


05.06.2018


Learned counsel for the appellant present. Mr. Zia Ullah, learned Deputy District Attorney present. Adjournment requested. Learned counsel for the appellant is directed to provide member copy of the present service appeal on the next date fixed as 23.07.2018. To come up for arguments on the date already fixed before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member


23.07.2018


Appellant absent. Learned counsel for the appellant is also absent. However, clerk of counsel for appellant present and requested for adjournment. Mr. Muhammad Jan, Deputy District Attorney on behalf of official respondents No. 1 & 2 and Mr. Mansoor Ali, ASI on behalf of private respondent No. 3 also present. Adjourned. To come up for arguments on 13.09.2018 before D.B.


Member

13.09.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Kabir Ullah Khattak learned Additional Advocate General present. case called for several times but no one appeared on behalf of appellant. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member



ANNOUNCED.

13.09.2018

Service Appeal No. 898/2015

04.01.2018

Clerk of the counsel for appellant present. Mr. Riaz Ahmed Payanda Khel, Assistant AG for official respondents No. 1 & 2 also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Member copy of the present service appeal is also not available on record. Clerk of the counsel for appellant is directed to submit the Member copy of the present service appeal on or before the next date of hearing. Adjourned. To come up for arguments on 26.02.2018 before D.B.

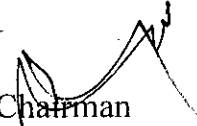

(Ahmad Hassan)
Member(E)


(M. Amin Khan Kundi)
Member (J)

26.02.2018

Counsel for the appellant and Addl. AG for the official respondents present. Learned AAG seeks adjournment. To come up for arguments on 29.03.2018 before the D.B.


Member


Chairman

29.03.2018


Counsel for the appellant and Asst: AG alongwith Mr. Mansoor Ali, ASI for respondents present. Counsel for the appellant seeks adjournment. Adjourned. Counsel for the appellant also directed to submit member copy of the instant appeal. To come up for arguments on 05.06.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

01.06.2017

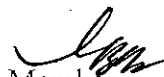
Clerk of the counsel for appellant present, Mr. Suleman, Head Constable alongwith Mr. Muhammad Adeel Butt, Additional AG for official respondents No. 1 & 2 also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 21.09.2017 before D.B.

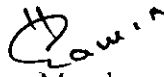

(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

21.09.2017

Counsel for the appellant present. Muhammad Jan, Learned Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 27.11.2017 before D.B.


Member
(Executive)


Member
(Judicial)

27.11.2017

Appellant in person and Addl: AG alongwith Mr. Mansoor, ASI for respondents present. Due to general strike of the Bar arguments could not be heard. Adjourned. To come up for arguments on 04.01.2018 before D.B.


Member


Chairman

11.07.2016

Agent of counsel for the appellant, Mr. Ziaullah, GP for official respondents No. 1 & 2 and private respondent No. 3 in person present. Due to strike of the Bar learned counsel for the appellant is not in attendance today therefore, case is adjourned for rejoinder and arguments to 21-10-16.

A: 11


MEMBER


MEMBER

21.10.2016

Agent to counsel for the appellant and Mr. Shabir Ahmed, Computer Operator alongwith Mr. Ziaullah, GP for official respondents No. 1 & 2 present. Due to non-availability of learned counsel for the appellant as well as learned Member Judicial Mr. Pir Bakhsh Shah is on leave therefore case is adjourned for arguments to 19-1-17 before D.B.


(ABDUL LATIF)
MEMBER

19.01.2017

Counsel for appellant and Mr. Ziaullah, GP for official respondents No. 1 & 2. Private respondent No. 3 through his representative Mr. Habibullah present and requested for adjournment as respondent No. 6 will appear in person to defend his right. The learned counsel for appellant requested that this case is lingering on from so many years such like request and that final opportunity may be extended to all for arguments. His request seems proper. All respondents are directed to be present in person or through their counsel. In case of absence the arguments of the available party to be heard and case will be positively decided on next date. To come up for arguments on 01.06.2017 before D.B.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER.

27.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving as DSP (legal) and is senior to private respondents No. 3 to 5 who are erroneously placed senior to appellant. That against the impugned order dated 19.3.2015 appellant preferred departmental appeal on 6.4.2015 which was not responded and hence the instant service appeal on 3.8.2015.

That the appellant being senior is entitled to be placed senior to private respondents No. 3 to 5.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.11.2015 before S.B. Notice of application be also issued for the date fixed.

Appellant Deposited
Security & Process Fee




Chairman

26.11.2015

Counsel for the appellant, Addl: A.G for official respondents No. 1 and 2 and private respondents No. 3 and 4 in person present. Requested for adjournment. To come up for written reply/comments on 22.3.2015 before S.B.


Chairman

22.03.2016




Agent of counsel for the appellant and Mr. Suleman, Reader alongwith Addl: A.G for official respondents No. 1 and 2 present. None present for private respondent No. 5. Proceeded ex-parte. Written statement by official respondents No. 1 and 2 as well as private respondents No. 3 and 4 submitted. The appeal is assigned to D.B for rejoinder and final hearing for 11.7.2016.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____


Case No. 898/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.08.2015	<p>The appeal of Mr. Imtiaz Ali Khan resubmitted today by Mr. Bilal Ahmad Kakaikzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR -</p>
2	12-8-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>13-8-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	13.08.2015	<p>None present for appellant. Notice to counsel for the appellant be issued for 27.8.2015 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. *Imtiaz Ali Khan DSP legal DPO Office Kohat* received today i.e. on 03.08.2015 is returned to the counsel for the appellant with the direction to submit one spare copy of the memorandum of appeal along with annexures i.e. complete in all respect within 10 days.


No. 1152 /S.T,

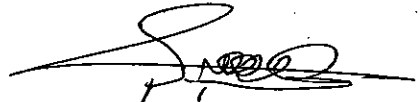
Dt. 03/8 /2015.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Bilal Ahmad Kakaizai Adv. Pesh.

10/8/015

Re-Submitted and one spare copy 



10/8/01015

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 898 / 2015

IMTIAZ ALI KHAN

Versus

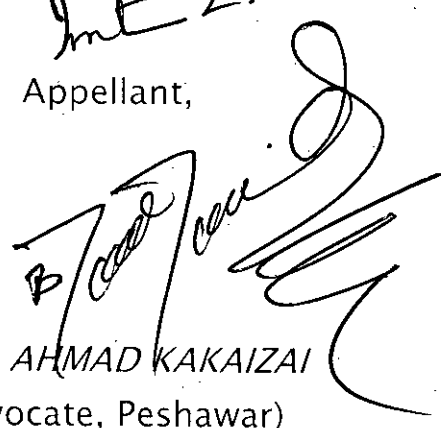
Government of KPK etc.

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██████████		
Annexure-A	Seniority List dated 31.10.2010.	10 - 13-A
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Wakalatnama		nil

Int 2.
Appellant,

Through:


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

213, Sunehri Masjid Road,
Peshawar Cantt.
0300-9020098

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Imtiaz Ali Khan (Appellant/Petitioner)

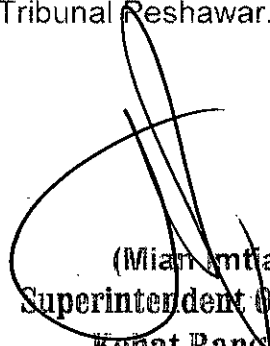
Through Secretary Home & Tribal Affairs

VERSUS

Govt. of Khyber Pakhtunkhwa etc. (Respondents)

AUTHORITY LETTER

I, Mian Imtiaz Gul, presently posted as Superintendent of Police, FRP Kohat Range Kohat, do hereby authorize Mr. Mansoor Ali ASI FRP Kohat to represent me in the above titled service appeal before this Honourable Service Tribunal Peshawar.


(Mian Imtiaz Gul)
Superintendent of Police, FRP
Kohat Range, Kohat
(Respondent No. 3)

1

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 898 / 2015

A.W.F. Province
Service Tribunal
Dary No. 980
dated 03-8-2015

IMTIAZ ALI KHAN,
DSP Legal,
DPO Office, Kohat.

..... APPELLANT

VERSUS

1. GOVERNMENT OF K.P.K
Through Secretary Home & Tribal Affairs,
Civil Secretariat, Peshawar
2. PROVINCIAL POLICE OFFICER,
Khyber Pakhtunkhwa, Peshawar.
3. IMTIAZ GUL,
DSP Legal, Mardan.
4. FALAK NAWAZ,
DSP Legal, CPO, Peshawar
5. MUSHTAQ AHMAD,
DSP Legal, AIG Legal, CPO, Peshawar

..... RESPONDENTS

3/8/15

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974
AGAINST SENIORITY LIST AS STOOD ON 19.03.2015 CIRCULATED
VIDE NO. 2351-66/SE-1 WHEREBY APPELLANT IS PLACED AT
SERIAL NO. 6 INSTEAD OF SERIAL NO. 3, I.E. ABOVE THE NAME OF
THE RESPONDENT NO. 3 AND AGAINST ASSIGNING WRONG
SENIORITY TO RESPONSENTS NO. 3 TO 6

Prayer: That on acceptance of this Service Appeal, the Impugned Seniority List be modified to the extent that Appellant be placed ahead of Respondent No.3 TO 5, with such other relief as may deem fit in the circumstances of the case may also be granted.

Respectfully Sheweth,

Short facts, giving rise to present Service Appeal, are as under:

1. That, Appellant was enlisted as Prosecuting Sub-Inspector (PSI) w.e.f. 08.01.1984.
2. That, the Appellant successfully underwent the requisite in-service training at Police College, Sihala. He passed the examination with credit way back in 1985 and as such under the Police Rules 19-28 (4); his name was brought on Promotion List "F".
3. That, as per Police Rules 19-26 (3), it was mandatory upon the Department to have confirm the Appellant after the successful completion of Training, immediately however, Appellant was promoted as Inspector Legal w.e.f. 03.12.1991 on the basis of Seniority of List "F".
4. That, Appellant's seniority position was correctly fixed and the same was never challenged till 31.12.2006 but on 31.12.2007, the Seniority List was disturbed and junior to Appellant was placed senior against which Appellant filed Service Appeal No. 797 / 2008 before this Honourable Tribunal but during the pendency of the Appeal, the official Respondents rectify the illegality and irregularity by issuing a revised Seniority List as stood on 15.07.2009, therefore, the pending service Appeal was withdrawn by the Appellant. It is important to mention here that in the Seniority List circulated vide Circulation Letter dated 15.07.2009, the Appellant was at S/No.9 and Respondents 3 to 5 were shown junior to him.

- (3)
5. That, once again defective Seniority List as stood on 31.10.2010 was issued on 03.11.2010 wherein Appellant was again relegated to 16th number by placing Respondents 3 to 5 ahead of Appellant which was challenged by the Appellant in this Honourable Tribunal and the same is still pending, copies of the Seniority List dated 31.10.2010 & Appeal No, 02 / 2011 is attached as Annexure-A & B.
 6. That, along with challenging the Seniority List, the Appellant also filed Service Appeal No. 398 / 2011 for confirmation as SI Legal since date of enlistment because the date of confirmation of the Appellant was the basic objection of the Department. The said Service Appeal No. 398 / 2011 was accepted by the Tribunal and the Appeal filed by the Department before Apex Court was also dismissed, copies of the Judgments dated 22.01.2013 & 31.07.2013 are attached as Annexure C & D.
 7. That on 23.05.2014, the Seniority List of Inspectors Legal of Dera Ismail Khan Region was issued wherein the date of confirmation as Inspector Legal was corrected, copies of the Seniority List dated 23.05.2014 & Relevant Recommendations etc are attached as Annexure E (Sheets).
 8. That, Appellant was promoted to the Rank of DSP Legal vide Notification No. 1092 dated 12.09.2014.
 9. That, Impugned Seniority List of DSP Legal as stood on 19.03.2015 was issued whereby once again Appellant has been shown junior to the Private Respondents despite the fact that the objection regarding the date of confirmation has already been settled, copy of the Impugned Seniority List is attached as Annexure F.
 10. That, being highly dejected from the list in question, the Appellant brought his genuine grievance into the notice of the Competent Authority by filing a Representation on 06.04.2015, copy of the Representation along with covering Letters are attached as Annexure-G.
 11. That, the Department / Competent Authority failed to redress the genuine grievance of the Appellant within statutory period,

(4)

mentioned in the law hence, this Service Appeal on the following amongst other grounds: -

GROUND:

- A. That, the Seniority List as stood on 19.03.2015 is patently against law and realities on the ground, hence unsustainable.
- B. That, the same is against the principles of Natural Justice, also.
- C. That, the Appellant has got more than 30 years of unblemished and distinguishing service career wherein Appellant has not been found in any activities detrimental to the interests of the Department.
- D. That, the Appellant cannot be punished for fault of the Department for late confirmation or fault of Respondents who fail to qualify to PIs Examination with credit as required under Police Rules 19-28 (4).
- E. That, the rectification done by the Department vide Seniority List as stood on 15.07.2009 vide covering Letter dated 25.07.2009, in consequence whereof the Appellant withdrew his Service Appeal No. 797 / 2008 pending before this Honourable Tribunal, was never challenged / called in question at any level by the Respondents.
- F. That, despite the fact that Appellant's Service Appeal No. 398 / 2011 was admitted by this Honourable Tribunal, the Department melafidely did not consider the Appellant for promotion in order to extend the undue favour to the private Respondents.
- G. That, the Service Appeal No. 398 / 2011 was admitted by the Tribunal on 22.01.2013 against which the Department filed CPLA before the Supreme Court of Pakistan which was dismissed on 31.07.2013. It merits mentioning here that during the pendency of Appeal before the Supreme Court, the Department issued promotion order dated 25.07.2013 of the Private Respondents which is against the norms of justice and an act of colorful exercise of powers.

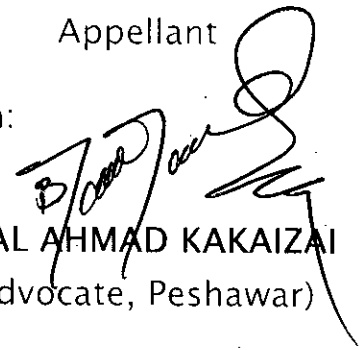
CS

- H. That, even otherwise the Service Appeal No. 398 / 2011 was decreed in favour of the Appellant with all consequential benefits which means that Appellant has been assigned all the benefits of service including promotion and seniority.
- I. That, it is important to mention here that as the Appellant was senior to the Respondents 3 to 5, therefore, he was promoted as Inspector Legal much prior to the Respondents 3 to 5 and the said promotion was never challenged by the Respondents at any forum meaning thereby that they accepted the position of the Appellant in the Seniority List.
- J. That, the Respondents had violated all the service rights of the Petitioner enshrined in the ESTACODE and Constitution of Islamic Republic of Pakistan, 1973.

It is, therefore, requested that subject Appeal be accepted as prayed for.


Appellant

Through:


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

(6)

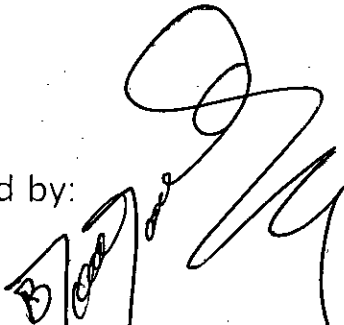
BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: _____ / 2015

IMTIAZ ALI KHAN Versus Government of KPK etc.

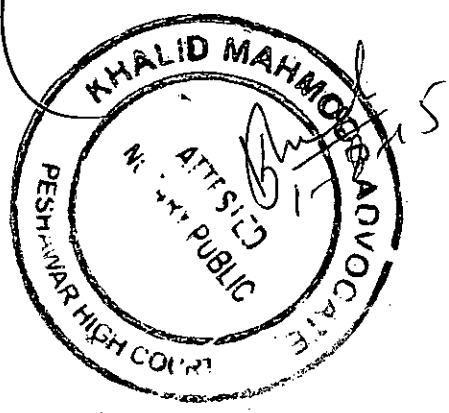
AFFIDAVIT

I, IMTIAZ ALI KHAN, DSP Legal, DPO Office, Kohat, Appellant, do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by: 

BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)


Deponent



(7)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: _____ / 2015

IMTIAZ ALI KHAN Versus Government of KPK etc.

ADDRESSES OF PARTIES.

APPELLANT:

IMTIAZ ALI KHAN, DSP Legal, DPO Office, Kohat.

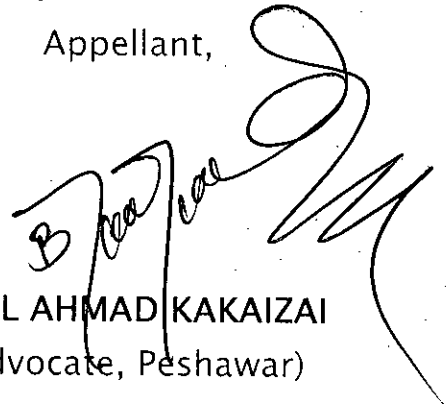
RESPONDENTS:

1. Government of Khyber Pakhtunkhwa, Through Secretary Home & Tribal Affairs, Civil Secretariat, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Imtiaz Gul, DSP Legal, Mardan.
4. Falak Nawaz, DSP Legal, CPO, Peshawar.
5. Mushtaq Ahmad, DSP Legal, AIG Legal, CPO, Peshawar.



Appellant,

Through,



BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

(8)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: _____ / 2015

IMTIAZ ALI KHAN Versus Government of KPK etc.

APPLICATION FOR INTERIM RELIEF TO THE EFFECT THAT THE OFFICIAL RESPONDENTS BE RESTRAINED FROM CONDUCTING THE MEETING OF PROVINCIAL SELECTION / PROMOTION BOARD MEETING IN RESPECT PROMOTION OF DSP (S) LEGAL INVOLVING THE PRIVATE RESPONDENTS DUE TO THE REASON OF DISPUTE IN INTER-SE SENIORITY.

Respectfully Sheweth,

1. That, the subject mentioned Appeal has been filed by the Appellant / applicant in which no date has yet been fixed.
2. That, the contents of the Main Appeal may please be read as integral part of this Application.
3. That, the Applicant / Appellant has got prima facie case in his favour, therefore balance of convenience lies in his favour.
4. That, Applicant / Appellant will again suffer irreparable loss if the Impugned Seniority List is acted upon and Meeting etc of the Board is called upon, even otherwise where the Inter-se-SeniORITY is under dispute no promotion orders can be issued.

It is, therefore, requested that till the disposal of main Appeal the Impugned Seniority List be suspended and Respondents be directed not to call / conduct the meeting of the Provincial Selection

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/ Promotion Board in respect of DSP (s) Legal involving the Private Respondents.

Int 2

Appellant / Applicant

Through:

[Handwritten signature]

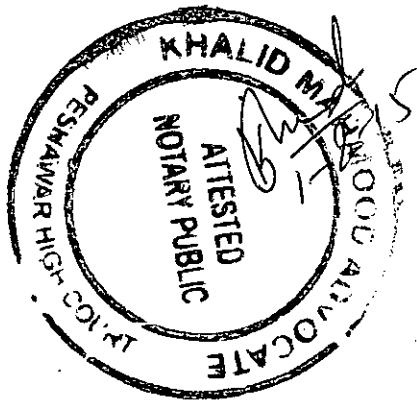
BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

AFFIDAVIT

I, IMTIAZ ALI KHAN, DSP Legal, DPO Office, Kohat, Appellant, do hereby on oath affirm and declare that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Int 2

Deponent



A (10)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: _____ / 2010.

IMTIAZ ALI KHAN

Inspector Legal # D/27,

DPO Office, D.I. Khan.

..... APPELLANT

VERSUS

1. GOVERNMENT OF K.P.K
Through it's Secretary
Home Department, Peshawar.
2. Provincial Police Officer,
K.P.K, Peshawar.
3. Mian Mustafa Gul # K/25,
Prosecuting Inspector,
Now NAB, Peshawar.
4. Iftikhar-ul-Mulk # M/86,
Prosecuting Inspector, Malakand, now/
NHA/Motorway.
5. Aziz-ur-Rehman # K28,
Prosecuting Inspector, RTC, Kohat.
6. Imtiaz Gul # K/15,
Prosecuting Inspector, Karak, now
CPO, Peshawar.
7. Falak Naz # K/28,
Prosecuting Inspector, Karak.
8. Altaf Hussain # D/33,
Prosecuting Inspector, DIC Office, Kohat.

Mustafa
MA

- (11)
9. Abdus Sattar # B/62,
Prosecuting Inspector, DPO Office, Lakki Marwat.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974 AGAINST SENIORITY LIST FOR THE YEAR 31.10.2010 CIRCULATED VIDE NO. 25406-21/E-II DATED 03.11.2010 WHEREBY APPELLANT IS PLACED AT S/No.16 INSTEAD OF S/No.8 BY ASSIGNING WRONG SENIORITY TO RESPONSENTS NO.3 TO 9 AND DEPARTMENTAL REPRESENTATION HAS BEEN FILED VIDE IMPUGNED APPELLATE ORDER NO.27630/E-II DATED 14.12.2010 COMMUNICATED TO THE APPELLANT ON 23.12.2010.

Prayer: That on acceptance of this Service Appeal the Impugned Order as well as Impugned Appellate Order be setaside as being illegal, unlawful, void and ineffective and Appellant be placed ahead of Respondent No.3 TO 9 at S/No.8 right below the name of Mushtaq Ahmad, D/26 instead of S/No.16, with such other relief as may deem fit in the circumstances of the case may also be granted.

Respectfully Sheweth,

Short facts, giving rise to present Service Appeal, are as under:

1. That, Appellant was in-listed as Prosecuting Sub-Inspector (PSI) w.e.f. 08.01.1984.
2. That, the Appellant successfully underwent the requisite in-service training at Police College, Sihala. He passed the examination with credit way back in 1985 and as such under the Police Rules 19-28 (4), his name was brought on Promotion List "F".
3. That, as per Police Rules 19-26 (3), it was mandatory upon the Department to have confirm the Appellant after the successful

13 (12)

completion of Training, immediately however, Appellant was promoted as Inspector Legal w.e.f. 03.12.1997 on the basis of Seniority List "F" and since then his serving as Inspector Legal.

4. That, Appellant's seniority position was correctly fixed and the same was never challenged till 31.12.2006 but suddenly the Seniority List on 31.12.2007 was disturbed and junior to Appellant was placed senior against which Appellant alongwith others submitted a Representation and after waiting for the requisite result, subsequently Service Appeal No.797 / 2008 was filed before this Honourable Forum but during the pendency of the Appeal, the official Respondents rectify the illegality and irregularity by issuing a revised Seniority List as stood on 15.07.2009, therefore, the pending service Appeal was withdrawn by the Appellant. It is important to mention here that the Seniority List circulated vide Circulation Letter dated 15.07.2009, the Appellant was at S/No.9 and Respondents 3 to 9 were from S/No.10 to 14, 16, 19 & 21.
5. That, once again the subject mentioned defective Seniority List as stood on 31.10.2010 has been circulated on 03.11.2010 wherein Appellant is again relegated to 16th number by placing Respondents 3 to 9 ahead of Appellant, copy of the Impugned Seniority List is attached as Annexure-A.
6. That, being highly dejected from the list in question, the Appellant brought his genuine grievance into the notice of the Competent Authority / Respondent No.2 by filing a Representation on 05.11.2010, copy of the such Representation alongwith covering Letter is attached as Annexure-B.
7. That, the Appellant's Representation has been filed without mentioning any reasons and without any speaking order, copy of the Impugned Appellate Order is attached as Annexure-C, hence, this Service Appeal on the following amongst other grounds: -

GROUND:

- A. That, the Seniority List in question as it stood on 31.10.2010 is latently and patently against law and realities on the ground, hence unsustainable.

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- B. That, the same is against the principles of Natural Justice, also.
- C. That, the entire process of preparing so-called updating and finalizing the Seniority List in question was not done in accordance with law. It may be seen that in almost all cases the dates mentioned in various columns of the so-called Seniority List are incorrect, misleading and incompatible with reality. So much so that even the dates of confirmation in service in respect of the Respondents # 3 to 9 are not correct as per record. The same do not obtain support from any documentary proof.
- D. That, this is by now a settled law that the names of PSIs undergoing the requisite training and passing the examination with credit i.e. (70% marks) stand assigned to list "F". It is this placement of their names in such list, which determines their inter se seniority. It is also a settled law that their seniority takes effect from the date of placement of their names in such list in order of merit and not at from the date of confirmation of their service. By giving seniority to the Respondents # 3 to 9 from the date of their confirmation in service, the Authority has it is submitted with respect, rewritten the law on the subject.
- E. That, though dates of confirmation of Respondents 3 to 9 as given in the Impugned Seniority List are mostly incorrect, yet the date of confirmation in service is not determining factor. Seniority will be counted from the date of placement in "List "F". By doing so, the Respondent No.2 has acted beyond jurisdiction and authority.
- F. That, posts of PSI and PIs are actually borne on the overall establishment of province. For the purpose of promotion, their inter se seniority is determined on the basis of "LIST "F" and that too not from date of confirmation in service but from the date of placement of their names in list "F".
- G. That, the Appellant has got impeccable service record.
- H. That, the Appellant cannot be punished for fault of the Department for late confirmation or fault of Respondents who

A
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(13)



fail to qualify to PIs Examination with credit as required under Police Rules 19-28 (4).

- I. That, the Promotion List "F" is the basic criteria of Seniority for promotion on Provincial level, where as confirmation is Regional matter, therefore, the above private Respondents 3 to 9 cannot be treated and considered as senior to the Appellant according to the existing Rules and procedure.
- J. That, the decision of the Service Tribunal dated 19.11.1996, allegedly on the basis of which the present Impugned Seniority List has been recasted, was regarding Azmat Ghafoor, who got retired and as such the present Impugned Seniority List seems to be an after thought. Moreover, that Service Appeal was only to be extent of said Azmat Ghafoor.
- K. That, the rectification done by the Department vide Seniority List as stood on 15.07.2009 vide covering Letter dated 25.07.2009 whereby Respondents 3 to 9 were placed below the Appellant had never challenged / called in question at any level, the said Seniority List, therefore, the present Impugned Seniority List seems to be melafide and based on ill will.
- L. That, it is important to mention here that as Appellant was / is senior to the Respondents 3 to 9, therefore, he was promoted as Inspector Legal much prior to the Respondents 3 to 9 and the said promotion was never challenged by the Respondents at any forum meaning thereby that they accepted the position of the Appellant in the Seniority List.

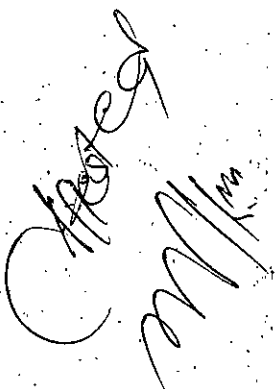
It is, therefore, requested that subject Appeal be accepted as prayed for.


Appellant

Through:

WAQAR AHMAD SETH
(Advocate, Peshawar)

BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)



SENIORITY LIST OF INSPECTORS LEGAL ON LIST F OF KHYBER PAKHTUNKHWA POLICE AS IT STOOD ON 31.10.2010

(14) (B)

No. 2540 G-1/E-II Seniority list. In pursuance of the decision of KPK Service Tribunal dated 19.11.1996 in Service Appeal No.841-96/2297/99 followed by Departmental Selection Committee in its meeting held on 13.10.2010 duly approved by Provincial Police Officer, a revised Seniority list of Inspector Legal as it stood on 31.10.2010 is hereby published for information of all concerned.

S. No.	Name & No.	Education Qualification	Home Distt:	Date of Birth	Date of Enlistment	Date of confirmation SI/Legal	Date of promotion to List "C"	Date of Promotion as Inspector Legal	Date of confirmation as Inspector	Remark
1.	Attaullah No. P/261	B.A/LLB	Peshawar	15.05.1951	11.07.1977	18.07.1979	01.08.1987	27.09.1990	24.05.2008	
2.	Muhammad Saeed No. M/98	B.S./LLB	MKD Agency	15.03.1952	11.03.1978	11.03.1981	06.11.1994	02.12.1997	24.05.2008	
3.	Purdil Khan No. M/100	B.A/LLB	Swat	01.04.1954	20.04.1978	20.04.1981	01.08.1987	02.03.1988	24.05.2008	
4.	Sajad-ud-Din No. K/14	B.A/LLB	Kohat	20.11.1957	26.08.1982	26.08.1982	01.08.1987	20.09.1988	24.05.2008	
5.	Mian Mustafa Gul No. K/25	B.A/LLB	Karak	01.04.1953	26.08.1982	26.08.1982	09.07.1991	01.03.1993	24.05.2008	
6.	Muhammad Ayaz M/85	B.A/LLB	Makhdul Agency	01.10.1954	26.06.1980	26.06.1983	29.12.1984	09.12.1986	24.05.2008	
7.	Sher Ahmad M/86	B.A/LLB	Chitral	15.04.1956	15.07.1983	15.07.1983	29.12.1984	31.12.1986	24.05.2008	Swat. Asst. Seniority list 16259-720-11, dated 17.07.2007
8.	Mushraq Ahmad No. D/26	B.A/LLB	DIKhan	22.12.1955	08.01.1984	27.01.1985	01.08.1987	07.07.1991	24.05.2008	
9.	Mikhael-ul-Mulk No. M/86	B.A/LLB	MKD Agency	04.1953	06.11.1982	01.07.1988	09.07.1991	18.10.1992	24.05.2008	
10.	Aziz-ur-Rahman No. K/28	B.A/LLB	Kohat	08.1958	03.04.1983	01.06.1989	09.07.1991	01.03.1993	24.05.2008	
11.	Imtiaz C. No. K/15	B.A/LLB	Karak	06.1959	10.07.1984	01.06.1989	09.07.1991	01.03.1993	24.05.2008	
12.	Falak Nawaz No. K/28	M.A/LLB	Karak	03.1958	25.11.1985	01.06.1989	09.07.1991	01.03.1993	24.05.2008	
13.	Ataf Hussain No. D/33	M.A/LLB	Tank	02.1963	17.09.1989	17.09.1989	06.11.1994	19.11.2007		
14.	Abdul Sattar No. B/62	B.A/LLB	Bannu	05.1958	10.08.1983	01.07.1991	09.07.1991	20.12.1995	24.05.2008	
15.	Akbar A. No. D/25	B.A/LLB	DIKhan	01.1954	11.11.1978	06.02.1992	01.08.1987	31.03.1988	24.05.2008	
16.	Imtiaz A. No. D/27	B.A/LLB	Bannu	11.1959	09.01.1984	06.02.1992	01.08.1987	31.03.1988	24.05.2008	
17.	Ghulam Hussain No. D/54	B.A/LLB	DIKhan	02.1959	27.04.1983	01.07.1992	09.07.1991	3.12.1991		
18.	Hidayat Shah No. P/248	B.A/LLB	Charnadda	15.04.1954	18.01.1987		09.07.1991	20.07.2007		
19.	Abdul Sattar No. K/02	B.A/LLB	Karak	20.11.1962	23.01.1990	23.01.1990	09.07.1991	19.11.2007		
20.	Abdul Aziz No. B/54	B.A/LLB	Bannu	29.06.1958	01.06.1992	11.12.1992	12.01.1997	14.02.2008		
21.	Sohail Afzal No. B/13	B.A/LLB	Bannu	23.12.1964	17.04.1993	09.12.1993	12.01.1997	19.11.2007		
22.	Javed Ahmad No. D/28	B.A/LLB	DIKhan	15.05.1962	21.09.1989		12.01.1997	19.11.2007		
23.	Mir Faraz No. B/38	B.A/LLB	Bannu	02.11.1967	17.04.1993		06.11.1994	05.03.2009		
24.	Bashir Ahmad No. P/100	B.A/LLB	Dir	19.07.1959	09.09.1992	09.09.1992	12.01.1997	08.10.2009		
							30.07.2008	30.07.2008		

P.T.O

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S. No.	Name & No.	Education Qualification	Home Distt:	Date of Birth	Date of Enlistment	Date of confirmation SI/Legal	Date of promotion to List "F"	Date of Promotion as Inspector Legal	Date of confirmation as Inspector	Remarks
26	Muhammad Ibrahim Azhar No. K/93	BA/LLB	Kohat	17.04.1965	08.10.1992	08.10.1992	30.07.2008	30.07.2008		
26	Ishaq Gul No. K/58	B.Sc/LLB	Kohat	10.04.1968	25.03.1999	25.03.1999	30.07.2008	30.07.2008		
27	Ibrahimullahi No. K/55	BA/LLB	Kohat	29.10.1969	26.03.1999	26.03.1999	30.07.2008	30.07.2008		
28	Raza Muhammad No. P/03	MA/LLB	Swabi	01.01.1969	20.04.1999	20.04.1999	30.07.2008	30.07.2008		
29	Muhammad Asif No. B/36	BA/LLB	Lakki	31.03.1970	18.04.1993	24.05.2008	12.01.1997	15.02.2008		
30	Syed Farman Ali Shah No. B/39	BA/LLB	Lakki	08.03.1971	08.04.1999	24.05.2008	30.07.2008	05.09.2009		

(KHALID MASOOD)
 Addl: IGP/Headquarters,
 For Provincial Police Officer,
 Khyber Pakhtunkhwa
 Peshawar.

No. 2540/21-21/II, dated Peshawar, the 03/11/2010.

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

1. Inspector General of Police National Highways & Motorway Police Islamabad
2. Additional IGP Investigation Khyber Pakhtunkhwa Peshawar
3. Addl. Inspector General of Police, Special Branch, Khyber Pakhtunkhwa, Peshawar
4. Addl. IGP/Commandant PTC Hanjra
5. Capital City Police Officer Peshawar
6. All Regional DisG in Khyber Pakhtunkhwa.
7. Director ACE Khyber Pakhtunkhwa, Peshawar.
8. Registrar CPO, Peshawar
9. Superintendent Establishment CPO, Peshawar
10. Chief Suptt: Secret CPO, Peshawar

They are requested to please inform all officers serving under their command. Any officer who have objection on his seniority/correction, he should submit his representation within one month after the issue of the list otherwise no representation will be accepted.

Handwritten signature and date: 20/11/10

214
 Register No. _____
 Application submitted on 23-12-10
 Copying fee deposited on 23-12-10
 Independent fund for copying _____
 No. words copied _____
 Insp. In-charge Ati Khan.
 Insp. In-charge _____
 Name of copyist _____
 Copy completed on 23-12-10
 Copy delivered on _____
 Cause of delay _____

Ann: C

(16)

BEFORE SERVICE TRIBUNAL, MEMBER, EAST KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 108/2011

Date of institution -- 02.03.2011

Date of decision -- 27.07.2013

Imtiaz Ali Khan, Inspector (legal), No:10/27. Presently, Inspector legal, DPO office, Dera Ismail Khan..... (Appellant)

Versus

1. Provincial Police Officer (IGP), N.W.F.P, Central Police Office, Peshawar.
2. Deputy Inspector General of Police, Dera Ismail Khan Range, D.I.Khan.
3. District Police Officer Dera Ismail Khan..... (Respondents)

Appeal u/s 4 of NWFP (KPK) Service Tribunals Act, 1974 for seeking adjustment / regularization & confirmation in service from due date.

Mr. Muhammad Ismail Aizai and
Mr. Usman Khan Turandi, Advocates.....For appellants.
Mr. Arshad Alam, Government Pleader.....For Respondents.

SYED MANZOOR ALI SHAH.....MEMBER.
MR. NOOR ALI KHAN.....MEMBER.

JUDGMENT

NOOR ALI KHAN, MEMBER:- This appeal has been filed by the appellant for seeking adjustment / regularization & confirmation in service from the date of his appointment.

2. Brief facts of the case are that the appellant is serving in KPK Police Department since 1984 as Sub Inspector in the Prosecution Branch and earned promotion in due course of time to the present incumbency of Inspector, and currently posted at D.I.Khan. During the course of his employment, the appellant at the earliest qualified the departmental examination with credit and successfully completed all the courses in the field as required for confirmation and further / future promotion to the rank of Inspector and onwards. By dint of requirement of police rules-1934 the name of appellant was placed on promotion list-F vide Notification dated 1.8.1987 and later on he was promoted to the rank of Inspector on 3.12.1991. The appellant, instead of due date, was confirmed in the rank of Sub-Inspector Prosecution w.e.f. 6.2.1992 vide notification dated 2.4.1992. By the close of each calendar year a seniority list of PSIs & PIs whose names are placed on list 'F' established at Dera Ismail Khan on provincial basis and

Arshad Alam
Urdu
[Handwritten signature and notes]

(17)


since the seniority of the appellant remained in tact amongst his colleagues / batch-mates of the contemporary rank i. e Inspector (P.I). In the wake of promulgation of seniority list effective from 31.10.2010, the seniority of the appellant was disturbed and the appellant has been shown junior to a number of officers who even were employed later in time than the appellant, they discriminated the appellant without any justification. The appellant had in due course of events moved a departmental representation to Respondent No. 2, for the purpose. Juniors to him in all respects were shown senior by dint of date of confirmation in the rank of Sub Inspector (PSI) from the date of appointment. Hence the instant appeal.

a. Arguments heard and file perused.

b. The learned Counsel for the appellant argued that that the orders, being inconsistent with law, rules and regulations in vogue qua reckoning of the seniority and date of confirmation of appellant are thus liable to be set-aside nullified/rectified. The appellant has been subjected to the discriminatory treatment for no fault on his part. The respondents have clearly defied the law, as well the verdict of this Tribunal on the point in the matter. The impugned orders have thus caused grave mis-carriage of justice to the appellant and have adversely affected his right without any lawful excuse. In light of the principle of "equal treatment" as ordained by the law, judgments of this Tribunal pronounced in service appeals of Mir Faraz Khan (Appeal No. 1056/2009 decided on 16.10.2009) & Muhammad Asif (Appeal No. 667/2009 decided on 12.01.2010). The date of confirmation of the appellant in the rank of PSI ought to have been reckoned from the date of his appointment i.e 9.1.1984 as has been done with connivance by respondents in case of other 3 employees, even junior to the appellant. In support of his arguments the learned counsel for the appellant relied on this Tribunal judgment passed in Appeal No. 1056/2009 by Mir Faraz Khan and 667/2009 by Muhammad Asif.

c. The Government Pleader argued that the seniority list issued on 31.10.2010 was according to date of confirmation as PSI. The orders were issued by Respondent No. 1 in accordance with law/rules. Mir Faraz has not yet been confirmed as there is no permanent vacancy of PSI in Bannu Region while Muhammad asif has been confirmed w.e.f. 24.5.2008. The appellant was confirmed as PSI w.e.f. 06.02.1992 vide notification dated 02.04.1992. He was required to have challenged his date of confirmation at that time by preferring a representation but he did not avail this opportunity. At present he has lost his right to challenge the said notification at this belated stage.

d. The learned Government Pleader laid much stress on the issue of limitation, but since it is held that the case of appellant has merit and he has some vested right in view

ATTESTED


(18)

of the relevant law/rules and that denial of the benefit would amount to discrimination in view of granting of the same benefit to other similarly placed Government servants, the appeal could not be dismissed on the ground of limitation in view of PLJ-1997 Tr. 100 (Services), (Federal Service Tribunal Islamabad) and consistent view of the Superior Courts in a number of cases.

7. This Tribunal has passed judgment in Appeals No. 1056/2009 by Mufarraz Khan and 667/2009 by Muhammad Asif, whereby the appellants in that appeals were held entitled to confirmation as PSIs from the date of their appointments. On this score alone, the appellant is also entitled to the relief prayed for in view of the consistent view of the superior courts, enjoining the departmental authorities to also extend the same benefits to similarly placed Government servants once the Court/Tribunal declare the claim lawful and valid in the case of other Government servants. Moreover, it was not only the Tribunal which had accepted the claim of PSIs on similar grounds, as was done in the case of Altaf Hussain Inspector (Legal) PTC Hangu by the Regional Police Officer-D.I.Khan vide order dated 15.1.2009. Besides, a number of PSIs have been confirmed from the date of their appointment in accordance with Police Rules 19.26.

8. As a sequel to the foregoing discussion, the appeal is accepted, with the result that the relevant orders/notifications be modified by confirming the appellant from the date of his appointment, with consequential benefits. There shall however, be no order as to costs.

9. This judgment will also dispose of the other connected appeals bearing Nos. 399/2011, by Javed Ahmad and 396/2011 by Akbar Ali, Inspectors (Legal), involving common questions of law, in the same manner.

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ANNOUNCED.
22.1.2013.

Signature: Syed Mansoor Ali Shah
Member

Signature: Syed Noor Ali
Member

Certified true copy
Signature
Federal Service Tribunal

Date of Presentation of Application 23-1-2013
Number of Pages 1200
Copies 8
Fees —
Total 8
Name _____
Date 12-2-2013
Date of this copy 12-2-2013

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

(19)
Amir D

PRESENT:

MR. JUSTICE SARMAD JALAL OSMANY;
MR. JUSTICE EJAZ AFZAL KHAN.

C. As. No. 537 to 539 of 2013.

(On appeal against the judgment dt. 22.01.2013 of the KPK Service Tribunal, Peshawar passed in Appeals No. 396, 398 and 399 of 2011).

Provincial Police Officer, KPK and others.

(in all cases)
...Petitioners

Versus

Imtiaz Ali Khan.
Akbar Ali.
Javed Ahmad.

(in 537/13)
(in 538/13)
(in 539/13)
...Respondents

For the petitioners: Ms. Neelum Khan, AAG.

For the respondents: Mr. Salimullah Khan Ranazai, ASC.
Mr. M. Anwar Awan, ASC

Date of hearing: 31.07.2013.

J U D G M E N T

EJAZ AFZAL KHAN, J. - These appeals with the leave of the Court have arisen out of the judgment dated 22.01.2013 of the learned Service Tribunal, KPK, Peshawar whereby it allowed the appeals filed by the respondents.

2. Points raised and noted at the time of granting leave read as under:-

"It is stated that the respondents were aggrieved about their non-confirmation which took place in 1992, but they agitated their claim for the first time on 4.11.2010 before the department, which was hopelessly barred by time; besides, no case of discrimination has at all been made out by the respondents and resultantly, the impugned judgment of the Tribunal is based upon misconception of facts. Leave is granted inter alia to consider the above".

ATTESTED

Supreme Court of Pakistan

3. Learned Additional Advocate General appearing on behalf of the appellants contended that seniority of the respondents would be reckoned from the date of their confirmation and not from the date of their appointment which was temporary on all accounts. The Service Tribunal, the learned AAG added, while deciding appeals filed by the respondents failed to consider this essential aspect of the case, therefore, the impugned judgment is liable to be set aside.

4. As against that learned counsel appearing on behalf of the respondents contended that though the appointment of the respondents was temporary but against existing vacancies, therefore, their seniority has to be reckoned from the date of their appointment. The learned counsel next contended that where seniority of Mir Faraz Khan in Appeal No. 1056 of 2009 decided on 16.10.2009 and that of Muhammad Asif in Appeal No. 567 of 2009 decided on 12.01.2010 is reckoned from the date of their appointment, Respondents having alike and identical case could not be treated differently. The learned counsel next contended that in the case of "Provincial Police Officer, KPK and others. Vs. Aziz-ur-Rehman" in Civil Petitions No. 241 and 242 of 2011 decided on 02.02.2012, this Court declined to interfere with the judgment of the Service Tribunal reckoning the seniority of the respondents in those petitions, from the date of their appointment.

4. We have gone through the entire record carefully and considered the submissions of the learned counsel for the parties.

5. A perusal of the appointment orders of the respondents shows that they were appointed temporarily but

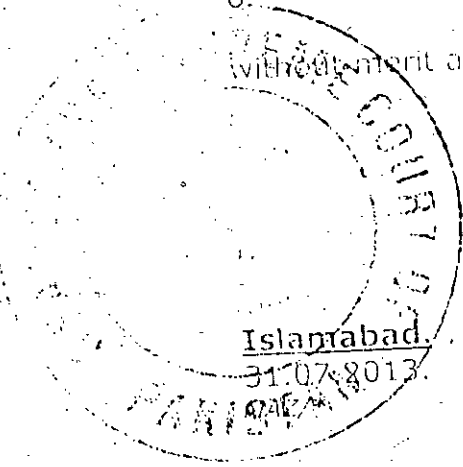
ATTESTED

Supervisor
Supreme Court of Pakistan
(Islamabad)

(21)

against sanctioned posts. Though they were confirmed, subsequently but their seniority has to be reckoned from the date of their appointment. They cannot be treated differently when seniority of many other employees similarly placed has been reckoned from the date of their appointment as mentioned too in the impugned judgment. When we asked the learned Addl. Advocate General whether any petition for leave to appeal has ever been filed against the judgment rendered in Mir Faraz Khan in Appeal No. 1056 of 2009 decided on 16.10.2009 and that of Muhammad Asif in Appeal No. 607 of 2009 decided on 12.01.2010, she replied in negative. In the case of "Provincial Police Officer, KPK and others. Vs. Aziz-ur-Rehman" in Civil Petitions No. 241 and 242 of 2011 decided on 2.7.2012 petitions for leave to appeal have been filed but they were dismissed. Even otherwise, we would not like to interfere with the judgment of the Service Tribunal when the case of the respondents is by no means distinguishable from those mentioned above.

6. For the reasons discussed above, these appeals being without merit are dismissed.



Sd/- Sarmad Jaleel Osmany, J
 Sd/- Ejaz Afzal Khan, J
 Sd/- Justice Tahir Qazi
 3/8/13
 Superintendent,
 Supreme Court of Pakistan
 ISLAMABAD

'NOT APPROVED FOR REPORTING'

3-8-13

9821/13
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 06/08/13
 Sd/- Syed Faraz Hussain

(22)

Ann: E

From: The Dy: Inspector General of Police,
Dera Ismail Khan Region

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

No. /ES Dated D.I.Khan the 23/05/2014

Subject: SENIORITY LIST OF INSPECTORS LEGAL

Memorandum:

Kindly refer to your office memo: No.441-15/E-II dated 22.05.2014.

It is submitted that the requisite information pertaining to Inspector Legal serving in DIKhan Region are submitted as under please: -

S#	Name & Rank	Education Qualification	Home District	Date of Birth	Date of enlistment	Date of Confirmation as SI Legal	Date of Promotion List 'F'	Date of promotion as Inspector Legal	Date of confirmation as Inspector Legal
1	Inspector Legal Imtiaz Ali, D/27	BA/ LLB	Bannu	03.11.1959	09.01.1984	09.01.1984	01.08.1987	03.12.1991	24.05.2008
2	Inspector Legal Javed Ahmad, D/28	BA/ LLB	DIKhan	15.05.1962	21.09.1989	21.09.1989	06.11.1994	05.03.2009	

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(ABDUL GHAFOOR AFRIDI)
PSP, PPM
Deputy Inspector General of Police,
Dera Ismail Khan Region



Office of the D.S.P.
Legal, Kohat.
Dy. No. 396
Dated 9-4-2015

(23)

OFFICE OF THE
REGIONAL POLICE OFFICER
KOHAT REGION

No. 2383

Dated 09/4 /2015

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

Subject:- REPRESENTATION

MEMORANDUM

It is submitted that District Police Officer, Kohat vide his office Memo: No. 14635/LB dated 06.04.2015 has forwarded a representation, preferred by DSP Legal Kohat regarding seniority position of DSSP Legal as it stood on 19.03.2015.

His representation alongwith connected papers in light of judgment of Khyber Pakhtunkhwa Service Tribunal dated 22.01.2013 as upheld by august Supreme Court of Pakistan, vide judgment dated 31.07.2013 is enclosed herewith for favour of perusal and order please.

Regional Police Officer,
Kohat Region

No. 2384

Copy to the District Police Officer, Kohat for information w/r to his office Memo: quoted above

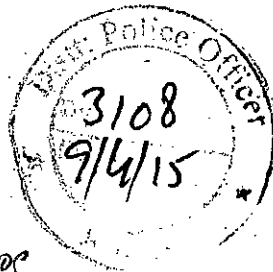
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Regional Police Officer,
Kohat Region

(24)

From: The District Police Officer, Kohat.

To: The Deputy Inspector General of Police,
Kohat Region, Kohat.

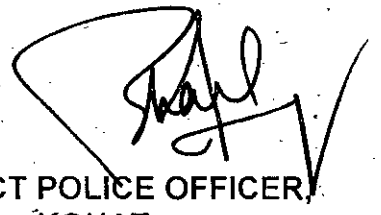
No 14635/LB dated Kohat the 06/04/2015.

Subject: REPRESENTATION.

Memo:-

Enclosed please find herewith a representation submitted by Imtiaz Ali Khan DSP Legal Kohat against the seniority list of DSsP Legal as it stood on 19.03.2015 bearing No. 2351-66/SE-I.

It is requested that in compliance of the judgment of KPK Service Tribunal dated 22.01.2013 as upheld by August Supreme Court of Pakistan vide judgment dated 31.07.2013, he may kindly be accorded his due seniority with consequential benefits.



DISTRICT POLICE OFFICER,
KOHAT

(25)

From The Dy Inspector General of Police,
DIKhan Region, DIKhan

To The Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar

No. 3208 /ES Dated D.I.Khan the

01/10/2013

Subject **IMPLEMENTATION OF THE JUDGMENT OF THE SERVICE
TRIBUNAL PASSED ON SERVICE APPEAL NO.398/ 2011**

Memorandum

Kindly refer to your office memo No 23088/E-II dated 19.09.2013

It is submitted that in compliance with your office memo quoted above, notification for revised confirmation from the date of appointment i.e 09.01.1984 in respect of Imtiaz Ali, Inspector Legal has been issued vide this office Revised Notification bearing Endst. No.3178-80/ES dated 26.09.2013 which is enclosed herewith, please.

It is requested, that in compliance with the Judgment of Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 22.01.2013 as upheld by August Supreme Court of Pakistan vide Judgment dated 31.07.2013, he may kindly be accorded his due seniority with consequential benefits please.

(IJAZ AHMAD) PSP
Deputy Inspector General of Police,
Dera Ismail Khan Region

24/9
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From: The Dy: Inspector General of Police,
Dera Ismail Khan Region.

To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

No. 2209 ES, dated Dikhan the

20th, August, 2013

Subject: **REVISED CONFIRMATION & SENIORITY FROM DATE OF APPOINTMENT I.E. 09.01.1984 IN COMPLIANCE WITH THE JUDGMENT DATED 22.01.2013 OF THE KPK SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO. 398/2011 UPHOLD BY THE AUGUST SUPREME COURT OF PAKISTAN VIDE JUDGMENT DATED 31.07.2013 IN CIVIL APPEAL NO. 537/2013 AND PROMOTION TO THE RANK OF DSP LEGAL.**

Memorandum

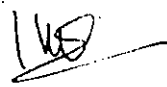
Enclose please find herewith a copy of KPK Service Tribunal Judgment dated 22.01.2013 upheld by the Supreme Court of Pakistan vide Judgment Order dated 31.07.2013 along with application of Inspector Legal Imtiaz Ali Khan No. D 27.

This office has already recommended his representation vide this office Memo. No. 111/ES dated 02.07.2009, No. 3159/ES dated 04.11.2010, No. 709/ES dated 25.02.2013 and Memo. No. 1621/ES dated 07.06.2013 for revised confirmation from date of appointment and seniority.

It is, therefore, requested that the Judgment of KPK Service Tribunal as upheld by Supreme Court of Pakistan may kindly be approved to be implemented by issuing Notification for revised confirmation from date of appointment i.e. 09.01.1984 and his name placed Senior accordingly in the Seniority List "F" with all back benefits and promotion as DSP Legal.

Encl: 30

a/c


(IJAZ AHMAD) PSP
Dy: Inspector General of Police,
Dera Ismail Khan Region

(27)

From The Dy. Inspector General of Police,
DIKhan Region, DIKhan

To The Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar

No. 3208 /ES Dated D.I.Khan the

01/10/2013

Subject **IMPLEMENTATION OF THE JUDGMENT OF THE SERVICE
TRIBUNAL PASSED ON SERVICE APPEAL NO.398/ 2011**


Memorandum

Kindly refer to your office memo: No.23088/E-II dated 19.09.2013

It is submitted that in compliance with your office memo quote above, notification for revised confirmation from the date of appointment i.e. 09.01.198 in respect of Imtiaz Ali, Inspector Legal has been issued vide this office Revised Notification bearing Endst: No.3178-80/ES dated 26.09.2013 which is enclosed herewith, please.

It is requested, that in compliance with the Judgment of Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment date 22.01.2013 as upheld by August Supreme Court of Pakistan vide Judgment date 31.07.2013, he may kindly be accorded his due seniority with consequential benefits please.

nd/c


(IJAZ AHMAD) PSP
Deputy Inspector General of Police,
Dera Ismail Khan Region
22/9
B

(28)

POLICE DEPARTMENT

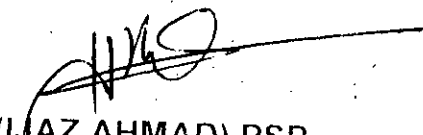
D.I.KHAN REGION

FOR PUBLICATION IN THE KHYBER PAKHTUNKHWA POLICE GAZETTE PART-II
ORDERS BY THE DY; INSPECTOR GENERAL OF POLICE, D.I.KHAN

REVISED NOTIFICATION

Dated D.I.Khan the 26/09/2013

No. 3177 /ES, REVISED CONFIRMATION As per Judgments of the Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar dated 22.01.2013 passed on Service Appeal No.398/ 2011 and August Supreme Court of Pakistan vide Judgment dated 31.07.2013 conveyed to this office with the approval of the worthy Provincial Police Officer, Khyber Pakhtunkhwa Peshawar vide his office memo No.23088/E-II dated 19.09.2013, Imtiaz Ali, Inspector Legal DIKhan Region is hereby confirmed in the rank of Prosecuting Sub Inspector from the date of appointment i.e 09.01.1984 in the light of Police Rule 19-26 (3) with consequential benefits.

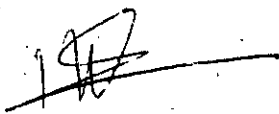

(IJAZ AHMAD) PSP
Deputy Inspector General of Police,
Dera Ismail Khan Region

OFFICE OF THE DY; INSPECTOR GENERAL OF POLICE, DERA ISMAIL KHAN

No. 3178-80 /ES Dated D.I.Khan the 26/09/2013

Copy to the:

1. Provincial Police Officer, Khyber-Pakhtunkhwa Peshawar for favour of information with reference quoted above.
2. Addl: Inspector General of Police, Investigation, Khyber Pakhtunkhwa Peshawar. Two spare copies of the notification are enclosed for publication.
3. District Police Officer, DIKhan.


(IJAZ AHMAD) PSP
Deputy Inspector General of Police,
Dera Ismail Khan Region

(29)

From: - The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

To: - The Deputy Inspector General of Police,
Dera Ismail Khan Region

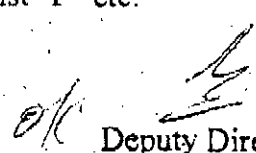
No 23088/E-II Dated Peshawar the, 19/09 /2013

Subject:- IMPLEMENTATION OF THE JUDGMENT OF THE SERVICE
TRIBUNAL PASSED ON SERVICE APPEAL NO 398/2011.

Memo:-

Please refer to your office Memo No. 2209/ES dated 20.18.2013, on the subject noted above.

The judgment of the Service Tribunal first needs implementation at your end as your office is the competent and proper forum of confirming the appointment of appellant as Sub-Inspector Legal from the date of appointment. Therefore confirmation of appellants in the rank of SI Legal may be revised accordingly then the cases may be recommended for revising seniority to promotion list "F" etc.


Deputy Direct Legal,
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

(30)

Ann: F

SENIORITY LIST OF DSsP LEGAL IN KHYBER PAKHTUNKHWA AS STOOD ON 19.03.2015

No. **2351-66/SE-I**, Seniority List: - The Seniority List of DSsP Legal BS-17 as it stood on 19.03.2015 is hereby published for information to all concerned

S. #	Name of Officer	Education	Domicile	D.O Birth	Date of Retirement	Date of promotion as DSP/Legal BS-17	Reference of Promotion
1.	Mr. Sher Ahmad	BA/LLB	Chitral	18.04.1956	17.04.2016	29.03.2013	Promoted vide Notification No. 2935 dated 15.05.2013
2.	Mr. Aziz-ur-Rehman	BA/LLB	Kohat	01.08.1958	31.07.2018	29.03.2013	Promoted vide Notification No. 2935 dated 15.05.2013
3.	Mr. Imtiaz Gul	BA/LLB	Karak	24.06.1959	23.06.2019	25.07.2013	Promoted vide Notification No. 3906 dated 25.07.2013
4.	Mr. Falak Nawaz	MA/LLB	Karak	15.03.1958	14.03.2018	25.07.2013	Promoted vide Notification No. 3906 dated 25.07.2013
5.	Mr. Mushtaq Ahmad	BA/LLB	DIKhan	22.12.1955	21.12.2015	25.07.2013	Promoted vide Notification No. 3906 dated 25.07.2013
6.	Mr. Imtiaz Ali	BA/LLB	Bannu	03.11.1959	02.11.2019	12.09.2014	Promoted vide Notification No. 1092 dated 12.09.2014
7.	Mr. Javed Ahmed	BA/LLB	DIKhan	15.05.1962	14.05.2022	12.09.2014	Promoted vide Notification No. 1092 dated 12.09.2014
8.	Mr. Ghulam Hussain	BA/LLB	DIKhan	01.02.1959	31.01.2019	12.09.2014	Promoted vide Notification No. 1092 dated 12.09.2014

Endst: No. & date even.

Copy forwarded to the:-

- All Addl: IGsP Khyber Pakhtunkhwa Peshawar.
- Capital City Police Officer Peshawar.
- All RPOs
- Commandant PTC Hangu
- AIG Legal CPO Peshawar.
- Director Anti-Corruption Estt. Khyber Pakhtunkhwa Peshawar.

Representation if any against the above Seniority List should reach CPO within a period of 30 days of the receipt of the list.

(SYED FIDA HASSAN SHAH)
AIG/Establishment
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

(31)

Ann: G

To: The Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Through Proper Channel.

Subject: PRESENTATION AGAINST THE SENIORITY LIST OF DSsP
LEGAL AS STOOD ON 19.03.2015 BEARING NO. 2351-66/SE-I.

Respected Sir,

The subject cited seniority list has been published which is against the judgment dated 22.01.2013 of KPK Service Tribunal upheld by Supreme Court of Pakistan vide judgment/order dated 31.07.2013.

I submit the following yours kind favour and sympathetic consideration.

1. That I was enlisted as prosecuting sub Inspector vide order No. 46-47/ES dated 07.01.1984.
2. That my name was brought on promotion list "F" vide order Notification No. 10865/E-II dated 01.08.1987 after qualifying training course with credit as per Police Rules 19-28 (4) and completion of probation period as per Police Rules 19-26.
3. That I was promoted as Inspector Legal / P.I in the year 1991.
4. That unfortunately date of confirmation as PSI was issued by the office hands w.e. from 1992 and no fault on my part.
5. That I remained senior in the promotion list "F" upto 2007 and no one challenged my seniority for more than 20 years. Copy attached.
6. That suddenly seniority list "F" was revised on the basis of confirmation and I was made junior. Copy attached.
7. That I challenged the seniority list 2007 in service appeal No. 797/2008. The department conceded my version in reply and issued revised seniority list dated 15.07.2009 and my seniority was restored. Copy attached.

But non of inspector legal challenged the seniority list dated 15.07.2009.

8. That in meanwhile the department revised the date of confirmation of some inspectors legal including late Altaf Hussain of D.I.Khan Range who was promoted as Inspector Legal in 2007.
9. That surprisingly another seniority list dated 31.10.2010 was issued on basis of confirmation without any notice and I was placed most junior to the Inspector Legal promoted in 2007 as compared to myself promoted in 1991.
10. That I challenged the seniority/confirmation by way of representation which was kept subjudice due to interested hands/colleagues at CPO Peshawar. The copies of recommendation of the then DIGs are attached.

(32)

11. Therefore I lodged a service appeal No. 398/2011 for revised confirmation and seniority from date of appointment which was accepted by the KPK Service Tribunal vide judgment dated 22.01.2013 with consequential benefits. Copy attached.
12. That Service Tribunal has earlier accepted the similar nature service appeals of inspectors legal Mir Faraz Asif, Aziz ur Rehman and Abdul Sattar.
The department did not lodge appeal/CPLA against Mir Faraz and Asif whereas CPLA was lodged against Abdus Sattar and Aziz ur Rehman which was dismissed by the Supreme Court of Pakistan in the year 2012.
Therefore department implemented the judgments of Service Tribunal by according confirmation to them from date of appointment to them.
13. That in utter disregard above implementation and dismissal of CPLA by Supreme Court of Pakistan in similar nature appeal (due to vested interest of main Imtiaz Gul Inspector Legal posted at AIG Legal office) the department recommended CPLA in my case and Mian Imtiaz Gul managed this CPLA to pave a way for his illegal/out of way promotion and he succeeded to get promotion as DSP Legal vide Notification No. 3906 dated 25.07.2013 alongwith other junior.
14. That judgment of Service Tribunal in my service appeal No. 398/2011 remained in field as no status quo was issued by the Supreme Court of Pakistan and any promotion during the period was illegal and against the rules as well as justice.
15. That the Supreme Court of Pakistan dismissed the CPLA vide judgment dated 31.07.2013 against judgment dated 22.01.2013 of KPK Service Tribunal. Copy attached.
16. That in compliance with judgment of Service Tribunal dated 22.01.2013 upheld by Supreme Court of Pakistan my date of confirmation was revised from date of appointment i.e 09.01.1984 according to which I stand senior to DSP Legal placed at Serial No. 3,4,5 of the impugned seniority list.
17. That in the light of judgment dated 22.01.2013 of Service Tribunal and upheld by Supreme Court of Pakistan vide judgment dated 31.07.2013 I stands senior to the following who were promoted as DSP Legal vide notification No. 3906 dated 25.07.2013 after judgment dated 22.01.2013.

(33)

1. Mian Imtiaz Gul
 2. Falak Nawaz
 3. Altaf Hussain (Now Dead).
 4. Mushtaq Ahmed.
18. That I stand senior to DSsP Legal Mian Imtiaz Gul and Falak Nawaz by date of appointment, list "F", confirmation date and promotion as Inspector Legal.

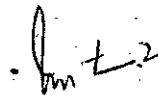
In view of above, it is humbly prayed that as the KPK Service Tribunal vide judgment dated 22.01.2013 in service appeal No. 398/2011 upheld by Supreme Court of Pakistan has accorded confirmation/seniority from date of appointment with all consequential benefits, therefore, the impugned seniority list as it stood on 19.03.2015 bearing No. 2351-66/SE-I may kindly be revised and my name placed senior to DSsP Legal Mian Imtiaz Gul and Falak Nawaz.

I shall be highly obliged.

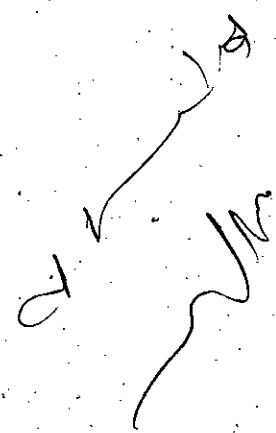
I also wish to be heard in person.

Yours Faithful

Dated 06.04.2015



IMTIAZ ALI KHAN
DSP Legal Kohat



(34)



Office of the
Deputy Inspector General
of Police, Dikhan
By: 1064
Dt: 24/4/15

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

No. 2752-53 /SE-I

Dated Peshawar 15 April 2015

To : The Regional Police Officer 2
DIKhan Region

Subject: **REPRESENTATION**

Memo:

Enclosed please find herewith a representation alongwith documents forwarded by RPO Kohat in respect of DSP legal Imtiaz Ali Khan. Region for Para wise comments please.

EC
107
20/4/15

For Inspector General of Police
Khyber Pakhtunkhwa,
Peshawar.

Endst: No. & date even.

Copy forwarded to the:-

- Regional Police Officer Kohat Region Kohat with reference to his letter No. 2383/24 dated 09.04.2015.

DSP/legal
Imtiaz Khan

(35)

From: The Dy: Inspector General of Police,
DIKhan Region, DIKhan

To: The Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar

No. 1754 /ES

Dated D.I.Khan the

27/04/2015

Subject: REPRESENTATION
Memo:

Kindly refer to your office memo: No. 2752-53/SE-I dated

Para-wise comments are submitted as under:-

1. Correct.
2. Correct.
3. Correct.
4. That though his name was already brought on promotion notification No. 10865/E-II dated 01.08.1987 and promoted as Legal in the year 1991 but his confirmation as PSI was granted in 1992.
5. Correct to the extent that his name remained senior on promotion upto 2007.
6. Pertains to record.
7. Pertains to record
8. The date of confirmation of late Inspector Legal Altaf Hussain was revised by the DIG DIKhan from the date of appointment i.e. 1989.
9. Correct.
10. Pertains to record.
11. Correct. In compliance with the judgment of KPK Service Tribunal of confirmation was revised from the date of appointment per vide notification bearing Endst: No. 3178-80/ES dated 26.09.2013 with consequential benefits related to CPO Peshawar.
12. Pertains to record.
13. Relates to CPO.
14. Pertains to record.
15. Pertains to record.

(Signature)

(36)

DIKHAN

FAX NO. : 0366 9280390

27 Apr 2013

16. Correct.
17. That as his date of confirmation as SI Legal has been revised in his appointment i.e. 09.01.1984, therefore he is entitled for consequential benefits.
18. As stated above.

This office has already requested for grant of consequential benefits vide this office Memo No. 2209/ES dated 20.08.2011 and No. 3202/ES dated 01.10.2013, please.



(ABDUL GHAFOOR)

Deputy Inspector General
Dera Ismail Khan Region

Before KPK Service Tribunal

Peshawar.

Appellant
Government of
KPK etc

2 منجانب

Intiaz Ali Khan

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام Peshawar کیلئے Bilal A. Kakizai Adu

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

Intiaz
Ali Khan

3 ماہ 2015

الرقوم

العہدہ

مقام

کے لئے منظور ہے۔

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1721 ST


Dated 6 / 11 / 2015

To

The PPO,
Peshawar.

Subject: - Order

I am directed to forward herewith a certified copy of order dated 27.8.2015 passed by this Tribunal on the above subject for strict compliance.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

Versus

Government of KPK through Secretary Home, & TAs Department
Khyber Pakhtunkhwa, Peshawar and others..... (Respondents)

COMMENTS BY RESPONDENT NO. 3 ARE
SUBMITTED AS UNDER:-

Respectfully Sheweth!

Preliminary Objections:-

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

FACTS:-

1. Correct to the extent of appointment of appellant as temporary prosecuting Sub-Inspector in Police department.
2. Needs no comments by private Respondent No. 3 as it pertains to the service record of appellant.
3. Incorrect, according to Police Rule 19.26(4), in case of officers who are appointed officiating prosecuting Sub-Inspector against temporary or deputation vacancies and are subsequently absorbed in substantive vacancies, the Inspector General of Police, may, by special order in each case, permit period of officiating service as Prosecuting Sub-Inspector to count towards the period of probation provided the courses of training and the examination prescribed in Rule 19.28 have been undergone and passed. Appellant was recruited as temporary PSI and no order within the meaning of Police Rule 19.26(4) was issued by the Inspector General of Police, therefore, the appellant was not confirmed from the date of appointment.

4. Incorrect, the seniority list of Prosecuting Sub-Inspectors was revised in compliance with judgment of this Honorable Tribunal dated 19.11.1996 passed in Service Appeal No. 84/1996 and subsequent order dated 22.11.2004 passed in execution petition. The Honorable Tribunal held in the judgment that F-List is a promotion list while seniority is reckoned from the date of confirmation within the meaning of Police Rule 12.2(3). The answering private Respondent No. 3 was confirmed in the rank of Sub-Inspector Legal prior to appellant therefore, ranks senior to appellant.
5. Correct to the extent that appellant has challenged the seniority list as stood on 31.10.2010 in Service Appeal No. 2/2011 which is still pending adjudication before this Honorable Tribunal. In addition to others, the answering private Respondent No. 3 is also respondent in the said service appeal. Actually this Honorable Service Tribunal while placing reliance on judgment passed in Service Appeal No. 84/1996 dismissed identical Service Appeal No. 802/2008 vide order dated 18.01.2011. The appellant on realizing the fate of his Service Appeal No. 02/2011 mentioned above filed another Service Appeal No. 398/2011, praying therein for confirmation in the rank of SI from the date of appointment, which was accepted vide order dated 22.01.2013. The appellant did not make anyone as private respondent in Service Appeal No. 398/2011. Therefore, claim of seniority against private respondents on the basis of judgment passed in Service Appeal No. 398/2011 is not tenable..
6. Correct to the extent that the Service Appeal No. 398/2011 filed by appellant was accepted by this Honorable Tribunal but answering private Respondent No.3 was not party in the appeal therefore, such judgment cannot be enforced against the private respondent.
7. Correct to the extent that the confirmation of appellant in the rank of Sub-Inspector Legal was revised in compliance with the judgment of this Honorable Tribunal, however, private respondents were not made parties in the appeal therefore appellant is estopped to claim seniority against the private respondents on the basis of judgment passed in Service Appeal No. 398/2011. The private respondents were confirmed prior to appellant and were also promoted prior to appellant. Therefore, the private respondents ranks senior to appellant.

8. Need no comments. It pertains to the record.
9. Incorrect, the answering private Respondent No.3 was promoted to the rank of DSP/Legal much earlier than the appellant therefore, the private respondent rank senior to the appellant.
10. Needs no comments on the part of private Respondent No.3 as this Para need reply on behalf of official respondents.
11. Incorrect, appellant has filed the Service Appeal on no grounds, therefore, the appeal is not sustainable.

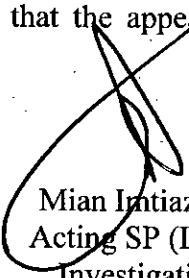
GROUNDS:-

- A. Incorrect, the officials respondents has correctly fixed seniority of DSP/Legal in accordance with law and rules.
- B. Incorrect, the seniority list has been prepared in accordance with law and rules and no one has been discriminated.
- C. Incorrect, seniority of junior ranks Police officers is regulated by Police rules and confirmation in the rank is determining factor for fixation of seniority.
- D. Incorrect, appellant was recruited on temporary basis and his confirmation was correctly made in accordance with law and rules on the subject matter. Later on his confirmation in the rank of SI was revised in compliance with the judgment of this Honorable Tribunal and appellant did not cite private Respondent No. 3 as respondent in that service appeal, therefore, he is wrongly claiming seniority against private respondent on the basis of above judgment of this Honorable Tribunal.
- E. Incorrect, the seniority list was revised in compliance with judgment of this Honorable Tribunal passed in Service Appeal No. 84/1996 and subsequent order dated 22.11.2004 passed in execution petition.
- F. Incorrect, the confirmation of appellant in the rank of SI Legal was revised in compliance with judgment passed in Service Appeal No. 398/2011. Furthermore, he did not make anyone as private respondent in the Service Appeal therefore he is wrongly contending seniority against the private respondents. The Service Appeal No. 02/2011 filed by appellant against the private respondent is still pending adjudication before this Honorable Tribunal.
- G. Incorrect, the confirmation of appellant was revised in compliance with judgment passed in Service Appeal No. 398/2011. Appellant did not make anyone as private respondent in the Service Appeal therefore he

is wrongly contending seniority against the private respondents. The Service Appeal No. 02/2011 filed by appellant against the answering private Respondent No.3 is still pending adjudication before this Honorable Tribunal.

- H. Incorrect, the confirmation of appellant was revised in compliance with judgment passed in Service Appeal No. 398/2011 and answering private Respondent No.3 was not cited as respondent in the appeal therefore, the judgment could not be enforced against the private Respondent No.3.
- I. Incorrect, the authorities consider the promotion cases of Police officers on seniority cum fitness basis.
- J. Incorrect, the seniority of appellant and others has been fixed in accordance with law and rules and in compliance with the judgment of the Honorable Tribunal.

It is therefore, prayed that the appeal may be dismissed with costs.


Mian Intiaz Gul
Acting SP (Legal)
Investigation,
CPO, Peshawar
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

Versus


Government of KPK through Secretary Home, & TAs Department

Khyber Pakhtunkhwa, Peshawar and others..... (Respondents)

COMMENTS IN RESPONSE TO APPLICATION FOR
INTERIM RELIEF BY RESPONDENT NO. 3 ARE
SUBMITTED AS UNDER:-

1. That the application of appellant for interim relief is not sustainable as the balance of convenience is in favour of respondents, appellant has got no good prima facie case and there are no prospects of causing irreparable loss to the appellant if grant of interim relief is denied.
2. That the Service Appeal No. 2/2011 filed by appellant against the same respondents with same prayer is still under consideration before this Honorable Tribunal therefore, the fresh appeal of appellant with interim relief application is neither tenable nor justified.

It is therefore, prayed that the application for interim relief filed by appellant being without any force and substance may please be dismissed with costs.


Mian Imtiaz Gul
Acting SP (Legal)
Investigation,
CPO, Peshawar
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

Versus

Government of KPK through Secretary Home, & TAs Department
Khyber Pakhtunkhwa, Peshawar and others..... (Respondents)

Subject:- COMMENTS ON BEHALF OF OFFICIAL
RESPONDENTS

Respectfully Sheweth!

Preliminary Objections:-

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

FACTS:-

1. Correct to the extent that on 08.01.1984, appellant was appointed as temporary prosecuting Sub-Inspector in Police department.
2. Correct to the extent that appellant qualified basic Prosecuting Sub-Inspector course and his name was brought on promotion List-F.
3. Incorrect, according to Police Rule 19.26(4), in case of officers who are appointed officiating prosecuting Sub-Inspector against temporary or deputation vacancies and are subsequently absorbed in substantive vacancies the Inspector General of Police, may, by special order in each case, permit period of

officiating service as Prosecuting Sub-Inspector to count towards the period of probation provided the courses of training and the examination prescribed in Rule 19.28 have been undergone and passed. Appellant was recruited as temporary PSI and no order within the meaning of Police Rules 26.4 was issued by the Inspector General of Police, therefore, the appellant was not confirmed from the date of appointment.

4. Incorrect, the seniority list of Prosecuting Sub-Inspectors was revised in compliance with judgment of this Honorable Tribunal dated 19.11.1996 passed in Service Appeal No. 84/1996 and subsequent order dated 22.11.2004 passed in execution petition. The Honorable Tribunal held in the judgment that F-List is a promotion list while seniority is reckoned from the date of confirmation within the meaning of Police Rule 12.2(3). The private respondents were confirmed in the rank of Sub-Inspector Legal prior to appellant therefore, they were placed senior to appellant in the seniority list in compliance with the above referred judgment of the Service Tribunal. Copy of the judgment and the order are enclosed as Annexure-A & B respectively.
5. Correct to the extent that appellant has challenged the seniority list as stood on 31.10.2010 in Service Appeal No. 2/2011 which is still pending adjudication before this Honorable Tribunal. The private respondents in the instant service appeal and others have also been cited as respondent in the Service Appeal. The Honorable Service Tribunal while placing reliance on judgment passed in Service Appeal No. 84/1996 dismissed identical Service Appeal No. 802/2008 vide order dated 18.01.2011. The appellant on realizing the fate of his Service Appeal No. 02/2011 referred above filed another Service Appeal No. 398/2011, praying therein for confirmation in the rank of PSI from the

date of appointment, which was accepted vide order dated 22.01.2013. The appellant did not make anyone as private respondent in Service Appeal No. 398/2011. Therefore, claim of seniority against private respondents on the basis of judgment passed in Service Appeal No. 398/2011 is not tenable. Copy of the judgment passed in Service Appeal No. 802/2008 is enclosed as Annexure-C.

6. Correct to the extent that the Service Appeal No. 398/2011 filed by appellant was accepted by this Honorable Tribunal but appellant did not make anyone as private respondent in the Service Appeal therefore, claiming of seniority against the private respondent on the basis of the judgment passed in Service Appeal No. 398/2011 is not tenable.
7. Correct to the extent that the confirmation of appellant in the rank of Sub-Inspector Legal was revised in compliance with the judgment of this Honorable Tribunal, however, private respondents were not made parties in the appeal therefore appellant is estopped to claim seniority against the private respondents on the basis of judgment passed in Service Appeal No. 398/2011. The private respondents were confirmed prior to appellant and were also promoted prior to appellant. Therefore, the private respondents rank senior to appellant.
8. Need no comments it pertain to the record.
9. Incorrect, the private respondents were promoted to the rank of DSP/Legal much earlier than the appellant therefore, the private respondent rank senior to the appellant.
10. Incorrect, there was no force in the departmental appeal of appellant as his seniority was already restored in compliance with judgment of this Honorable Tribunal. As regards his seniority against the private respondents, it is worth mentioning that the private respondents were promoted to the rank of

DSP/Legal much earlier than the appellant, therefore, they will rank senior to the appellant.

11. Incorrect, there was no force in the departmental appeal of appellant and he has filed the Service Appeal on no grounds, therefore, the appeal is not sustainable.

GROUND:-

- A. Incorrect, the seniority of DSP/Legal has correctly been fixed in accordance with law and rules.
- B. Incorrect, the seniority list has been prepared in accordance with law and rules and no one has been discriminated.
- C. Incorrect, respondents have never questioned the service carrier of appellant and his seniority was fixed in accordance with law and rules and in compliance with judgments of this Honorable Tribunal.
- D. Incorrect, appellant was recruited on temporary basis and his confirmation was correctly made in accordance with law and rules on the subject matter. Later on his confirmation in the rank of PSI was revised in compliance with the judgment of this Honorable Tribunal.
- E. Incorrect, the seniority list was revised in compliance with judgment of this Honorable Tribunal passed in Service Appeal No. 84/1996 and subsequent order dated 22.11.2004 passed in execution petition.
- F. Incorrect, the confirmation of appellant in the rank of PSI was revised in compliance with judgment passed in Service Appeal No. 398/2011. Furthermore, he did not make anyone as private respondent in the Service Appeal therefore he is wrongly contending seniority against the private respondents. The Service Appeal No. 02/2011 filed by appellant against the private respondent is still pending adjudication before this Honorable Tribunal.
- G. Incorrect, the confirmation of appellant was revised in compliance with judgment passed in Service Appeal No. 398/2011. Appellant did not make anyone as

private respondent in the Service Appeal therefore he is wrongly contending seniority against the private respondents. The Service Appeal No. 02/2011 filed by appellant against the private respondent is still pending adjudication before this Honorable Tribunal.

- H. Incorrect, the confirmation of appellant was revised in compliance with judgment passed in Service Appeal No. 398/2011.
- I. Incorrect, the authorities consider the promotion cases of Police officers on seniority cum fitness basis.
- J. Incorrect, the seniority of appellant and others has been fixed in accordance with law and rules and in compliance with the judgment of the Honorable Tribunal.

It is therefore, prayed that the appeal may be dismissed with costs.



Secretary Home & Tribal Affairs
Khyber Pakhtunkhwa,
Peshawar
(Respondent No.1)



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

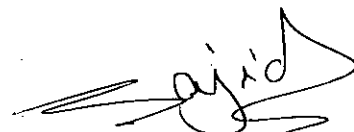
Versus

Government of KPK through Secretary Home, & TAs Department Khyber
Pakhtunkhwa, Peshawar and others..... (Respondents)

AFFIDAVIT

I, Sajid-Ud-Din Qazi AIG/Legal CPO, Peshawar do here by solemnly affirm on oath that the contents of accompanying comments on behalf of official Respondent in response to the above titled service appeal is correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

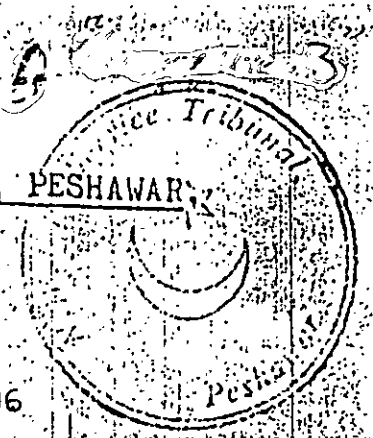
DEPONENT



Sajid-Ud-Din Qazi,
AIG/Legal

Annexure: "A"

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR



Appeal no. 84/1996

Date of institution - 25.2.96

Date of decision - 19.11.96

Muhammad Saeed PSI No. M/98 Swat, presently posted at Headquarter Swat. (APPELLANT)

VERSUS

- 1. I.G.P. N.W.F.P. Peshawar.
- 2. D.I.O. of Polico, Malakand Range Swat.
- 3. S.P. Swat.
- 4. Mr. Sultan Mahmood P.I.No. P/118 Peshawar & 54 others. (RESPONDENTS)

Sardar Shaukat Hayat, Advocate.

..For appellant.

Mr. Muhammad Zubair Anwar, Additional Govt. Pleader.

..For respondents ..no. 1 to 3.

MR. HIDAYATULLAH KHAN
MR. TAJ MUHAMMAD KHAN

..MEMBER.
..MEMBER.

JUDGMENT.

HIDAYATULLAH KHAN, MEMBER:- This appeal has been filed by the appellant against the orders dated 10.1.96, 22.3.94 and 20.11.94, whereby the appellant has been shown junior to respondents no. 4 to 55 in the list 'F' of PSIs of NWFP. He has prayed that the impugned List 'F' may be ordered to be modified and corrected and the appellant be declared senior to the respondents PSIs while in case of promotion as Inspector to those of the respondents Inspectors.

Brief facts as averred in the memo of appeal are that the appellant was appointed as PSI no. M/98 vide order dated 11.3.78. The appellant undergone the PPSI Course in the session 1978-79 at P.T.O. Ethala and qualified all the subjects with credit excepting Police Rules and opening speech, thereby obtained 1017/1500 marks i.e. 67.8%. The

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appellant has been confirmed as PSI w.e.f. 11.3.87. The case of the appellant's seniority was not considered for the reason that he had not qualified all the subjects with credit. The appellant qualified that examination with credit in the term ending September 1992 and vide notification dated 20.11.94 brought on list 'F'. Respondent no. 1 issued list 'F' dated 22.3.94 by not listing the appellant. The appellant preferred a departmental representation to respondent no. 1 through respondents No. 2 and 3. The respondents No. 1 to 3 did not apply their minds to the contents of the representation/appeal and the relief sought for, nor consulted the relevant rules and vide order/memo turned down the same. Hence this appeal.

Respondents have filed their replies, contested the appeal and denied the claim of the appellant.

Arguments heard and file perused.

The order of the departmental appellate authority on the representation of the appellant for revised seniority reads as under :-

"PSI Muhammad Saeed No.M/98 of Malakand Range was not recommended for admission to promotion list 'F' alongwith his colleagues by the S.P/Swat on the grounds that he has not qualified the PSI Examination with credit and just after qualifying the PSIs examination with credit his name was recommended for admission to promotion list 'F' and accordingly he was admitted to promotion list 'F' w.e.f. 6.11.94, therefore, his request for assignment of revised seniority is not deserving."

It is the plea of the respondents that according to rule 19.28 a PSI may not be promoted to the rank of P.I, unless and until he is certified to have passed the PSIs examination with credit. The case of the appellant is for seniority and not for promotion. With regard to the passing of departmental examination with credit, the counsel for the appellant relied on 1974-PLC(C.S.T) note-44, Ch.Fazal Muhammad Khan IGP Punjab, Lahore etc, in which it has been held that passing of departmental examination with credit is not one

of the criterions for determination of inter-so-seniority. The difference between promotion and seniority among the PSIs therefore, stands clear. The counsel also relied on the judgment of this Tribunal dated 12.7.94, copy of which has been placed on file, in which it has been held that seniority is required to be determined under Rule 12.2(3) of the Police Rules 1934 (Vol: II). A list which is a promotion list is not a seniority list. It is different and independent from the seniority in various promotion lists of Police Officers of different ranks including seniority in promotion list 'F' which is prepared under Police Rules 13.15(1) Vol:II. List 'F' is described in its clause(2) as promotion list and it is not to be published. Therefore, list 'F' is a list of selected PSIs who are approved for promotion to the rank of P.Is and it may be altered from time to time. Seniority list is a ranking list of all PSIs which has to be published.

In view of the above, the impugned departmental order of the competent authority is set aside and the case is remanded back to the respondents to reconsider the case of the appellant under the relevant rules and keeping in view the above discussion and pass a final order with regard to the seniority of the appellant within 3 months of the receipt of this judgment failing which the appellant would be at liberty to approach this Tribunal for the redressal of his grievance. No order as to costs. File be consigned to the record.

ANNOUNCED.

19.11.96

Taj Muhammad Khan
 (TAJ MUHAMMAD KHAN)
 MEMBER.

Hidayatullah Khan
 (HIDAYATULLAH KHAN)
 MEMBER. 25/11/96

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 No. 170 Copy
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Number of words 1201
 Copies Sec 5
 Urgent 2
 Total 7
 Date of Completion of copy 25/11/96
 Date of receipt of copy 25/11/96

Annexure: "B"

FORM 'A'

FORM OF ORDER SHEET

COURT OF NWFP SERVICE TRIBUNAL PESHAWAR.

Case No. 8297/1999 M. Saeed vs G.P. etc



S.No.	Date of order	Order/proceedings with signature of judge.
1	2	3
	22.11.2004	<p>Mr. Muhammad Saeed, PSI No. M/98 Swat had filed Appeal No. 84/1996 in the Service Tribunal on 25.02.1996 against his seniority given in List "F" of PSIs of NWFP and had requested to correct the seniority list and to place him senior from respondents No. 4 to 55 in the said appeal. The Service Tribunal vide judgment dated 19.11.1996 while accepting the appeal, set aside the impugned departmental order of seniority and remanded the case back to the respondents to re-consider the case of appellant under the relevant provision of rules in view of the grounds mentioned in the judgment. The IGP NWFP and 2 others filed Civil Petition No. 29-P of 1997 against the said judgment of the Tribunal in the Hon'ble Supreme Court of Pakistan. The</p>

ATTESTED
EXAMINED
NWFP Service Tribunal
Peshawar

Honourable Supreme Court dismissed the petition, upholding the judgment dated 19.11.1996 of the Service Tribunal with the observation that while considering the case of Government servant to a higher post the question of seniority to the appellant, all the ingredients to be determined by the departmental authority which point had correctly been noted by the Service Tribunal in its judgment.

The judgment dated 19.11.1996 of the Service Tribunal duly upheld by the Supreme Court of Pakistan had got finality and has to be implemented by the respondent department. The respondent department has failed to implement the judgment of the Service Tribunal as well as of Supreme Court of Pakistan passed in the instant case on 19.11.1996 and 25.11.1997 respectively so far and has not ~~been~~ re-considered the seniority position of the appellant as well as the respondents and has not so far passed final order with regard to the seniority of the concerned employees. The

ATTESTED
E. A. M. I. S. C.
M. I. S. C.
Respondent

prayer of the appellant contained in his appeal No. 2297/1999 filed before this Tribunal on 2.12.1999 is accepted and the respondent department is directed to determine the seniority of the appellant viz-a-viz respondents in accordance with the principles laid down by the Service Tribunal in its judgment dated 19.11.1996, upheld by the Supreme Court in its judgment dated 25.11.1997 without further loss of time. File be consigned to the record.

ANNOUNCED.
22.11.2004.

[Signature]
Member.

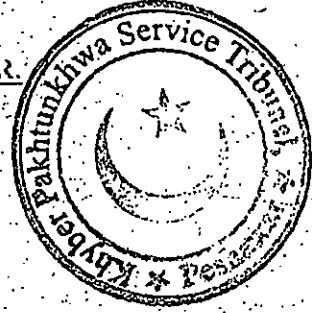
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Member.

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[Signature]
EXAMINER,
Service Tribunal,
Peshawar.

Date of Presentation of Applicant..... 9.12.04
 Number of Words 2000
 Copying Fee..... 12-00
 Urgent..... 2-00
 Total..... 14-00
 Name of Copyist.....
 Date of Completion of Copy..... 9.12.04
 Date of Delivery of Copy..... 9-12-04

Annexure "C"

BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR.



Appeal No: 802/2008

Date of institution - 04.06.2008

Date of decision - 18.01.2011

Akber Ali R/O D.I. Khan, Presently Inspector Legal, Hangu..... (Appellant)

Versus

1. Government of K.P.K through its Secretary, Home Department, Peshawar.
 2. Provincial Police Officer, NWFP, Peshawar.
 3. Abdul Rashid No. H/9, Prosecuting Inspector, Mansehra.
 4. Atta Ullah No. P/261- Prosecuting Inspector Office of CCPO, Peshawar.
 5. Muhammad Saeed No. M/98, Prosecuting Inspector, Charsadda.
 6. Sajjad ud Din No. K/14, Prosecuting Inspector DPO Office Kohat.
 7. Main Mustafa Gul No. K/25, Prosecuting Inspector, new NAB Peshawar.
 8. Mushtaq Ahmed No. D/26 Prosecuting Inspector, Inspector Legal (PO
 9. (Investigation), Peshawar.
 10. Iftikhar ul Mulk No. M/86 Prosecuting Inspector, Malakand, now NHA/
 11. Motorway,
 12. Aziz ur Rehman No. K28, Prosecuting Inspector, RTC Kohat.
 13. Imtiaz Gul No. K/15, P.I. Kohat now NHA/ Motorway.
 14. Falak Naz No. K/28, Prosecuting Inspector Karak.
 15. Hafizullah No. B/10 Prosecuting Inspector, DIG Office Kohat.
 16. Abdul Sattar No. B/62 Prosecuting Inspector, DPO office Pakki Marwat.
- (Respondents No. 3, 4 and 6 to 14 deleted vide order sheet dated 30.10.2009)..... (Respondents)

APPEAL under Section 4 of the NWFP Service Tribunal Act, 1974 (1 of 1974) from Seniority List of Prosecuting Inspectors (PIs) as it stood on 31.12.2007, whereby the appellant has been placed at serial No.17 wrongly, unjustifiably and otherwise than in due course of law, because he deserves to be placed at serial No.5 after Mr. Sher Ahmad No.786 Prosecuting Inspector, Chitral while the respondents No.3 to 14 being junior to the appellant in all respects have been placed senior to him therein illegally and unjustifiably. The inter-se seniority of the appellant and the respondent No.3 to 14 need to be ex consequent corrected in that the appellant be placed at serial No.5 in the impugned seniority list.

Mr. Shakeel Azam, Advocate..... For appellant.

Mr. Fahir Iqbal Khattak A.G.P..... For official respondents.

Mr. Ijaz Anwar, Advocate..... For Respondent No. 5.

ATTESTED

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ATTESTER

SYED MANZOOR ALI SHAH.....
MR. NOOR ALI KHAN.....

MEMBER.....
MEMBER.....

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER This appeal has been filed by the appellant against the Seniority List of Prosecuting Inspectors (PIs) as it stood on 31.12.2007, whereby he has been placed at serial No.17 instead of serial No.5 after Mr. Sher Ahmad No./86 Prosecuting Inspector, Chitral while the respondents No.3 to 14 being junior to the appellant in all respects have been placed senior to him.

2. Brief facts of the case are that the appellant joined the K.P.K. Police Organization as Prosecuting Sub Inspector (PSI) on 19/11/1978. He successfully underwent the requisite "in-service training" at Police College, Sihala. He passed the examination with credit in 1984. The name of the appellant was consequently admitted to promoted list "I" vide Notification dated 03.08.1987. The appellant was promoted as Prosecuting Inspector (P.I) on 31.03.1988. In the seniority list of PIs of K.P.K. Police as it stood on 31.12.2006 the Officers mentioned therein at serial No. 4 to 3 and 5 to 9 have since been promoted as DSPs, therefore, the name of appellant would come at Serial No. 5 in the said list. Respondent No. 2, issued a seniority list as it stood on 31.12.2007, wherein the name of appellant has been placed at serial No. 17. Respondents No. 3 to 14 being junior to him have been placed therein senior to him illegally. A letter sent by the DIG, D.I. Khan under dated 26.10.2007 also unveils a lot about reality. Being highly dejected from the list in question, the appellant brought his grievance into the notice of the competent authority by filing a representation on 07.02.2008. but the has not been decided so far. Hence, the instant appeal.

3. Arguments heard and file perused.

4. The learned counsel for the appellant argued that the seniority list in questions as it stood on 31.12.2007, is against law and the dates of confirmation mentioned in various columns are incorrect. This is by now a settled law that the names of PSIs undergoing the requisite training and passing the examination with credit, i.e. (70%.

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EXAMINER

W. M. M. Khwa

(3)

marks) stand assigned to list "P" which determines their inter-se seniority. It is also a settled law that their seniority takes effect from the date of placement of their names in such list in order of merit and not at all from the date of confirmation of their service. The date of confirmation in service is not a determining factor. Seniority will be counted from the date of placement in "List 'P'". The posts of PSIs and PIs are actually borne on the overall establishment of Province. For the purpose of promotion, their inter-se-seniority is determined on the basis of "List 'P'" and that too not from the date of confirmation in service but from the date of placement of their names in list 'P'.

5. Counsel for the appellant further argued that the impugned list-I, issued in the year 2007 is totally in conflict to the provisions contained under Rules 13.15, 13.16 and 19.28 (4) which correctly determines seniority amongst the contestants. He further contended that the order dated 23.10.2007 in respect of Respondent No. 5 (Muhammad Saeed) is illegal, void ab-initio, coram-non-judice and without lawful authority. And the same can be withdrawn by the Tribunal any time u/s 21 of the General Causes Act 1987, r/v Rule 27 of the K.P.K Service Tribunal Rules 1974. He placed reliance on the following reported judgments :-

- PLD-1992-SC-207
- 2000-SCMR-907
- 2005-SCMR-1703
- PLD-2009-Karachi-397
- 2009-PLC (CS) 161
- 1973-SCMR-SC-565
- PLD-1981-SC-565
- PLD-2003-SC-724

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 MEMBER
 Khuzd District Tribunal
 Service Tribunal
 Peshawar

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6. The A.G.P. argued that the procedure and method of promotion etc of legal Branch lays down that a Prosecuting Sub Inspector may not be promoted to the rank of Prosecuting Inspector unless and until he is certified to have passed the Prosecuting Sub-Inspector Examination with credit. If he fails to achieve this standard in the first instance he may thereafter, be given two further chances. Prosecuting Sub-Inspector, having passed exams with credit turns eligible for further promotion to the rank of Inspector. No other impediment exists for PSIs, and for further promotion the provision

of Police Rule 13:15 List F, laid down for Sub Inspectors and sergeants has to be followed.

7. As decided in *Fazal Muhammad Vs. I.G.P Punjab, 1994-CST-44*, that passing of examination with credit is not criteria for determination of inter-se seniority. Seniority is to be determined under Rule 12.2 (3) of Police Rules 1934 which states, that "seniority shall be finally settled by the dates of confirmation. Furthermore, as per rule 13.16 vacancies Inspectors are to be filled by promotion of officers from List "F" selected according to the principles laid down in Rule 13.1, which states that promotion shall be made by selection tempered by seniority.

8. Counsel for Respondent No. 5 argued that the issue of seniority has already been settled in the judgments passed in Appeal No. 84/1996 duly upheld by the Hon'ble Supreme Court of Pakistan vide order dated 25.11.1997 in Civil Petition No. 29-P of 1997. In another Appeal bearing No. 2297/1999 (filed by Muhammad Saeed Respondent No. 5) followed by order dated 23.10.2007 on implementation application before the Service Tribunal. He further pointed out that both the appellants were parties in the above stated judgments as Respondents No. 13 and 18 respectively, hence their prayer before the Tribunal on the same issue which has already been settled is against the norms of justice. The counsel further contended that this Tribunal on the issue of seniority, based on credit examination, had already disposed of service appeal filed by Abdul Latif Vs. I.G.P, Muhammad Saeed Vs. I.G.P, Abdul Hameed Vs. I.G.P and Azmat Ghafoor Vs. I.G.P by declaring that passing of examination with credit is not a criteria for seniority but just an eligibility for promotion to the rank of Inspector. The counsel further submitted that the issue having been decided by the competent forum and having attained finality, cannot be re-opened or re-questioned at any time forum in any subsequent proceedings and thereby hit by the principles of res-judicata. Reliance was placed on the following reported judgments:

1999, PLC (C.S) 893

1972-PLC-208

1983-PLC-(C.S) 200

1985-PLC-(C.S) 631

1985-PLC (C.S) 694

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

1989-SCMR- 441

PLD-1992-SC-207

PLD-1964-SC-205

2000-PLC (C.S) 147

9. Counsel for Respondent No. 5 also pointed out that the order dated 23.10.2007 had been assailed in the Hon'ble Supreme Court of Pakistan through C.P. No. 601/2007 but was dismissed vide order dated 1.4.2009, it being not a final order and thereby the seniority list attained finality as the same was not challenged again i.e. after final order.

The counsel added that both the appellants have concealed the factum of material decisions of Service Tribunal and Hon'ble Supreme Court of Pakistan vide order dated 19.11.1996 and 25.11.1997 respectively, thereby concealing materials facts from the Tribunal which is gross blunder on their part.

10. Bare perusal of judgments of this Tribunal dated 19.11.1996 duly upheld by the Hon'ble Supreme Court of Pakistan vide order dated 25.11.1997 reflects that the core issue of seniority had already been elaborately discussed and settled which needs no further clarification/interference. Moreover, any issue settled in this forum cannot be re-opened, particularly when parties are the same i.e. appellants at S. Nos. 13 and 18 respectively were made as respondents by the appellant (Muhammad Saeed, hereinafter called Respondent No. 5 in this appeal). Remedy had to be sought in the Apex Court but that too had been disposed of by the Hon'ble Supreme Court of Pakistan vide order dated 1.4.2009, hence, the contention of appellants are not tenable under the law rather survivable at this belated stage before this Tribunal.

11. In view of the above, this Tribunal does not justify any interference in the impugned seniority list issued in compliance with directions of this Tribunal in Appeal No. 84/1996 duly upheld by the Apex Court and subsequent Appeal bearing No. 2297/1999 followed by order dated 23.10.2007, subject to disposal of CPA hearing No. 601-P/2007 in the Hon'ble Supreme Court of Pakistan, having been dismissed vide order dated 1.4.2009 and attained finality.

12. In the circumstances explained above, the appeal is dismissed.


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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

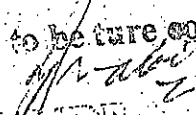
13. This judgment will also dispose of the other connected appeal bearing No. 731/2008 filed by Muhammad Ayaz Khan Vs. I.G.P. K.P.K etc. involving common question of law, in the same manner.

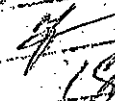
The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
18.1.2011.


(NOOR ALI KHAN)
MEMBER.


(SYED MANZOOR ALI SHAH)
MEMBER.

certified to be true copy

EX. CHIEF CLERK
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Submission of Application	18-2-2011
Number of Words	2400
Copying Fee	14-00
Urgent	2-00
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Date of Delivery	18-2-2011

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

Versus

Government of KPK through Secretary Home, & TAs Department
Khyber Pakhtunkhwa, Peshawar and others..... (Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENT No.4

Respectfully Sheweth!

Preliminary Objections:-

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

FACTS:-

1. Correct to the extent of appointment of appellant as temporary prosecuting Sub-Inspector in Police department.
2. Needs no comments on private Respondent No. 4 as it pertains to the service record of appellant.
3. Incorrect, according to Police Rule 19.26(4), in case of officers who are appointed officiating prosecuting Sub-Inspector against temporary or deputation vacancies and are subsequently absorbed in substantive vacancies, the Inspector General of Police, may, by special order in each case, permit period of officiating service as Prosecuting Sub-Inspector to count towards the period of probation provided the courses of training and the examination prescribed in Rule 19.28 have been undergone and passed. Appellant was recruited as temporary PSI and no order within the meaning of Police Rules 26.4 was issued by the Inspector General of Police, therefore, the

appellant was not confirmed from the date of appointment.

4. Incorrect, the seniority list of Prosecuting Sub-Inspectors was revised in compliance with judgment of this Honorable Tribunal dated 19.11.1996 passed in Service Appeal No. 84/1996 and subsequent order dated 22.11.2004 passed in execution petition. The Honorable Tribunal held in the judgment that F-List is a promotion list while seniority is reckoned from the date of confirmation within the meaning of Police Rule 12.2(3). The answering private Respondent No. 4 was confirmed in the rank of Sub-Inspector Legal prior to appellant therefore, ranks senior to appellant.
5. Correct to the extent that appellant has challenged the seniority list as stood on 31.10.2010 in Service Appeal No. 2/2011 which is still pending adjudication before this Honorable Tribunal. In addition to others, the answering private Respondent No. 4 is also respondent in the said service appeal. Actually this Honorable Service Tribunal while placing reliance on judgment passed in Service Appeal No. 84/1996 dismissed identical Service Appeal No. 802/2008 vide order dated 18.01.2011. The appellant on realizing the fate of his Service Appeal No. 02/2011 mentioned above filed another Service Appeal No. 398/2011, praying therein for confirmation in the rank of SI from the date of appointment, which was accepted vide order dated 22.01.2013. The appellant did not make anyone as private respondent in Service Appeal No. 398/2011. Therefore, claim of seniority against private respondents on the basis of judgment passed in Service Appeal No. 398/2011 is not tenable..
6. Correct to the extent that the Service Appeal No. 398/2011 filed by appellant was accepted by this Honorable Tribunal but answering private Respondent No.4 was not party in the appeal therefore, such judgment cannot be enforced against the private respondent.
7. Correct to the extent that the confirmation of appellant in the rank of Sub-Inspector Legal was revised in compliance with the judgment of this Honorable Tribunal, however, private respondents were not made parties in the appeal therefore appellant is estopped to

claim seniority against the private respondents on the basis of judgment passed in Service Appeal No. 398/2011. The private respondents were confirmed prior to appellant and were also promoted prior to appellant. Therefore, the private respondents ranks senior to appellant.

8. Need no comments. It pertains to the record.
9. Incorrect, the answering private Respondent No.4 was promoted to the rank of DSP/Legal much earlier than the appellant therefore, the private respondent rank senior to the appellant.
10. Needs no comments on the part of private Respondent No.4 as this Para need reply on behalf of official respondents.
11. Incorrect, appellant has filed the Service Appeal on no grounds, therefore, the appeal is not sustainable.

GROUND:-

- A. Incorrect, the officials respondents has correctly fixed seniority of DSP/Legal in accordance with law and rules.
- B. Incorrect, the seniority list has been prepared in accordance with law and rules and no one has been discriminated.
- C. Incorrect, seniority of junior ranks Police officers is regulated by Police rules and confirmation in the rank is determining factor for fixation of seniority.
- D. Incorrect, appellant was recruited on temporary basis and his confirmation was correctly made in accordance with law and rules on the subject matter. Later on his confirmation in the rank of SI was revised in compliance with the judgment of this Honorable Tribunal and appellant did not cite private Respondent No. 4 as respondent in that service appeal, therefore, he is wrongly claiming seniority against private respondent on the basis of above judgment of this Honorable Tribunal.
- E. Incorrect, the seniority list was revised in compliance with judgment of this Honorable Tribunal passed in Service Appeal No. 84/1996 and subsequent order dated 22.11.2004 passed in execution petition.
- F. Incorrect, the confirmation of appellant in the rank of SI Legal was revised in compliance with judgment passed in Service Appeal No. 398/2011. Furthermore,

he did not make anyone as private respondent in the Service Appeal therefore he is wrongly contending seniority against the private respondents. The Service Appeal No. 02/2011, filed by appellant against the private respondent is still pending adjudication before this Honorable Tribunal.

G. Incorrect, the confirmation of appellant was revised in compliance with judgment passed in Service Appeal No. 398/2011. Appellant did not make anyone as private respondent in the Service Appeal therefore he is wrongly contending seniority against the private respondents. The Service Appeal No. 02/2011 filed by appellant against the answering private Respondent No.4 is still pending adjudication before this Honorable Tribunal.

H. Incorrect, the confirmation of appellant was revised in compliance with judgment passed in Service Appeal No. 398/2011 and answering private Respondent No.4 was not cited as respondent in the appeal therefore, the judgment could not be enforced against the private Respondent No.4.

I. Incorrect, the authorities consider the promotion cases of Police officers on seniority cum fitness basis.

J. Incorrect, the seniority of appellant and others has been fixed in accordance with law and rules and in compliance with the judgment of the Honorable Tribunal.

It is therefore, prayed that the appeal may be dismissed with costs.



Falak Nawaz,
DSP/Legal
CPO Peshawar
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

Versus


Government of KPK through Secretary Home, & TAs Department

Khyber Pakhtunkhwa, Peshawar and others..... (Respondents)

Subject:- COMMENTS IN RESPONSE TO
APPLICATION FOR INTERIM RELIEF BY
RESPONDENT NO. 4 ARE SUBMITTED AS
UNDER:-

1. That the application of appellant for interim relief is not sustainable as the balance of convenience is in favour of respondents, appellant has got no good prima facie case and there are no prospects of causing irreparable loss to the appellant if grant of interim relief is denied.
2. That the Service Appeal No. 2/2011 filed by appellant against the same respondents with same prayer is still under consideration before this Honorable Tribunal therefore, the fresh appeal of appellant with interim relief application is neither tenable nor justified.

It is therefore, prayed that the application for interim relief filed by appellant being without any force and substance may please be dismissed with costs.


Falak Nawaz
DSP/Legal
CPO Peshawar
(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 898/2015

Imtiaz Ali Khan.....(Appellant)

Versus

Government of KPK through Secretary Home, & TAs Department Khyber
Pakhtunkhwa, Peshawar and others..... (Respondents)

AFFIDAVIT

I, Falak Nawaz DSP Legal CPO, Peshawar do here by
solemnly affirm on oath that the contents of accompanying comments on
behalf of Respondent No. 4 in response to the above titled service appeal
and interim application is correct to the best my knowledge and belief.
Nothing has been concealed from this Honorable Tribunal.

DEPONENT



Falak Nawaz,
DSP/Legal
(Private Respondent No. 4)

