

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2021/2023.


Constable Zahir Husain No.1123 of CCP Peshawar..... **Appellant.**

VERSUS

Capital City Police Officer, Peshawar and others..... **Respondents.**

I n d e x

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**DSP/Legal,
CCP, Peshawar.**

20/11/2023

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REPLY BY RESPONDENTS NO. 3,4 & 5.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

Khyber Pakhtunkhwa
Service Tribunal
9192
Entry No. 1711-2023

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.

REPLY ON FACTS:-

1. Pertains to record.
2. Incorrect. The appellant himself admitting the facts that he was given promotion as C-II/officiating Head Constable in special case in the year 2009 without observing legal formalities, which amounts to out of turn promotion. The same 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 promotion. As per Police Rules 1934, those constables will be promoted to the rank of Head Constable who qualified A-1, B-1 and lower college course, while instead of qualifying the said courses the appellant gained promotion in a special case (gallantry promotion). Such promotions have been deprecated in Apex court judgments reported as 2013 SCMR 1752, 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206 and 2018 SCMR 1218.
3. Incorrect. 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 judgment passed by the Hon'ble Supreme Court of Pakistan in 2013 SCMR 1752, Civil Review Petition No.193/2003 reported in 2015 SCMR456, 2016 SCMR 1254, 1254, 2017 SCMR 206, 2018 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 promotion, all unit Heads, Regional Police officers and district Police Officers of Khyber Pakhtunkhwa Police were directed vide CPO Letter No. CPO/CPB/45 dated 27.01.2023 and Letter No. CPO/CPB/75 dated 14.02.2023 to ensure compliance of above mentioned orders in letter and spirit. Accordingly, all out f turn promotions granted to Police personnel either

on gallantry or otherwise have been withdrawn by the competent authority. In compliance of judgments pertaining to out of turn promotion, the appellant was demoted from the rank of Head Constable to his original rank of Constable vide Order No.9134-45/CRC dated 18.05.2023.(copy of order is annexure as A)

4. Incorrect. The appellant had gained benefit of out of turn promotion in the shape of promotion in the rank of officiating Head Constable as a special case. The appellant without waiting of the disposal of his departmental appeal, filed Writ Petition before the Hon'ble Peshawar High Court.
5. Incorrect. The appellant was 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 promotion. Further, promotions and confirmations of Police officials on the basis of out of turn promotion, adhoc basis or acting charge basis promotions in the past created serious anomalies among the various seniority lists of Police ranks. Promotions and confirmations of Police personnel in violation of rules and regulations were termed as "out of turn promotions" by the apex Court of Pakistan firstly in case reported as Malik Nadeem Arif Vs Govt of Sindh etc in 2010/11. The term out of turn promotions, its vires and components were discussed in details and laid to rest by the following apex Court judgments:

- a) 1998 SCMR 2013
- b) 2013 SCMR 1752
- c) 2015 SCMR 456
- d) 2016 SCMR 1254
- e) 2017 SCMR 206
- f) 2018 SCMR 1218

Furthermore, the appellant filed Writ Petition before the Hon'ble Peshawar High Court wherein, during the course of argument the counsel for the petitioner stated that he does not press this Petition with the permission to approach the proper forum. Therefore the instant Service Appeal is not maintainable in law and is liable to be dismissed on following grounds.

REPLY ON GROUNDS:-

- A. Incorrect. The demotion order passed by the competent authority is just legal in accordance with law/rules as well as per landmarks judgment of the Hon'ble supreme court of Pakistan.
- B. Incorrect. Para already explained in the preceding paras. Further, the appellant himself admitting the facts that he was promoted to the rank of officiating head constable in a special case on the basis of outstanding performances which amounts to out of turn promotion deprecated by the Apex court judgments in the above mentioned judgments.
- C. Incorrect. The appellant wants to regain out of turn promotion which is clear violation of the Hon'ble Supreme Court of Pakistan judgments ibid wherein the apex court in the abovementioned cases, held that the practice/concept of out-of-turn promotions is unconstitutional, being against Fundamental Rights as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973.
- D. Incorrect. The appellant gain benefits of out of turn promotion in the rank of officiating Head Constable without fulfilling the legal criteria, hence the Apex court in its landmarks

judgments has held the same as out of turn promotions as unconstitutional, unislamic, null and void as ab initio. Therefore, in compliance of the directions of Apex court the demotion order passed by the competent authority is in accordance with law/rules and Apex court judgments. Therefore, is sustainable in the eye of law.

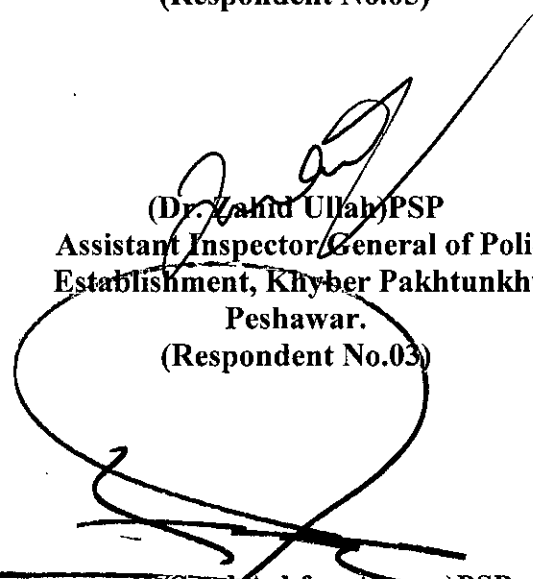
- E. Incorrect. The appellant was demoted from the rank of officiating Head Constable to constable in pursuance of Supreme Court judgments, hence in the instant case no need of proper proceedings. Further, the appellant was treated as per Article 04 & 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.
- F. Incorrect. Para pertains to record. However, the appellant was given promotion as officiating Head Constable which falls under the out of turn promotion being not regular promotion. Actually, confirmation/promotion in the respondent department to next higher rank is subject to completion of laid down criteria and those personnel who fulfill the said qualifications are promoted to the next higher rank.
- G. Incorrect. The appellant is hiding the legal and factual position in reality. Each and every case has separate facts and grounds. In the instant case no irregularity has been occurred. Furthermore, replying respondents are duty bound to follow law/rules and Apex court judgments while no right of the appellant has been violated.
- H. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

Prayers:-

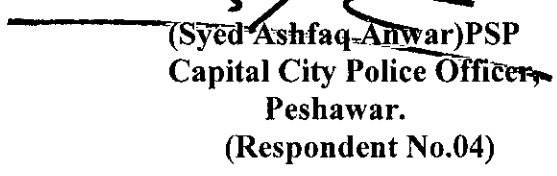
Keeping in view the above stated facts & judgments it is, most humbly prayed that the appeal of the appellant being devoid of merits is not maintainable , may kindly be dismissed with costs please.



**(Dr. Khadija Umer)PSP
Senior Superintendent of Police,
Coordination, Peshawar.
(Respondent No.05)**



**(Dr. Zahid Ullah)PSP
Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.03)**



**(Syed Ashfaq Anwar)PSP
Capital City Police Officers,
Peshawar.
(Respondent No.04)**

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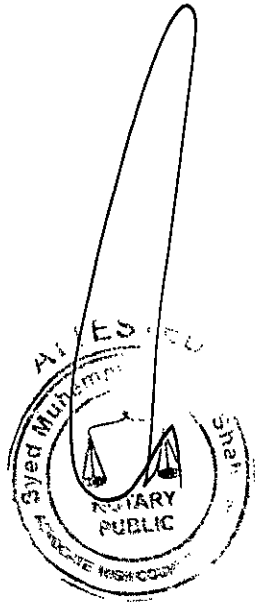
VERSUS

Capital City Police Officer, Peshawar and others..... **Respondents.**

AFFIDAVIT.

We respondents No. 3, 4 & 5 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.

**(Dr. Khadija Umer)PSP
Senior Superintendent of Police,
Coordination, Peshawar.
(Respondent No.05)**



**(Dr. Zahid Ullah)PSP
Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.03)**

**(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.04)**

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AUTHORITY.

We respondents No. 3, 4 & 5, are 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.

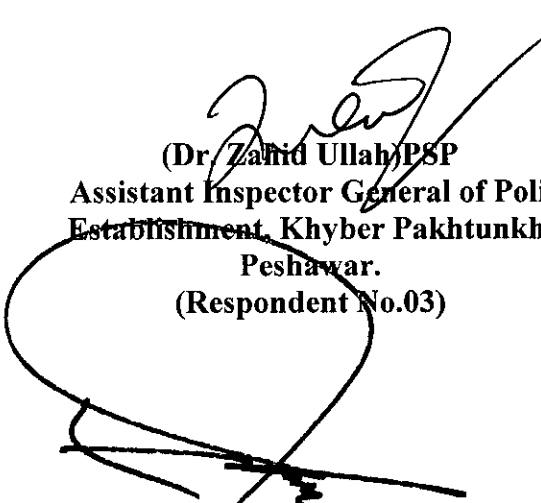


**Dr. Khadija Umer)PSP
Senior Superintendent of Police,
Coordination, Peshawar.
(Respondent No.05)**



(Dr. Zahid Ullah)PSP

**Assistant Inspector General of Police,
Establishment, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No.03)**



**(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.04)**



OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR
Ph: # 091-9211555

ORDER

In the compliance with CPO Order vide letter No. 2794-95/E-IV, dated 31.03.2013 on the line of Order of Turn Promotions, this office orders to be related to the following officers as noted against each name, withdrawn in the light of letter No. CPO/CPB/45, dated 27.01.2023 and No. CPO/CPB/73 dated 14.01.2023

Sl. No.	Name, Rank & No.	Order No.	Date of turn promotion Order	Remarks
✓	HC Anwar-ul-Ghazal No. 2866/192	CPB order No. 9498-15/E-II	dated 12.10.1991	Corvable
✓	HC Ejaz Hussain No. 1123	OC No. 3051 dated 18.09.2009, order No. 1235-76/PA	SP Qtrs dated 16.09.2009	Corvable
✓	LtC Muhammadzeb No. 979/194	D.O. No. 2029	dated 14.04.1992	Corvable
✓	HC Gulzarullah No. 189	CPB order No. 3693-07/E-II	dated 21.05.2009	Corvable

Consequently, the above mentioned order of turn promotion orders are hereby withdrawn through this order and the above officers are restored to their original substantive rank of Constable with immediate effect.

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Stamp: 15/03/2023

SSP COORDINATION
For CAPITAL CITY POLICE OFFICER,
PESHAWAR.

Res #6

9134-45/CRC

Dated: Peshawar 18/15/2023.

- Copy of the above is forward to:
- ✓ The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar vide his good office in No. 2794-95/E-IV, dated 31.03.2013
 - The Capital City Police Officer, Peshawar.
 - The SSP Operations & Coordination CCP Peshawar.
 - SP Headquarters, CCP Peshawar
 - PSO to WCCPO Peshawar
 - AD-IT, PO, EC-I, FMC & OAS.

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ATTESTED

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OFFICE OF THE CAPITAL
CITY POLICE OFFICER
PESHAWAR

ORDER

In the compliance with the CPO Order vide letter No. 2794-95/E-IV, dated 21/03/2023 on the issue of out of turn promotion, the office Orders so far related to the following officers as noted against each hereby withdrawn in the light of letter No. CPO CPB/45, dated 27/01/2023 and No. CPO/CPB/75 dated 14/02/2023

S.No	Name, Rank & No.	Withdrawn out of turn promotion Order	Reversed to original rank
1.	HC Aurangzeb No. 2466/192	CPO Order No. 9408-13/E-II dated 12/10/1991	Constable
2.	HC Zahir Hussain No. 1123	OB No. 3051 dated 18/09/2009, order No. 1235-38/PA SP HQrs dated 26/09/2009	Constable
3.	HC Mujahidzeb No. 979/194	OB No. 2029 dated 14/04/1992	Constable
4.	HC Rehmat Ullah No. 189	CPO order No. 3695-97/E-II dated 24/05/2008	Constable

Consequently, the above mentioned out of turn promotion orders hereby withdrawn through this order and the above officials are restored to their original substantive rank of constable with immediate effect.

SSP COORDINATION
For CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 9134-45/CRC

Dated the Peshawar 18/05/2023.

Copy of the above is forward to:

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar, w/r to his good office No. 2794-95/E-IV, dated 21/03/2023
2. The Capital City Police Officer, Peshawar
3. The SSSP Operations and Coordination CCP Peshawar.
4. SP Headquarters, CCP Peshawar.
5. PSO to W/CCPO Peshawar.
6. AD-IT, PO, EC-I, FMC & OASI.

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ATTESTED