

*Execution Petition No. 138/2015
Umar Raman*

04.03.2016

Petitioner with counsel and Mr. Kabirullah Khan Khattak, Assistant AG for respondents present. Arguments heard and record perused.

This Tribunal vide judgment dated 6.7.2015 directed that respondent No. 3 i.e Provincial Police Officer, Khyber Pakhtunkhwa shall revisit the case of the petitioner vis-a-vis the position of similarly placed official and extend him similar treatment. Vide order dated 8.10.2015 the said authority reconsidered the case of the petitioner and his claim was rejected as such the judgment of this Tribunal referred to above stood implemented. It is, however, observed that in case of any grievances against the said departmental order the petitioner may agitate the issue before the prescribed forum in the prescribed manners, if so advised. The petition is disposed of in the above manners. File be consigned to the record room.

ANNOUNCED
04.03.2016


Chairman

04.03.16.

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 138/2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19.11.2015	<p style="text-align: center;">The Execution Petition submitted by Mr. Umar Zaman Khan through Mr. Ijaz Anwar Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	26.11.2015	<p style="text-align: center;">This Execution Petition be put up before S. Bench on <u>26-11-15</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p> <p style="text-align: center;">Counsel for the petitioner present. Notice to respondents be issued for 4.3.2016 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Chairman</p>

4

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 138/2015
in

In the matter of
Appeal No. 1298//2013
Decided on 06.07.2015

Appeal No. 1298/2013

***Umer Zaman Khan, Sub Inspector FRP / PR, Police Line,
Peshawar.***

(Applicant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa, Peshawar and others.

(Respondents)

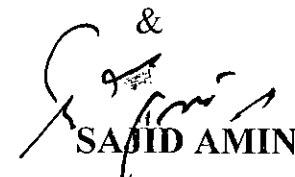
INDEX

S. NO	Description of documents	Annexure	Page No
1	Memo of Petition		1- 2
2	Affidavit		3
3	Memo of Appeal	A	4- 7
4	Judgment and order of the Tribunal dated 06.07.2015	B	8- 11
5	Order dated 08.10.2015	C	12
	Vakalatnama		

Appellant

Through


IJAZ ANWAR
Advocate Peshawar

&

SAJID AMIN
Advocate Peshawar

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Execution Petition no. 138/2015

In the matter of
Appeal No.1298//2013
Decided on 06.07.2015

*in
Appeal no. 1298/13*

E.W.F. Province
Service Tribunal
Diary No 1321
Dated 19-11-15

*Umer Zaman Khan, Sub Inspector FRP / PR, Police Line,
Peshawar.*

(Applicant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Finance Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
4. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

***Application for the implementation of the
Judgment and Order dated 06.07.2015 of
this Honourable Tribunal.***

Respectfully Submitted:

1. That the above titled service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 06.07.2015. *(Copy of the memo of appeal is attached as Annexure A)*
2. That vide judgment and order dated 06.07.2015, this Honourable Tribunal while setting aside the impugned order dated 15.08.2013, remitted the case of the appellant for revisiting it afresh. The operating Para of the Judgment and order dated 06.07.2015, is reproduced below:

"....in view of the circumstances, the tribunal is constrained to indulge in the case by setting aside the order of respondent No. 3 dated 15.08.2013, and to remit the case to the respondent No. 3 who shall revisit it afresh to ascertain as to whether the appellant in fact is a similarly placed official and if so to treat him similarly strictly in accordance with la. The respondents shall decide the case within two months of the receipt of this judgment. The appeal is disposed of accordingly....."


(Copy of the judgment and order dated 06.07.2015, is attached as Annexure B)

3. That vide order dated 08.10.2015, the respondents have again refused the prayer of the appellant for one step promotion/up-gradation in light of the directive of the Chief Minister Khyber Pakhtunkhwa conveyed vide letter dated 16.07.2009, despite the appellant being similarly placed to those who were allowed the same benefit. *(Copy of the order dated 08.10.2015, is attached as Annexure C)*
4. That the order dated 08.10.2015, is passed in violation of the clear directions of the judgment of this Honourable tribunal. The respondents have never taken into consideration the fact that the appellant is a similarly placed employee and while refusing to accede the prayer for one step promotion of the appellant, they again shown the same reasons which were previously mentioned in the rejection order once turned down / set aside by the Honorable Tribunal vide its judgment dated 06.07.2015.
5. That as per the spirit of the judgment and order dated 06.07.2015, of this Honourable Tribunal, the respondents were required to consider whether the appellant is similarly placed employee or not keeping in view the directions of the Honourable Tribunal, however this fact has completely ignored by the respondents and have passed the order dated 08.10.2015, on flimsy grounds.
6. That the respondents are legally bound to implement the judgment of this Honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the respondents may please be directed to implement the judgment and order dated 06.07.2015 of this Honourable Tribunal in its true letter and spirit.

Through

Applicant


IJAZ ANWAR
Advocate, Peshawar

&


SAJID AMIN
Advocate Peshawar

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No.1298//2013
Decided on 06.07.2015

*Umer Zaman Khan, Sub Inspector FRP / PR, Police Line,
Peshawar.*

(Applicant)

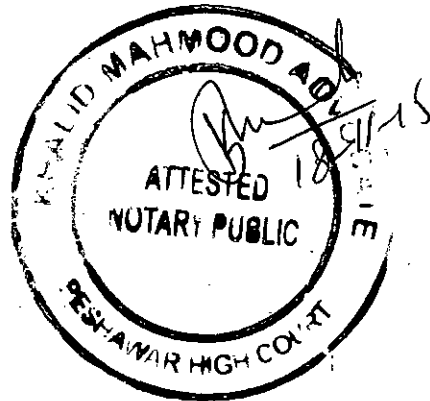
VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa, Peshawar and others.

(Respondents)

AFFIDAVIT

I, *Umer Zaman Khan, Sub Inspector FRP / PR, Police Line,
Peshawar*, do hereby solemnly affirm and declare on oath that the
contents of the above application are true and correct and that nothing
has been kept back or concealed from this Honourable Tribunal.



[Handwritten Signature]
Deponent

(4)

ANNEXA "A"

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. _____/2013

Umar Zaman Khan, Sub-Inspector FRP / PR, Police Line,
Peshawar.
(Appellant)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Finance Department, Govt of Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
4. Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Order dated 15.08.2013 whereby the departmental appeal for the grant of one step promotion to the appellant has been regretted.

Prayer in Appeal:

On acceptance of this appeal the order dated 15.08.2013 may please be set aside the respondents are directed to allow the benefit of one step promotion in accordance with the directives of the Chief Minister Khyber Pakhtunkhwa, conveyed vide letter dated 16.07.2009. Non consideration of the Appellant for one step promotion and treating him discriminately is illegal, unlawful and without lawful authority and of no legal effect and benefits or any other remedy deemed proper may also be allowed. The respondents are bound to follow the law and to implement the directive of the Chief Minister in letter and spirit and to allow one step promotion to the Appellant w.e.f the date when his junior / colleagues were promoted with all back benefits and arrears with all benefits.

Atc
#

e 5

Respectfully submitted:

1. That the Appellant is serving in the Frontier Reserve Police and remained posted in Malakand Range.
2. That in the year 2009, Swat Region remained in the control of the militants, the army operation was going on and in this situation, the Appellant stood fast and performed his active duties, maintaining peace in the area.
3. That the army operation against the militants remained successful and the situation of the Swat Region became normal, in this period the District Police and the Frontier Reserve Police throughout remained on their active duties side by side.
4. That when peace prevail in the area the then Chief Minister visited the Swat Area and was appraised about the valour and sacrifices of the Police Officers, he in recognition of their duties issued directives for one step promotions as a Special Case to all Police Officers who remained on active duty in the operational period. (Copy of the directives circulated vide letter dated 16.07.2009 is attached as Annexure A).
5. That at the initial stage the names of all the Police Officers of the District Police who remained on active duty were recommended for one step promotion, however, the Police Officers / Officials of the FRP Malakand Range were ignored.
6. That on the insistence of the FRP employees, vide letter dated 25.07.2009 the names of different employees / police officers of the FRP were sent to the Office of the Respondent No 2. In the meantime the Appellant was transferred to police lines FRP Peshawar on 21.8.2009.
7. That vide order dated 14.04.2010 sanction was accorded for one step promotion of Police Officers / Officials on active duty in operational period. It transpired that only the name of the Police Officers / Officials of the District Police were recommended and the FRP employees were deprived despite the fact that they were similarly placed and remained posted in the most volatile areas in the operational period. (Copies of the sanction letters of the Finance Department are attached as Annexure B).
8. That in the meantime some of the colleagues of the Appellant who remained at District Swat, filed writ Petition No 2498/2010, the writ petition was disposed of vide judgment and order dated 7.9.2010 with a direction to the respondents to pass an appropriate

ATC
#

6

orders on the recommendations regarding the one step promotion. (Copy of the Judgment and Order dated 07.09.2010 is attached as Annexure C).

9. That those writ petitioners later on filed COCs for the implementation of the judgment of the Honourable Peshawar High Court, and it was recently that they have also been allowed one step promotion. (Copy of the order dated 29.05.2012 & order dated 17.05.2012 with the list is attached as Annexure D & E)
10. That the Appellant throughout agitated for the grant of one step promotion however he remained deprived, recently he submitted a representation for the grant of promotion, however no action was taken thereon. (Copies of the correspondence, and representation are attached as Annexure F, G, H, & I)
11. That the appellant thereafter submitted Writ Petition No. 2040-P/2012 however it was disposed of vide judgment and order dated 15.11.2012 with a direction to the respondents to decide the representation of the appellant. (Copy of the order dated 15.11.2012 is attached as Annexure J)
12. That the Representation of the appellant was regretted vide order dated 15.08.2013, copy conveyed on 16.08.2013. (Copy of the order dated 15.08.2013 is attached as annexure K)
13. That the Appellant having been discriminated and deprived of one step promotion is aggrieved and have got no other adequate and efficacious remedy available in law, are constrained to invoke the Constitutional Jurisdiction of this Honourable Tribunal inter alia on the following grounds:-

GROUND OF APPEAL:

- A. That the Appellant has not been treated in accordance with law, and his right secured and guaranteed under the Law and Constitution have been violated.
- B. That the directives of the Chief Minister and subsequent orders of the Respondent No 2 were clear and made applicable to all the Police Officers / Officials remained on active duties in the operational period, denying to it to the Appellant is highly discriminatory and step mother treatment, is thus not tenable.


ATC
TD

- C. That the Appellant has been treated discriminately among his colleagues serving in the District Police/ FRP though the Appellant remained on active duties in the most volatile / disturbed areas in the operational period, but due to his transfer he remained deprived of.
- D. That the acts and omissions of the respondents in denying one step promotion to the Appellant is illegal, unlawful and without lawful authority.
- E. That the Appellant is fit and eligible for promotion in accordance with the criteria set in the directives of the Chief Minister. Thus he is entitled to the benefit of the directive of the Chief Minister.
- F. That the respondents are bound to follow the law and to implement the directives of Chief Minister in letter and spirit.
- G. That the matter has already been decided by the Honourable High Court, hence the same benefit is also required to be extended to the Appellant as well.
- H. That the Appellant seek the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this petition.

It is, therefore, prayed that on acceptance of this Appeal, the appeal in hand be accepted as prayed for in the heading of this appeal.



Appellant

Through


IJAZ ANWAR
Advocate, Peshawar

Affidavit

I, *Umar Zaman Khan, Sub-Inspector FRP / PR, Police Line, Peshawar*, do hereby solemnly affirm and declare on oath that the contents of the above appeal are true and correct and that nothing has been kept back or concealed from this Honorable Court.


Deponent

ATC


298-16

CR#KSL-111 (8)

ANNEX B



Sr. No. 1
Date of order/proceedings 2

Order or other proceedings with signature of Judge/Magistrate 3

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 123456789

Umar Zaman Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar etc.

JUDGMENT

ABDUL LATIF, MEMBER - Appellant with

counsel (Mr. Ijaz Anwar, Advocate) and Government Pleader (Mr. Ziaullah) for the respondents present.

06.07.2015

2. The instant appeal has been filed by Mr. Umar Zaman, Sub Inspector FRP under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 15.08.2013 of respondent No. 3 whereby the departmental appeal for the grant of one step promotion to the appellant had been regretted. The appellant prayed that the impugned order may be set aside and one step promotion may be granted to him w.e.f. the date his junior colleagues were promoted with all back benefits and arrears.

3. Facts giving rise to the instant appeal are that appellant is serving in the FRP and remained posted in Malakand in the year, 2009 when Swat Region remained in the grip of militancy and Army Operation was conducted against the same. The then Chief Minister announced one step promotion to all police officers who remained on active duty



Signature of Abdul Latif

ATC

during the operation period. That at the initial stage all the police officers of the District Police were recommended for one step promotion however, the officers/officials of FRP Malakand Range were ignored. That some of the colleagues of the appellant who remained in District Swat during the operation filed Writ Petition in the Hon'ble Peshawar High Court who vide judgment dated 07.09.2010 directed for passing appropriate orders on recommendations of the committee on one step promotion. His representation was decided on the intervention of Peshawar High Court in Writ Petition No. 2040/2010 and regretted by the department, hence the instant appeal.

4. The learned counsel for the appellant argued that the appellant was not treated according to law and his rights secured under the law and the Constitution were violated by the respondents. That the appellant was discriminated against as his similarly placed colleagues were given the benefit but he was deprived due to his transfer out of Swat District. He further argued that appellant was fit and eligible for promotion in accordance with the criteria set in the directive of the Chief Minister for the one step promotion and prayed that accepting the appeal, the impugned order may be set aside relied on 2009-SCMR-1.

5. The learned Government Pleader on behalf respondents argued that case of the appellant was examined the department in pursuance of the Writ Petition cited

ATTESTED
EXC. CLERK
Khyber Pakhtunkhwa
Services Tribunal
Peshawar

ATC
to

3/2/10
2/2/10
3/2/10
3/2/10

and he was not found fit for the benefit as his relevant authorities did not recommend him. He stated that his case was unlike those FRP officials who were granted the one step promotion and prayed that the appeal being devoid of any merits may be dismissed.

6. Arguments of the learned counsels for the parties heard and record perused with their assistance.

7. From perusal of the record of the case, it transpired that in pursuance of sanction of Finance Department dated 14.04.2010 benefit of one step promotion was granted to officers/officials of the District Police who remained stick to their duties during the Military operation against the militancy in the year 2009. Officers/officials of the FRP who were initially ignored from the said benefit were subsequently considered in pursuance of directions of the Peshawar High Court in Writ Petition No. 2498/2010 as consequence whereof certain committee was constituted, details whereof are not available on this record.. It is however, not clear as to whether any officer/official other than those in the above cited Writ Petition No. 2498/2010, were allowed the one step promotion on the ground of being similarly placed personnel and as to why and on what ground the appellant was denied the benefits. It is also not amply clear as to whether recommendations of supervisory officer was the sole criterion for grant of one step promotion or it was subject to any clearly laid down criteria and appellant's case was ever tested on the touchstone thereof.

ATTESTED
EXAMINER
Service Tribunal
Peshawar

A/c

(11)

The case cannot be decided on the bare reading of the impugned order dated 15.08.2013 passed by respondent No. 3 and in the absence of the criteria for one step promotion which is not available on the record of the case.

8. In view of the circumstances, the Tribunal is constrained to indulge in the case by setting aside the order of respondent No. 3 dated 15.08.2013 and to remit the case to the respondent No. 3 who shall revisit it afresh to ascertain as to whether the appellant in fact is a similarly placed official, and if so, to treat him similarly strictly in accordance with law. The respondents shall decide the case within two months of the receipt of this judgment. The appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
06.7.2015.

Shy. Abdul Latif
Shy. J. B. Bhatti

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 15.7.2015
Number of Pages 1000
Page No. 10
Page No. 2
Page No. 12
Date of Completion of Copy 15.7.2015
Date of Delivery of Copy 15.7.2015

AJC



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

12

SC
ANNEXED 'C'

ORDER.

This order is passed in compliance with the direction of Service Tribunal KPK dated 06.07.2015 passed in service appeal No. 1998/2013 title Umer Zaman SI/PC VS Govt: & etc.

Tribunal has directed that the case of SI/PC Umer Zaman may be re-considered whether appellant is a similar placed official who were allowed personal up-gradation in-recognition of performing duties during Operation at Swat or not.

The relevant record was examined which revealed that the appellant was not recommended by the committee constituted for the said purpose. Furthermore, personal up-gradation of the police officials was allowed by the Govt. of KPK Finance Department. Various cases of left over Police personal from personal up-gradation were recommended to the Provincial Govt: vide this office Endst: No. 10862/E-II, dated 29.05.2012 regretted all the cases and directed that no other cases will be entertained (copy enclosed).

This is last but not the least that the Honorable Supreme Court of Pakistan has conveyed copies of the Judgment to all the Govt. functionaries of the reported Judgments 2010 (PLC (CS) 924.2013 SCMR-1752) that out of turn promotion shall be stopped.

Keeping in view of the above facts the prayers of appellant could not be acceded, to therefore rejected.

(ASIF IQBAL MOHMAND) PSP
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

No. 2973-78 /E-III. Dated Peshawar, the 08 / 10 /2015. 5/11

Copy of above is forwarded for information and necessary action to the:-

1. Addl: IGP/HQrs: Khyber Pakhtunkhwa Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa Peshawar w/r to his letter No. 6186 SI-Legal, dated 29.07.2015.
3. Regional Police Officer Malakand Region Swat.
4. Registrar, Services Tribunal Khyber Pakhtunkhwa Peshawar.
5. AIG/Legal CPO, Peshawar.
6. Incharge Central Registry Branch CPO Peshawar.

ATC
FD

POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa Session Judge Peshawar

Umar Zaman Khan } For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of Khyber Pakhtunkhwa } Defendant
Session Judge Peshawar } Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/We, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

Adv. Saqib Amin Advocate my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year 2010
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Accepted
Saqib Amin

Ijaz Anwar
Advocate High Courts & Supreme Court of Pakistan