

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1388/2022

Bacha Khan s/o Driver Head constable District Dir Upper

.....Appellant

VERSUS.

- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Upper
- 4) Mr. Ghulam Hakim, Assistant sub Inspector/Driver No.313, Police Lines, Dir Upper.....Respondents.

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**Inspector Legal,
Dir Upper.**

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Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7969

Dated 28/09/23

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS 1 TO 3.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the service appeal is not maintainable in its present form.
- 2) That the Appellant has got no cause of action and locus standi to file the instant Appeal.
- 3) That the appellant has not come to this honourable Service Tribunal with clean hands.
- 4) That the present Service appeal is badly barred by law and limitation.
- 5) That this honorable Service Tribunal has got no jurisdiction to entertain the present service appeal.
- 6) That the appellant has suppressed the material facts from this honorable service tribunal.
- 7) That the Appeal is bad for mis- Joinder and non- Joinder of necessary parties.

ON FACTS:

1. Incorrect. The appellant was not appointed as constable on 16/08/1982 and later on absorbed as driver constable 17-05-1999 (copy of enlistment order annexed as A).
2. Incorrect. The appellant did not qualified any requisite course required for promotion, but was promoted as per recommendation of committee on the basis of Ex seniority as Head constable in 2014 (order annexed as B).

3. Correct to the extent of seniority list where in the name of one Ghulam Hakim was on the top because he was promoted as driver Head Constable in the year 2008 while the appellant was promoted as driver Head Constable in the year 2014 (promotion order are annexed as C).
4. Incorrect. The respondent No.4 was promoted on the basis of seniority list, because he was promoted as Driver Head Constable in the year 2008, while the appellant was promoted as Driver Head Constable in the year 2014. The respondent makes promotion through correct seniority (judgment as annexed as D).
5. Pertain to record, hence need no comments.
6. Incorrect. Judgment dated 03/12/2019 was fully complied with and the appellant was promoted as Driver ASI vide order dated 05-01-2022, on the basis of official record seniority.
7. Incorrect. The order is legal and the departmental appeal was found groundless by the competent authority on the grounds that the appellant is not eligible to the promotion from the due date.
8. That the appellant wrongly invoked the jurisdiction of this Honorable Service Tribunal through unsound grounds.

GROUND

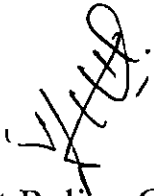
- A. Incorrect. That the order dated 05/01/2022 passed in compliance with judgment of Honorable Service Tribunal is in accordance with law rules and in accordance of the norms of natural justice.
- B. Incorrect. The appellant has been treated by the respondent in accordance with law and no violation of the constitution of Pakistan has been committed by the respondent.
- C. Incorrect the seniority list was prepared in light of record and the private respondent being senior, as he was promoted as Driver Head Constable in the year 2008, while appellant was promoted as Driver Head Constable in the year 2014.
- D. Incorrect. No malafide exist on the part of respondent and no illegality committed by the respondent in issuing order.
- E. Incorrect, the order of promotion was structure down as per judgment of Honorable Service Tribunal and driver ASI Ghulam Hakim was demoted vide judgment of Honorable Tribunal dated 03/12/2014.
- F. Incorrect. No violation of rules has been committed by the respondent.

G. Incorrect. As per judgment of Honorable Service Tribunal the appellant was promoted by the respondent on correct date 06/01/2021.

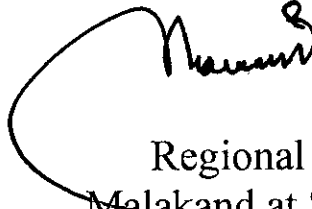
H. That the respondents seek permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

PRAYER:

It is therefore humbly prayed that on acceptance of this Para-wise reply, the appeal may graciously be dismissed with cost.

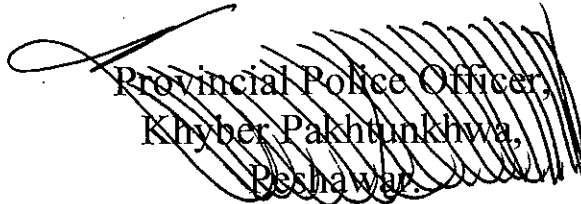


District Police Officer,
Upper Dir.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.

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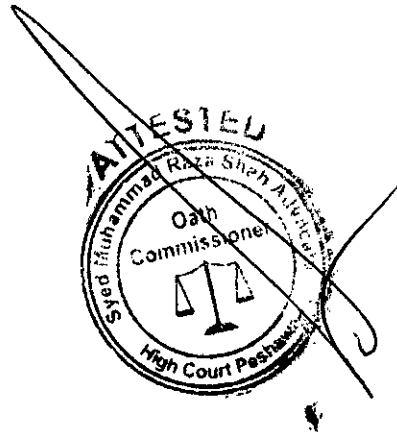
.....Appellant


VERSUS.

- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Upper
- 4) Mr. Ghulam Hakim, Assistant sub Inspector/Driver No.313, Police Lines,
Dir Upper.....Respondents.

Affidavit

I, Gul Zamin Khan, Inspector Legal do hereby solemnly affirm and declared that the contents of parawise reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.




DEPONENT
Gul Zamin Khan,
Upper Dir.

28 SEP 2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1388/2022

Bacha Khan s/o Driver Head constable District Dir Upper

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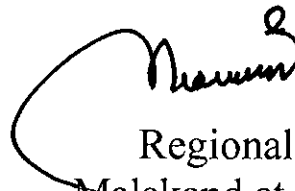
Power of Attorney

We, the undersigned do hereby authorized Gul Zamin Khan, Inspector Legal to appear on our behalf before the honorable Service Tribunal in the cited above case on each and every date.

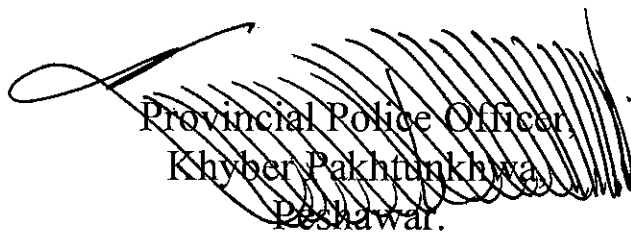
He is also authorized to file Para-wise comments/ reply, prefer appeal and to submit the relevant documents before the Tribunal.



District Police Officer,
Upper Dir.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.
Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.

ORDER.

Constable Bacha Khan No.236 is hereby brought on promotion list C-II, with immediate effect and until further Order.

OB No. 264

Dated 21-4-2011

District Police Officer,
Dir Upper.

Officials at S/NO.1 to 5 are promoted as Driver Head Constables against the existing vacancies.

HAN AKBAR KHAN)
SP HQRS (MEMBER)

(HUSSAIN ALI)
CLERK-HEADK CLERK (MEMBER)

(MOHYUDIN)
RI, POLICE LINES (MEMBER)

(JEHANGIR KHAN)
JR: CLERK-ESTT: CLERK (MEMBER)

APPROVED

Driver Constables from S/No.1 to 5 are promoted as Driver Head Constables (BS-7) as per their entitlement against the existing vacancies and on promotion as noted each is fixed accordingly.

Attested

The Regional Police Officer,
Mialakand at Saidu Sharif Swat.

PROMOTION AS DRIVER ASI

Kindly refer to Range Office, Swat Order No.1912/E, dated 15/02/2021.

It is submitted that in the light of above quoted reference, a committee was constituted for examining the seniority of the following Driver Head Constables for their promotion as Driver ASI. The committee thoroughly examined the services records and fixed their seniority in the following order: Swat, Khyber Pakhtunkhwa, Peshawar Guidance, the committee recommended Driver Head Constable Khan No.236 at serial No.01 for Promotion as Driver ASI. ✓

Date of Birth	Date of Enlistment	Date of absorption as Driver	Promoted as DHC	Qualification
1-Jan-1964	22-Aug-1982	19-May-1999	29-Dec-2014	Nil
12-Feb-1978	10-Mar-1999	10-Mar-1999	22-Apr-2008	SSC
15-Mar-1982	23-Aug-2000	30-Apr-2008	29-Dec-2014	Nil
12-Jan-1980	1-Jul-2001	30-Apr-2008	29-Dec-2014	Nil
1-Jan-1978	26-Mar-2002	30-Apr-2008	29-Dec-2014	Nil

A copy of committee is hereby submitted for your kind perusal, please: -

Miguel
District Police Officer,
Dir Upper.

Attest
[Signature]


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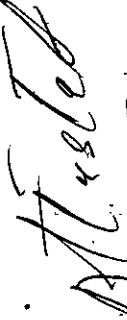

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O R D E R.

Driver Constable Ghulam Hakim No.313 of this District Police is hereby Promoted on List C-II with Immediate effect, for their good performance, honesty, Hard working and efficiency

OB 813.
Dt 07-12-2004.


(NCOR-UL-HUDA KHAN)
District Police Officer,
Dir Upper. 7.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT.

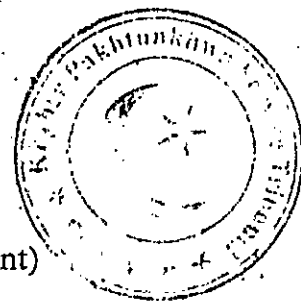
Service Appeal No. 226/2018.

Date of Institution ... 16.02.2018

Date of Decision ... 03.12.2019

Bacha Khan, Driver/Head Constable, Police Lines, Dir Upper.

(Appellant)



VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and three others.
(Respondents)

MR. SHAAZULLAH KHAN,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents

Mr. MUHAMMAD KAMRAN KHAN
Advocate

For respondents no.4.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ATTESTED

ARGUMENTS:

02. Learned counsel for the appellant argued that he was appointed as Driver Constable vide order dated 16.08.1982. That while in service, he cleared requisite course for promotion as Head Driver and got promoted as Head Driver to the said post vide order dated 29.12.2014. That the respondents issued seniority list of Head Constable Drivers of District Dir in which the name of the appellant was missing. On the other hand, the respondents on the basis of disputed seniority list promoted

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

private respondent no.4 to the rank of Driver ASI through impugned order dated 11.03.2015. The said order was upon his request was communicated to him on 19.10.2017. Feeling aggrieved, he filed departmental appeal on 20.10.2017 which remained unanswered, hence, the present service appeal. He further argued that he was appointed as Constable on 15.07.1982 whereas private respondent no.4 was appointed as Constable on 09.03.1999. Moreover, the said respondents appointment was made as Constable but the word "Driver" was inserted later on through fraud/forgery. His promotion as Head Constable was also not made on the recommendation of DPC and fell in the ambit of out of turn promotion. His adjustment as Driver Head Constable (BPS-07) vide order dated 22.04.2008 was also illegal.

03. Learned counsel for private respondent no.4 argued that private respondent no.4 was appointed as Driver Constable on 09.03.1999 and promoted as Head Constable vide order dated 09.12.2004 and confirmed as Head Constable on 22.04.2008. On the other hand, the appellant was appointed as general duty Constable on 16.08.1982 and later on transferred to Telecommunication Wing on 19.05.1999 and promoted to the rank of Head Constable vide order dated 29.12.2014, therefore, the private respondent was senior and rightly promoted through order dated 11.03.2015. He also raised the issue of limitation that the present appeal was barred by time.


04. Learned Assistant Advocate General relied on arguments advanced by the learned counsel for private respondent no.4

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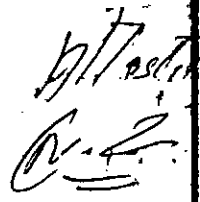
CONCLUSION:

05. As regards the issue of limitation raised by the learned counsel for private respondent no.4 was concerned, as the appellant was never considered for promotion so how could he get knowledge of the same? The plea taken by the appellant that he came to know about the said order on 19.10.2017 and filed departmental appeal on 20.10.2017 appeared to be convincing. This plea of the appellant has not been repelled by the respondents and it gives credence that his stance was not only correct but had the support of relevant documents. Moreover, issues relating to promotion, confirmation and seniority are not hit by limitation as held by superior court in numerous judgments. In addition to this it is against the principles of substantive justice to deprive a civil servant of his due right just on the strength of technicalities. In this case illegalities, favoritism and arbitrary acts of the respondents have been proved beyond any shadow of doubt, therefore, the appellant has every right to be treated according to merit.

ATTEST

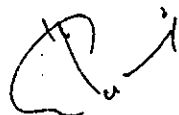

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06. The respondents have no disputed the fact that the appellant was appointed as Constable vide order dated 16.08.1982 and was promoted to the rank of Head Constable vide order dated 29.12.2014. On the other hand private respondent no.4 was appointed as Driver Constable on 09.03.1999. It is clarified that perusal of his appointment order clearly indicates that the word "Driver" was inserted later on through fraudulent means/forgery. So far as his promotion as Head Constable made vide order dated 09.12.2004 was concerned, the same was made on out of turn basis which had been held to be illegal by the apex court and this Tribunal in numerous judgments. Score of employees of the Police Department were demoted on the strength of these judgments thus the said order was patently illegal and void. His order as Head Constable dated 22.04.2008 was also without legal backing. The respondents have not indicated whether he had undergone relevant course before

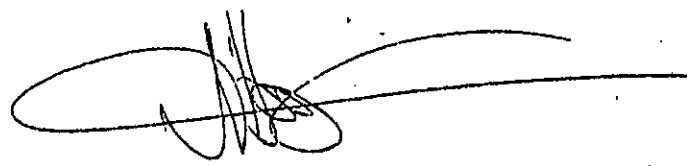


promotion to the higher rank? Furthermore, order of his confirmation was also not produced by the respondents and in these circumstance, we believe that he was never confirmed in the relevant ^{rank}, then how proper place in order of seniority was assigned to the private respondent? Resultantly promotion order of private respondent no.4 was illegal and void ab-inito and required to be struck down.

07. As a sequel to the above, the appeal is accepted, the impugned order dated 11.03.2015 are set aside and the respondents are directed to consider the case of promotion of the appellant from the due date. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
Member



(AHMAD HASSAN)
Member
Camp court Swat

ANNOUNCED
03.12.2019

Copy to be made copy
K. J. Khan
S. J. Khan
Tribunal,
Peshawar

Date of Receipt 12-12-19
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Date of 18-12-19
Date of Receipt of 18-12-19

Attested
