Punjab. Thirdly, there was distinction between section 8-A of the Punjab Civil Servants Act, 1974 and section 9-A of the Sindh Civil Servants Act, 1973 and by striking down the out of turn promotions in the province of Sindh, same principle could not be applied to the Province of Punjab. She further

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submitted that in the province of Punjab there was a Committee formed under Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, therefore, unlike the practice in the Province of Sindh the discretion to grant out of turn promotion did not vest in a single person and such powers were not being exercised arbitrarily. Fourthly, section 8-A of the Punjab Civil Servants Act, was omitted in the year 2006 and it had the same effect as that of repeal of a law and hence the vested rights created in favour of the Petitioners could not be taken away under the garb of the impugned judgments. She next contended that the question of out of turn promotion was one that stemmed out of a government policy, which could not be interfered with by the Court. In this regard she has relied upon the case of *Dossani Travels Pvt. Ltd v. Ms. Travels Shop Pvt. Ltd.* (PLD 2014 SC 1).

53. She next contended that all of the Petitioners were only given one time 'out of turn promotion' throughout their career and that too, validly under the law prevalent at that time and that too were awarded on good reasons as each one of them had acted in an exceptional manner during the discharge of their duties. She was of the view that such incentives are given to the officers/officials of the forces on the ground of "bravery" in many countries of the world, however, she did not point out any country where such benefit was being given. She further submitted that by the repeal of section 8-A in Punjab in the year 2006, vested rights accrued in favour of the Petitioners, which could not be taken away on the basis of the principle of 'past and closed transactions'.

54. She next contended that the judgment of this Court could not be given retrospective effect to undo the out of turn promotions validly given, under the law in force at the relevant time as the vested rights had accrued and the effect of repeal as per the Constitution and the law would be attracted. In support of her contention, she has relied upon the cases of *Dr. Mukhtar Hamid Shah v. Government of Punjab* (PLD 2002 SC 757), *M.C.B Bank Ltd., Karachi v. Abdul Waheed Abro and others* (2016 SCMR 108), *Nazeer Ahmad and others v. Ghulam Mehdi and others* (1988 SCMR 824), *Taza Khan and others v. Ahmad Khan and others* (1992 SCMR 1371), *Muhammad Tariq Badr v. National Bank of Pakistan* (2013 SCMR 314), *Shahida Bibi and others v. Habib Bank Limited and others* (2016 CLD 2025), *Federation of Pakistan v. Dr. Mubashir Hassan and others* (PLD 2012 SC 106), *Jannat-ul-Haq and 2 others v. Abbas Khan and 8 others* (2001 SCMR 1073), *Hakim Ali Zardari v. The State* (PLD 1998 SC 1), *Al-Samrez Enterprises v. Federation of Pakistan* (1986 SCMR 1917), *Badshah Gul Wazir v. Government of Khyber Pakhtunkhwa* (2015 SCMR 43).

55. Mr. Hamid Khan, learned Senior ASC, while appearing for the Petitioner in C.R.P.No.92 of 2016 in Civil Appeal No.184-L of 2013, contends that the Petitioner is aggrieved by the order of the department, whereby under the garb of directions of this Court vide order dated 26.01.2016, regarding implementation of the judgments of this Court reported as Contempt Proceedings against Chief Secretary Sindh (2013 SCMR 1752) and *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456), the Petitioner was reverted, inter alia, on the ground that he was promoted out of turn. The learned Counsel submits that the Petitioner was twice promoted out of turn but the issue of his seniority was settled up to this Court by the judgment dated 12.12.2013. He contended that the aforesaid judgments of this Court were not applicable to the case of the Petitioner, as the matter was different and had also become part of the history on the basis of the doctrine of "past and closed transaction", therefore, the matter could not be put to another round of litigation to settle what had already been settled by this Court and the benefit granted under the valid law could not be taken away.

56. Mr. Hamid Khan, learned Sr. ASC appeared for the Petitioners in Civil Review Petition 382/2016 and Civil Review Petition 383/2016. He contended that all the Petitioners in these Review Petitions were appointed and promoted in the Punjab Police on the basis of Sports Policy and the



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maximum promotion one could achieve through the Sports Policy was up to the rank of Inspector. He submitted that the Punjab Police issued a Sports Policy in the year 1982, which provided for an objective criteria on the basis of which incentives in the shape of cash reward or promotion could be granted to any police officer/official and there were hardly 140 police officials/officers, who were inducted and given accelerated promotion in the Punjab Police on the basis of this policy.

57. He next contended that the participation in sports from our country both at national and international levels was facing a continuous decline and the country has suffered a rapid downfall in the Sports performance, therefore, there was a pressing need to encourage sports activities in the country in accordance with Article 259 of the Constitution. He submits that although the sportsmen appointed and promoted under this policy were part of the Punjab Police, yet they should be categorized separately from those who were promoted out of turn on the basis of an act of gallantry, based on the principle of intelligible differentia. In this regard he referred to the case of I.A. Sherwani v. Government of Pakistan (1991 SCMR 1041).

58. He further contended that this category was never discussed in the judgments wherein the out of turn promotion was declared ultra vires the Constitution. He submitted that induction and accelerated promotion on the basis of sports policy has been a recognized method, which is based on the performance shown by an officer/official at national and international level. He added that since physical fitness and strength were of value to the duties entrusted to a Police Officer/Official, such inductions and promotions should be encouraged. Different departments like WAPDA, NBP, PIA, Air Force etc. were also encouraging the sportsmen, representing the country at national and international level, by offering incentives in the shape of cash rewards as well as promotions. He contended that if the promotion of sportsmen in the Punjab Police is undone, then they will be discriminated against those who are getting the same benefit in other government departments.

59. He next contended that in the case of Contempt proceedings against Chief Secretary Sindh (2013 SCMR 1752) the rationale on the basis of which out of turn promotions were held against the Constitution cannot be applied to the persons promoted on the basis of Sports, and it was not possible for the authority to wrongly exercise its powers under the garb of Sports Policy since it was based on an objective criteria of winning championships and or gold medals. He submits that the principle of legitimate expectancy was also attracted in their case.

60. He next contended that undoing of such promotions will be against the spirit of Article 10A of the Constitution which guaranteed "due process" and if the sportsmen, who have earned promotions on the basis of a valid sports policy are demoted, the principle of locus poenitentiae would be fully attracted, because the Sports Policy had become a mature practice in the Punjab Police since 1982 and has assumed the force of law which could not be deviated. In this regard he has relied on the case of Nazir Ahmad v. Pakistan (PLD 1970 SC 453).

61. Mr. Hamid Khan, learned Sr. ASC for the Petitioners has filed written arguments in C.R.P.No 480 of 2016 on behalf of 13 DSPs. He has submitted that in pursuance of order dated 12.12.2013 of this Court passed in Civil Appeal No.840/2012, seniority list of Inspectors dated 01.11.2012 was circulated and finalized. Another final seniority list of DSPs dated 01.07.2014, was circulated vide notification dated 01.07.2014, showing dates of promotion of all the Petitioners w.e.f. 12.02.2009 and 12.01.2010. He has further submitted that the seniority of the Petitioners as Inspector was adjusted w.e.f. 16.11.1995, along with colleagues of their own batch and this seniority list has assumed finality under the Orders of this Court.

62. He has next submitted that the seniority of the Petitioners through order dated 10.11.2016 of

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the Department has been disturbed and adjusted from 1999, which means that they have been promoted after 11 years whereas their juniors have been promoted after 7 years and in some cases after 5 years. So the Petitioners have been rendered junior as Inspectors of Police on the pretext of implementation of the order of this Court dated 26.01.2016 passed in Civil Appeal No.184-L/2013. He has next submitted that the order dated 10.11.2016, passed by the IGP, Punjab is violative of the orders of this Court dated 08.03.2011, 12.07.2011 and 05.01.2012 passed in HRC No.1038/201. Furthermore, the said order of the Department is also violative of the judgment of this Court dated 12.12.2013 passed in Civil Appeal No.840/2012 and order dated 08.04.2014 passed in C.R.P. No.2/2014.

63. He has also submitted that the case of the Petitioners has nothing to do with out of turn promotions and they have neither been promoted out of turn nor have benefited from ante-dated fixation of seniority, hence, order of this Court dated 26.01.2016, is not applicable to the present case. He has also referred to the case of Gul Hasan Jatoi and others v. Faqir Muhammad Jatoi (2016 SCMR 1254) and submitted that adjustment of seniority from the date of confirmation after completion of the period of probation would reflect the actual position of seniority of the Petitioners and such subsequent adjustment cannot be treated as out of turn promotion or ante-dated fixation of seniority.

64. He has also submitted that the seniority of the Petitioners as Inspectors in the year 2008 and DSPs in the seniority list of 2014 are past and closed transaction and cannot be re-opened at this stage. Moreover, the Petitioners were condemned un-heard violating the fundamental principle of audi alteram partem and Respondent No.1/IGP Punjab was bound to give opportunity of hearing to the Petitioners before withdrawing their promotions as DSPs after about 7 years without any justification. This is also violative of due process of law as enshrined in Article 10A of the Constitution. He next submitted that the withdrawal of promotion of the Petitioners is violative of the principle of locus poenitentiae and the right to continue as DSPs has been vested in the Petitioners. Furthermore, the impugned order of IGP Punjab suffers from bias and mala fide. He has prayed that the seniority of the Petitioners as DSPs reflected in the final seniority list circulated on 01.07.2014, may be revived and restored.

65. Malik Muhammad Qayyum, Sr. ASC appeared on behalf of the Petitioner in CrI.O.P 123/2016 in C.P 1446-L/1997 and submitted that the Petitioner displayed gallantry beyond the call of his duty in an encounter which took place on the night between 30th and 31st October, 1992 wherein Ahmad Nawaz alias Barbr, a notorious criminal and proclaimed offender was killed. Based on this act of gallantry, the Petitioner was recommended for accelerated promotion by the Deputy Inspector General of Police, Sargodha Range, Sargodha but this recommendation was turned down by the Inspector General of Police, Punjab. Thereafter, a Writ Petition was filed before the Lahore High Court which was accepted and the Lahore High Court directed for the grant of out of turn promotion on 03.12.1996. The Petition filed by the government before this Court (C.P 656-L/1997) was dismissed as being barred by time. However, the Petition (C.P 1446-L/1997) filed by Rana Shujat Ali Khan, compatriot Inspector of the Petitioner was dismissed by this Court and thereafter, on 17.10.1997, notification regarding promotion of the Petitioner was issued by the Government of Punjab pursuant to the Judgment of this Court in C.P 1446-L/2016; which was also affirmed on 18.04.1998, by dismissal of the Review Petition. He further submitted that now the said notification dated 17.10.1997, issued by the Governor of Punjab has illegally been withdrawn by the department on 17.02.2016 as the Inspector General of Police is not competent to withdraw the same of his own without any reference to or order of the Government.

66. He next contended that neither the Petitioner nor the Government of the Punjab were parties to the case out of which judgments in the case of Contempt proceedings against the Chief Secretary

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Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) had been passed. He submitted that these judgments were not binding on the Petitioner.

67. He next contended that the order of out of turn promotion of the Petitioner was issued in terms of section 8-A of the Punjab Civil Servants Act, 1974 and this provision was omitted from the statute in the year 2006 and the said provision was not the subject matter of the judgments of this Court i.e. 2013 SCMR 1752 and 2015 SCMR 456, therefore, the said judgments could not be applied to the case of the Petitioner.

68. He further contended that the law in Punjab was repealed long before the two judgments Contempt proceedings (Supra) and Ali Azhar Baloch (Supra) were delivered by this Court and there was no question of the same being brought to life again and then declaring it against the Constitution. Regarding the effect of omission of law, he referred to the cases of Dad Muhammad and another v. Additional District Judge Quetta and others (1996 SCMR 1868), Idrees Ahmad and another v. Hafiz Fida Ahmad Khan and 4 others (PLD 1985 SC 376), Muhammad Tariq Badar and another v. National Bank of Pakistan (2013 SCMR 314) and Raja Shaukat Mehmood v. Azad Jammu and Kashmir and another (2003 PLC (C.S.) 424).

69. He next contended that even if the judgments in the cases of Contempt proceedings (Supra) and Ali Azhar Baloch (Supra) are assumed to be applicable to the case of the Petitioner, yet those cases which have become past and closed and have been concluded giving rise to vested rights cannot be reopened and interfered with on the basis of these judgments. In this regard he relied on the cases of Income Tax Officer (Circle-II), Karachi and another v. Cement Agencies Ltd. and another (PLD 1969 SC 322), Pir Bukhsh and another v. Chairman Allotment Committee (PLD 1987 SC 145), Hussain Badshah and another v. Akhtar Zaman and others (2006 SCMR 1163), Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445), Dr. Subra Manian Swami v. State of Tamil Nadu and others (AIR 2015 SC 460), Akhtar Hussain Siddique Advocate v. The Province of Punjab (1999 CLC 951), Atia Bibi v. Federation of Pakistan (2001 SCMR 1161), Molasses Trading and Export v. Federation of Pakistan and another (1993 SCMR 1905), Province of East Pakistan v. Sharafat Ullah and others (PLD 1970 SC 514), Commissioner of Income Tax, Karachi v. Eastern Federal Union Company (PLD 1982 SC 247), Pakistan Steel Mills Corporation v. Muhammad Azam Katper and others (2002 SCMR 1023) and Ch. Textile Mills v. Income Tax Officer (PLD 1988 Lahore 440).

70. He next contended that the judgments of this Court generally apply prospectively and cannot destroy the rights which have already been accrued to a person. He relied on the cases of Pensionary benefits of Judges (PLD 2013 SC 829), Victor Linkletter v. Victor G. Walker Warden (381 U.S 618), Muhammad Yousaf v. Chief Settlement Commissioner (PLD 1968 SC 101), Muhammad Yousaf v. Essa Jan (2009 SCMR 1169), Mst. Atiya Bibi v. Federation of Pakistan (2001 SCMR 1161), Muhammad Farooq v. Muhammad Hussain (2013 SCMR 225), Mehram Ali v. The Federation (PLD 1998 SC 1145), Pir Bukhsh v. Chairman Allotment Committee (PLD 1987 SC 145), Asad Ali and others v. Federation of Pakistan and others (PLD 1998 SC 161).

71. He next contended that in any case the judgment delivered in favour of the Petitioner is protected by the doctrine of res judicata, estoppel and conclusiveness. The Petitioner, the I.G.P Punjab and the Government of Punjab are bound by the judgment of this Court passed in C.P 1446-L/1997 which had attained finality in the review petition on 18.07.1997 and these judgments, being conclusive and binding, operate as res judicata. In this regard he relied on the cases of Pir Bukhsh v. Chairman Allotment Committee (PLD 1987 SC 145), Dr. Subra Manian Swami v. State of Tamil Nadu and others (AIR 2015 SC 460).

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72. The learned Counsel lastly contended that the judgment in the case of Dr. Mobashir Hassan and others v. Federation of Pakistan (PLD 2010 SC 265) i.e National Reconciliation Ordinance (NRO) case, was distinguishable on three grounds: Firstly, NRO was promulgated on 05.10.2007 and its vires were challenged within three days of its promulgation and within a week on first date of its hearing, this Court was pleased to pass an interim order, whereby any benefit under NRO was made subject to the outcome of the case. Secondly, in the NRO case it was observed that the President of Pakistan cannot issue an Ordinance of the nature which the Parliament is not empowered to enact. So there was an inherent defect in the promulgation of the NRO. Thirdly, no defense was put by Federation of Pakistan and no beneficiary has come forward to protect his benefits.

73. Mr. M. Bilal, learned Senior ASC, has filed written arguments in C.M.A.No.1681/2016 in C.R.P.No.49 of 2016, contending that the Petitioner joined Punjab Police as Assistant Sub-Inspector on 29.4.1985 on sports basis and thereafter was promoted to the rank of Sub-Inspector and was confirmed in that rank by the competent authority with effect from 27.09.1986. She was promoted to the rank of Inspector on 20-12-1991. Thereafter, in August 2005, on the recommendations of the Departmental Promotion Committee, she was appointed as DSP. In light of order dated 26-01-2016, passed by this Court in Civil Appeal No.184-L/2013, a large number of promotions of Police Officers were withdrawn by the IGP and Addl.IGP, Punjab, vide order dated 17-02-2016. As a result of order dated 17-02-2016, the date of promotion of the Applicant were revised, inter alia, on the ground that her batch mates in her range were promoted from the said dates. The CCPO Lahore vide order dated 03-03-2016, re-fixed her seniority against which the Applicant has already filed a departmental representation on 30-07-2016.

74. He next contended that the judgments reported as Contempt Proceedings against Chief Secretary, Government of Sindh (2013 SCMR 1752), Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and order dated 26-01-2016, of this Court in Civil Appeal No.184-L/2013, have no bearing on the case of the Applicant as no findings have been recorded by this Court regarding appointment on sports basis, which has become a regular practice and is prevailing even in other departments like Pakistan Customs, Pakistan Railways, HBL, NBP, PIA, WAPDA and Pakistan Air Force. He further submitted that even Article 259(2) of the Constitution also encourages promotions on the basis of sports. Moreover, the "Sports Policy, 1982" has become a mature practice and the same cannot be undone.

75. He further contended that the principles of "past and closed transaction" and "locus poenitentiae" are fully attracted to the case of the Applicant. In this regard he has relied upon the case of Application by Abdul Rehman Farooq Pirzada v. Begum Nusrat Ali Gonda (PLD 2013 SC 829). He further contended that the Applicant has been condemned unheard as a result of which her fundamental rights guaranteed under Articles 10-A and 25 of the Constitution have been affected. In this regard he has relied upon the cases of Contempt Proceedings against Syed Yousaf Raza Gillani, P.M. (PLD 2012 SC 553) and (Babar Hussain Shah v. Mujeeb Ahmed Khan (2012 SCMR 1235). The learned Counsel has also adopted the arguments advanced by Mr. Hamid Khan, learned Sr. ASC in C.R.P. No.382/2016 and 383/2016.

76. Mr. Muhammad Qamar-uz-Zaman, learned ASC appeared for the applicant/Petitioner in C.M.A.No.8132/2016 in C.R.P.No.49/2016, and has filed his written submission in which it is contended that case of the applicant lady is not of "out of turn promotion". She was appointed as Sub-Inspector in Punjab Police on 27.11.1986. Thereafter, due to her outstanding performance shown in the arrest of a desperado, her admission to the List-F was ante-dated and she was promoted as Inspector w.e.f 21.01.1988 and when her juniors were promoted as DSP, having ignored the applicant, the Notification dated 02.11.1999 for her promotion as DSP was issued in light of the judgments of

this Court dated 15.04.1999 and 20.10.1999. Thereafter, she was promoted as S.P w.e.f 05.10.2012.

77. It is next submitted that now the IGP in light of order dated 26.01.2016 of this Court, passed in C.A. 184-L/2013, has withdrawn her promotion as S.P. and thereafter also withdrew her promotion as DSP and relegated her to the post of Inspector. While withdrawing her promotion, it has specifically been mentioned that the Notification dated 02.11.1999 (for her promotion as DSP) was issued under the judgment of this Court.

78. It is also contended that the IGP, Punjab is not competent to whittle down the effect of judgments dated 15.04.1999 and 20.10.1999, passed by this Court as the same had attained finality. Moreover, under Article 185(2)(b) of the Police Order, 2002 all rights, privileges, obligations or liabilities acquired, accrued or incurred under the Police Act, 1861 have been saved and the saving clause of Police Order, 2002 do not confer any authority to the IGP, Punjab to undo the 'past and closed transactions'. Therefore, now after lapse of 18 years the IGP could not withdraw her promotion.

79. Mr. S. A. Mahmood Saddozai, learned ASC appearing for the Petitioner in C.R.P.No.482 of 2016 has submitted his written contentions that the Petitioner joined Police Department on 30.1.1980 as ASI and was placed in Balochistan Police. After 7 years he was promoted as officiating Sub-Inspector (S.I) w.e.f. 15.01.1987, thereafter, he was confirmed as S.I w.e.f. 22.05.1993. He was transferred to Rawalpindi Range, Punjab Police on 24.05.1993 and his name was placed at the bottom of the seniority of officiating Sub-Inspectors instead of placing in the list of confirmed Sub-Inspectors. He then filed departmental representation, which was not responded to. He approached the Punjab Service Tribunal where his Service Appeal was allowed on 27.03.2000, directing the Respondents to place his name at the bottom of seniority list of confirmed Sub-Inspectors of Rawalpindi Range. In compliance with the said judgment his name was placed in list 'F' w.e.f. 01.11.1995 and thereafter, he was promoted as officiating Inspector w.e.f. 16.11.1995 and confirmed as Inspector w.e.f. 16.11.1995 by order dated 29.08.2001. He was further promoted to the rank of DSP vide order dated 12.02.2009.

80. It was next contended that by wrongly applying the judgments of this Court in the cases of Contempt Proceedings against Chief Secretary, Government of Sindh (2013 SCMR 1752), Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and order dated 26-01-2016, of this Court in Civil Appeal No.184-L/2013, the Petitioner has been victimized and reverted back to as Inspector besides his seniority has been re-fixed after promotion to the rank of Inspector w.e.f 17.10.2001.

81. It was next contended that the above cited judgments of this Court have no nexus with the case of the Petitioner therefore, the order dated 10.11.2016, reverting him to the rank of Inspector may be set aside.

82. The Petitioner has submitted written arguments in Crl. O.P.No.195/2016 in C.A.No.184-L/2013, contending that the term 'out of turn promotion' as per its literal meaning means to get promotion while superseding someone who is senior to the promoted officer, whereas vide order of the Department dated 16.11.1991, the Petitioner was granted proforma promotion along with his batch mates as per his seniority and not a single person/officer, senior to him, was superseded, therefore, the promotion of the Petitioner cannot be termed as out of turn promotion. He has next submitted that vide notifications dated 18.03.2016, 23.06.2016 and 28.03.2016, issued by the Respondent - Department, whereby his promotions to the post of Inspector, DSP and SP, respectively have been withdrawn, are violative of the judgments passed by this Court, as well as of the Punjab Service Tribunal, which speaks about the malicious and mala fide acts of the Respondents. He has next submitted that vide order dated 26.01.2016, passed in Civil Appeal No.184-L/2013, directions were

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issued regarding withdrawal of out of turn promotions, but the Respondents have deliberately victimized him without his fault and even without hearing. Therefore, he has prayed for initiation of contempt proceedings against the Respondents and to restore him to the post of Superintendent of Police.

83. Syed Mansoor Ali Bukhari, learned ASC, has submitted written arguments in C.R.P.No.481/2016, and contended that while hearing HRC Nos.2103-G/2011, 1038/2010 and 6679-P/2014 on 12.7.2011, this Court has observed that all the representations pending must be decided within a period of one week and no promotion/demotion/change in seniority shall be made till final orders are passed. He further submitted that on 12.12.2013, while hearing Civil Appeal No.840/2012, this Court had directed the departmental authority to issue the final seniority list, after hearing the objections of the parties in terms of the judgments of this Court, within a period of one month.

84. He has next submitted that names of the Petitioners were appearing in the list, which was accordingly submitted in this Court in pursuance of the order dated 12.12.2013. However, at the time of notifying the same, names of the Petitioners were excluded. He has next submitted that the Petitioners filed representations against the notified seniority list of DSPs dated 01-07-2014, but no response was given, thereafter, objections were submitted to the IGP, Punjab but the same proved abortive.

85. He has also submitted that the Respondents were bound to follow the directions of this Court vide order dated 08.03.2011, which, inter alia, stipulate as under:-

- i. Seniority list of the incumbent in all the cadres shall be updated for the purpose of the promotions against permanent existing vacancies,
- ii. All vacancies will be worked in respect of the present cadre to be filled in within due course of time,
- iii. Judgment delivered by the Apex Court, High Court, or Service Tribunal shall be implemented within the above stipulated period,
- iv. Final seniority list be prepared and promotions be made according to that list.
- v. Promotions shall be made in accordance with law and on merits in terms of seniority-cum-fitness basis.

86. He has next submitted that the order of this Court dated 26.01.2016, is quite within four corners of law and does not warrant any interference, therefore, the same should be maintained to foster the ends of justice.

87. In response to the notice issued to the learned Attorney General for Pakistan under Order XXVIIA, C.P.C., he has filed written arguments. He has contended therein that the judgments pronounced in relation to the Sindh Civil Servants Act, could not be extended to the Province of Punjab on the touchstone of Article 241 of the Constitution and that section 8-A which remained on the statute book was never challenged during its life time and the promotions given under this Section were protected upto this Court. He has submitted that the actions taken under the said provision are protected in the light of Section 6 of the West Pakistan General Clauses Act, 1956.

88. He has contended that the promotions made under the said Section are past and closed



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transaction. In support of his submission, he has relied on the cases of Income Tax Officer Karachi v. Cement Agencies (PLD 1969 SC 322), Pir Baksh and another v. Chairman Allotment Committee (PLD 1987 SC 145).

89. He has next submitted that the term 'omission' and 'repeal' has the same effect. He further submits that Section 8-A was never declared discriminatory as envisaged by Articles 8(1) and (2) of the Constitution, therefore, application of the principles propounded in the judgments under review with respect to the Province of Punjab would be prospective and that the rights accrued to the Petitioners through the judgments of this Court are protected under the principle of res judicata.

90. He has next submitted that if the application of the principles enunciated in the judgments under review is extended to the Province of Punjab and that too on the basis of an omitted provision, it would amount to violating the principle of legislative competence and independence as recognized by this Court in the case of Province of Sindh v. Mutihidda Qami Movement (Civil Appeals Nos.760 to 765).

91. He has next submitted that in terms of Article 7 of the Constitution, the term 'State' includes a Provincial Assembly and in order to make a declaration under Article 199(1)(a) of the Constitution, it would be necessary that the party should be before the Court and the Government of the Punjab was not a party at the time of hearing of the proceedings which culminated into judgments under review, and issuance of notice at this stage would not cure this defect.

~~92. He has further submitted that any adverse findings against the Petitioners would be against Article 10A of the Constitution and that the ratio of the judgments under review is against the spirit of the Constitution.~~

93. We have heard the learned Counsel for the Petitioners and have gone through the written synopsis submitted by them. The opportunity to file written synopsis was afforded to the learned Advocate General, Punjab, as well as the learned Attorney General for Pakistan, but the Advocate General, Punjab, did not file any written synopsis. We have perused the material on record with the able assistance of the learned Counsel and the learned Law Officer. Before examining the issues raised in these proceedings, we intend to reproduce certain material facts which formed the basis of the present proceedings. The first order in this regard passed by this Court on 26.01.2016 in Civil Appeal No.184-L of 2013, is reproduced hereunder:-

"3. The learned Additional Advocate General, Punjab, states that the Punjab Government has started implementing judgment of this Court reported as Contempt Proceedings Against Chief Secretary Sindh (2013 SCMR 1752) and Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) and still date substantial portion of seniority of the Police personnel has been re-fixed. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sindh Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior

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colleagues. Under section 9-A, the Sindh Government has granted out of turn promotions to the civil servants who do not belong to police force. By using the word 'Gallantry' in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.

94. There is one more judgment of this Court in Civil Petitions Nos.2058 to 2060 of 2014 decided on 05.12.2014 (Gul Muhammad and others v. Government of KPK through its Chief Secretary and others) which has not been noticed by either party on the issue, wherein while maintaining the judgment of a learned Division Bench of the Peshawar High Court, this Court has refused the leave. The backdrop of the proceedings was that the Petitioners-Police Officers of KPK in the aforesaid petitions had approached the Peshawar High Court, challenging the withdrawal of their out of turn promotions through notifications issued by the competent authority in compliance with the judgments of this Court in 2013 SCMR 1752 and 2015 SCMR 456. The learned Peshawar High Court after discussing the issues had concluded that the principles enunciated on the issue of out of turn promotion in the aforesaid judgments would extend to all the provinces including the KPK and the competent authority was justified in withdrawing out of turn promotions.

95. The Punjab Government in terms of Article 189 of the Constitution had complied with the judgments of this Court reported in 2013 SCMR 1752 and 2015 SCMR 456, by issuing notifications whereby out of turn promotions granted to the police officers at times, pursuant to the provisions of section 8-A of the Punjab Civil Servants Act, 1974, were withdrawn.

96. The Punjab Government did not seek review of the judgments referred to hereinabove besides the orders passed by this Court in Civil Appeal No.184-L of 2013, on the issue of out of turn promotions.

97. Before we address the submissions made by the learned ASCs, we may examine the context in which the present proceedings have arisen. The Petitioners are either the beneficiaries of the exercise of power under section 8-A of the Act, 1974, who were granted out of turn promotions or are claimants to such out of turn promotions. It needs to be appreciated that in matters relating to service, there are certain rights or benefits which are granted or which accrue to the civil servants without affecting the rights or interests of other civil servants while other benefits accruing to civil servants necessarily affect the rights or interests of other civil servants. The former category includes financial benefits, training, transfers, posting etc. while the latter category includes seniority, promotions, etc. where any arbitrary exercise of power by the authority may adversely affect rights of other civil servants in such matter. The out of turn promotions are inherently destructive of the rights of other officers who, though senior and entitled to be considered for promotion before the beneficiaries of out of turn promotions, are bypassed as a result of out of turn promotions. Thus each out of turn promotion must necessarily have a corresponding affected officer, who suffers due to this exercise despite being completely blameless. He suffers for no fault of his own when he is bypassed in favour of the beneficiary of such an exercise. Unless he voluntarily waives his rights, in which case the promotion could no longer be described as out of turn, the Courts ought not to ignore his rights in matters brought before it for adjudication, irrespective of his presence or absence before the Court in a particular case.

The section 8-A was regulated by the Rule 14-A, whereas in Sindh no rules were framed to



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regulate out of turn promotions under section 9-A, which was inserted on 21.02.2002.

98. In a series of judgments, this Court has declared out-of-turn promotions as being unconstitutional, un-Islamic and void ab initio. The principle of unconstitutionality attached to the instrument providing for out of turn promotion was laid down first in the case of Muhammad Nadeem Arif v. I.G. of Police (2011 SCMR 408). The view taken in this judgment was followed in another case reported as Ghulam Shabbir v. Muhammad Munir Abbasi (PLD 2011 SC 516); wherein it was held that out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam; and that reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

99. In another case, Suo Motu case No.16/2011, this Court again deprecated the practice of conferring out of turn promotions in the following terms:-

“It is also a hard fact that the police has been politicized by out of turn promotions and inductions from other departments time and again, through lateral entries which has brought unrest amongst the deserving police officers waiting their promotions on merits. The posting and transfers of the police officers also lack merits. The complete service record of a police personnel which could reflect posting and transfer is not maintained by the relevant wing. Even many police officers posted within the Karachi on senior positions lack qualifications and competence both. If this is the state of affairs, how can there be peace in Karachi. It seems instead of depoliticizing police force further damage has been caused by the government by introducing their blue eyed persons in police force through lateral entries and then granting them retrospective seniority and out of turn promotions.”

100. Subsequently, this Court reiterated, inter alia, the principle of declaring the law of out of turn promotion unconstitutional and void ab initio in the Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752). The relevant para is reproduced as under:-

“158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants, by virtue of Section 9-A would affect the performance of hundreds of thousands of the civil servants serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9-A.”

101. This Court also highlighted the pernicious effects of the conferment of out of turn promotions, at paras 161 and 162 (ibid) -

“161. The ultimate casualty of the impugned instruments would not only be the establishment of meritocratic public service but more ominously the certainty of law which undermines both legitimate expectancy individually among the civil servants as regards the smooth progression of their career, but also the overall administrative environment. Article 143 of the Constitution has been promulgated to harmonize and regulate the service of the civil servants from federal government and provincial governments on their opting for All Pakistan

Unified Group/PSP. The impugned legislation would distort inter se seniority of the civil servants not only within the province but also the federal civil servants.

162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self-respect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bona fide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.”

102. The Court then determined the unconstitutionality of the out of turn promotion and provided a direction for boosting the morale of police personnel at Paragraph 164 of the said judgment:-

“164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sindh Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9-A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word ‘Gallantry’ in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.”

103. The Review Petitions were filed against the aforementioned judgment by the Sindh Government besides those who were aggrieved on their de-notification in terms of the directives contained therein. These Review Petitions were dismissed on 05.01.2015, by a three Member Bench of this Court maintaining the findings recorded in the judgment reported in 2013 SCMR 1752. The judgment passed in Review Petitions is reported in 2015 SCMR 456. The learned Counsel for Petitioners raised a number of grounds challenging various findings of this Court, including the issue of out of turn promotion. Upholding the unconstitutionality and nullity of the legislative instrument pertaining to out of turn promotions, this Court recorded the following findings which are reproduced hereunder:-

### OUT OF TURN PROMOTIONS

122. The issue of out of turn promotions has been dealt with by us in detail in the judgment sought to be reviewed and we reached the conclusion that it was violative of Articles 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, learned Advocate Supreme Court has contended that section 9-A of the Act has not been struck down by this Court, while declaring the out of turn promotions as un-constitutional. We are mindful of this fact as we have held that the Competent Authority can grant awards or rewards to the Police Officers, if they show act of gallantry beyond the call of duty. However, we had struck down the very concept of "out of turn promotion" being violative of Constitution for the reasons incorporated in paras 158 to 164 of the judgment under review.

126. The contention of the learned ASC that the judgment of the High Court of Sindh relating to the out of turn promotion is still in field, therefore, he prayed for formulation of a ~~Committee to scrutinize the cases of the Police Officers, who were given out of turn promotion,~~ is without substance. We have already declared "out of turn promotion" as unconstitutional, therefore, after recording such findings, the need of forming a Committee under Rule 8-B for scrutinizing the cases of Police Personnel is of no significance. However, they could be awarded or rewarded compensation for their exceptional acts of gallantry."

104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion.

**Article 189 of Constitution**

105. Under Article 189, this Court is the court of last resort and laws declared or principles enunciated by it are binding on all the subordinate courts and authorities in Pakistan as reflected in Farhat Azeem v. Waheed Rasul (PLD 2000 SC 18). We have also held that the decisions of this Court laying down the proposition in law are laws binding on all, regardless whether they were party to the proceedings or not. M/s. Star Diamond Co. v. Union of India (PTCL 1988 FC 229). It has also been held by us that even a decision of Supreme Court for which no reasons are given would be binding upon the Courts in the Country. Safdar Ali v. Conservator of Forests (1987 PLC (C.S.) 55). Likewise, where amendment in an Act was made prior to a decision of Supreme Court, declaration of law by Supreme Court would override the amendment in the Act and nullify its effect by virtue of Article 189 of the Constitution (PLD 1986 SC 14). Finally, the doctrine of stare decisis is not applicable to this Court. This Court in the case of Hitachi Limited v. Rupali Polyester (1998 SCMR 1618), has concluded that the Supreme Court is not a slave of doctrine of stare decisis and can change or modify its view with the passage of time. All the courts and public institutions are bound to follow the principles laid down by this Court. No exception to this principle can be created under the garb of rule or procedural niceties.

**Difference between section 8-A of PCSA and 9-A of SCSA:**

106. It has been contended that the language of section 9-A of Sindh Civil Servants Act, which has been interpreted by this Court in the case of Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752), was distinct from Section 8-A of the Punjab Civil Servants Act. For ready reference both the provisions are reproduced in juxtaposition as under:-

**Section 8-A of Punjab Civil Servants Act, 1974**

Notwithstanding anything contained in this Act or any other law for the time being in force or

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in any contracts or rights claimed or acquired under any judgment of any Court or Tribunal, a civil servant who provenly exhibits exemplary intellectual, moral and financial integrity and high standard of honesty and gives extraordinary performance in the discharge of his duties, may be granted out of turn promotion or award or reward in such manner as may be prescribed.

**Section 9-A of Sindh Civil Servants Act, 1973**

“Notwithstanding anything contained in this Act or any other law for the time being in force or any judgment, a civil servant who provenly exhibits the act of gallantry while performing his duties or very exceptional performance beyond the call of duty, may be granted out of turn promotion or award or reward in such manner as may be prescribed”

107. Even a perfunctory comparison of the two provisions would vouchsafe the following facts:

- i. Both provisions are substantively similar in nature and cater to the same purpose, i.e., out-of-turn promotion, which this Court has already declared unconstitutional and a nullity ab initio;
- ii. Both provisions create a new exception or category of promotion to the existing framework of service rules, in the name of out-of-turn promotion, whereas such promotion is alien to the concept and scheme of civil service rules, read with Articles 4, 9, 14, 18, 25 and 240-242 of the Constitution;
- iii. Both provisions overtly militate against the settled law and principles of promotion based on merit, inter-se seniority, annual performance reports and so on;
- iv. Both provisions are discriminatory and violative of the fundamental rights of other civil servants who have been affected by the out of turn promotions, despite the fact that they may stand a notch up in merit, inter-se seniority and even competence from the beneficiary of such promotions;
- v. Measured on the touchstone of ‘pith and substance’, both the provisions seem to have been instrumentalized for the same purpose—out of turn promotion.

108. In view of the above similarities, the contention of the learned Counsel that the two provisions may be differentiated on the basis of the language used, holds no ground. Both provisions are similar in nature and cater to the same purpose—out of turn promotion—which we have consistently held to be unconstitutional and void ab initio. Therefore, we are not persuaded by the argument that an exception may be created in the case of section 8-A of PCSA.

109. It was also contended that section 9-A of Sindh Civil Servants Act, which has been interpreted by this Court in the case of Contempt Proceedings against Chief Secretary, Sindh (2013 SCMR 1752), was distinct from section 8-A of the Punjab Civil Servants Act, in that section 8-A was regulated by the Rule 14-A, whereas in Sindh no rules were framed to regulate out of turn promotions except for a short period of three months starting from 10.02.2005 to 11.05.2005, Rule 8-B was inserted in the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, to regulate the provisions of section 9-A.

110. We fail to appreciate the principle of law underlying this submission. It is settled law that the operation of a statute or any statutory provision is not dependent upon framing of the Rules. In some

cases the absence of Rules may affect the enforceability or operability of the statute, as happened in the case of section 9-A of the Sindh Civil Servants Act, where the Rules were to prescribe the procedure for claiming benefits under the provision and such could not be claimed unless the procedure prescribed in the statute was adopted. However, for considering the constitutionality or otherwise of a statute on the touchstone of the Constitution or Fundamental Rights, framing or non-framing of the Rules under that statute could hardly be relevant. The framing of Rules would be generally relevant for determining as to whether the power under the statute has been exercised properly or not, but the existence of Rules could neither save nor destroy the constitutional validity of the Rules. Thus, the reasoning in the earlier judgments with respect to section 9-A of the Sindh Civil Servants Act is fully applicable to section 8-A of the Punjab Civil Servants Act.

111. Yet another anomalous consequence of this argument is that while two identical provincial laws are enacted and acted upon and one province repeals the law while the other continues with its operations. Subsequently, the vires of the law that continues on the statute books is examined by the Court and its provisions have found to be inconsistent with the Constitution or Fundamental Rights with the result that the benefits conferred or availed thereunder, unless protected by the category of past and closed transaction, have to be reversed and its deleterious effects undone. This category, quite obviously, consists of the cases wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court. They shall remain intact unless reviewed. Even otherwise, it does not appeal to logic that in such a situation, while those benefitting from a law which continued to be on the statute book and eventually found to be ultra vires, the Constitution would stand deprived of such illegal benefits, those continuing to enjoy the same under the omitted/repealed law in other Province would stand protected. If an illegal benefit was accrued or conferred under a statute, whether repealed (omitted) or continuing, and its benefits continue to flow in favour of beneficiaries of such an unconstitutional Act, and it is declared ultra vires, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not. Where such an anomalous situation surfaces – i.e. where one province continues to countenance the benefits of an unconstitutional (though repealed/omitted) Act, while the other Provincial statute has been struck down on the same touchstone, and thereby determined whether those enjoying benefits pursuant to the repealed law are entitled to continue to do so, such reversal of benefits is imperative.

**A statute could only be declared as non-est, if the legislature is not competent to legislate that law:-**

112. Undoubtedly, the legislature enjoys much leeway and competence in matters of legislation, but every law enacted may not necessarily be tenable on the touchstone of the Constitution. It is the sole jurisdiction of this Court, under the law and the constitution to look into the fairness and constitutionality of an enactment and even declare it non est, if it is found to be in conflict with the provisions of the Constitution. Thus, legislative competence is not enough to make a valid law; a law must also pass the test at the touchstone of constitutionality to be enforceable, failing which it becomes invalid and unenforceable.

113. Normally the courts make utmost efforts to save a piece of legislation from becoming invalid. But in certain cases, the courts also apply, inter alia, the doctrine of severance to remove a piece of legislation that distorts the scheme of a parent law, or deviates from the provisions of the Constitution. While dealing with the issue on the effect of law declared to be non est, a 14 Member Bench of this Court in the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265), has reached the following conclusion:



169. It may be noted that the President has an authority under Article 89 of the Constitution to promulgate an Ordinance, but cannot issue temporary legislation, which the Parliament is not empowered to do. A thorough perusal of the Federal and the Concurrent Lists persuades us to hold that the President was not empowered to issue the NRO, 2007 as the subjects covered by its sections 2, 6, and 7 fall beyond the scope of these lists. As far as its manifestation is concerned, it has already been done by the Parliament before whom the NRO 2007 was placed, but the same was withdrawn subsequently under Rule 139 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007, as impliedly the National Assembly refrained itself from making it as an Act of parliament. Inasmuch as, the actions taken from the date of its inception till the expiry of its constitutional life of 120 days under Article 89 of the Constitution from 5th October 2007 to 1st February, 2008, benefits derived by some of the persons have not been protected, and the Government (either Federal or provincial) has also not insisted to allow retention of the benefits derived out of it to the accused persons during the said period. More so, none of the beneficiaries, who have drawn benefit during the said stipulated period from 5th October 2007 to 31st July 2009, when vide judgment dated 31st July 2009, all the Ordinances were declared to have been shorn of permanency, have not come forward to protect their benefits, although hearing of these petitions has been widely publicized in print and electronic media. Thus in view of theory of ultra vires, explained in Cooley's Constitutional Limitations, reference of which has been made by Chief Justice Cornélius (as then he was) in *Fazlul Quader Chowdhry v. Muhammad Abdul Haque* (PLD 1963 SC 486), wherein it has been observed that "for the constitution of the State is higher in authority than any law, direction, or order made by anybody or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made; in any case of conflict the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity", we are of the opinion that the NRO, 2007 is void ab initio, therefore, the parties who have derived benefit shall not be entitled for the same from 5th October, 2007 and all the cases withdrawn under Sections 2, 6, and 7 of the NRO, 2007 shall stand revived immediately. The Courts seized with the matters shall proceed to decide the same, considering that the NRO 2007 was never promulgated.

171. We have examined the respective contentions of the learned counsel for the parties as well as the vires of the NRO, 2007, on the touchstone of various Articles of the Constitution, and have come to the conclusion that the NRO, 2007 as a whole, particularly its sections 2, 6 and 7, are declared void ab initio being ultra vires and violative of Articles 4, 8, 12, 13, 25, 62(f), 63(1)(h), 63(1)(p), 89, 175, 227 of the Constitution; therefore, it shall be deemed non est from the day of its promulgation i.e. 5th October 2007 as a consequence whereof all steps taken, actions suffered, and all orders passed by whatever authority, any orders passed by the Courts of law including the orders of discharge and acquittals recorded in favour of accused persons, are also declared never to have existed in the eyes of law and resultantly of no legal effect.

172. Resultantly, all cases in which the accused persons were either discharged or acquitted under Section 2 of the NRO, 2007 or where proceedings pending against the holders of public office had got terminated in view of Section 7 thereof, a list of which cases has been furnished to this Court and any other such cases/proceedings which may not have been brought to the notice of this Court, shall stand revived and relegated to the status of pre-5th of October, 2007 position.

114. The present matter falls in the latter category. Section 8-A, or similar instruments of law,

clearly falls foul of the principles laid down in a series of cases by this Court. Therefore, legislative competence alone cannot be made a ground of saving the impugned provision, unless the relevant Constitutional provisions are amended, which is not the case in hand.

**Even if a Court declares a law to be unconstitutional, it does not affect the past and closed transactions and the cases wherein vested rights have been created.**

115. This question was also raised before this Court during the proceedings of the aforementioned Review petitions where a number of contentions were made in this regard. It was contended that the Judgment under review should have been effective prospectively; that the benefits accrued to the Petitioners by the impugned legislative instruments, which were struck down by this Court, could not have been withdrawn as their rights were protected by the principles of locus poenitentiae; that the judgment under review was in personam and did not apply to others; and that judgments always applied prospectively and not retrospectively. In that regard, reliance was placed on the case Regarding Pensionary Benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as such (PLD 2013 SC 829). However, this Court did not agree with the contentions and observed that:-

“129. Now it is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability.”

“130. In the case in hand, the benefits extended to the Petitioners through the impugned legislation were not only violative of law but were also declared ultra vires of the Constitution. In such like circumstances, the benefits, if any, accrued to the Petitioners by the said legislative instruments shall stand withdrawn as if they were never extended to them. The judgment relied upon by Syed Ifkhar Hussain Gillani is distinguishable on facts. Under the said judgment, this Court had re-visited the earlier judgment of this Court titled as Accountant General Sindh and others v. Ahmed Ali U. Qureshi and others (PLD 2008 SC 522) by which the retired Judges were granted pensionary benefits. In the said case, it was held that the pensionary benefits granted to retired Judges were violative of the scheme and as such the judgment was declared as per incurium, declaring further that no pensionary benefits could be granted to any retired Judge, unless he serves for five years in office. In the present proceedings, this Court has struck down the legislative instruments by which benefits were extended to a class of persons, in complete disregard of the service structure mandated by the provisions of Articles 240 and 242 of the Constitution. Through the legislative instruments, which were struck down by this Court, undue favours were extended to a few individuals, for political considerations against the mandate of the Act and the recruitment Rules framed thereunder. Such instruments were held to be violative of Articles 4, 8, 9, 14 and 25 of the Constitution. Through these legislative instruments, many of the Petitioners were absorbed and/or given out of turn promotions or back-dated seniority, depriving other meritorious Civil Servants of their seniority and smooth progression in career. A substantial number of unfit and unmeritorious Officers were thus absorbed/promoted out of turn/given back-dated seniority in important cadres, services and posts by extending undue favours by the Authorities, skipping the competitive process. Such absorptions etc, which were not permissible under the Civil Servants Act, had practically obliterated the Constitutional and legal differentiations that existed amongst various cadres, posts and services. We have already observed in our judgment that the legislative instruments, which were struck down by this Court, had engendered a

culture of patronage, bringing more politicization, inefficiency and corruption in the Civil Service

116. As to the claim that the out of turn promotions are covered by the doctrine of past and closed transaction, the infirmity of the argument is self-evident. Sometimes there are wrongs without individual victims while in other cases there are identified individual victims. The brunt of out of turn promotions is always borne by the individual officers who were bypassed due to out of turn promotions. The damaging effect on the careers of deserving officers who suffered due to these out of turn promotions continue during service and even after retirement in terms of pensionary benefits. If the beneficiaries of this illegal exercise are reverted to the positions to which they would have been entitled to, on their respective merit and promotion, on their turn, this would immediately open up vistas of promotion for those deserving officers who were earlier bypassed due to out of turn promotions.

117. In the light of the rules and principles laid down by this Court, we with respect are not inclined to agree with the proposition that vested rights that were created under a law subsequently declared unconstitutional by this Court have attained finality under doctrine of past and closed transaction, and that they are immune from the application of the aforementioned judgments of this Court. We have maintained that vested rights are generated only under a valid and uncontested instrument of law. An instrument that was still born or treated by this Court as non est is barred from creating any vested rights, let alone being protected under the doctrine of past and closed transactions. We believe that it is our duty to protect the rights and interests created under a law and also to deny the enjoyment of rights created under an invalid law. In the instant case, the Petitioners are claiming the protection of rights that were created under a law that has failed to pass the test of constitutionality, as determined by this Court, hence, they cannot take the plea of past and closed transaction.

118. The contention of the learned Counsel that the effect of the aforesaid judgments which declares the concept of out of turn promotion unconstitutional cannot be extended to apply retrospectively on the cases where law granting out of turn promotions was omitted, is without force. Insofar as the issue of examining the provisions of a repealed statute is concerned, such an exercise is carried out by Courts in routine in the context of section 6 of the General Clauses Act, as well as Article 264 of the Constitution of Pakistan. Whenever any right, obligation, privilege or liability acquired, accrued or incurred under the repealed law is raised, the Courts are necessarily required to examine the provisions of the repealed statute. Thus, there is neither any reason in principle nor any precedent which bars the Courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights, as enumerated in the Constitution. Any other conclusion would lead to the absurd consequences that while the statute remains on the statute book, the Courts can examine its vires but once it was repealed by a subsequent statute, its effect, even if ex facie inconsistent with the Constitution or Fundamental Rights goes beyond the realm of judicial review. If such were the effect of repeal, then all that would be required to create a protected class of legislation is promulgation of patently unconstitutional statutes creating rights in favour of certain interested persons which though completely destructive of the Fundamental Rights of others, stood protected behind an impenetrable wall by the mere repeal of the statute through such unconstitutional Act. Such would not only be a fraud upon the statute but would be completely destructive of the rule of law and constitutional governance. Thus, there is no reason which compels the Court to sustain such an absurd proposition. As and when a repealed statute is invoked or raised in support of any claim, right, office or act, before the Court, the Court would always be entitled to examine its validity on the touchstone of the Constitution and Fundamental Rights. We have not been able to discover any instance from our own history as well as that of other legal systems with entrenched judicial review on the touchstone of the



ent

Constitution, where the Courts have refrained from examining the vires of the statute on the mere ground that at the time of review such law stood repealed by a subsequent statute.

19. However, when a statute (whether existing or repealed) is found to be ultra vires the Constitution, the Court is empowered – indeed, mandated – to examine whether any person continues to enjoy the benefits of the ultra vires statute, or whether any state of affairs continues to exist as a result, and if it is found so the Court is mandated to undo the same, provided that the benefit or state of affairs in question is not a past and closed transaction. For instance, the case of an employee who had enjoyed an out of turn promotion pursuant to a law found to be ultra vires the Fundamental Rights, who now stands retired and or died; it would constitute a past and closed transaction inasmuch as it would be a futile exercise to re-open the case of such an employee. On the other hand, employees who were so promoted under such a statute and who continue to remain in service, would be liable to be restored to the position that existed prior to the benefit conferred under the statute found inconsistent with Fundamental Rights. Indeed, once a statute has been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same are to be stopped. Reference in this behalf may be made to the case of Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265). Even during hearing, we called upon the learned Counsel for the Petitioners to satisfy us that the term 'out of turn promotion' used in section 8-A is not violative of the provisions of Constitution guaranteeing fundamental rights to the civil servants. But none of them had addressed us on the issue.

120. In view of the above, we cannot accept the argument that while the beneficiaries of the repealed law could invoke its provisions to justify their out of turn promotions and yet raise an impenetrable bar, if the Court seeks to examine its consistency with the provisions of the Constitution and the Fundamental Rights. Indeed the case of the Petitioners claiming out of turn promotion under the repealed statute of Punjab is on a weaker wicket as compared to the officers whose out of turn promotions were sought to be given cover by a subsisting law. Yet when a subsisting statute was declared unconstitutional due to its violation of Fundamental Rights, a preferential treatment could hardly be sustained on the basis of a repealed statute.

121. This Court in the cases of Fazlul Quader Chowdhry v. Muhammad Abdul Haque (PLD 1963 SC 486) and Muhammad Mubeen ul Salam v. Federation of Pakistan (PLD 2006 SC 602), has held that "in any event, on questions relating to the constitutionality of actions, the ground of laches cannot prevail; for there can be no estoppel against the Constitution and an Act which is unconstitutional cannot become constitutional by lapse of time, nor can it vest anyone with any kind of legal right to benefit from such an unconstitutional act." These judgments further concluded that "this Court cannot be refrained from examining the constitutionality of a law because of lapse of time, therefore, notwithstanding any objection, if the constitutionality of a law is under challenge, its vires can be examined despite the fact that it had remained on the statute book for a considerable time."

122. Indeed, raising such a question would lead to disastrous consequences; some of them are enumerated as under:

- i. Citizens would lose their legitimate rights to usurpers merely by the lapse of time and under the garb of closed and past transactions;
- ii. In practical terms, declaring a law void and non est would make no difference as the undue benefits would continue to be enjoyed by the undeserving persons, under the garb of closed and past transactions, and at the cost of deserving persons.

iii. The aims of justice would be defeated at the hands of a mechanical force of time; in other words, a mere operation of time would upstage the operation of law.

iv. More alarmingly, this Court may come to lose its inherent jurisdiction to review a previous judgment for any aspect of it, which may have remained hidden in the procedural or technical folds or escaped the testing at the altar of constitutional law.

v. If allowed to be hampered by procedural niceties, this Court, or High Courts, may find it difficult to exercise their discretionary powers to render justice to the victims of an invalid law or of a law that has been declared void ab initio by this Court.

vi. Annuling a law on constitutional grounds, and yet protecting the rights created there under would create an absurd situation, requiring the courts to enforce the provisions of substantive/constitutional laws, without disturbing the principle of closed and past transactions.

vii. The blind application of the principle of past and closed transactions may also lead to defeat the very intent of legislature, in addition to causing hardship cases.

viii. Finally, upholding a prima facie unconstitutional provision merely on the grounds of past and closed transaction would subjugate the rules of judicious construction to a mindless adherence to temporal considerations, whereas the very concepts of retrospectivity and prospectivity of laws are rooted in the golden tenets of equity and fairness, not in the mechanical passage of time.

23. We are clear in our view that the issue of past and closed transaction (except what has been concluded in paragraph 11) does not arise in the instant case as we have already declared void ab initio the legislative instruments that provided for out of turn promotions. In other words, the provisions of section 8-A of PCSA created no vested rights in favour of the Petitioners because it was void from the moment of its inception. The principle of past and closed transaction would apply in the cases where rights are created under a valid law, even though such laws are allowed to lapse or removed from statutes. It is critical to differentiate between the rights created under a valid law and those claimed under a law that was void ab initio, regardless of the fact that this Court declared its invalidity or unconstitutionality after some time.

124. The Counsel have relied on certain judgments in support of their contentions. We have perused them and found that most of these were passed before this Court examined the vires of the law providing for out of turn promotion in its constitutional jurisdiction in the case of Nadeem Arif. This judgment was followed later in a series of cases decided by this Court in constitutional jurisdiction. A fourteen Member Bench of this Court in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483), has concluded that "where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of Article 189 and is binding on all the Courts of Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court, due to high place which the Court holds in the hierarchy in the country enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of law. The principles enunciated by this Court in respect of the provisions of law pertaining to out of turn promotion hold the ground."

125. The contentions of the learned Counsel Khawaja Haris, Sr. ASC, pertaining to applicability of Article 27(I) are beyond appreciation. This Article protects the citizens from discrimination based on

religion, caste, sex, residence and place of birth in matter of appointment to service of Pakistan. However, it does not open the doors of other forms of discrimination or nepotism under the garb of the rules that are patently unconstitutional and against the very scheme of the civil services. Were it a number of constitutional provisions such as Articles 4, 8, 9, 14, 18 and 25 would lose their significance and the entire edifice of social justice and equality before law would become vulnerable various exceptions created under the perverse interpretation of Article 27(1). Moreover, the ambit of Article 27(1) is confined only to the initial appointments and not the appointments by way of promotion, therefore, to stretch it any further would contort or destroy the very spirit of this important constitutional provision. Article 27(1) is complementary to Article 25 and should be read in tandem.

126. The learned Counsel Khawaja Haris attempted to argue that section 8-A of P.C.S.A falls within the exclusionary clause of Article 8(3)(a) of the Constitution as it is a police specific section. With respect, we find this argument flawed and misconceived, because the exclusion clause deals with the situation where the law enforcement agencies are required to maintain public order at the perils of some law which is otherwise protected under Article 8(3)(a). In other words, the exclusionary clause does as nothing, whatsoever, to do with the Civil Servants Act which governs the terms and conditions of the civil servants including the police force.

127. The further contention of learned Counsel Khawaja Haris, Sr. ASC, on the point of applicability of the cutoff date of section 8-A of the Punjab Civil Servants Act, which was omitted on 17.10.2006, is also without force. The contention to treat a certain law which otherwise was held as void ab initio from a particular date in itself, is self-contradictory. We have already held that a law which was declared by this Court as unconstitutional from the date of its inception cannot be treated as being so from a date when it was omitted or repealed.

128. We have already dealt with the contentions of Messrs Hamid Khan, Muhammad Akram Sheikh and Ms. Asma Jehangir, on the issue of past and closed transaction in our foregoing paragraphs. Mr. Muhammad Akram Sheikh, the learned Sr. ASC, has attempted to argue that the out of turn promotion is permissible in Islam and has relied upon an extract (reproduced above) from Secret Encyclopedia, Volume 10. We do not find any substance in his contention nor has he advanced any argument except relying upon the above extract from the book, which has no nexus with the proposition he has advanced.

129. We have also perused the written synopsis of the learned Attorney General for Pakistan, received by us through mail. In substance he has only advanced his arguments that the judgments under review should apply prospectively. He has further contended that the principles enunciated in the judgments under review would not extend to the Province of Punjab. The grounds on which these arguments have been advanced are already dealt with by us in the foregoing paragraphs, therefore, we are of the considered view that the points raised, having already been answered in the judgments under review and this judgment, merit no consideration.

130. The learned Counsel for the Petitioners have attempted to draw a distinction in the judgments under review, inter alia, on the ground that no rules were framed to form a committee for scrutinizing the out of turn promotion to a Police Officer in the Province of Sindh, whereas in Punjab Rule 14-A was introduced to ensure transparency in grant of out of turn promotion. We have noticed from the available record that even this distinction is missing. The committee constituted under Rule 14-A had failed to draw a line between the job description of a Police Officer and the justification for grant of out of turn promotion. It is the duty of a Police Officer to arrest an accused or recover drugs and if he performs well, the law provides that such officer should be decorated with awards and rewards, but grant of out of turn promotion, in no way, is permissible, in view of the reasoning recorded by this

urt in the judgments under review. The Committee constituted under Rule 14-A, has completely lost sight of the duty of a Police Officer while awarding them out of turn promotion. We have noticed numerous instances which clearly speak that they in discharge of their duties were bound to perform such acts and if they were found to have done something extraordinary, they could have been decorated with awards, rewards or compensated with any amount. Although there are a number of striking instances of out-of-turn promotions granted by the committee which do not conform to the set principles, however, we find it inappropriate to delve into each instance in order to examine the merits of the said promotions. We have already laid down the principle that the very concept and practice of out-of-turn promotions are violative of the services rules and the provisions of the Constitutions, hence, the question of merit of these promotions do not matter our considerations.

### SPORTS POLICY, 1982

For ease of reference, the Sports Policy of 1982, is reproduced hereunder: -

Subject: PROMOTION OF SPORTS IN THE POLICE FORCE

#### Memorandum

It was observed at the D.Is.G's conference held on 2nd and 3rd of December, 1981 that not only the general standard of sports had been gradually going down but the interest in games had also been sagging for the past few years. Since physical fitness is one of the principal trait of a professionally sound police officer, it was felt that necessary incentives and stimuli be provided for promotion of sports and physical fitness in Police Force. In order to achieve the objective in view, rewards and promotions to outstanding sportsmen have been considered imperative. Comprehensive standing instructions as outlined below are, therefore, being issued for strict compliance at all levels. D.Is.G. and SSP are particularly emphasized to kindly evince personal interest and ensure that the talent, wherever available, is given due recognition and good sportsmen are encouraged to give better performance.

d) All Heads of Police Offices will ensure that the following major games are played daily in unit lines except for closed holidays. Not only necessary facilities be provided in this behalf but an endeavor should be made to raise District/Unit teams, where necessary talent is forthcoming.

- a) Athletics
- b) Hockey
- c) Football
- d) Volleyball
- e) Basketball
- f) Kabaddi
- g) Wrestling
- h) Polo (for Lahore, Rawalpindi, DG Khan and P.T.C/Sihala only.

ii) Inter-District/Unit Tournaments.

- a) Range D.I.Gs. will organize Inter-District Range Tournaments in the above games by 15th of November each year.
- b) The individual sportsmen and members of teams winning Inter-District Range Tournaments shall be given commendations Certificates Class II which Rs.200/- as cash reward while the runner-up Commendation Certificate Class II with Rs.100/- as cash reward.
- c) Constables exhibiting outstanding performance shall be considered for entry into list "A" "B-1" and "C" as the case may be, by the Range D.I.Gs.

iii) Inter Range Sports.

- a) Inter Range Punjab Police Sports Tournaments shall be organized by the Director-General, Sports, Punjab Police by 15th December every year.
- b) Policemen securing first position in any individual event in Athletics and members of the teams winning the Police Inter Range Championship shall be awarded C.C. Class 1 with Rs.1000/- as cash reward while the runners-up given C.C. Class II with Rs.500/- as cash reward.

iv) Selection of Teams and Training

- a) Punjab Police Teams shall be selected by the Director-General, Sports, Punjab Police by 15th December each year and he would organize training camps at stations considered suitable for improved hard training.
- b) The Members of the Punjab Police teams when called for camp training by the Director-General, Chief Sports Officer, shall immediately be relieved by the Heads of Police Officers.

v) Posting of Sportsmen

Members of the Punjab Police Teams shall normally be posted close to the Provincial, Divisions or District HQrs, as the case may be.

vi) Promotions

- a) Police Officers selected in the provincial teams for National Competition shall be awarded a C.C. Class 1 with Rs.5000/- as rewarded every time they are picked-up for such representation.
- b) Members of the Police Teams or individual Police Officers who win the National Championship in any game or an individual event in Athletics
  1. Shall be placed on List B-1, promoted as Offg. HCs and sent for the next immediate lower School Course, if they happen to be Constables.
  2. Shall be confirmed, promoted as officiating A.S.Is and sent for the next immediate Intermediate School Course, if they happen to be officiating H.Cs.

3. Shall be confirmed and promoted to the next higher rank if they are officiating as ASI, SI or Inspector; in case of ASIs and S.Is, they shall be nominated for the next immediate Upper School Course as well.

4. They shall also be awarded C.C. Class 1 with a cash reward of Rs.7,500/-.

5. Police members of the National teams who win Gold Medal in World/Asian Olympic Games or World Cup shall be given one step promotion, brought on next immediate promotion course and also awarded a cash reward of Rs.10,000/- with a letter of appreciation by the Inspector-General of Police, Punjab, which shall be placed on their Character Rolls.

vii) Promotion Indicated under Items (vi) (b) above, will, however, be admissible once in two years and an officer earning promotion on sports basis to the next rank should have served for at least two years since the date of his last promotion on similar basis.

viii) Meritorious performance by G.Os will also be duly recognized by offering them suitable souvenirs.

The above instructions should please be given wide circulation and brought to the notice of all ranks.

132. We have heard the learned Counsel for the Petitioners Messrs. Hamid Khan and others on the issue of out-of-turn promotions pursuant to the Sports Policy, and we have also perused the said Policy. With respect, we do not subscribe to the contentions of the learned Counsel. The Sports Policy broadly lays down two paths of accelerated promotions for the officials. One prescribes the courses and examinations, in addition to the performance in the sports competitions, in order to be qualified for out-of-turn promotions. However, the other path provides for the out-of-turn promotions to the members of National teams who win Gold Medal in World/Asian Olympic Games or World cup.

133. We believe that there is some justification for allowing out-of-turn promotions, and that too up to the level of ASIs only, due to the fact that certain qualifications/courses/examinations have been prescribed in the Policy in order to be qualified for such promotions. In other words, there is no element of an arbitrary or selective choice of candidates for the accelerated promotions and they have to meet the bare minimum requirements of the Police Rules.

134. As far as the accelerated promotions in terms of Sub-clause (5) of Clause VI of the Sports Policy are concerned, we are of the view that such promotions are in conflict with the provisions of Punjab Civil Servants Act, 1974, and the rules framed thereunder, and which Act itself is created pursuant to the provisions of Articles 240 and 242 of the Constitution.

135. Moreover, there seems no justification to allow the police officers to enjoy accelerated promotions on the basis of their performance in sports activities, while this Court has declared out of turn promotion granted through statutory instrument to be ultra vires the provisions of the Constitution on the ground of proven gallantry. In fact, promoting sports at the cost of professionalism within the police force will lead to ominous consequences. The efficient police officers will be demoralized if they are superseded by their junior colleagues, which in turn will also affect the overall performance of police in maintaining law and order.

136. This Court has already held in a series of judgments that acts of gallantry, no matter how commendable and appreciated by the society, do not justify out-of-turn promotions as they necessarily lead to impingement of the fundamental rights of fellow officers in terms of blocking their smooth



gression of careers and impinging their respect and honor as protected under Articles 9 and 14 of Constitution. Hence, this policy to the extent of accelerated promotions is not sustainable, being violative of the service laws and the provisions of the Constitution. This Court in a series of judgments has held that policy making is the domain of the executive and the Courts normally do not interfere in such matters, but when a policy is violative of the fundamental rights of individuals, the Courts are obliged to examine such policy in judicial review. We are fortified by the judgments of this Court reported as Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad (PLD 2015 SC 6), Dossani Travels Pvt. Ltd v. Travels Shop (Pvt) Ltd. (PLD 2014 SC 1), Iqbal Zafar Jhagra and Senator Rukhsana Zuberi v. Federation of Pakistan (2014 PTD 243), OGRA through Secretary v. Midway II, CNG Station (2014 SCMR 220), Watan Party v. Federation of Pakistan (PLD 2013 SC 167), Alleged Corruption in Rental Power Plants and others (2012 SCMR 73), Dr. Akhtar Hassan Khan v. Federation of Pakistan (2012 SCMR 455), Executive District Officer Revenue, District Khushab at Jauharabad v. Ijaz Hussain (2011 SCMR 1864), Al-Raham Travels and Tours (Pvt.) Ltd. v. Ministry of Religious Affairs, Hajj, Zakat and Ushr (2011 SCMR 1621), Punjab Public Service Commission v. Mst. Aisha Nawaz (2011 SCMR 1602), Suo Motu Case No.10 of 2007 (PLD 2008 SC 673) and Wattan Party through President v. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad (PLD 2006 SC 697).

37. The learned Counsel for the Petitioners, Mr. Hamid Khan, has contended that the accelerated promotions on the basis of Sports Policy are allowed to the officers who belong to a group that is separate from the main police group, and hence, distinction has to be drawn. Apparently, this contention does not seem convincing given the fact that we have perused the record and found that there exist no separate group of sports in the Punjab Police. In fact, serving police officers are participating in the sports competitions and they are the subjects of accelerated promotions on the basis of their performance. We have already held that seniority and promotions of the police officers are to be fixed/decided on the basis of the required standards provided in the service rules, hence accelerated promotions cannot be accorded on the basis of an officer's performance in a sports competition.

138. However, it would be open to the government to frame rules providing a Sports Group within police in order to encourage and incentivize sports, which will not form part of the regular police force. In other words, the members of Sports Group shall not be assigned field posting, but will be restricted to their specialized Group.

139. The learned Counsel Mr. Hamid Khan has referred to Article 259 of the Constitution to substantiate his point that the said Policy has been framed to promote sports in terms of the said Article. The perusal of Article 259, however, does not provide for any accelerated promotion and in fact confines the awards to the extent of decorations to be given by the President under the Federal Law. It may also be pointed out that the context of Article 259 is entirely different and it deals with the awards to be given to citizens by way recognizing their varied services and performances. It cannot be stretched beyond the given parameters to include accelerated promotions, by way of the said Policy; hence, the contentions of the learned Counsel are without substance.

140. We cannot lose sight of one important aspect of the case that the Punjab Government/Competent Authority has withdrawn all out of turn promotions earned by the police officials, in terms of Section 8-A of the Punjab Civil Servants Act, 1974. As a consequence, hundreds of thousands of police personnel have acquired their lawful right to promotion/seniority, which was denied to them owing to the invalid omitted law i.e. section 8-A of the Act. In fact, a right has been created in favour of hundreds of thousands of Punjab Police personnel due to withdrawal of all out of turn promotions by the Punjab Government/Competent Authority. The police personnel in whose

your this right to gain lawful promotion/seniority has been created, were not impleaded as party to the present proceedings, therefore, these proceedings on this score alone merit dismissal.

41. During the hearing of these proceedings, one of the Petitioners' Counsel has prayed that the judgment of this Court in the case of Gul Hassan Jatoi v. Faqir Muhammad Jatoi reported in (2016 CMR 1254), may also be made applicable to Punjab Police, inter alia, on the ground that Police Rules are abused by the authorities with regards to termination of probation and not sending the police officials to different examinations/courses under Chapter XIII of the Police Rules on their turn. The Police Rules are applicable both to the Sindh Police and the Punjab Police. We are cognizant of the fact that delay in promotion of police officials affect their morale as they work hard in performing their duties. This Court in paragraphs 74 and 75 of the aforesaid judgment has given the following directions:

"74. It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of the competent authorities concerned. Hence, we are of the view that this practice must be brought to an effective end so that injustice may not be perpetrated against such officials. Therefore, in future those Police Personnel who have completed their statutory period of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued."

75. We have further observed that a cherry picking is made in the case of selection of Police personnel for police training or practical training despite the fact they have completed their required period to be eligible for such trainings, which amounts to denying them of timely promotion for the next scale; hence, we direct that in future, competent authority shall ensure that the Police personnel who have completed their required period to be eligible for trainings shall be forthwith sent for the training; and in case such police officials are bypassed for such trainings on account of default by the department, or to extend a favour to the junior, or negligence by the authority concerned, their inter se seniority and the accompanying financial entitlements shall not be effected on account of their late joining or completion of training."

These directives shall also be applicable to all the Police officials who are governed by Police Rules, 1934 and the competent authority shall ensure compliance to streamline the service structure of the police by redressing the heart burning and dismay of the police officials at the hands of high ups, who abuse their discretion in violation of the Police Rules.

142. Before parting with this judgment, we acknowledge the assistance of the Senior Counsel rendered by them on the issues at hand, which will have far reaching effect on the working of the police.

143. For the aforesaid reasons, all the listed Review Petitions and the Applications are dismissed. The I.G.P. Punjab, the Home Secretary, Punjab, and the Secretary, Establishment Division, are directed to comply with the judgment, by fixing the seniority of all the Police Officers who were given out of turn promotion along with their batch-mates, as if they were never given out of turn promotion. However, the orders of withdrawal of out of turn promotion passed by the Department/Competent Authority shall be recalled against the Police Officers who had earned out of turn promotions, pursuant to the judgments of superior Courts/Service Tribunals, as discussed in paragraph 111 of this judgment. For the purpose of compliance of this judgment, necessary D.P.C/Board, as the case may be, shall be immediately held without further loss of time and a compliance report be submitted to the



registrar of this Court for our perusal in Chambers. This exercise shall be completed within a period of one month. The Advocate General, Punjab, and the learned Attorney General for Pakistan shall communicate the directives of this Court to the relevant authorities.

Sd/-

Anwar Zaheer Jamali, C.J.

Sd/-

Amir Hani Muslim, J

Sd/-

Ejaz Afzal Khan, J

Sd/-

Mushir Alam, J

Sd/-

Ijaz-ul-Ahsan, J

As I am in disagreement with the conclusion recorded in the order/Judgment, I intend to record my separate note.

Sd/-

Anwar Zaheer Jamali, C.J.

### ORDER OF THE BENCH

With majority of four to one, (Anwar Zaheer Jamali, Chief Justice, dissenting), these review petitions/applications along with all other miscellaneous applications are dismissed.

Sd/-

Anwar Zaheer Jamali, C.J.

Sd/-

Amir Hani Muslim, J

Sd/-

Ejaz Afzal Khan, J

Sd/-

Mushir Alam, J

Sd/-

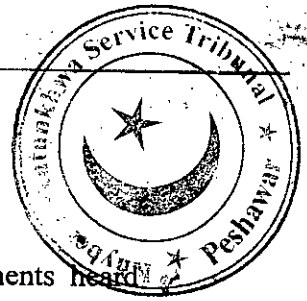
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Ijaz-ul-Ahsan, J

Petitions/applications dismissed.

IWA/S-40/SC



A.No. 1167/2017  
Munir Ali vs Govt

09.11.2017

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant is serving as S.I in Special branch, Police Department, Khyber Pakhtunkhwa. The appellant was granted out of turn promotion. Subsequently, vide impugned order dated 24.04.2016 the same was withdrawn. He preferred departmental appeal on 30.04.2016 which was not responded within stipulated period. In the meanwhile he also filed Writ Petition no. 2088-P of 2016 in the Peshawar High Court, Peshawar which was dismissed for want of jurisdiction. The appellant has not been treated according to law and rules.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 21.12.2017 before S.B.

  
(AHMAD HASSAN)  
MEMBER


21.12.2017


Today has been declared holiday for Judicial Officers. Therefore, the case is adjourned. To come up for the same on 01.01.2018.


  
READER

01.01.2018

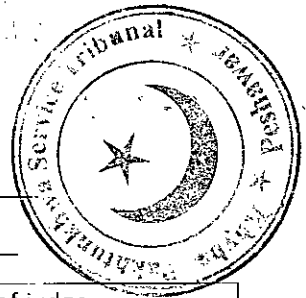
Clerk of the counsel for appellant present and Assistant AG for the respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within (07) days, thereafter notice be issued to the respondents for written reply/comments on 21.01.2018 before S.B.

  
Appellant Deposited  
Security & Process Fee

Certified to be true copy  
  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

  
(Gul Zohra Khan)  
Member (E)

**Form-A**  
**FORM OF ORDERSHEET**



Court of \_\_\_\_\_  
Case No. 1167/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19/10/2017	<p>The appeal of Mr. Muntaz Ali resubmitted today by Mr. Muhammad Alam Zeb Khan Advocate, may be entered in the institution Register and put up to Worthy Chairman for proper order please.</p> <p align="right"><i>[Signature]</i> REGISTRAR 19/10/17</p>
2-	23/10/17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/11/17</u>.</p> <p align="right"><i>[Signature]</i> CHAIRMAN</p>

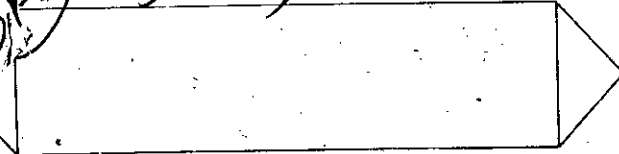
**ATTESTED**

*[Signature]*  
MANAGER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Copy 27-2-18  
Number of Words 800  
Copying Fee 6  
Urgent 2  
Total 8  
Name of Copyist [Signature]  
Date of Completion of Copy 27-2-18  
Date of Delivery of Copy 27-2-18

بعدالت لسرویس اعلیٰ

Govt of Punjab



مورخہ

مقدمہ

دعویٰ

جرم

2، پنجاب

شفقت اللہ بنام

Govt of Punjab

سرویس اعلیٰ

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آن مقام لسرویس اعلیٰ کے لئے شہر علی ملز پیاصال اعلیٰ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زراریں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی

اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت

مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے دہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Handwritten signature

Accepted

2017

نومبر

ماہ

6

المرقوم

17/11/17

العہدہ واہ العہدہ

کے لئے منظور ہے۔

Handwritten signature

مقام



No. ADE-I/

/E-II

J  
39

OFFICE OF THE  
PROVINCIAL POLICE OFFICER/  
INSPECTOR GENERAL OF POLICE  
PUNJAB

Dated:

/2020

This order disposes of a representation submitted by SI Abdul Ghani, GL/37 (recently de-inducted and repatriated from National Highways & Motorways Police (NH&MP) Islamabad to his parent department i.e Punjab Police) seeking therein promotion/re-fixation of seniority in the rank of Inspector along with batchmates.

2. Briefly stated that SI Abdul Ghani, GL/37 was appointed as Probationer ASI on 10.01.1983 in Pakistan Railway Police, Rawalpindi. He was transferred from Pakistan Railway Police to Punjab Police (Gujranwala Region) vide IGP, Punjab Lahore's Order No.363/SE-II/V dated 13.01.1990. He reported his arrival in Gujranwala Region on 04.02.1990.

3. Later on, he was confirmed provisionally by SP/Pakistan Railway Police, Rawalpindi in the rank of ASI with retrospective effect i.e. 05.05.1988 and accordingly he was allotted Regional No.458/GL vide DIG/Gujranwala Range, Gujranwala's Memo: No.32272/EC dated 03.10.1992. On the basis of such confirmation, he was admitted to list 'E' with effect from 10.02.1993 vide DIG/Gujranwala Range, Gujranwala's Endst: No.4556-61/EC dated 17.02.1993. He passed Upper Class Course in the term ending 03.10.1993 from Police Training College, Sihala. He was transferred to National Highways & Motorway Police, Islamabad in the rank of ASI on deputation for the period of 03 years with effect from 16.10.1997 vide IG, NH&MP's office order No.FHP-30(1)97, dated 16.10.1997. While serving in NH&MP, he was promoted to the rank of Offg: Sub Inspector w.e.f 30.10.1997 vide DIG/Gujranwala Range, Gujranwala's Memo: No.4111-16/EC dated 30.10.1997. He was confirmed in the rank of Sub Inspector w.e.f 01.11.1997 under rule 13.18 of Police Rules, 1934 after counting his officiating service towards probation and allotted him Regional No.37/GL vide DIG/Gujranwala Range, Gujranwala's Memo: No.24606-8/EC dated 22.08.2000.

4. In the light of decision of the Hon'ble Supreme Court of Pakistan reported as 2013 SCMR 1752 & 2015 SCMR 456 and opinion of SP/Legal Regional Office, Gujranwala, the following promotional benefits granted to Sub Inspector Abdul Ghani, GL/3 on the basis of confirmation as ASI w.e.f 05.05.1988 by SP/Pakistan Railway Police, Punjab after his absorption in Punjab Police (Gujranwala Region) have been withdrawn by RPO/ Gujranwala vide his order No. 11405/E-II, dated 01.04.2020: -

Page 1 of 3

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- (40)
- i. Admission to list 'E' w.e.f 10.02.1993
  - ii. Promotion as Offg: SI w.e.f 30.10.1997
  - iii. Confirmation as SI w.e.f 01.11.1997

5. He was permanently absorbed in NH&MP against the post of SPO/ BS-16 w.e.f 01.11.1997 vide IG, NH&MP's office Notification No.FHP-41(5)/98/E, dated 27.12.2003.

6. In compliance with order/judgment dated 05.10.2018, passed by the Hon'ble Supreme Court of Pakistan in Criminal Review Petition No.207/2016 in CrI. Org. Petition No.89/2011, its connected cases and the other order/judgment dated 05.10.2018 passed in CrI. Org. Petition No.36/2017 & 22/2017 in CrI. Org. Petition No.89/2011 and orders dated 06.05.2014, 30.05.2014, 25.02.2016 & 17.06.2016 passed by the Hon'ble Sindh High Court Karachi in Constitution Petition No.D-331 of 2013, he was repatriated from NH&MP Islamabad to his parent department in his substantive rank, pay and allowance with immediate effect being de-inducted alongwith others with the direction that the matter of seniority and other consequential benefits in respect of repatriated officers in their parent departmental may be decided in compliance of Review Petition No.193/2013 in Criminal Org. Petition No.89/2011 titled Ali Azhar Baloch Vs. Chief Secretary Govt. of Sindh reported as 2015 SCMR 456. The relevant paragraph No.160 of the said judgment stated that: -

*"..... The officers/officials who have been repatriated to their parent departments shall be entitled to salaries and other benefits from the date they were relieved to join their parent departments. Their seniority shall be maintained in their parent departments with their batchmates as if they were never relieved from their parent departments. Expiry of period lien shall not come in the way of the officers to deprive them from joining the parent department...."*

7. In compliance with repatriation order issued by NH&MP, Islamabad vide Notification No. NH&MP-42(7)/2020/HRM/SPO/66, dated 17.03.2020, ASI (now SI) Abdul Ghani, No. 458/GL, GL/37 reported his arrival in Central Police Office Lahore on 20.03.2020. He was inducted/rc-adjusted in Punjab Police and posted to Gujranwala Region vide this office order No. AD E-1/1608-12/E-I, dated 25.03.2020.

8. Now, after withdrawal of his promotional benefits mentioned above, RPO/ Gujranwala vide order dated 01.04.2020 has re-fixed seniority of ASI (now SI) Abdul Ghani, No. 458/GL, GL/37 alongwith his batchmates as per detail given below: -

- i. Confirmation as ASI w.e.f 04.02.1990 i.e. the date of his arrival in Gujranwala Range on transfer from Pakistan Railway Police, Rawalpindi.
- ii. Admission to list 'E' w.e.f 18.05.1997
- iii. Promotion/ confirmation as SI w.e.f 01.05.2000

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9. A Scrutiny Committee under DIG/ Establishment-I, Central Police Office, Lahore examined the representation on 08.04.2020 and after considering all pros & cons recommended that his seniority may be fixed as Inspector with his batchmates strictly maintaining inter-seniority in the lower rank in his Region.

10. His written representation has been considered at length. The undersigned agrees to the recommendations of Scrutiny Committee that his seniority may be fixed as Inspector with his batchmates. The RPO/ Gujranwala has re-fixed his seniority in the rank of Sub-Inspector w.e.f 01.05.2000 and SIs of that date were promoted as Inspector w.e.f 15.11.2006 in routine. Keeping in view of this, his seniority/ promotion/confirmation in the rank of Inspector is hereby re-fixed along with batchmates from the date when Sub-Inspectors of 2000 were actually promoted/confirmed as Inspector in routine, which is given as under: -

- i. Admission to list "F" w.e.f 04.10.2006
- ii. Promotion/confirmation as Inspector w.e.f 15.11.2006
- iii. Provincial No. 1490

B.A. NASIR, PSP  
Addl: Inspector General of Police,  
Establishment, Punjab, Lahore.

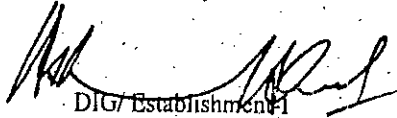
ADE-I/ 1777-81 /E-II:

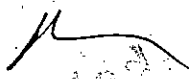
Dated Lahore, the 9-04-2020

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

1. Regional Police Officer, Gujranwala.
2. Deputy Director, CPO.
3. Assistant Director, Secret Branch, CPO.
4. Officer concerned (through RPO/ Gujranwala).
5. Head Record Keeper, Establishment-I, CPO, Lahore.

With the direction to intimate name of any leftover officer whose seniority has yet not been fixed.

  
DIG/ Establishment-I  
For Provincial Police Officer/IGP,  
Punjab, Lahore

  
Attested

Page 3 of 3



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
ISLAMABAD

Islamabad, the 29 Sep. 2020

K  
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NOTIFICATION

No. 1978-84/E-1. Consequent upon repatriation from NH&MP to ICT Police and in pursuance of judgment of Honourable Supreme Court of Pakistan in Review Petition No. 193/2013 in Criminal Original Petition No. 89/2011, Sub-Inspector Muhammad Zahid Khan is hereby confirmed as SI w.e.f. 08.04.2001, admitted into List-F w.e.f. 08.01.2008, promoted as Inspector (BPS-16) w.e.f. 14.01.2008 and confirmed as Inspector w.e.f. 12.07.2010 along with his batchmates.

2. All concerned to note.

*K. Jodai*  
AIG/Establishment  
for Inspector General of Police  
Islamabad

The Manager,  
Printing Corporation Pakistan,  
Karachi.

Copy to:-

1. All DisG of ICT Police
2. All AIsG/SSsP of ICT Police
3. AGPR, Islamabad
4. Accountant, o/o the SSP/Logistics (Hqrs), Islamabad.
5. OB/DSI (HQs)
6. Officers concerned.

AIG/Establishment  
for Inspector General of Police  
Islamabad

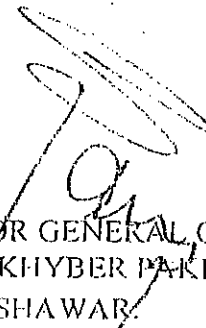
*Attested*

## حاضر سروس

10-11-1990	1- تاریخ بھرتی	شفقت اللہ SI	1
28-05-2010	2- آمد سوشل برانچ		
26-06-2006	3- ترقی HC		
24-07-2012	4- ترقی ASI		
15-04-2013	5- ترقی SI		
28-03-1994	1- تاریخ بھرتی	محمد اقبال SI	2
28-03-1994	2- آمد سوشل برانچ		
01-04-1995	3- ترقی HC		
11-11-1996	4- ترقی ASI		
01-01-2005	5- ترقی SI		
08-09-1991	1- تاریخ بھرتی	ہمایون خان SI	3
01-06-1995	2- آمد سوشل برانچ		
01-01-2002	3- ترقی HC		
01-05-2006	4- ترقی ASI		
01-12-2008	5- ترقی SI		
24-11-1994	1- تاریخ بھرتی	آصف سلیم SI	4.
15-07-2005	2- آمد سوشل برانچ		
24-11-2008	3- ترقی HC		
09-04-2010	4- ترقی ASI		
15-07-2016	5- ترقی SI		
12-02-1996	1- تاریخ بھرتی	محمد آصف SI	5.
14-03-2002	2- آمد سوشل برانچ		
07-01-2005	3- ترقی HC		
15-12-2008	4- ترقی ASI		
15-07-2016	5- ترقی SI		
30-05-1996	1- تاریخ بھرتی	ہمایون خان ASI	6
30-05-1996	2- آمد سوشل برانچ		
01-01-2002	3- ترقی HC		
15-12-2008	4- ترقی ASI		
26-06-1996	1- تاریخ بھرتی	سعید خان ASI	7
22-04-2003	2- آمد سوشل برانچ		
15-07-2005	3- ترقی HC		
15-06-2009	4- ترقی ASI		

ORDER.

In compliance with the orders of Inspector General of Police Khyber Pakhtunkhwa Peshawar vide his Order No. S/2262-2312/16, dated 21.03.2016, issued in the light of Supreme Court Order, all orders issued regarding *second and third* steps out of turn promotions to the officials of Special Branch from their substantive ranks are hereby withdrawn with immediate effect.

  
ADDL. INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, KHYBER PAKHTUNKHWA,  
PESHAWAR.

NO. 2445/EB, dated Peshawar the 27 / 4 / 2016.  
Copy forwarded to:-

1. DIG/HQrs , CPO, Khyber Pakhtunkhwa Peshawar.
2. The AIG/Establishment, CPO Peshawar.
3. PA to Addl: IGP/Special Branch
4. E.C/Accountant.

# سینڈنگ آرڈر نمبر 1 1996ء

## پروگرام آبرائے ذریعہ افراد سپیشل برانچ

### پس منظر

ریگولر پولیس سے ڈیپوٹیشن پر سپیشل برانچ آنے والے پولیس اہلکاروں کیلئے کوئی مخصوص معیار مقرر نہیں ہے۔ مگر مشاہدہ ہے کہ ناپسندیدہ اہلکار یا ایسے اہلکار سپیشل برانچ بھیج دیئے جاتے ہیں جو خود جانا نہیں چاہتے۔ ڈیپوٹیشن کی محدود مدت، ٹریننگ اور مہارت کے فقدان کی وجہ سے سپیشل برانچ مستقل طور پر مسائل کے تسلسل کا شکار ہے۔

**مقصد - Object -**

یہ نہایت ضروری ہے کہ حکومت کے متعدد، منظم تربیت یافتہ اور مخلص تحقیقاتی ادارے ہوتے چاہئے جو حالات و واقعات کے متعلق بروقت اور قبل از وقت اہم اطلاعات اکٹھا کرنے اور بروقت حکومت کو پہنچانے کی صلاحیت رکھتے ہوں تاکہ حکومت امن عامہ کی خاطر بروقت فیصلہ صادر کرے۔ اسی طرح سفید پارچوں میں سکیرٹی، مشتبہ اور غیر ملکی اشخاص کی نگرانی اور ڈاک سنسر شپ نہایت ہر تکنیکی شعبے ہیں۔ اسلئے رضا کار اور موزوں اہلکاروں کو سپیشل برانچ میں شامل کرنے کیلئے قواعد و ضوابط وضع کرنے کی اشد ضرورت محسوس کی گئی ہے۔

**طریقہ کار - Method -**

ہر سال جنوری کے مہینے میں پولیس کے تمام شعبہ جات سے ایسے پولیس اہلکار (سیاہی سب انسپکٹنگ) جو خوشی خود سپیشل برانچ میں آنا چاہتے ہوں کے نام بھجوانے کی استدعا کی جائیگی۔

سپیشل برانچ میں ملازمت کا کم از کم دو رانیہ پانچ سال ہوگا جس میں دو سال خواندہ ملازمت کی جائیگی۔

FA/FSC سرٹیفکیٹ رکھنے والے اہلکاروں کیلئے ملازمت کی معیاد تین برس ہوگی جس میں ایک سال خواندہ سروس کی جائیگی۔ گریجویٹس یا اعلیٰ تعلیم یافتہ اہلکاروں کیلئے سپیشل برانچ میں ملازمت کا دو رانیہ دو سال ہوگا۔ تمام اہلکار جنکو سپیشل برانچ میں شامل کیا جائیگا سپیشل برانچ سے اجازت حاصل کرنے کے پابند ہونگے۔

سپیشل برانچ میں شمولیت کے خواہشمند اہلکار اردو، انگریزی، مضمون نویسی، جرنل ناچ اور انٹرویو دینے کے پابند ہونگے تاکہ انکی سپیشل برانچ کیلئے موزنیت اور مہارت کا اندازہ لگایا جاسکے۔ اعلیٰ تعلیم رکھنے والوں کو اضافی نمبرات دیئے جائینگے۔

(ورق الیے)

سکیورٹی ڈپارٹمنٹ کیلئے اہلکاروں کے چناؤ کیلئے فہمی اور عملی فنس، مستوری اور پابندی اور ذمہ دارانہ رویہ معیار تصور کیا جائیگا۔ ATS تربیت یافتہ اہلکار کو ترجیح دی جائیگی۔ پولیس ڈویژن (21-25) کے تحت DIG سپیشل برانچ اعلیٰ مہارت اور تکنیک رکھنے والے افراد کو کنٹریکٹ بنیادوں پر بھرتی کر سکتے ہیں تاہم جنکی تعداد سپیشل برانچ کے کسی بھی یونٹ میں منظور شدہ تعداد کی 20 فیصد سے ناپید نہ ہوگی۔ ایسین، سرورینس اور سکیورٹی کیلئے کوئی کوئی ایسی بھرتی نہیں کی جائیگی۔

**تحقیقہ تحقیقاتی اور سیکیورٹی کورسز :-**

پولیسکل برانچ، سپیشل اینٹیلی جنس یونٹ، رائے عامہ سروے یونٹ، سنیٹر شپ ایسین برانچ، سرورے اور سرورینس کیلئے جن اہلکاروں کا چناؤ ہوگا۔ وہ بتدریجہ ذیل کورسز کیلئے بھیجے جائیں گے۔

1۔ اینٹیلی جنس (تعمیری اور اصول) Counter Sabotage، Counter Espionage

**Counter Intelligence**

- 1۔ مقابلہ اینٹیلی جنس، مقابلہ جاسوسی، مقابلہ دہشت گردی کی ٹریننگ دی جائیگی۔
- 2۔ اطلاعات، اشخاص، دستاویزات اور VVIP کے سکیورٹی ٹریننگ
- 3۔ امن الاقوامی سیاسی تحقیقاتی کورسز
- 4۔ ساکت اور ڈیوٹی فوٹو گرافی، سماعی آلات کے استعمال اور اعلیٰ ٹیکنالوجی ٹریننگ
- 5۔ سرورینس ڈرائیور کورس، ڈرائیونگ لائسنس رکھنے والوں اور دیگر گورنر ڈرائیوروں کیلئے ٹریننگ
- 6۔ کمپیوٹر اور مائیکرو فلپنگ کی ٹریننگ
- 7۔ انسٹرکٹر ٹریننگ کورسز اور عملی کارروائی کے ٹریننگ
- 8۔ متذکرہ کورسز کیلئے انسٹرکٹر کورسز

سپیشل کے اہلکاروں پر کوئی پابندی نہیں ہوگی۔ کہ وہ PTC ہو، PTC کوشہرہ، ATS سمیلی ڈیم یا CID ٹریننگ سکول سموات میں ریگولر پولیس ٹریننگ سرانجام دیں

**سپیشل برانچ میں مدتِ تعیناتی :-**

ایسے تمام اہلکار (FC سے 75 تک) جنہیں سپیشل برانچ میں شامل کیا جائے گا کم از کم پانچ سال ملازمت کرنے کے معاہدے پر دستخط کریں گے۔ معاہدہ کی خلاف ورزی کرنے پر اسکی خلاف چکمانہ کارروائی کی جائیگی۔

**ترقی؛ Promotion :-**

متعلقہ ضلعوں اور ریجنوں میں ترقی پانے والے اہلکار سپیشل برانچ میں ترقی پا جائیں گے۔

FBI/FSC سرٹیفکیٹ باسادی تعلیم رکھنے والے ایڈیٹور کو ذیل بنیادوں پر ترقی دی جائیگی۔  
Intelligence ایجنسی جس کو سزا پس کرنے پر

کارکردگی اور ستیاری پر  
متعلق شعبہ میں اعلیٰ تعلیم پر

وہ ایڈیٹور جو سپیشل پرائیج میں 5 پانچ سال کیلئے بلازمت کرنا چاہتے ہوں انکو ماریٹی  
ایڈیٹور بنیادوں پر ترقی دی جائیگی لیکن اپنے متعلقہ ضلعوں کو واپس بھیجے جانے کی صورت  
میں وہ اپنے سابقہ عہدے اور ستیاری پر Revert کیے جائیگے۔  
ایسے ایڈیٹور جو 5 سال مدت پوری کرنے کے بعد بھی سپیشل پرائیج میں بلازمت

کرنا چاہتے ہوں انکو ریگولر ترقی دی جائیگی۔  
اس سلسلے میں حکومت کو ایک کیس پیش کیا جائیگا تاکہ اعلیٰ پولیس ٹریننگ کیساتھ  
I.B سکول میں سپیشل پرائیج کے ایڈیٹور ٹریننگ حاصل کر سکے اور پولیس کورسٹر کے بغیر  
مستقل بنیادوں پر ترقی دینے کے مواقع فراہم کیے جاسکیں یہ سلسلہ سپیشل پرائیج  
ٹریننگ سکول کے قیام تک جاری رہیگا۔

دستخط: سید مسعود شاہ  
ای جی پی سرحد

No. 521-24 /EB, Dated Peshawar the, 24-1- /1996.

Copy of above is forwarded to All SsP, in  
Special Branch for circulation amongst the staff.

Handwritten signatures and initials on the left side of the document.

FOR DI: INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, NWFP, PESHAWAR.

Handwritten signatures and initials at the bottom of the document.

5

ORDER

The following LHCs of List C-I are hereby promoted as Offg: Head Constables in BPS No.07 with immediate effect duly approved by the Departmental Promotion Committee after having them found suitable for the promotion.

S.No.	Name & Number.
1.	LHC Amjad Ali No.3779 ✓
2.	" Sabz Ali No.385 ✓
3.	" Ali Akbar No.3314 ✓
4.	" Hidayat Ullah No.348/E ✓
5.	" Muhammad Jan No.1048 ✓
6.	" Shaukat Ali No.1900 ✓
7.	" Sabir Ullah No.3911 ✓
8.	" Hamid Khan No.46 ✓
9.	" Shafqat Ullah No.2388 ✓
10.	" Wasif ur Rehman No.3977 ✓
11.	" Gul Muhammad No.1026 ✓
12.	" Riaz Ali No.3976 ✓

Affected

CAPITAL CITY POLICE OFFICER  
PESHAWAR

No. 6287-610 /CRC, dated Pesh: the 24/6 /2006.  
Copy of above is forwarded to the:-

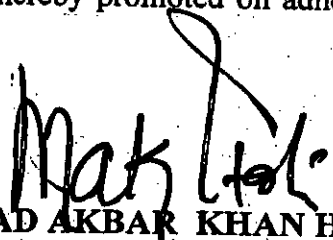
1. The Provincial Police Officer, NWFP Peshawar for favour of information.
2. Addl: Inspector General of Police, Investigation, NWFP Peshawar for favour of information.
3. Dy: Inspector General of Police, Special Branch, NWFP Peshawar for favour of information.
4. Capital City Police Officer, Peshawar for favour of information.
5. Asstt: Inspector General of Police, CID, NWFP Peshawar for favour of information.
6. SSP/Operation.
7. SSP/Investigation.
8. SP/Cantt.: City, Rural Peshawar.
9. DSP/Legal.
10. Pay Officer, DSI, P.M.C.

CR No 1630

**ORDER**

No. 8540 /E-II ASI Shafqatullah No. 392/SB of CCP, Peshawar now on deputation to Special Branch, Khyber Pakhtunkhwa is hereby confirmed with immediate effect.

No. 8541 /E-II ASI Shafqatullah No. 392/SB of CCP, Peshawar now on deputation to Special Branch, Khyber Pakhtunkhwa is hereby promoted on adhoc basis to the rank of Sub-Inspector with immediate effect.

  
(MUHAMMAD AKBAR KHAN HOTI)  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.

No. 8542-43 /E-II dated Peshawar the 15/04 /2013.

Copy of above is forwarded for information and necessary action to the:-

1. Addl: Inspector General of Police, Special Branch Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer, Peshawar.





**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 825 /ST

Dated: 31-3-2022

All communications should be  
addressed to the Registrar KPK Service  
Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To

The Additional Inspector General of Police (Special Branch),  
Government of Khyber Pakhtunkhwa  
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 1225/2017 MR. SHAFQAT ULLAH & OTHERS.

I am directed to forward herewith a certified copy of Judgement dated  
10.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR