BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1730/2023.

Muhammad Ismail Marwat ..... **Appellant.**

VERSUS

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

I n d e x

S.NO	DOCUMENTS	ANNEXURE	PAGES
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DSP LEGAL,
CCP PESHAWAR.
03/11

06-11-2023
Peshawar.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1730/2023

Muhammad Ismail Marwat..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa etc

.....(Respondents)

PARA-WISE COMMENTS BY RESPONDENT NO. 1 TO 4

RESPECTFULLY SHEWETH:

That the respondents are submitted as under:-

PRELIMINARY OBJECTIONS:-

a) That the appeal is not based on facts.
b) That the appeal is barred by law and limitation.
c) That the appeal is not maintainable in the present form.
d) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
e) That the appellant is estopped to file the instant appeal by his own conduct.
f) That the appellant has not come to this Honorable Tribunal with clean hands.
g) That the appellant has got no cause of action and locus standi to file the instant Service Appeal.

FACTS

1. Pertains to personal information of the appellant, needs no comments.
2. Denied as incorrect. As reported by the CCPO, Peshawar vide his office Letter No. 16632/EC-I dated 25.09.2023 (attached as Annexure **'A'**), the appellant qualified Intermediate College Course for the term ending 20.09.1994 much earlier than his colleagues. Subsequently he also got promotion and confirmation in the rank of ASI as special case in 2005 earlier than his colleagues. Besides, the appellant was initially recruited on **21.02.1984** in District Karak and later on, he was transferred to CCP/ Peshawar in **1985**. Subsequently, on **01.01.1990** he was transferred to ATS Centre Islamabad where, taking benefits of incentives extended to the instructors in Training Institute, he was directly selected to Lower College Course at PTC, Hangu for the term ending **20.09.1993**, superseding his colleagues initially appointed with him. Such out of turn selection to Lower College Course amounts to Out of Turn Promotions deprecated by the Hon'ble Apex Court at its landmark judgments reported in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions.
3. Incorrect and misleading as Intermediate Selection of the appellant was against turn ahead of his original colleagues which amounts to Out of Turn Promotion deprecated by the august Apex Court as highlighted above.

4. Incorrect and misleading as according to CCPO/ Peshawar report ibid, the appellant was confirmed as ASI as a special case in 2005 much earlier than his original colleagues.

5. Incorrect, the Rule 12.18 of Police Rules, 1934 does not relate to confirmation. Rather the appellant has availed confirmation in the rank of ASI as a special case which amounts to Out of Turn Promotions as explained above.

6. It is worth noticing that appellant himself is admitting the fact that he was confirmed in a special case on the basis of outstanding performances which amounts to out of turn promotion deprecated by the Apex Court in various judgments reported as 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019.

7. Denied as incorrect. The appellant has gained benefit of Out of Turn Promotion in the shape of confirmation in the rank of ASI as a special case in 2005 earlier than his colleagues upon which he has climbed the ladder of promotion and career progression which also amounts to Out of Turn Promotion.

8. Pertains to record, however, the appellant's confirmation in the rank of ASI on the basis of special case established a foundation for out of turn promotion due to which later on his further progression career became also accelerated. The same accelerated promotion has been declared as illegal, unlawful, unconstitutional and unislamic in plethora of Apex Court judgments. Appellant's out of turn promotion infringed upon the rights of other Police officers depriving them of their rightful seniority, hence was withdrawn in compliance of Apex Court order dated 26.01.2023 in Crl.O.P No. 38/2021

9. Correct to the extent that the august Apex Court in its landmarks judgments has held the Out of Turn Promotions as unconstitutional, unislamic, null and void ab initio.

10. Correct to the extent that the august Apex Court in its judgment reported as 2013 SCMR 1752 had directed all Chief Secretaries to implement the instructions contained in the judgment, operating Para of which is reproduced below;-

> *183. A copy of this judgment be sent to the Chief Justice, Sindh High Court through Registrar for circulating it amongst the learned Judges. A copy of this judgment be also sent to all the Chief Secretaries of the Provinces as well as the Secretary, Establishment Division, Government of Pakistan, Islamabad, with the direction to streamline the service structure of Crl.Org.P.No.89/11 etc. 138 civil servants in line with the principles laid down in this judgment. The Chief Secretary and Secretary, Services, Sindh, are further required to comply with this judgment in letter and spirit and report compliance within three weeks.*

11. In compliance with Order Sheet of Hon'ble Supreme Court of Pakistan dated 26.01.2023 in Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 and in pursuance of Judgments passed by Hon'ble Supreme Court of Pakistan in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR

456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions, all Unit Heads, Regional Police Officers and District Police Officers of Khyber Pakhtunkhwa Police were directed vide this office Letter No. CPO/CPB/75, dated 14.02.2023, to ensure compliance of above mentioned Orders in letter and spirit. Accordingly, all Out of Turn Promotions granted to Police personnel either on gallantry or otherwise belonging to different Units, Regions & Districts have been withdrawn by the concerned authorities and consequently their seniority has been re-fixed along with their Batchmates who were promoted during their intervening period by maintaining original inter-se-seniority.

12. Correct to the extent of CPO, Peshawar order dated 15.03.2023, wherein pursuant to the directions contained in the order dated 26.01.2023 of the Hon'ble Supreme Court of Pakistan in Crl.O.P No. 38/2021 and in compliance of the judgments pertaining to Out of Turn Promotions, the appellant was demoted from the rank of DSP to the rank of Inspector and his seniority was adjusted below the name of Inspector Salahuddin No. P/375 present at Serial No. 172 in the revised seniority list of Inspectors issued vide CPO, Peshawar No. 431/E-II/CPO/Seniority dated 06.12.2022.

13. Incorrect, the appellant has been proceeded in accordance with law/ rules as well as in the spirit of judgments of Hon'ble Supreme Court of Pakistan pertaining to Out of Turn Promotions and to avoid contempt proceedings initiated in Crl.O.P No. 38/2021. Therefore, the instant Service Appeal is not maintainable in law and is liable to be dismissed on following Grounds.

GROUNDS

A. Incorrect, the order issued by the respondent department is quite legal in accordance with law/ rules as well as per landmarks judgments of the Hon'ble Supreme Court of Pakistan.

B. Incorrect, the acts of respondent department are quite in accordance with mandate assigned in accordance with law/ rules.

C. Incorrect, misleading and misconceived, the appellant was confirmed as ASI as a special case in 2005 much earlier than his original colleagues. The appellant is concealing facts from this Hon'ble Tribunal.

D. Incorrect, the order passed by the respondent department is in accordance with law/ rules and Apex Court judgments. Therefore, is sustainable in eyes of law.

E. Incorrect and misleading, Rule 12.18 does not pertain to confirmation of ASI. Rather the appellant has availed confirmation in the rank of ASI in the year 2005 as special case.

F. Incorrect, the appellant has been dealt in accordance with law/ rules and as per Apex Court judgments.

G. Incorrect, as already explained above that appellant gained confirmation in the rank of ASI in the year 2005 prior to his original colleagues and the same amounts to Out of Turn Promotions deprecated by Hon'ble Apex Court in landmarks judgments reported above.

H. Incorrect, misleading and misconceived, the appellant has been treated as per law/ rules and as well as Apex Court judgments mentioned above.

I. Incorrect, misleading and misconceived, after demotion of Out of Turn Promotion, the appellant seniority is intact with his batchmates strictly in accordance with law/ rules. No victimization has been committed by the respondent department.

J. As already explained above that Rule 12.18 does not pertain to confirmation of ASI. Rather the appellant has availed confirmation in the rank of ASI in the year 2005 as special case.

K. Denied as incorrect, no such opinion has been given by the office of DIG/ Legal, CPO.

L. Incorrect as already explained above in detail.

M. Incorrect, the appellant qualified Intermediate College Course for the term ending 20.09.1994 much earlier than his colleagues. Subsequently he also got promotion and confirmation in the rank of ASI as special case in 2005 earlier than his colleagues.

N. Incorrect misleading. The withdrawals in Out of Turn Promotions have been carried across the board.

O. Incorrect, demotion order of the appellant is quite legal in accordance with law/ rules as well as Apex Court judgments as mentioned above.

P. The respondent department may also be allowed to adduce additional grounds at time of hearing of instant Service Appeal.

PRAYER:-

Keeping in view the above stated facts and circumstances, it is therefore humbly prayed that the appeal being devoid of merits is not maintainable and may kindly be dismissed with costs, please.

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

Capital City Police Officer,
Peshawar
(Respondent No. 4)

Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)

Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)

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

AFFIDAVIT.

I, ***Inamullah DSP/Legal,*** Capital City Police Peshawar do hereby solemnly affirm and declare that the contents of the accompanying Written Statement on behalf of respondent No. 01, 02, 03 and 04 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon, able Court. 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.

Respondents through

(**Inam Ullah**)
DSP/Legal,
CCP Peshawar.
03/11

ATTESTED
Zaheer Khan Advocate
Peshawar

A 6

5370/CP

OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR.
Tel: No.091-9210641, Fax No. 091-9212597

No. 16632- /EC-I, dated Peshawar the 25/9/2023.

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

Subject: **APPLICATION OF INSPECTOR MUHAMMAD ISMAIL.**

Memo:

Kindly refer to your office memo: No. CPO/CPB/263 dated 06.09.2023 on the subject cited above.

It is submitted that the record of this office regarding out of turn promotion of Inspector Muhamad Ismail was thoroughly examined. As per record Muhammad Ismail was enlisted as constable on 21.02.1984 in District Karak. In 1985, he was transferred to CCP, Peshawar. On 01.01.1990, he was transferred to ATS Centre Simly Dam, Islamabad on deputation basis. He qualified his Lower course in PTC Hangu term ending 20.09.1993 on Simly dam vacancy and his name was placed between Muhammad Arif No. 93 and Islah uddin No. P/375. He qualified his Intermediate course in PTC Hangu in term ending 20.09.1994 on ATS Centre Simly Dam vacancy and his name was placed between Sardar Ali No. 330/P and Nasrullah Shah No. 295/P. In 1998 he was repatriated to CCP, Peshawar from Simly Dam ATS Centre. He was promoted as Officiating ASI on 02.08.2002 and subsequently confirmed in the rank of ASI as a Special Case on 24.03.2005. He got Promotion upto the rank of DSP and demoted to the rank of Inspector in light of the Supreme Court judgment by CPO Vide order No. 1580/Legal/E-I dated 15.03.2023.

Keeping in view his due seniority, the benefits granted, for selection to the Intermediate College Course in 1994 earlier than his colleagues and promotion and confirmation in the rank of ASI as a special case in 2005 earlier than his colleagues, are withdrawn and his name may be placed before the name of his colleague in Lower Course Inspector Mr. Islah uddin No. P/375 in the list of Inspectors, please.

Attested

CPB 25/9

25/9/23

CAPITAL CITY POLICE OFFICER,
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.