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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1320/2023

Niaz Muhammad Officiating Sub-Inspector No. 587/MR PS Shahbaz Ghari Mardan
.....Appellant

VERSUS

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

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

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The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.
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Para-wise comments by respondents:-

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Sheweth,

Diary No. 7465

PRELIMINARY OBJECTIONS

Dated 13/09/23

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
6. That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.
7. That the appeal is bad for miss-joinder and non-joinder of necessary parties.

REPLY ON FACTS

1. Para to extent of initial appointment as constable and subsequent promotion to the rank of ASI pertains to record needs no comments.
2. Para to the extent of qualifying promotion courses pertains to record needs no comments while rest of the Para is not plausible because every Police Officer after completion and qualifying promotion courses, gets promoted to the next higher rank through due process of law but not at the stake of infringement of rights of others.
3. Para to the extent of enlistment pertains to record needs no comments. While rest of para is incorrect because every Police Officer is under obligation to perform his duty upto the entire satisfaction of his superiors. Moreover, the perusal of service record of the appellant revealed that due to his lethargic attitude his entire service record is tainted with bad entries. Besides, non receipt of complaint against the appellant does not mean a clean chit for the future wrong deeds.
4. Correct to the extent that promotion order of the appellant alongwith all those others who were promoted in sheer violation of section 31 of the Police Act 2017 and when this fact came to surface that the appellant alongwith others had been promoted against the quota purely reserved for Fast Track Promotion as enunciated in Section 31 of Police Act 2017, in the light of ibid order, the committee reviewed the minutes of previous Departmental Promotion Committee

meetings which were held in Region Office Mardan on 22.03.2018, 20.06.2018 and 22.01.2019 wherein; total 117 posts of Sub Inspectors were filled during such period. Therefore, the committee reported that the criterion for filling the post of Sub inspectors has been provided in section 31 of the Police Act 2017 which is read as under:-

31. **Appointment of Sub Inspectors.** ---(1) The post of the Sub-Inspector shall be filled in the following manner: -
- (i) subject to competitive examination, twenty five percent (25%) by selection on merit from amongst Assistant Sub-Inspectors on recommendation of Public Service Commission in the prescribed manner; and
 - (ii) Seventy five percent (75%) from amongst Assistant Sub-Inspectors on the recommendation of **Departmental Promotion Committee** in the prescribed manner.

The other terms and conditions of service shall be such as may be prescribed.

A. Section 31 of Police Act, 2017 clarifies that the domain of Departmental Promotion Committee is restricted only to clause (ii) above. However, perusal of record transpired that, at the time of above DPCs, there was no vacant post of Sub Inspector in the Region to be filled in a manner as provided in clause (ii) above. However, 117 posts of Sub Inspectors were shown as vacant in the above DPCs which were supposed to be filled in a manner as provided in clause (i) above on the recommendation of Public Service Commission contrary to ibid section. Consequently, 117 Sub Inspectors of Mardan Region were inadvertently considered and promoted as Officiating Sub-Inspectors. Moreover, the perusal of available record revealed that since 22 March 2018 (DPC held for promotion of Sub Inspectors under review) till date, a total of 52 posts in the rank of Sub Inspectors got vacant on account of either retirement or struck off of Police officers from Police Force. Hence In order to rectify the above irregularity; committee unanimously recommended that Offg: promotion of Sub Inspectors of Mardan Region against the vacancies of 25% share (to be filled through competitive examination and on recommendation of Public Service Commission) vide DPCs held on 22.03.2018, 20.06.2018 and 22.01.2019 at Mardan Region Office may be considered as an adhoc promotion till occurrence of vacancy against 75 % share with the condition that promoted officers shall not claim any seniority. However, upon creation of vacancy under 75% share, the same may be considered as regular promotion. Moreover, after completion of 02 years' probation period as prescribed in Police Rules, Chapter-13 Rule-18, they may be confirmed on the basis of requisite criteria already fulfilled during the period of their adhoc promotion subject to the promotion as Officiating Sub-Inspectors, 52 vacant posts of Sub Inspectors at Mardan Region may be filled through

regularizing the promotion of officers who were earlier promoted against the 25 % share (to be filled through competitive examination and on recommendation of Public Service Commission) from date of creation of vacancies and in order of seniority. Hence, the issue in question was discussed in Departmental Committee meeting held on 01.02.2023 wherein it was unanimously decided to agree with the recommendation of committee. Therefore, promotion was termed as adhoc. Hence, promotion against the share of Fast Track is sheer violation of Police Act 2017.

5. Para already explained needs no comments.
6. Correct to the extent that the appellant preferred departmental appeal which was decided on merit.
7. Incorrect. Stance taken by the appellant is not plausible, order issued according to law, facts and as per principle of natural justice. Appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

REPLY ON GROUNDS:

- B. Incorrect. Order passed by the competent authority is legal, lawful and according to rules, hence, liable to be maintained.
- C. Incorrect. Appellant has been treated in accordance with law and rules and the respondents did not violate any Article of the Constitution.
- D. Incorrect. The respondent department has no grudges against the appellant; therefore, stance of the appellant is devoid of legal footing.
- E. Incorrect. Order passed by the competent authority is legal, lawful and according to the principle of natural justice and there is no need of issuing Charge Sheet.
- F. Incorrect. Para already explained needs no comments.
- G. Incorrect. Para already explained needs no comments.
- H. Plea taken by the appellant is not plausible, because some irregularities in connection with promotions of the Police Officers were found. Therefore, a revised seniority list was issued after due deliberation and taking into consideration the relevant law and rules by the committee constituted for the purpose.
- I. Plea taken by the appellant is totally devoid of merit hence, denied. As the appellant seeking that remedy which cannot be extended under the law/rules because promotion/confirmation is governed by Police Rules 1934 as amended in 2017 and Police Act 2017 and in case of infringement of rights of others, no Police officer can be attended such undue favor.
- J. Para already explained needs no comments.
- K. Plea taken by the appellant is bereft of any substance because Fast Track Promotion and departmental Promotion are two different entities and a committee was constituted by the then Regional Police Officer, Mardan vide order No. 9891-93/ES dated 16.12.2022 for examining and identification the cases of those Officiating Sub-Inspectors who have been promoted as Officiating Sub-Inspectors on the share of Fast Track Promotion. Hence, the issue in question was discussed

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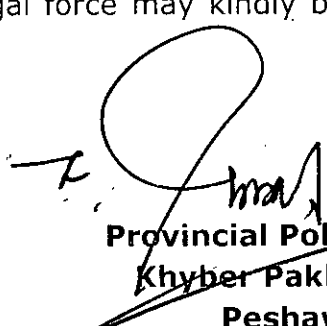
L. Incorrect. Para already explained needs no comments.

M. Incorrect. The respondent department has no grudges against the appellant, therefore, stance of the appellant is devoid of legal footing.

N. Incorrect. Plea taken by the appellant is not plausible because every Police Officer /Official is under obligation to perform his duty regularly and with devotion.

PRAYER:-

Keeping in view the above stated facts and rules it is most humbly prayed that the appeal of the appellant is devoid of legal force may kindly be dismissed with costs please.


**Provincial Police Officer
Khyber Pakhtunkhwa,
Peshawar,**

(Respondent No. 01)


**Regional Police Officer,
Mardan.**

(Respondent No. 02)


**District Police Officer,
Mardan**

(Respondent No. 03)

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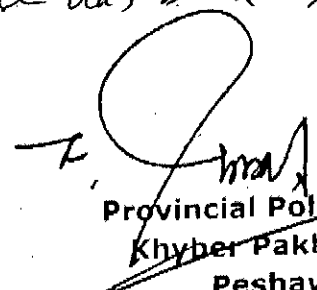
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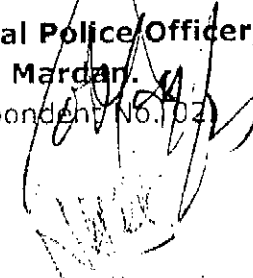
COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defence has been struck off.


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


**Regional Police Officer,
Mardan.
(Respondent No. 02)**


**District Police Officer,
Mardan
(Respondent No. 03)**

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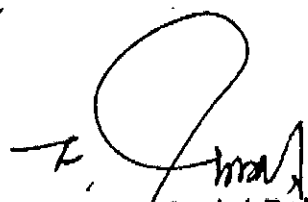
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AUTHORITY LETTER.

Mr. Wisal Ahmad Superintendent of Police Headquarters and Legal, Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


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


**Regional Police Officer,
Mardan.**
(Respondent No. 02)

**District Police Officer,
Mardan**
(Respondent No. 03)