

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1249 /2022

Mr. Rehmat Ullah Junior Clerk Police Department District Tank ... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Assistant Inspector General Establishment of Police Khyber Pakhtunkhwa at Peshawar.
3. The Regional Police Officer, Dera Ismail Khan.
4. The District Police Officer, Dera Ismail Khan. ... (Respondents)

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DEPONENT

*copy of written reply
one set is submitted at
camp court D.I. Khan
& three set submitted at
Principals seal.*

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WRITTEN REPLY ON BEHALF OF RESPONDENTS

Khyber Pakhtunkhwa
Service Tribunal

Case No. 8247

Dated 12/10/23

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action.
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is badly barred by law & limitation.
4. That the appellant has not come to the Honourable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct.
6. That the appellant has concealed the material facts from the Honourable Tribunal.
7. That the instant appeal is badly time barred.
8. That the instant appeal is not maintainable in its present form.
9. That the instant appeal is not liable under Section 4(1)(a) & 4(1)(b) of The Service Tribunal Act, 1973.

REPLY ON FACTS

1. Correct to the extent that the appellant was enlisted as Junior Clerk in police department on 25.08.1992.
2. Incorrect. That the plaintiff was not eligible for promotion and those who were conditionally promoted were senior to him as per the inter-se merit list. However, if the Appellant was differed from DPC or promotion due to ACR, why did the Appellant not file an appeal to the authority, which is badly time barred.
3. Incorrect. The Appellant was conditionally promoted to the post of Senior Clerk (BPS-14) vide Notification No. 6219-319/E-V, dated 07.11.2019 subject to provision of ACRs within stipulated period but he failed.
4. Incorrect. Infact the Appellant was given three (3) chances for completion of remaining ACRs for the period of 30.01.2016 to 31.12.2016 and 01.06.2018 to 31.12.2018 but he failed to submit the ACRs within due course of time i.e. 31.12.2019.
5. Incorrect. Infact the Appellant given three (3) chances but he failed to submit his remaining ACR of specified period to till now, hence not considered/deferred in the light of Section 6(1)(a) of Standing Order 03/2022. Moreover, as per 2006 PLC(CS) 558 FST (Promotion Entitlement) "A.C.Rs were important component for determine fitness of employees for promotion" (Copies Annexure "A & B")
6. In view of above, the instant appeal is badly time barred and not maintainable on the following grounds.

Alleged

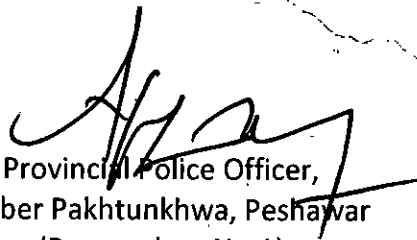
REPLY ON GROUNDS

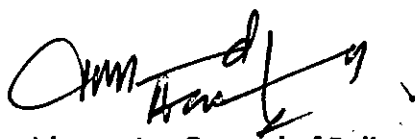
- A. Incorrect. The impugned notification passed by the authority in accordance with law/rules.
- B. Incorrect. The appellant was directed/given three (3) chances to submit his remaining ACRs but he failed to till now, hence deferred him in the light of Section 6(1)(a) of Standing Order 03/2022. (Copy already Annex "A")
- C. Incorrect. The Appellant was conditionally promoted to the post of Senior Clerk (BPS-14) vide Notification No. 6219-319/E-V, dated 07.11.2019 subject to provision of ACRs within stipulated period but he failed. The Appellant was given three (3) chances for completion of remaining ACRs for the period of 30.01.2016 to 31.12.2016 and 01.06.2018 to 31.12.2018 but he failed to submit the ACRs within due course of time i.e. 31.12.2019.
- D. That there are numerous judgments for and against on the points. However, the Appellant was given three (3) chances for completion of remaining ACRs for the period of 30.01.2016 to 31.12.2016 and 01.06.2018 to 31.12.2018 but he failed to submit the ACRs within due course of time i.e. 31.12.2019.
- E. Incorrect. No such discrimination or violation of fundamental Right of appellant has been violation by the respondents. The petitioner was conditionally promoted subject to the completion of ACRs were important component for determine fitness of employees for promotion (2006 PLC(CS) 558 FST Promotion Entitlement).
- F. The Respondents also seek permission to produce additional documents/grounds at the time of arguments.

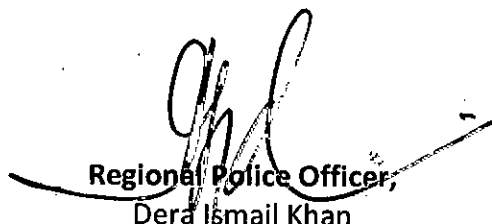
PRAYER


In view of above, it is prayed that on acceptance of these Parawise Comments the instant appeal may kindly be dismissed being not liable and badly time barred under section 4(1)(a) & 4(1)(b) of The Service Tribunal Act, 1973, please.

Attested


 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No.1)


 Assistant Inspector General of Police,
 Establishment, Khyber Pakhtunkhwa,
 Peshawar
 (Respondent No.2)


 Regional Police Officer,
 Dera Ismail Khan
 (Respondent No.3)


 District Police Officer,
 Dera Ismail Khan
 (Respondent No.4)

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- 4. The District Police Officer, Dera Ismail Khan.(Respondents)

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENTS

We, the respondents do hereby solemnly affirm and declare on oath that the contents of comments-written reply to Appeal are true & correct to the best of our knowledge and nothing has been concealed from this Honourable Tribunal.

The appeal is neither placed on file nor their defence struck off /cost.

Attended

[Signature]
 Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No.1)

[Signature]
 Assistant Inspector General of Police,
 Establishment, Khyber Pakhtunkhwa,
 Peshawar
 (Respondent No.2)

[Signature]
 Regional Police Officer,
 Dera Ismail Khan
 (Respondent No.3)

[Signature]
 District Police Officer,
 Dera Ismail Khan
 (Respondent No.4)

[Signature]


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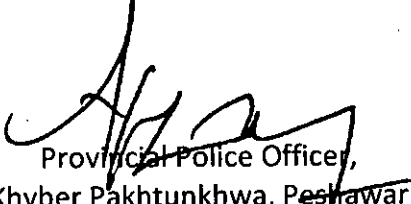
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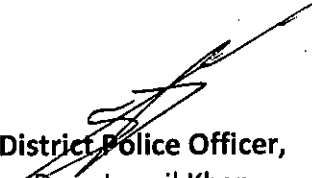
A U T H O R I T Y

We, the respondents do hereby authorised Inspector/Legal, DIKhan to appear before the Service Tribunal Khyber Pakhtunkhwa, Peshawar, on our behalf, He is also authorised to produce/ withdraw any application or documents in the interest of Respondents and the Police Department.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)


Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar
(Respondent No.2)


Regional Police Officer,
Dera Ismail Khan
(Respondent No.3)


District Police Officer,
Dera Ismail Khan
(Respondent No.4)

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(5) ANNEXER "A"
(1)

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

STANDING ORDER NO. 03/2022

KHYBER PAKHTUNKHWA POLICE PROMOTION POLICY 2022

In exercise of the powers conferred by sub-section (3) of section 17 of the Khyber Pakhtunkhwa Police Act, 2017 (Act No. II of 2017), the Inspector General Khyber Pakhtunkhwa Police is pleased to issue the following Standing Order:

Aim

In order to streamline promotions in Khyber Pakhtunkhwa Police Establishment, provide uniform promotions policy, guidelines and mechanism for DPC or DSB for the objective and subjective assessments of the candidates on line for promotion to prevent and minimize the litigations and to clarify the ambiguities arising out of the promotion proceedings, the following patent promotion policy is promulgated.

1. Short Title, Application and Commencement:

- 1) The policy shall be called the Khyber Pakhtunkhwa Police Promotion Policy 2022.
- 2) The policy shall be applicable to promotions of all cadres of Khyber Pakhtunkhwa Police Ministerial Staff and IT Staff.
- 3) The Policy shall come into force at once.

2. Objectives:

Promotion means appointment of an Officer to a higher post in the Khyber Pakhtunkhwa Police. The Khyber Pakhtunkhwa Police Act, 2017 (Act No. II of 2017), the Khyber Pakhtunkhwa Police Rules 1934, The North West Frontier Province (Promotion of Superintendent of Police and Deputy Superintendent of Police) Rules 2007 and other appointment, promotion and transfer rules provide legal framework for appointment by promotion, this standing order further elaborates on methodology for objective assessment of performance of Officers for promotion to higher ranks.

3. Definitions:

- a) "Actualization" means assumption of charge of the higher post upon promotion or availing proforma promotion or promotions benefits after retirement.
- b) "Consideration for Promotion" means and included the objective and subjective assessment of the candidate on line for all kinds of promotion by DSB, DSC or DPC as the case may be. The recommendation shall include approval, defer and supercede.
- c) "Departmental Selection Board" or "DSB" means a board constituted under section 122 of the Khyber Pakhtunkhwa Police Act, 2017 (Act No. II of 2017) to consider promotion to all posts in Basic Pay Scales 18 for the time being reserved for promotion in their respective cadres.
- d) "Departmental Selection Committee" or "DSC" means a committee constituted by the Inspector General Khyber Pakhtunkhwa Police, under section 122 of the Khyber Pakhtunkhwa Police Act, 2017 (Act No. II of 2017) to consider promotion to all posts in

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2) Successful completion of mandatory training and passing of any proscribed departmental promotion examination provided in any Law, Rules, or Standing Order. Provided that in case an officer who is nominated in order of seniority for mandatory training declines to proceed on training for two consecutive training courses, then he/she would forfeit the right to consideration for promotion.

6. Grounds for deferment:

- 1) After consideration of the names on the panel, the DSB, DSC or DPC may recommend a civil servant for deferment on the basis of any one or more of the following reasons:
 - a) PER dossier is incomplete, or any other document/information required by the DSB, DSC or DPC for determining his suitability for promotion is not available.
 - b) The record of the officer for last three years contains an adverse PER/ACR, and decision on his representation against adverse remarks is pending.
 - c) Disciplinary proceedings, anti-corruption, or other enquiries or criminal cases are pending against the officer. However, preliminary inquiry/probe in the department or complaint pending with Anti-Corruption Establishment shall not be considered as a cause of deferment.
 - d) The officer is on deputation with a foreign Government/ international organization.
 - e) The officer is on training abroad/long leave for a period of more than six months or is not likely to return within a period of six months.
 - f) The officer is on contract appointment outside or within the department.
 - g) The inter se seniority of the officer is disputed/ subjudice.
 - h) The officer has not earned a full year's report after having been on deputation abroad/employment with foreign Government/long leave.
 - i) The officer does not fulfill any specific condition laid down for a specific category of officers/officials such as mentioned any Law, Rules, or Standing Order.
- 2) The civil servant whose promotion has been deferred will be considered in the subsequent DSB or DSC, as soon as the reason of deferment ceases to exist. The officer who for any reason is deferred for promotion shall regain his original seniority if he is not subsequently superseded.

7. Grounds for Supersession:

- 1) The Board shall supersede those officers who do not fulfill the eligibility threshold as provided in this Policy or any other Law, Rules or Standing Order.
- 2) The DSB, DSC or DPC may recommend a civil servant for supersession on the basis of any one or more of the following reasons:
 - a) The record of the officer contains adverse remarks (not expunged after representation) during the last three years.
 - b) The officer has failed to qualify or failed to appear in the prescribed departmental examination (within the prescribed attempts) or mandatory training.
 - c) The officer has been awarded a major penalty within three years of the date of consideration for promotion, and penalty order is not set aside by competent authority.
 - d) The officer has been awarded 05 or more minor penalties during the last 03 years.
 - e) The officer has been deferred by three consecutive DSBs, DSCs or DPCs.

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Promotion. Entitlement. Quantification though had not been prescribed in Pakistan Steel Officers Service Rules and Regulations, 1989, but its adoption was also not barred in the Rules. A.C.R.'s were important component for determining fitness of employee for promotion. Undoing the promotion of respondents, who were promoted, which had not been challenged before Service Tribunal for a period of 11 months, would not be justified. Consideration of promotion of the appellants after their retirement, would also not be justified. Relief prayed for by the appellants, could not be granted in circumstances. **[2006 PLC(CS) 558 FST]**

Integrity Quantification

Attested
K. J. J.