

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 1867/2022

Izhar Ahmad

VERSUS

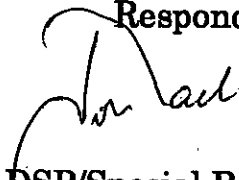
Government of KPK through Chief Secretary KPK & Others

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Dated:15/12/2023

Respondent Through


**DSP/Special Branch
Jan Muhammad Khan
Peshawar**

①

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 1867/2022

Izhar Ahmad No. 512/SB Constable Special Branch (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa at Civil Secretariat Peshawar.
2. Provincial Police Officer Khyber Pakhtunkhwa at CPO Peshawar.
3. Additional Inspector General of Police (Special Branch) Khyber Pakhtunkhwa, Peshawar.
4. Deputy Inspector General of Police (Special Branch) Khyber Pakhtunkhwa, Peshawar(Respondents)

REPLY BY RESPONDENTS.

PRELIMINARY OBJECTIONS:-

- a) That the appellant has no cause of action.
- b) That the appeal is badly barred by law & limitation.
- c) That the appellant has been estopped by his own conduct to file the appeal.
- d) That the appeal is not maintainable in its present form.
- e) That the appellant has not come to the Hon'ble Tribunal with clean hands.
- f) That the appeal is bad for misjoinder and non joinder of necessary parties.

FACTS:-

1. First portion of the Para pertain to the personal information and service record needs no comments while for rest of the Para it is made clear that incentive based promotions and confirmations in Police Department has termed as out of turn promotions deprecated by the Apex Court Judgment reported as 2013 SCMR 1752, 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206 and 2018 SCMR 1218. The Apex Court of Pakistan declared all kinds of out of turn promotions as illegal, unlawful, unconstitutional, un-Islamic void ab-initio, against human rights and norms of Justice in the above mentioned Judgments. Recently, the Apex court vide order dated 26-01-2023 in CrI.D.P#38/2021 in CP 381-P/2020 sought implementation report of the aforementioned Apex Court Judgments on Out of Turn promotions from KP Police. The KP Police in compliance withdrawn all kinds of out of turn promotions and submitted compliance reports in CrI.O.P#38/2021 in C.P#381-P/2020 titled Govt of KP versus Amjid Khan & others.
2. Incorrect, misleading and misconceived. In fact, the appellant alongwith others were given shoulder promotion which is purely temporary promotion for the purpose of performing duty. Appellant is misconceiving the said promotion as permanent

promotion while for permanent promotion, he had to qualify A-1 and B-1 examinations as envisaged in Police Rules 13-7 mandatory for promotion to the rank of Head Constable (HC). Furthermore, no Constable can be regularly promoted to the rank of HC unless qualify Lower College Course after his 'A-1 and B-1. Appellant neither qualify A1, B1 nor passed his Lower College Course. Appellant is canceling these facts from this Hon'ble Court and trying to get promotion at the dent of a Judicial verdict by concealing and deceiving this Hon'ble Tribunal. (Copy of Police Rules 13-7 annexed as Annexure A)

3. Incorrect, misleading and misconceived. Infact, the appellant is deceiving this Hon'ble Court by concealing the real facts that he is neither fit nor eligible for regular promotion as ASI. The appellant has to get regular promotion to the rank of HC at the first instance which has its own criteria and he never qualified the regular promotion to the rank of HC. After regular promotion to the rank of HC, he has to qualify Intermediate College Course mandatory for further promotion to the rank of ASI. Appellant both rank promotions i.e. HC and ASI are purely on temporary basis and for the purpose of duty. He neither qualified the mandatory courses nor other prescribed trainings and periods for the said promotion. Hence, claim of the appellant is quite illegal, unlawful, devoid of law/rules and based on malafide intentions. (Copy of promotion as ASI Rule 13 of Police Rules annexed as Annexure B).
4. Pertain to record, however, as explained in above Para 1, 2 and 3 appellant's promotions were purely temporary for the purpose of duty within the Special Branch Establishment, therefore, upon repatriation to the district of domicile (Parent District) both of his temporary promotions were rightly withdrawn. The Apex Court of Pakistan in its Judgments repeated as 2016 SCMR 1254 declared that the establishments of Police other than DIG Range are barred from recruitment, selection for trainings and maintaining seniority list. Therefore, in compliance of above mentioned order, the KP Police issued Standing Order No. 02/2016 wherein all the Police personnel recruited in various establishments were transferred to their districts of domicile where there seniority is maintained and selection for various mandatory training courses are made under the Rules. (Copy of Standing Order No. 02/2016 is annexed as Annexure C).
5. Pertain to record, however, as explained in Para No. 4 above that appellant's promotions were purely on temporary basis for the purpose of duty within the jurisdiction of Special Branch Establishment and were not regular promotions under the rules, hence, these promotions were rightly and legally been withdrawn by the competent authority. Furthermore, temporary or shoulder promotion is the discretion of concerned authorities and appellant cannot claim that a specific promotion be given so that to qualify for a specific duty within the establishment.

Transfer and postings of police officers are always subject to their fitness, suitability and eligibility to a particular assignment under the Rules. No police officer can claim promotion unless 'qualify to' a particular post. Appellant from recruitment remained a Constable, never qualified mandatory courses prescribed and he did not even try to qualify the same but insisting for promotion to a higher post, is quite illegal, immoral and without justification.

6. Incorrect, misleading and misconceived. All of the appellant's who were granted relief in the consolidated Judgement dated 10-01-2022, were also temporary promoted personnel but due the concealing of facts and improper pleading, they were granted relief by this Hon'ble court in the Judgement *ibid*.

It is further clarified to this Hon'ble court that all such promotions which are granted in violation of Rules whether they are one step, two step, adhoc, in the wake of terrorism, under any incentive based standing order like cadetship, gallantry or accelerated promotion on the basis of out of turn promotional courses all kinds of such promotions have been termed as out of turn promotions by dated the Apex Court of Pakistan in its various judgments reported as 2013 SCMR 1752, 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206 and 2018 SCMR 1218. The Apex Court declared that such promotions are illegal unlawful, unconstitutional and against the injunctions of Islam. The legal instruments providing for such promotions have no legal sanctity and are void ab-initio. Such promotions impinge upon the rights of other police officers in terms of seniority and promotions and deprive them of their due rights as such promotion can be granted at the cost of others rights. Furthermore, the Apex Court in Judgment reported as 2018 SCMR 1218 at Para 76 declared in the following terms:-

76. Keeping in view the above we hold as under:-

- i. The exception, created in para No.111 of the Shahid Pervaiz's Case (Supra) read with para No.143 thereof, wherein the protection was extended to the category of cases "wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court", is hereby withdrawn by exercising Suo Motu Review Jurisdiction;*
- ii. The Intra Court Appeals filed against judgment dated 29.03.2017 and the Criminal Original Petitions filed for violation of judgment dated 30.12.2016 are dismissed. Furthermore, the Review Petitions filed against judgment dated 29.03.2017 are also dismissed. As the main cases have been decided hereinabove, the*

applications for impleadment as party are dismissed;

- iii. *The Criminal Original Petition No. 96/2017 filed for violation of order dated 08.12.2016 is disposed of with the direction that the Punjab Service Tribunal shall proceed to decide the cases of the petitioners pending before it expeditiously, preferably within a period of two months of the decision of this case;*
- iv. *It would be open to the government to frame rules providing a Sports Group within the police in order to encourage sports but it will not form part of the regular police force and the members of Sports Group shall not be assigned field posting, and will only be restricted to their specialized Group; as already observed in Shahid Pervaiz's case (supra);*
- v. *The I.G.P, Punjab, the Home Secretary, Punjab, and the Secretary, Establishment Division, are directed to comply with the judgment, by fixing the seniority of all the Police Officers/Officials who were given out of turn promotions along with their batch-mates, as if they were never given out of turn promotion;*
- vi. *For the purpose of compliance of this judgment, necessary D.P.C/Board, as the case may be, shall be immediately held and a compliance report be submitted to the Registrar of this Court for our perusal in Chambers within a period of one month. The Advocate General, Punjab, and the learned Attorney General for Pakistan shall communicate the directives of this Court to the relevant authorities.*

Hence, reliance of appellant is without suffice, excessive and suppressive upon the law, rules, human rights and Apex Court Judgments.

- 7. Incorrect and denied. No departmental appeal lay to the competent authority against his original order of repatriation/reversion. Such departmental appeal was already badly time barred without lawful effect.
- 8. Incorrect and misleading as explained in above paras in detail whereas departmental appeal was badly time barred, insuffice and without legal effect. Appeal of the appellant is without proper cause of action and liable to be dismissed inter-alia on the following grounds:

GROUNDS:-

- A. Incorrect, the order of the Respondents is according to Law, Rules and regulations and no discrimination has done with the appellant.
- B. First para is pertain to record, however for the remaining it has already been explained in the above mentioned paras.
- C. Incorrect, as already explained in the preceding paras.
- D. Incorrect, appellant was temporarily based promoted for a time being hence his plea for show cause etc is baseless.
- E. Incorrect, as already explained in Para 2 and 3.
- F. First para is pertain to record, while for the remaining para it has already been explained in the above mentioned paras.
- G. Incorrect, pertain to record, however, every and each case has own aspect and nature.
- H. As replied above.
- I. Incorrect, appellant has been deal according to law rules and regulations.
- J. Respondents may allowed to raise other grounds at the time of arguments.

PRAYER:-

Keeping in view of the above stated Facts, it is therefore humbly prayed that the Appeal being not maintainable may kindly be dismissed with costs please.

AFTAB AHMAD MAHSUD (PSP)
Deputy Inspector General of Police
Special Branch Khyber Pakhtunkhwa, Peshawar
(Respondent No. 4)

KASHIF ALAM (PSP)
Additional Inspector General of Police
Special Branch Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)

(DR. MUHAMMAD AKHTAR ABBAS) PSP
DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 2)

Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)

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Khyber Pakhtunkhwa Police Rules 1934 amended 2017

7. After rule 13.7, the following new rules shall be inserted, namely:

“13.7A. Criteria for placement on List A and List B.---(1) A Constable appointed under these rules shall be placed on List A as provided in rule 13.6, if he has-

- (i) completed three (03) years service;
- (ii) qualified recruit course as provided in these rules; and
- (iii) qualified A1 examination; provided that upper age limit for appearing in A1 examination shall be thirty-seven (37) years and qualifying marks shall not be less than forty percent (40%) of the total marks.

Note:

The syllabus for A1 examination shall be as per Appendix 13.7A (I).

Amended.
Amended

(2) Subject to rule 19.10, a Constable placed on A1 list shall be eligible for appearing in B1 examination for the purpose of eligibility on List B as provided in rule 13.7. A Constable, who qualifies A1 examination, shall be eligible to appear in B1 examination to be held next year. The syllabus for B1 examination shall be as per Appendix 13.7A (II):

Provided that upper age limit for appearing in B1 examination shall be forty (40) years and qualifying marks shall not be less than fifty percent (50%) of the total marks.

(3) The cut-off date for calculating the upper age limit for either of the above examinations shall be the 31st day of the month of December falling before the respective examination.

(4) There shall be no bar on the number of attempts for a candidate to appear either in A1 and B1 examination within the prescribed age limit.

(5) Both A1 and B1 examinations shall be conducted through an accredited testing agency approved by the Provincial Police Officer.

(6) The entire process of both A1 and B1 examinations shall be completed before the 31st day of March every year.

(7) The Provincial Police Officer may by general or special order raise the minimum qualification marks for A1 and B1 examinations from time to time.

(8) Constables who qualifies B1 examination shall be eligible for the lower school course in the order of merit in B1 examination. The Head of the District Police shall select B1 qualified candidates for lower school course strictly in accordance with consolidated seniority list as provided in sub-rule (13).

(9) The examination for the lower school course shall be conducted through an accredited testing agency approved by Provincial Police Officer.

(10) The duration of lower school course shall be sixteen (16) weeks. The lower course qualified Constables shall also undergo six (06) weeks Field Tactics Course under supervision of Commandant Elite Force.

(11) In each district on the basis of total strength of Head Constables of the district including share of Central Units, the Provincial Police Officer on the recommendation of the following Committee fix every year the number of seats for the lower school course:

- (a) the Additional Inspector General of Police Headquarters;
- (b) the Deputy Inspector General Training;
- (c) the Assistant Inspector General of Police Establishment; and
- (d) any other member not below the rank of Superintendent of Police, nominated by the Provincial Police Officer.

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(12) No seats of the lower school course shall be allocated to any police unit except districts.

(13) A consolidated seniority list of all Constables enlisted in a district, or having domicile of the district, shall be maintained in that district which shall include seniority-wise names of all Constables of the district whether such Constables are serving in that district or they have been transferred to or working in other police Units.

Police Rules 1934

13.9. List D. Promotion to Assistant Sub-Inspector. – (1) A list shall be maintained in each district card index Form 13.9(1) of those head constables who have passed the lower school course and the Intermediate school course at the Police Training School and are approved by the Deputy inspector-General as eligible for officiating or substantive promotion to the rank of Assistant Sub-Inspector. No head constable shall be admitted to their list who is not thoroughly efficient in all branches of the duties of a constable and head constable and of established integrity.

(2) Officiating promotion to the rank of assistant sub-inspector shall be made from the list prescribed in sub-rule (1), as far as possible in rotation so as to give each man a trial in the duties of the higher rank. Substantive promotion shall be made by the Deputy Inspector-General in accordance with the principles prescribed in Rule 13.1, and officiating promotion shall be made in accordance with sub-rule 13.4(2).

(3) Half-Yearly reports in Form 13.9 (3) on all head constables in this list shall be furnished on the 15th March and the 15th September, to the Deputy Inspector-General.

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(9)

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

STANDING ORDER NO. 02/2016
Quotas of Districts in Central Units

This Standing Order is issued under Article 10(3) of Police Order 2002 and in pursuance of the Police Policy Board decision taken in its 20th meeting held on 15th December 2015.

2. **Aim:** - This Standing Order aims at fixing the contributory quota of District and Regions in the executive strength of the Central Units.

3. **Existing Sanctioned Strength in Rank as determining Factor:** - (1) The executive strength from Constable to Sub-Inspector of all Central Units including Frontier Reserve Police, Elite force, Central Police Office, Special Branch, Traffic Khyber Pakhtunkhwa, CPO Investigation, Central Police Office, PQR and Training Schools and College will be provided by the Police Districts/Regions of the Province in accordance with the ratio of their existing sanctioned strength in overall sanctioned strength for each rank as detailed in attached Annexures.

(2) CTD Strength will be determined as per their requirement and deployment plan which has already been approved and issued vide CPO letter No. 3229-80/E-II dated 31.01.2014.

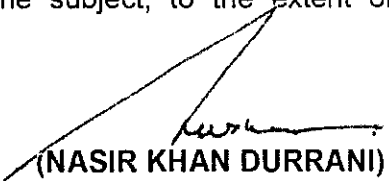
4. **Recruitment, Promotions in Central Units;**- Recruitment and promotion in the ranks from constable to Sub-Inspector will be carried out and be regulate in concerned Districts and Regions only. Central Units will neither recruit nor promote any officer unless it is specifically provided and allowed. All personnel serving in the central Units will be on deputation from concerned Districts and Regions and their lien will be in their parent District/Region. If in the past any recruitment has been carried out directly in the central units and lien of such recruits has not been fixed so far; it will be fixed in District of domicile of the concerned recruit. Furthermore for retirement purposes personnel will be posted back in their parent Districts.

5. **Tenure;**- The period in the central unit will be considered on deputation in the meaning of Police Rules and shall not exceed 03 years.

6. **Application;**- This Standing Order will come into force with immediate effect and transition to this scheme of things will not be at once but be in phased manner subject to occurrence of vacancies in central units and capacity of the contributing Districts to contribute as per quota in due course of time.

7. **Power to remove difficulties;**- If any difficulty arises in giving effect to this order, the Provincial Police Officer may by notification make such provisions as deemed appropriate.


8. **Amendment:** - All previous Standing Orders on the subject, to the extent of the provisions of this order, shall stand amended.


(NASIR KHAN DURRANI)
Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar

No:- 225-300/GB, dated Peshawar the 25th January 2016

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

1. All Heads of Police Offices in Khyber Pakhtunkhwa;
2. PRO to PPO;
3. Registrar CPO.


(Muhammad Alam Shinwari) PSP
DIG Headquarters
Khyber Pakhtunkhwa
Peshawar

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No. 1867/2022
Izhar Ahmad No. 512/SB ASI Special Branch (Appellant)

VERSUS

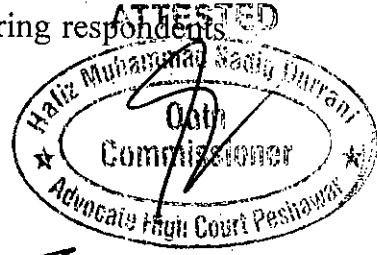
Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa &
others(Respondents)

AFFIDAVIT

We, Respondents No. 1, 2, 3 & 4 do hereby solemnly affirm on oath that the contents
of accompanying Reply to the Service Tribunal are correct to the best our knowledge and
belief. Nothing has been concealed from this Hon'ble Tribunal.

15 DEC 2023

It is further stated on oath that in this Service Appeal, the answering respondents
have neither been placed ex-parte nor their defense is struck off.



AFTAB AHMAD MAHSUD (PSP)
Deputy Inspector General of Police
Special Branch Khyber Pakhtunkhwa, Peshawar
(Respondent No. 4)

KASHIF ALAM (PSP)
Additional Inspector General of Police
Special Branch Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 3)

PROVINCIAL POLICE OFFICER,
Khyber Pakhtunkhwa, Peshawar
Through (Dr. Muhammad Akhtar Abbas) PSP
DIG/Legal, CPO, Peshawar
(Respondent No. 2)

NADEEM ASLAM CHAUDHRY
Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1867/2022
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VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa &
others(Respondents)

AUTHORITY LETTER

Jan Muhammad DSP Special Branch, Khyber Pakhtunkhwa, Peshawar is authorized to submit Para-wise comments/ reply in the instant Service Appeal in the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend instant case on behalf of respondents.

AFTAB AHMAD MAHSUD (PSP)
Deputy Inspector General of Police
Special Branch Khyber Pakhtunkhwa, Peshawar
(Respondent No. 4)

KASHIF ALAM (PSP)
Additional Inspector General of Police
Special Branch Khyber Pakhtunkhwa,
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(DR. MUHAMMAD AKHTAR ABBAS) PSP
DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 2)

Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)