


Cost of Rs. 2000/- received in Service Appeal No. 288/2023

Titled Shoaib Khan vs. Police Deptt.

in the office of Superintended, Vide Order 19th Sep Dated: 26/10/2023.

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Superintended
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 288/2023.


Civil driver Shoaib Khan of CCP, Peshawar.....**Appellant.**

VERSUS

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

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✓ DSP/Legal,
CCP, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.288 /2023.

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VERSUS

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

REPLY BY RESPONDENTS NO. 1, 2,3 & 4.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.
8. That the Hon'ble Service Tribunal has no jurisdiction to entertain the case of up-gradation.

REPLY ON FACTS:-

1. Pertains to record.
2. Pertains to record.
3. Incorrect. After due process of recruitment, Authorities of the ETEA forwarded a merit list of 59 candidates, wherein, top 30 candidates were considered for appointment against the 28 posts of District Peshawar and were called for interview. Vacancy distribution for the Said appointment is as under:

a. Investigation	= 13
b. CTD	= 07
c. Telecommunication	= 02
d. PTC Hangu	= 03
e. FSL	= 03 (BPS-4)
<u>Total</u>	<u>= 28</u>

During scrutiny of the vacant posts of Driver Constables, it has been found that among the 30 candidates, the appellant and two others were also included at the bottom of interviewed candidates and were informed that the three posts are falls in the cadre of Civil Drivers and not of Driver Constables. Hence, they could be considered as Civil Driver instead of Driver Constables. After thorough discussion amongst the appellant and two others, they agreed to accept the offer of appointment as Civil Drivers with the prescribe terms and conditions for the post of civil drivers laid down by the provincial government. Furthermore, a written bond on affidavits from the appellants was also obtained in this regard. (Copy of vacancy positions and affidavit of the appellant are annexed as A, B)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8631

Dated 26-10-23

4. Incorrect. During the process of his recruitment, the Finance Department of Khyber Pakhtunkhwa has upgraded all the posts of Constable and Driver Constable from BPS-05 to BPS-07 as well as Civil Driver from BPS-04 to BPS-06, therefore, the appellant was appointed as Civil Driver in BPS-06 vide order No.22429-32/OASI dated 23.11.2018 accordingly.(copy of appointment order is annexure as C).
5. Incorrect. Para already explained in the above para. Furthermore, the appellant and two others were cognizant that they are going to be appointed against the existing vacancies of Civil Driver which they accepted in written/affidavit. Therefore, the appellant has no right to claim the post of driver constable.
6. Incorrect. As explained in the preceding paras. The appellant was dealt legally and no discrimination has been done to him by the replying respondents. Similarly, according to Standing Order No. 03/2014, Para No.03 provided that "henceforth, there shall be no change, for any officer or official of Police department, from one cadre to another i.e. executive, technical, IT, Legal and or ministerial except done in accordance with the criteria approved by the Provincial Police Officer". The practice of cadre change is banned; hence legally, the appellant has no right to claim for cadre change. (copy of standing order is annexure as D)
7. Incorrect. As explained in the preceding paras.
8. Incorrect. Prior to issuance of their appointment order the appellant and two others had given affidavit to the department, wherein, they had accepted the terms & conditions pertaining to the post of civil drivers BPS-4 now BPS-6. Furthermore, the appellant at the time of appointment was well aware about the appointment as civil driver on his own sweet will. The writ petition was dismissed as withdraw by the Hon'ble Peshawar High Court Peshawar on 23.06.2022 and directed the respondents to decide it the representation of the appellant.
9. Incorrect. In pursuance of directions of the Hon'ble Peshawar High court, a meeting was held in CPO, on 06.09.2022, wherein, case of the appellant and two others was thoroughly discussed and decided that the appellant and two others were rightly appointed as Civil Driver on the terms & conditions of the post of civil driver on their written bond/affidavit. The appellants performing their duties on the post of Civil Drivers since 2018. After a lapse of sufficient period of time, the appellant awoke and demanded for the post of driver constable which is unjustified having no right as they are civil drivers and not driver constable. Moreover, the requests of the appellants also in contradiction to standing order No.03/2014, which prohibits change of cadre. The Hon'ble Peshawar High Court disposed off the COC on the report based on above facts submitted by the department.
10. Para already explained in detail in the above paras. Furthermore, the appellant was initially appointed as Civil Driver in PBS-06 on his own willingness. The appellant has no cause of action to change his cadre from the post of civil driver to driver constable and no kind of discrimination was done to him.
11. That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

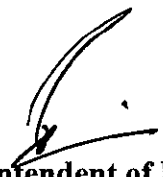
3

- A. Incorrect. The appellant was treated as per law/rules and no article of Constitution of Pakistan 1973 has been violated by the replying respondents.
- B. Incorrect. The appellant and two others were informed that the three posts fell within the cadre of Civil Drivers and not Driver Constables. After expressing their willingness, they were appointed as Civil Drivers, adhering to the prescribed terms and conditions for the post of civil drivers outlined by the provincial government. Therefore, no discrimination has been committed by the replying respondents.
- C. Incorrect. Para already explained in the preceding paras. Further, Appellant has been treated strictly in accordance with law/rules and no legal right has ever been violated.
- D. Incorrect. The appellant was fully aware that he will be appointed as civil driver not as driver constable. He willingly accepted the terms and conditions associated with the civil post and in this regard he gave written bond/affidavit accordingly.
- E. Incorrect. Para already explained in the above paras. The appellant has never deprived of his due right nor treated with discrimination.
- F. Incorrect. The appellant and two others agreed to accept the appointment as Civil Drivers, adhering to the prescribed terms and conditions set by the provincial government for the posts. Additionally, written bonds on affidavits from the appellants were obtained to formalize their commitment.
- G. Incorrect. The appellant was rightly appointed as a civil driver, in accordance with the prescribed terms and conditions established by the provincial government for the posts of civil drivers on their affidavits at the time of their appointment as civil driver.
- H. Incorrect. The objections raised in the Para by the appellant are denied, having no legal footing and against the norms of law as the replying respondent always followed the law/rules in its true letter & spirit.
- I. Incorrect. At the time of the appointment, the appellant was fully aware that they were being appointed as civil driver and not as driver constable.
- J. Incorrect. The appellant was treated as per Article 10-A of the Constitution of Pakistan and no violation of Article 25 and 04 committed by the replying respondents.
- K. Incorrect. The appellant was appointed as civil driver and Finance department of Khyber Pakhtunkhwa subsequently upgraded all the posts of civil driver BPS-04 to BPS-06 as per laid down criteria by the provincial government. Further, the appellant has no cause of action to challenge the legal order of his appointment.
- L. Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

PRAYERS:-

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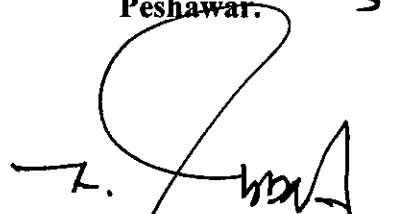
It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with cost please.




**Superintendent of Police,
HQrs, Peshawar.**



**Capital City Police Officer,
Peshawar.**



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



**Secretary Finance,
Khyber Pakhtunkhwa,
Peshawar.**

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AFFIDAVIT.

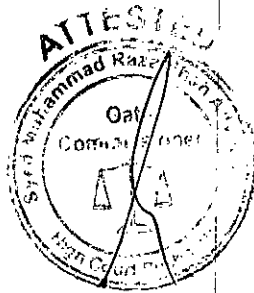
We respondents No. 1,2,3 & 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.


**Superintendent of Police,
HQrs, Peshawar.**


**Capital City Police Officer,
Peshawar.**


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


**Secretary Finance,
Khyber Pakhtunkhwa,
Peshawar.**



26 OCT 2023

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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AUTHORITY.

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Inam Ullah** DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.


**Capital City-Police Officer,
Peshawar.**

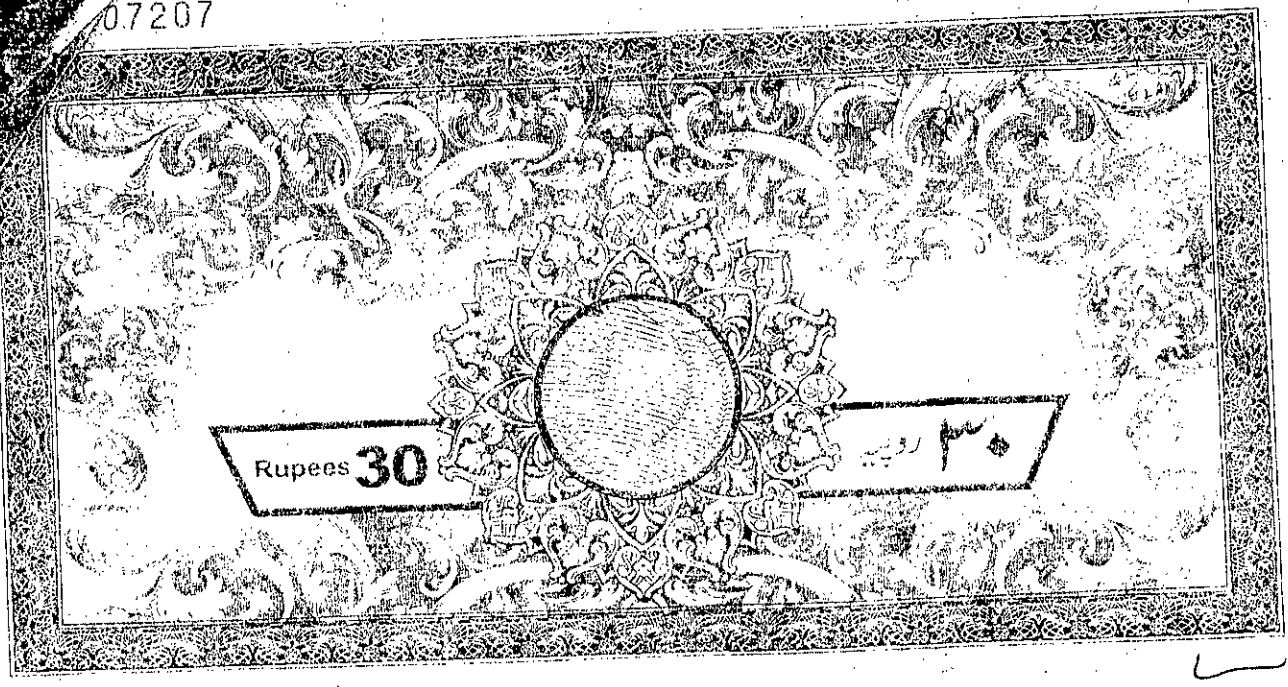
A >

VACANCY POSITION OF DRIVER CONSTABLES - 2018.

S.NO	District / Unit	District Vacancy	PTC Hangu Share	Total Vacant posts
1.	CPO	0	0	0
2.	Investigation Hqrs: CPO	5	0	5
3.	CCP, Peshawar - 0 SSP Investigation - 13 CTD - 07 Tele - 02 FSL - 03 (BS-04)	25	03	28
4.	Charsadda	0	01	01
5.	Nowshera	02	0	2
6.	Mardan	60	01	61
7.	Swabi	20	0	20
8.	Kohat + Investigation	15+01	0	16
9.	Hangu	32	0	32
10.	Karak	15	0	15
11.	Ramu	0	02	02
12.	Lakki	0	0	0
13.	DIKhan	0	02	02
14.	Tank	0	0	0
15.	Abbottabad - 0 FRP - 01	01	01	02
16.	Manshra - 12 RTW Manshra - 01	12+01	0	13
17.	Haripur	05	0	05
18.	Battagram	0	0	0
19.	Kohistan	06	0	06
20.	Torghar	01	0	01
21.	Swat + Invest: + FRP	78+0+02	01	90
22.	Shangla + Invest:	14+03	01	18
23.	Buner + Inv.	04	0	04
24.	Dir Lower + Inv.	0	02	02
25.	Dir Upper + Inv.	66+4	01	71
26.	Chitral + Inv.	0+02	01	03
	Total	383	16	399

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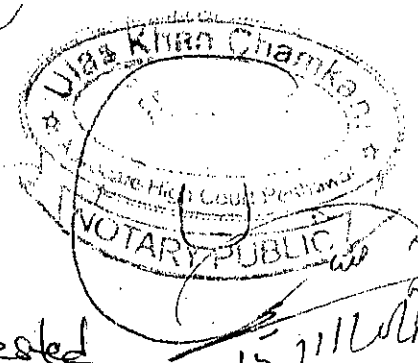
بیان حلقہ

قدوسی شعیب خان ولد زینت خان سہ ماہی پشاور کے رہنے والے ہیں اور ان کے پاس ایک گھر ہے جس کا پتہ ہے
 گھنٹہ گھر کے سامنے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے
 گھنٹہ گھر کے سامنے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے

ان کے پاس ایک گاڑی ہے جس کا نمبر ہے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے
 اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے
 اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے

بیان حلقہ محمد رفیق صاحب پشاور کے رہنے والے ہیں اور ان کے پاس ایک گھر ہے جس کا پتہ ہے
 گھنٹہ گھر کے سامنے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے
 گھنٹہ گھر کے سامنے اور ان کے پاس ایک گاڑی ہے جس کا نمبر ہے

ATTESTED



17307-2507460-9

Attested
Ullas

شعیب خان
 Shoaib Khan

Attested
 Dy. Supdt. Police
 Legal, CCP/Peshawar

15/11/15



C9
OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989

Phone No. 091-9212597

No. 22419 /OASI-Pesh, dated Peshawar the 27 / 11 /2018.

To: The Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Subject: RECRUITMENT OF DRIVER IN KP. POLICE THROUGH ETEA
Memo:-

Kindly refer to you good office letter No.6129-59/E-IV, dated 09.08.2018.

It is submitted that in compliance to the directions of your good office the following successful candidates have been recruited as Driver (Civil) BPS-6 against Forensic Science Laboratory (FSL) share vacancies. Copy of enlistment order is enclosed for ready reference.

S NO.	ETEA Merit	Name	FatherName	Address	Home PS
1.	25	Shoaib Khan	Zarbat Khan	Hassan Garhi Shami Road	Michani Gate
2.	26	Sajid Ullah	Muhammad Umar	Garhi Afsar Khan Umrar Mera	Urmur
3.	27	Saif Ullah	Muhammad Sabir	Mushtarzar Mohallah Sultan Khel	Badaber

Submitted please.


FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 22420 /OASI-Pesh, dated Peshawar the / /2018.

Copy to the:-

1. Director FSL, Peshawar with the request the documents of the above mentioned drivers are sent to your office for further necessary action, please.


FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR. o/c

Attested

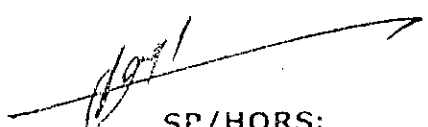

C² 10

ENLISTEMENT ORDER

The following candidates have qualified Physical and written test for recruitment as Driver through Education Testing Evaluation Agency (ETEA): After Psychological Evaluation and Physical Measurement and Special Branch Verifications they are hereby appointed as Driver (Civil) BPS-06 at **Rs. (10260-560-27420)** against the existing vacancy of **Forensic Science Laboratory (FSL)** Khyber Pakhtunkhwa, Peshawar purely on temporary basis subject to the medical fitness and verification of character from merit list as per instruction vide W/PPC letter No.6129-59/E-IV, dated 09.08.2018. Their services are liable to termination on 14 days notice without assigning any reasons. The appointment will take effect the date they actually reports for duty.

On appointment they will be posted to Forensic Science Laboratory Khyber Pakhtunkhwa, Peshawar.

S NO.	ETEA Merit	Name	FatherName	Address	Home PS
1.	25	Shoaib Khan	Zarbat Khan	Hassan Garhi Shami Road	Michani Gate
2.	26	Sajid Ullah	Muhammad Umar	Garhi Afsar Khan Umrar Mera	Urmar
3.	27	Saif Ullah	Muhammad Sabir	Mushtarzai Mohallah Sultan Khel	Badaber



**SP/HQRS:
FOR CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 22928-32 /OASI, dated Peshawar the 23 / 11 /2018.
Copy to the:-

1. W/Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for information please.
2. Addl: Inspector General of Police, Investigation KPK, Peshawar.
3. DISG, Investigations, KPK, Peshawar.
4. EC, Investigation, CPO, KPK, Peshawar.
5. Director Forensic Science Laboratory (FSL) Peshawar.

Attested
[Signature]



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

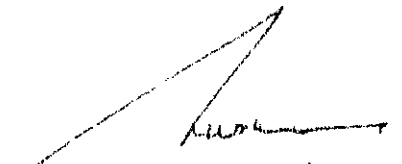
STANDING ORDER NO. 3/2014

Change of Cadre and Recruitment as Skilled Constables

This Standing Order is issued under Article 10(3) of Police Order 2002 in pursuance of the Police Policy Board decision taken in its 1st meeting held on 19th December 2013.

2. **Aim:-** It has been noticed that the policy of cadre change within the department has been misused. A number of Police employees of different cadres have landed into other cadres without fulfilling the requisite criteria. Similarly, the practice of recruiting 'Skilled Constables' has opened a backdoor of entry into Police constabulary, for those who neither fulfill the prescribed recruitment criteria nor adopt the prescribed procedure. This Standing Order is issued to address these anomalies.
3. **Change of Cadre:-** Henceforth, there shall be no change, for any officer or official of Police Department, from one cadre to another i.e. executive, technical, IT, legal, and/or ministerial except done in accordance with the criteria approved by the Provincial Police Officer.
4. **Skilled Constables:-** Henceforth, there shall be no recruitment in the category of 'Skilled Constables' till the formulation of proper policy by the Provincial Police Officer.
5. **Power to remove difficulties:-** If any difficulty arises in giving effect to this order, the Provincial Police Officer may by notification make such provisions as deemed appropriate.
6. **Amendment:-** All previous Standing Orders on the subject, to the extent of the provisions of this order, shall stand amended.

Attested
Lund


(NASIR KHAN DURRANI)
Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar