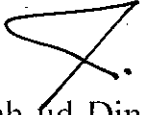



03rd May, 2023

SCANNED
KPST
Peshawar

1. Appellant in person present. Mr. Asif Masood Ali Khan, Deputy District Attorney for the respondents present.
2. Appellant seeks adjournment on the ground that his counsel is busy in the Hon'ble Peshawar High Court, Bannu Bench. Adjourned. To come up for arguments on 10.07.2023 before the D.B. Parcha Peshi is given to the parties.


(Salah-ud-Din)
Member (J)



(Kalim Arshad Khan)
Chairman

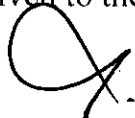
Naeem Amin

10th July, 2023

SCANNED
KPST
Peshawar

1. Appellant present in person. Mr. Muhammad Jan, District Attorney for the official respondents and counsel for private respondents No. 6 & 7 present.
2. Appellant seeks adjournment on the ground that his learned counsel is not in attendance due to engagement in the Hon'ble Peshawar High Court today. Granted. To come up for arguments on 01.11.2023 before the D.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Fazle Subhan P.S

14.02.2023


Petitioner alongwith his counsel Mr. Wiqar Ahmad Maidani, Advocate present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Original record requisitioned. Arguments on application for restoration of appeal heard and record perused.


Petitioner has alleged in his application that he had to appear before august Supreme Court of Pakistan in connection with his Civil Petition No. 6367/2021 titled "Muhammad Farooq Khan Versus The Provincial Police Officer, Khyber Pakhtunkhwa and others", therefore, he was unable to appear before this Tribunal. The appeal of the petitioner was dismissed in default on 05.01.2023, while the application in hand has been submitted on 17.01.2023, which is well within time. Law also favours adjudication on merit by avoiding technicalities. Moreover, learned Assistant Advocate General is also having no objection on acceptance of application for restoration of instant appeal.

The application in hand is, therefore, accepted and Service Appeal bearing No. 6271/2020 stands restored on its original number. To come up for arguments on 03.05.2023 before the D.B.

ANNOUNCED

14.02.2023


(Fareeha Paul)
Member (E)

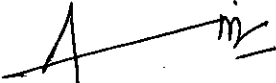

(Salah-ud-Din)
Member (J)

SCANNED
KFST
Peshawar

Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 33/2023

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 17.01.2023 | <p>The application for restoration of Appeal No.2671/2020 submitted today by Mr. Waqar Ahmad Maidani Advocate. It is fixed for hearing before Division Bench at Peshawar on <u>14-02-2023</u>. Original file be requisitioned. Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman  REGISTRAR</p> |

noted

**SCANNED
KPST
Peshawar**


SCANNED
KPST
Peshawar


17.11.2022

Clerk of counsel for the appellant present.

Muhammad Riaz Khan Paindakhel learned Assistant Advocate
General for respondents present.

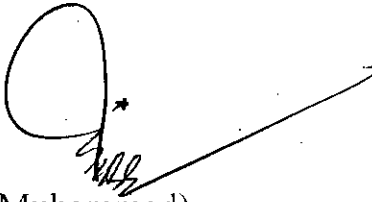
Lawyers are on general strike, therefore, case is adjourned to 5
05.01.2023 for arguments before D.B.



(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

5th Jan, 2023

1. Nobody is present on behalf of the appellant. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.
2. Called several times till last hours of the court but nobody turned up on behalf of the appellant. In view of the above, the instant appeal is dismissed in default. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5th day of January, 2023.*


(Mian Muhammad)
Member(E)


(Kalim Arshad Khan)
Chairman.

SCANNED
KPST
Peshawar

26th July 2022

Counsel for the appellant present, Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 11.10.2022 before the D.B.



(Salah-Ud-Din)
Member (J)

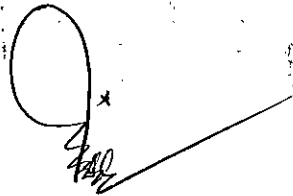


(Kalim Arshad Khan)
Chairman

11.10.2022

Appellant alongwith his counsel present, Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for official respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 17.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

30-9-21

DB is on Tour case to come up
For the same on Dated 30-12-21

30.12.2021

Due to winter vacation, the
case is adjourned to come up
on 14/3/2022

Reader

Reader

14.03.2022

Due to retirement of the Worthy Chairman, the
Tribunal is defunct, therefore, case is adjourned to
13.05.2022 for the same as before.

Reader

13-5-22

Proper DB not available The case is
adjourned on 26-7-22

Reader

02.07.2021

Appellant with counsel present.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Former made a request for adjournment; granted. To come up for arguments on 09.08.2021 before D.B.



(Rozina Rehman)
Member(J)



Chairman

13.08.2021

Appellant in person present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment as his counsel is not available. Request is accorded. To come up for arguments on 23.08.2021 before D.B.

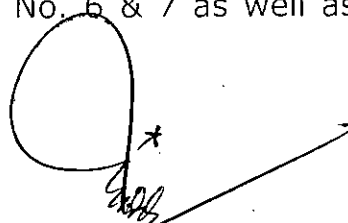
(Rozina Rehman)
Member(J)



Chairman

23.08.2021

Appellant in person present. Mr. Tariq Umer, Inspector alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents present. Mr. Hamza Durrani, junior of learned counsel for private respondents No. 6 & 7 present and requested for adjournment on the ground that learned counsel for private respondents is not available today. Adjourned. To come up for submission of reply on behalf of respondents No. 6 & 7 as well as arguments before the D.B on 30.09.2021.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)




(SALAH-UD-DIN)
MEMBER (JUDICIAL)

22.03.2021

Appellant with counsel, Addl. AG for official respondents and Junior to counsel for private respondents present.

Request for adjournment is made on behalf of learned counsel for private respondents due to his indisposition. Adjourned to 28.05.2021 for hearing before the D.B.


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


Chairman


28.05.2021


Appellant with counsel present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Tariq Umer Inspector for official respondents present. Safdar Iqbal Gulbela Advocate present and submitted Vakalat Nama in favor of private respondents No.6 & 7.

Being freshly engaged learned counsel for private respondents No.6 & 7 requested for adjournment.

Adjourned to 02.07.2021 for arguments before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

6271/2020

05.10.2020

Appellant with counsel and Addl. AG for respondents No. 1 to 4 present.

Learned AAG requests on behalf of respondents No. 1 to 4 for time to submit reply/comments. Respondents No. 5 to 7 have been served through registered post, despite, none of those respondents is in attendance, hence proceeded against ex-parte. To come up for reply/comments by respondents No. 1 to 4 on 26.11.2020 before S.B.

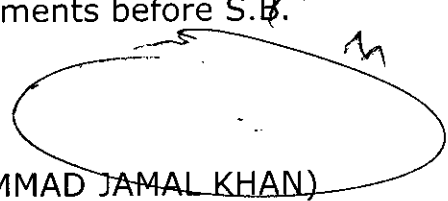


Chairman

26.11.2020

Appellant in is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Written reply on behalf of respondents not submitted. Learned Additional Advocate General is directed to ensure presence of representative of the department and submit reply on the next date positively. Adjourned to 23.12.2020 on which date file to come up for written reply/comments before S.B.



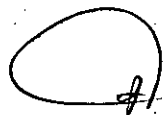
(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

23.12.2020

Junior counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Razaqat Khan Naib Court for respondents present.

Representative of respondents submitted reply/comments, placed on file. To come up for rejoinder, if any, and arguments on 22.03.2021 before D.B.



(Rozina Rehman)
Member (J)

05.08.2020

Mr. Pir Hamidullah Shah, Advocate for appellant is present.

The question for ponderance agitated at the bar by the learned counsel for the appellant, is that as to whether during the pendency of an appeal No. 702/2017 against the seniority list, private respondents could be promoted to Deputy Superintendent Legal (BPS-17) and against the non-decision of departmental appeal/representation.

SCANNED
KPST
Peshawar

The question so agitated besides other require consideration in the light of the law and rules on the subject therefore, the appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments. File to come up for written reply/comments on 05.10.2020 before S.B.

Appellant Deposited
Security & Process Fee

af
4/8/20

05.10.2020

Appellant with counsel and Addl. AG for respondents No. 1 to 4 present. (MUHAMMAD JAMAL KHAN) MEMBER

Learned AAG requests on behalf of respondents No. 1 to 4 for time to submit reply/comments. Respondents No. 5 to 7 have been served through registered post, despite, none of those respondents is in attendance, hence proceeded against ex-parte. To come up for reply/comments by respondents No. 1 to 4 on 26.11.2020 before S.B.

reprinted on fresh page.



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6271 /2020

| 1S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|--------|--|---|
| 1 | 2 | 3 |
| 1- | 26/06/2020 SCANNED KPJT Peshawar | <p>The appeal Mr. Muhammad Farooq Khan presented today by Mr. Pir Hamidullah Shah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>05/08/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |
| 2- | | |

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No. 6271 /2020

Muhammad Farooq Khan

VS

Provincial Police Officer & Others

INDEX

| S. No. | Description of Documents | Annexure | Pages |
|--------|--|----------|-------|
| 1 | Grounds of Appeal and certificate | ✓ | 1-6 |
| 2 | Copy of impugned notification dated 07/02/2020 | "A" | 7 |
| 3 | Copy of Judgment | "B" | 8-9 |
| 4 | Departmental appeal | ✓ | 10/11 |


APPELLANT

THROUGH COUNSEL


PIR HAMID ULLAH SHAH
ADVOCATE HIGH COURT

Dated: 26/06/2020

Bannu

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Appeal No. 6271/2020

Muhammad Farooq Khan Inspector Legal Bannu.

.....(Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Additional Inspector General (HQrs) Khyber Pakhtunkhwa Peshawar.
3. Deputy Inspector General of Police (HQrs), Khyber Pakhtunkhwa, Peshawar.
4. Assistant Inspector General of Police (Estb); Khyber Pakhtunkhwa, Peshawar.
5. Mr. Rashid Ahmad, Inspector Legal DPO Office, Abbotabad.
6. Mr. Wisal Ahmad, Inspector Legal DIG Office, Mardan.
7. Mr. Malik Habib Khan, Inspector Legal CCPO Office, Peshawar.

.....(Respondents)

APPEAL UNDER SECTION 4, OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED NOTIFICATION NO.CPO/E-I/PROMOTION/321 DATED 07.02.2020, WHEREIN DESPITE OF FACT THAT AN APPEAL NO. 702/2017 IS PENDING BEFORE THIS HONORABLE TRIBUNAL AGAINST THE SENIORITY LIST, THE PRIVATE RESPONDENTS HAVE BEEN PROMOTED TO DEPUTY SUPERINTENDENT LEGAL (BPS-17) AND AGAINST THE NON DECISION OF DEPARTMENTAL APPEAL/REPRESENTATION DATED 28.02.2020.



PRAYER:

ON ACCEPTANCE OF THIS APPEAL, THIS HONOURABLE TRIBUNAL MAY VERY GRACIOUSLY BE PLEASED TO SET ASIDE THE IMPUGNED NOTIFICATION NO. CPO/ E-I/PROMOTION/321 DATED 07.02.2020 AND RESULTANTLY THE PROMOTION GRANTED TO THE RESPONDENTS NO. 5 TO 7 MAY VERY KINDLY BE DECLARED AS ILLEGAL, ARBITRARY, FANCIFUL, AGAINST THE PRINCIPLE OF *RES SUBJUDICE* AND *VOID-AB-INITIO* AND MAY ALSO VERY FURTHER BE PLEASED TO DECLARE THE APPELLANT BEING ELIGIBLE AND QUALIFIED FOR PROMOTION TO THE POST OF DEPUTY SUPERINTENDENT LEGAL (BPS-17) AND DIRECT THE RESPONDENTS TO PROMOTE THE APPELLANT WITH ALL BACK BENEFITS WITH EFFECT FROM 07.02.2020, THIS HONOURABLE TRIBUNAL MAY VERY KINDLY BE PLEASED TO GRANT ANY OTHER REMEDY DEEM IT FIT IN THE CIRCUMSTANCES.

Respectfully Sheweth:

FACTS:

- 1) That, the Appellant was appointed as SI Legal in year 2009 and after completion of probation period was confirmed in the rank of SI Legal from the date of appointment i.e. 08.12.2009, by worthy RPO Bannu.
- 2) That, after confirmation the Appellant was brought on list "F" vide Notification dated 11.02.2014 and after completion of probation period was also confirmed in the rank of Inspector Legal and since then the Appellant enjoyed seniority over above the names of other SI Legal appointed in year 2009/batch fellows.



- 3) That, all of sudden the seniority of the Appellant was disturbed, whereby juniors were shown senior to the Appellant, vide Notification dated 02.01.2017 and procedure for fixing seniority was changed from date of appointment to the inter-se seniority after 8 years of his appointment.
- 4) That, it is pertinent to note that during 8 years i.e. from 2009 till 2017 no one ever challenged the seniority of the Appellant, but all of a sudden in the year 2017, the Appellant was placed junior from his other junior colleagues.
- 5) That, the Appellant has no other option except to knock the door of justice and therefore, three (03) affected colleagues i.e. Syed Aamir Abbas Acting DSP Legal CTD, Muhammad Farooq Inspector Legal Bannu and Muhammad Usman Acting DSP Legal City Patrolling Peshawar challenged the new seniority list in this Honourable Tribunal vide Service Appeal No.679/2017, Service Appeal No. 702/2017, and Service Appeal No. 703/2017 respectively, which are pending adjudication.
- 6) That, keeping in view the above facts the Appellant submitted an application through proper channel, duly signed by DPO Bannu in 2019 to the Worthy Provincial Police Officer Khyber Pakhtunkhwa/Respondent No.1, with the request that promotion of Inspectors Legal to the post of DSP Legal may kindly be stopped till the final decision of this Honourable Tribunal, and in this respect judgment of the Apex Court reported in *2009 SCMR 396*, was also attached with the said application.
- 7) That, regardless of fact above the Worthy Respondent No.1, issued the impugned Notification No. CPO/ E-I/Promotion/321 Dated 07.02.2020, whereby the Respondents No. 5 to 7, are promoted from Inspector Legal to DSP Legal.

(Copy of impugned notification dated 07/02/2020 is attached)



- 8) That, the Appellant feeling aggrieved of the above mentioned impugned notification filed representation/departmental appeal before the Worthy Provincial Police Officer, Khyber Pakhtunkhwa/Respondent No.1, on 28.02.2020, however, till no heed is paid.

(Copy of Departmental appeal is hereby annexed)

- 9) That, the Appellant being aggrieved having no other adequate remedy in hand, comes to this Honourable Tribunal, inter alia, on the following grounds.

GROUND:

- a) That, the impugned notification No. CPO/E-I/Promotion/321 Dated 07.02.2020, as well the impugned in-action of the Respondent No.1 of not deciding the appeal of the Appellant is against, law, facts, rules, and policy.
- b) That, the impugned notification No. CPO/ E-I/Promotion/321 Dated 07.02.2020, is against the natural justice i.e. *audi alter partum*.
- c) That, the impugned notification No. CPO/ E-I/Promotion/321 Dated 07.02.2020, as well as the impugned conduct of the Respondent No.1, is violation of the Articles 04, 10-A & 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- d) That, appeal No 702/2017, of the Appellant against the seniority list on the basis of which the Respondents No. 5 to 7, have been promoted is already subjudice before this Honourable Tribunal, as such the same is against the principle of *Res subjudice*.
- e) That, the impugned notification is against the Judgment of august Supreme Court of Pakistan, reported in 2009 SCMR 396, which was duly imparted upon the Respondents.

(Copy of Judgment is hereby annexed)



- f) That, the Appellant being senior, eligible and qualified in all respects was supposed to be promoted to the rank of DSP Legal, instead of the Respondents No. 5 to 7.

For the above stated reasons and other to be stated at the time of arguments, it is, therefore, most humbly prayed that on acceptance of this appeal, this Honourable Tribunal may very graciously be pleased to set aside the impugned notification No. CPO/ E-I/Promotion/321 dated 07.02.2020 and resultantly the promotion granted to the Respondents No. 5 to 7 may very kindly be declared as illegal, arbitrary, fanciful, against the principle of *Res subjudice* and *void-ab-initio* and may also very further be pleased to declare the Appellant being eligible and qualified for promotion to the post of Deputy Superintendent Legal (BPS-17) and direct the Respondents to promote the Appellant with all back benefits with effect from 07.02.2020, this Honourable Tribunal may very kindly be pleased to grant any other remedy deem it fit in the circumstances.


APPELLANT

THOROUGH COUNSEL


AHC

PIR HAMID ULLAH SHAH
ADVOCATE HIGH COURT

Dated: 26/06/2020

Bannu

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

Appeal No. /2020

Muhammad Farooq Khan Inspector Legal Bannu.

.....(Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Additional Inspector General (HQrs) Khyber Pakhtunkhwa Peshawar.
3. Deputy Inspector General of Police (HQrs), Khyber Pakhtunkhwa, Peshawar.
4. Assistant Inspector General of Police (Estb); Khyber Pakhtunkhwa, Peshawar.
5. Mr. Rashid Ahmad, Inspector Legal DPO Office, Abbotabad.
6. Mr. Wisal Ahmad, Inspector Legal DIG Office, Mardan.
7. Mr. Malik Habib Khan, Inspector Legal CCPO Office, Peshawar.

.....(Respondents)

CERTIFICATE:

It is certified that no such like appeal has ever been moved by the Appellant before any forum or pending except appeal No. 702/2017 (for Seniority).


APPELLANT

THROUGH COUNSEL


AHC

PIR HAMID ULLAH SHAH
ADVOCATE HIGH COURT

Dated: 26/06/2020



"A" 7

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR
Fax: 091-9210927

Dated Peshawar 07 February, 2020

NOTIFICATION

No.CPO/E-I/Promotion/ 321, In pursuance of the provision contained in Section 5 of Promotion Rules-2007, on recommendations of the Departmental Selection Committee meeting held on 30.01.2020, the following Inspectors (BS-16) Legal of Khyber Pakhtunkhwa Police are hereby promoted to the rank of Deputy Superintendent of Police Legal (BS-17) on regular basis with immediate effect.

The officers on promotion shall remain on probation for a period of one year in terms of Section 6 (2) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

The promotion shall take effect from the date they actually assume the charge of their higher responsibilities:-

| S# | Name & No. |
|----|------------------|
| 1. | Mr. Rashid Ahmed |
| 2. | Mr. Wisal Ahmad |
| 3. | Malik Habib Khan |

The posting Notification will be issued separately.

Sd/-
(DR. ISHTIAQ AHMAD) PSP/PPM
Additional Inspector General of Police,
Headquarters, Khyber Pakhtunkhwa,
Peshawar

Endst: No. & date even.

Copy forwarded to the:-

1. Principal Secretary to Governor Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister Khyber Pakhtunkhwa.
3. Secretary, Govt. of Khyber Pakhtunkhwa Estt. & Admn: Deptt: Peshawar.
4. Secretary, Govt. of Khyber Pakhtunkhwa Home & T.As Deptt: Peshawar.
5. Secretary, Govt. of Khyber Pakhtunkhwa Finance Deptt: Peshawar.
6. Accountant General Khyber Pakhtunkhwa Peshawar.
7. All Addl: Inspectors General of Police in Khyber Pakhtunkhwa.
8. Chief of Staff (COS) to the Provincial Police Officer, Khyber Pakhtunkhwa.
9. Capital City Police Officer Peshawar.
10. Regional Police Officers Mardan and Malakand region.
11. Deputy Inspector General of Police, HQrs: Khyber Pakhtunkhwa.
12. District Police Officers Mardan and Swat.
13. Director IT CPO Peshawar.
14. District Accounts Officers Mardan and Swat.
15. Registrar CPO, Peshawar.
16. Supdt: Secret & Supdt: E-II, CPO.
17. Supdt: CPB & Accountant CPO, Peshawar.

(ZAIBULLAH KHAN) PSP
AIG Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

1 B'' 8

2009 S C M R 396

[Supreme Court of Pakistan]

Present: Mian Shakirullah Jan, Muhammad Qaim Jan Khan and Muhammad Farrukh Mahmud, JJ

WAPDA and others---Petitioners**Versus****Qari MUHAMMAD FEROUZE and others---Respondents**

Civil Petitions Nos.1174 to 1177 of 2008, decided on 27th October, 2008.

(On appeal against the judgment, dated 26-6-2008 passed by Federal Service Tribunal, Islamabad, in Appeals Nos.26 to 29(P)(C.E.) of 2004).

Constitution of Pakistan (1973)---

---Art. 212(3)---Seniority list, preparation of---Pendency of lis before Supreme Court---Effect---Petitioner department and other departments and authorities, particularly in service matter when lis was pending in the court relating to terms and conditions of service, where rights of parties regarding seniority were under consideration and were still to be determined by the Court with a resultant consequence of effecting further promotion and other rights like Selection Grade, the department should keep its hands off unless there was specific order of the court for further proceeding on the part of department/authority, in order to avoid further complications and which ought to have been visualized by the department---Petitioner department had, without visualizing such complications, had shown smartness by deciding the matter hurriedly without waiting for decision of court and if any difficulty had then arisen, it was for petitioner department to solve or to suffer for that---Service Tribunal had rightly passed judgment in favour of respondents and declined to interfere---Leave to appeal was refused.

Sheikh Zamir Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioners (in all cases).

M. Shoaib Shaheen, Advocate Supreme Court along with Tanveer Ahmed in person (pro forma respondent) for Respondent No.1 (in all cases).

Date of hearing: 27th October, 2008.

JUDGMENT

MIAN SHAKIRULLAH JAN, J.---The respondents, employees of the petitioner, WAPDA, are litigating for a long time since 1993 for their seniority on the plea that their seniority be determined on the basis of combined seniority list after the establishment of Tarbela Power Station No.2 consisting of Units Nos.11 to 14 in addition to the already existing Tarbela Power Station No.1 consisting of Units Nos.1 to 10. After several rounds of litigation, even up to this Court, the contesting respondents who are respondent No.1 in each case succeeded in getting an order from the Court with regard to the preparation of combined seniority list which was prepared and

circulated on 10-3-2001. After the preparation of the new combined seniority list they again approached the Department for grant of Selection Grade as some of the employees who are junior to the said respondents had already been given Selection Grade but the petitioner/WAPDA did not agree to their said demand which ultimately gave rise to another round of litigation which resulted in the form of impugned judgment whereby they were held entitled to the grant of Selection Grade.

2. The petitioner, the WAPDA, being aggrieved of the said relief granted to the respondents approached this Court through instant petitions.

3. There is no controversy rather the parties are in agreement on final combined seniority list circulated on 10-3-2001, however, the petitioner's grievance about the impugned judgment is that the said respondents are not entitled to selection grade and the same had already been given to the employees on the basis of separate seniority list then in vogue at that time and on the ground that selection grade can be granted only to 33% of the total strength and which had already been granted and the Department is not in a position to give it to other employees over and above 33%.

4. Since the selection grade which had already been granted to other employees of the petitioner/Department was on the basis of separate seniority list of the two power stations which were under challenge since the very inception in the year 1993 well in time and which challenge of the respondent employees was accepted and which resulted in the combined seniority list dated 10-3-2001 in pursuance of the Court order and if the matter was delayed it was because of prolonged litigation in the Courts. The petitioner/Department and other departments and authority, particularly in a service matter when the lis is pending in the Court relating to the terms and conditions of service, like the instant one, where the rights of the parties regarding seniority is under consideration and was still to be determined by the Court with a resultant consequence of effecting further promotion and other rights like the selection grade, the department should keep its hands off, unless there is specific order of the Court for further proceeding on the part of the department/authority, in order to avoid further complications and which ought to have been visualized by the department. In the present case it is the department which without visualizing such complications has shown its smartness by deciding the matter hurriedly without waiting for the decision of the Court and if any difficulty now arises at this stage it is for the department to solve or to suffer for that. The Service Tribunal in the impugned judgment has very rightly and aptly observed that "... Seniority is an invaluable term and condition of service and cannot be interfered with without a valid and just cause. Circulation of the Final Combined Seniority List on the directions of the apex Court was not a perfunctory ritual without consequential benefits. Rights which have accrued as a result of the Combined Seniority List cannot be denied to the appellants. The appellants are entitled to all the service benefits including selection grade and promotion on the basis of seniority so determined."

5. We see no good reason to justify interference in the well-reasoned judgment of the Service Tribunal and resultantly we decline leave to appeal and these petitions are dismissed.

M.H./W-2/SC

Petition dismissed.



(10)

OFFICE OF THE
DISTRICT POLICE OFFICER,
BANNU

Phone No: 0928-9270 038

Fax No: 0928-9270045

No. 3124

/Dated Bannu, the 28 / 02 / 2020.

The Provincial Police Officer,
Khyber Pakhtun khwa,
Peshawar.

PRESENTATION TO WORTHY INSPECTOR GENERAL OF POLICE, KHYBER
PAKHTUNKHWA, PESHAWAR TO SET ASIDE/WITHDRAW THE NOTIFICATION
NO.CPO/E-I/PROMOTION/321 DATED 07.02.2020 AS THE CASE IS SUB-
JUDICE BEFORE SERVICE TRIBUNAL KP, PESHAWAR VIDE SERVICE APPEAL
NO.702/2017 AND TO RESTORE THE ORIGINAL SENIORITY OF PETITIONER
FROM THE DATE OF APPOINTMENT I.E.08.12.2009

Enclosed kindly find herewith a presentation in r/o Mr. Muhammad Farooq
Khan Inspector Legal Bannu for your kind information and kind sympathetic
consideration, please.

2a ✓
District Police Officer,
Bannu.

NO. 3125 /

Copy of above is forwarded to the Regional Police Officer, Bannu
Region, Bannu for favour of information, please.

2a ✓
District Police Officer,
Bannu.

(11)
BEFORE THE WORTHY PROVINCIAL POLICE OFFICER, KHYBER PAKHTUNKHWA
PESHAWAR THROUGH: "PROPER CHANNEL".

SUBJECT PRESENTATION TO WORTHY INSPECTOR GENERAL OF POLICE, KHYBER PAKHTUNKHWA, PESHAWAR TO SET ASIDE/WITHDRAW THE NOTIFICATION NO.CPO/E-I/PROMOTION/321 DATED 07.02.2020 AS THE CASE IS SUBJUDICE BEFORE SERVICE TRIBUNAL KP, PESHAWAR VIDE SERVICE APPEAL NO.702/2017 AND TO RESTORE THE ORIGINAL SENIORITY OF PETITIONER FROM THE DATE OF APPOINTMENT I.E.08.12.2009.

R/Sir,

It is submitted that I want to draw your kind attention towards the following points for your kind and sympathetic consideration.


1. The applicant was appointed as SI Legal in year 2009 and after completion of probation period was confirmed in the rank of SI Legal from the date of appointment i.e. 08.12.2009 by worthy RPO Bannu.
2. That after confirmation the appellant was brought on list "F" vide Notification dated 11.02.2014 and after completion of probation period was also confirmed in the rank of Inspector Legal and since then the appellant enjoyed seniority over above the names of other SI Legal appointed in year 2009 (batch fellow).
3. That all of sudden my seniority was disturbed whereby my juniors were shown senior to the appellant vide Notification dated 02.01.2017 and procedure for fixing seniority was changed from date of appointment to the inter-se seniority after 8 years of my appointment.
4. It is pertinent to note that during 8 years from 2009 to 2017 no one ever challenge my seniority but all of a sudden in year 2017 I was placed juniors from my other colleagues.
5. I have no other option except to knock the door of justice and therefore, we three (03) affected colleagues i.e. Syed Aamir Abbas Acting DSP Legal CTD, Muhammad Farooq Inspector Legal Bannu and Muhammad Usman Acting DSP Legal City Patrolling Peshawar challenged the new seniority list in Service Tribunal KP Peshawar vide service appeal No.679/2017 of Syed Amir Abbas, service appeal No.702/2017 of Muhammad Farooq (appellant) and service appeal No.703/2017 of Muhammad Usman.
6. Keeping in view of the above submission I humbly submitted an application through proper channel, duly signed by DPO Bannu in 2019 to the Worthy IGP KP with the request that promotion of Inspector Legal to the post of DSP Legal may kindly be stopped till the final decision of the Honourable Service Tribunal, and in this respect judgment of the Apex Court is also attached with the said application, please.

Sir, if your good honour not set aside/withdraw the subject notification then irreparable loss will occur to the applicant.

In light of many decision of Supreme Court of Pakistan, when the case is subjudice in court no promotion will be done until and unless the case is decided by the competent court please.

Copy of Supreme Court judgment (2009 SCMR 396) regarding subjudice cases to stop promotion till the decision of court is enclosed for ready reference.

Yours Sincerely



Muhammad Farooq Khan
Inspector Legal Bannu

SENDING REPORT

28 Feb. 2020 2:48PM

YOUR LOGO : DPO BANNU
YOUR FAX NO. : 9270045

| NO. | OTHER FACSIMILE | START TIME | USAGE TIME | MODE | PAGES | RESULT |
|-----|-----------------|----------------|------------|------|-------|-----------------|
| 01 | 0919223456 | 28 Feb. 2:47PM | 01'45 | SND | 01 | DOCUMENT JAMMED |

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

28 Feb. 2020 1:49PM

YOUR LOGO : DPO 3AMNU
YOUR FAX NO. : 9270043

| 0 | FAX SIMILE | START TIME | USAGE TIME | MODE | PAGES | RESULT |
|---|------------|----------------|------------|------|-------|--------|
| 1 | 019213185 | 28 Feb. 1:47PM | 01:55 | SND | 03 | OK |

TO TURN OFF REPORT, PRESS 'MENU' #04,
THEN SELECT OFF BY USING '+' OR '-'

وکالت نامہ

بعدالت

محمد فاروق صاحب پنہام ۴۶۵ و ستر

عنوان مقدمہ
منجانب [Appeller]

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں من رہم اپنی طرف سے واسطے پیروی و جوابدہی اور دیگر کل

کارروائی آں کیلئے برائے مقام

مشترک میر محمد رفیق صاحب و دیگر

کو وکیل مقرر کر کے اختیار دیتے ہیں کہ میری رہنماری جانب کے مقدمہ مذکورہ کی پیروی

و جوابدہی کرے۔ راضی نامہ کرے۔ فیصلہ ثالثی کرائے کہ فیصلہ کرانے پر حلف منظور

کرے، ہر قسم کی بیان دیوے، ہر قسم کے سوال و جواب کرے۔ عرضی دعویٰ کرے۔ جواب

دعویٰ۔ جواب الجواب۔ عذرات۔ اپیل۔ نگرانی۔ نظر ثانی۔ درخواست ہائے متفرق اور دیگر

ہر قسم کے دستاویزات تحریر و تصدیق کر کے داخل کرے۔ واپس لیوے۔ دست برداری

کرے۔ ترمیم کرے۔ ہر قسم رقوم مقدمہ۔ جرمانہ۔ ہر جانہ داخل اور قبول کرے۔ ہر قسم

دستاویز جو بعدم پیروی ڈمس ہو سرسبز کرے۔ کارروائی۔ ڈگری یکطرف منسوخ کرے۔ اجرا

ڈگری کہے۔ زر ڈگری وصول کرے۔ قبضہ جائیداد لیوے دیوے۔ اپنے ہمراہ ایڈوکیٹ

بیر شریا مختار قانون برائے جزوی یا کل کارروائی مقرر کرے۔ علیحدہ کرے۔ دوران مقدمہ اگر

جرمانہ۔ ہر جانہ فریق مخالف سے وصول ہو۔ وہ حق وکیل صاحب ہوگا۔ اگر پیشی ایسے مقام پر ہو

جو صدر مقام سے دور ہو تو وکیل صاحب پیروی کے ذمہ دار نہ ہوں گے۔ اس سلسلے میں جملہ

ساختہ و پرداختہ وکیل صاحب موصوف منظور و قبول ہوگا۔ لہذا وکالت نامہ ہذا لکھدیا کہ سند

رہے۔ نیز وکیل موصوف کو میری جانب سے مقدمہ فوجداری و مال میں بھی مکمل کارروائی کرنے

کا مکمل اختیار بمضمون بالا حاصل ہوگا۔

فقط مورخہ

العبد

العبد

Acceptance
[Signature]
[Signature]

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6271/2020

Muhammad Farooq Insp:/ Legal.....(Appellant)

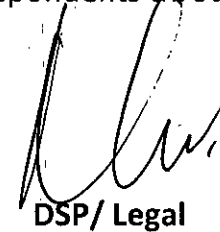
Versus

Provincial Police Officers & others.....(Respondents)

INDEX

| S. NO | DESCRIPTION OF DOCUMENTS | ANNEXURE | PAGE |
|-------|---|----------|-------|
| 1. | Para-wise comments/ reply | | 1-3 |
| 2. | Affidavit | | 4 |
| 3. | Copy of PSC merit list | A | 5 |
| 4. | Public Service Commission Rules | B | 6 |
| 5. | Copy of judgment dated 09.01.2017 in Service Appeal No. 162/ 2014 | C | 7-10 |
| 6. | Copy of 1993 PLC (C.S) 1005 | D | 11-16 |
| 7. | Copy of 1995 PLC (C.S) 950 | E | 17-20 |

Respondents through



DSP/ Legal
CPO, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.6271/2020.

Muhammad Farooq Khan Inspector Legal Bannu.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police HQrs:, Peshawar.
3. Deputy Inspector General of Police HQrs: Khyber Pakhtunkhwa, Peshawar.
4. Assistant Inspector General of Police Establishment, Khyber Pakhtunkhwa, Peshawar.....Respondents.

Subject:- **REPLY BY RESPONDENTS NO. 1,2,3 &4.**

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is not maintainable u/s 4(b (1) KP Service Tribunal Act 1974 before this forum.
2. That the appeal is barred by law & limitation.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has not come to this Hon'able Tribunal with clean hands.
5. That the appellant has no cause of action.
6. That the appellant is estopped by his own conduct to file the instant appeal.
7. That the appellant has concealed the material facts from Honorable Tribunal.
8. That this Hon'ble tribunal has no jurisdiction to entertain the appeal.
9. That the seniority of appellant and his batch mates have been prepared on the basis of Inter se merit list prepared by the KP Public Service Commission u/R 33/34 Regulation 2003 updated 2012.

FACTS:-

- (1) Correct to the extent of recruitment of Sub Inspector Legal in Khyber Pakhtunkhwa Police through Public Service Commission and the commission conveyed Inter Se merit of the candidates under rule 33,34 KP Public Service Commission Regulations 2003 updated 2012. As per inter se merit list of KP Public Service Commission the position of the appellant was at serial No.22 while the private respondents (Rashid Khan, Wisal Ahmad, Malik Habib) were at serial No.01.02.and 03 respectively in that merit list.(Public Service Commission rules, merit list are annexure as A&B)
- (2) Para pertains to record; seniority of appellant and his batch mates were revised and maintained in accordance Rule 12.2 and inter se merit list of KP Public Service Commission.

- (3) Incorrect. The CPO Peshawar on the recommendation of Departmental promotion Committee rectified the seniority of SI legal in accordance with the merit list assigned by the Public Service Commission. It is general principle of determination of Inter-se seniority of candidates at one selection that the merit list assigned by the Public Service Commission has to be followed. Date of joining etc was not the criteria for the determination of seniority in case where the candidates have been selected and assigned merit by the Public Service Commission.
- (4) Incorrect. As stated above. The merit assigned by the Public Service Commission has been followed by the replying respondents. The similar issued has also been decided by the Federal Service Tribunal in its reported judgment 1995 PLC (C.S) 950 and 1993 PLC (C.S) 1005 as well as this Honorable Service Tribunal in its Judgment Service Appeal No.162/2014 and others Appeals. (Judgments of the Court are annexure as C,D,E)
- (5) Para pertains to record, the honorable Service Tribunal has not issued Any directions regarding stoppage of promotion in the referred subjudice Appeals.
- (6) Incorrect. Private respondents were promoted on the basis of the recommendation of DSC on his own merit as per the law/rules, as no instruction/direction pertaining to the disposal of the said appeal was received to the respondent department from this Honorable Tribunal which does not effect on the appeal already pending in this Honorable Tribunal.
- (7) Incorrect. Para already explained in above para.
- (8) Departmental appeal of the appellant was against facts and inter se merit list of KP Public Service Commission. Therefore turndown being not maintainable.
- (9) That appeal of the appellant being devoid of merits may kindly be dismissed on the following grounds

GROUND:-


- a) Incorrect. The valid order passed by the replying respondents is legal, based on facts and in accordance with law/rules.
- b) Incorrect. The appellant was treated in accordance with law/rules. And no violation of any provision of Constitution of Pakistan has been committed by the replying respondents.
- c) Incorrect. The appellant was treated in accordance with law/rules. and no violation of any provision of Constitution of Pakistan has been committed by the replying respondents.
- d) Incorrect. Order dated 07.02.2020 was passed in pursuance of the recommendation of DSC on his own merit. Furthermore, the seniority of Inspector legal was revised on solid/ legal grounds by the DPC, seniority list was revised on


the basis of inter-se seniority and merit declared by the KP Public Service Commission.


- e) Incorrect. Para is misleading and not justified as already explained in the preceding paras.
- f) Incorrect. The seniority of the appellant was fixed as per list of inter-se and recommendation of the DPC. Therefore question of the intact of previous seniority do not arise.

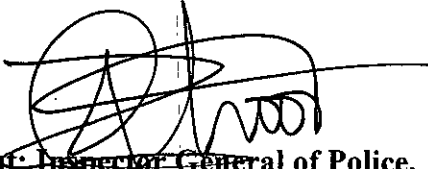
Prayers:-

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


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)


Add: Inspector General Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 02)


Deputy Inspector General Police,
HQrs, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 03)


Assistant: Inspector General of Police,
Estt, Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 04)

BEFORE THE HONORABLE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6271/2020

Muhammad Farooq Insp:/ Legal.....(Appellant)

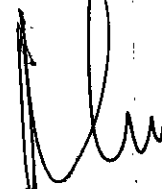
Versus

Provincial Police Officers & others.....(Respondents)

AFFIDAVIT

I, Mir Faraz Khan DSP/ Legal CPO, Peshawar do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondents are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

DEPONENT



(MIR FARAZ KHAN)

DSP/ Legal,

CPO, Peshawar.

11101-1425161-3

0336-5761727

A

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N.W.F.P. PUBLIC SERVICE COMMISSION

APPENDIX-A

**INTER SE MERIT OF 16 (SIXTEEN) POSTS OF SIB INSPECTOR
REGD. (14) (ADVERTISEMENT NO.01/2009) S.No.35**

| Merit Order | Name with Father's Name | District | ABE |
|-------------|--|-----------|-----------|
| 01 | Rashid Ahmad S/O Nizamul Karim | Dera | Own Quota |
| 02 | Waseel Ahmed S/O Aman Ullah | Peshawar | Own Quota |
| 03 | Malik Fasih Khan S/O Malik Farid Khan | Peshawar | Own Quota |
| 04 | Sami Ullah Khan S/O Sami Khan | Kohat | Own Quota |
| 05 | Ahlag Hussain Shah S/O Farzana Ali Shah | Khanjhera | Own Quota |
| 06 | Fazal Ullah S/O Iqbal Shah | Huner | Own Quota |
| 07 | Nasim Hussain S/O Muhammad Hussain | Battagram | Own Quota |
| 08 | Ghulam Hamid S/O Ghulam Noman | Swat | Own Quota |
| 09 | Muhammad Shafiq Khan Muhammad S/O Muhammad Aslam Khan Muhammad | Mardan | Own Quota |
| 10 | Fahim Khan S/O Nawaz Khan | Swabi | Own Quota |
| 11 | Muhammad Zahoor S/O Ruslan Khan | Haripur | Own Quota |
| 12 | Siraj ul Din S/O Jinnah | Kohistan | Own Quota |
| 13 | Syed Azmir Abbas S/O Syed Jamil Hussain | Kohat | Own Quota |
| 14 | Usman Ali Khan S/O Shir Ali | Charsadda | Own Quota |
| 15 | Muhammad Farooq Khan S/O Muhammad Danoor Khan | Bannu | Own Quota |
| 16 | Sheer Muhammad Malik S/O Muhammad Yaqub Khan | Chitral | Own Quota |

(KAZAL HADSHAH)
Deputy Secretary

1/2/09

Explanation

- (1) If no orders of the initial probation are deemed to have been extended.

- (2) If no orders have been made by the day on which the maximum period of probation expires, the probationer shall, subject to sub-clause (4), be deemed to have been confirmed in his appointment.

- (3) A probationer who has satisfactorily completed his period of probation, shall be confirmed with effect from the date of his continuous appointment in the service in a substantive vacancy; provided that where the period of his probation has been extended under the provisions of sub-clause (3) (c) of this clause, the date of confirmation shall, subject to the other provisions of this clause, be the date on which the period of probation was last extended.

- (4) No person shall be confirmed in the Service unless he successfully completes such training and passes such departmental examinations as may be prescribed by the Commission from time to time.

- (5) If a member of the Service fails to complete successfully any departmental examination prescribed under sub-clause (4) within the period or in such number of attempts as may be prescribed by the appointing authority may—

- (a) in case he has been appointed by initial recruitment, dispense with his services; or

- (b) in case he has been appointed by promotion, revert him to his former post, and if there be no such post, dispense with his services.

11. Seniority.---(1) The seniority inter-se of the holders of the posts shall be determined--

- (a) In the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission, if the appointment is made on the basis of a competitive examination, and in other cases, in accordance with the order of merit assigned by the appointing authority; provided that persons

C

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR!

SERVICE APPEAL NO. 162/2014

Date of Institution ... 10.02.2014
Date of Judgment ... 09.01.2017

Shaheen Tabssum,
Deputy Public Prosecutor, Kohat.

... (Appellant)

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. The Secretary Homes & TA, Khyber Pakhtunkhwa, Peshawar.
3. The Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
4. Shafiullah, Dy: Public Prosecutor, Prosecution Directorate Peshawar and 8 others.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER DATED 27.12.2013 COMMUNICATED TO APPELLANT ON 16.01.2014 WHEREBY APPEAL AGAINST FINAL SENIORITY LIST DATED 18.11.2013 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

Mr. M. Asif Yousafzai, Advocate.

For appellant.

Mr. Ziaullah, Government Pleader

For official respondents.

Mr. Syed Hamad Ali Shah, Advocate

For private respondent No 4 to 1

MR. MUHAMAMD AAMIR NAZIR

MEMBER (JUDICIAL)

MR. AHAMD HASSAN

MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Shaheen Tabassum, Deputy Public Prosecutor, Kohat, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, has impugned order dated 27.12.2013 communicated to the appellant on 16.01.2014 vide which departmental appeal by the appellant against final seniority list dated 18.11.2013 was rejected by the competent authority.

2. Brief facts of the case giving rise to the instant appeal are that the appellant appointed as Dy: Public Prosecutor (BPS-17) vide Notification dated 27.08.2009 on recommendation of the Khyber Pakhtunkhwa Public Service Commission dated 04.08.2009.

