BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2260/2023

Sabz Ali Inspector..... .....(Appellant)

VERSUS

Provincial Police Officer, KP and others.....(Respondents)

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DEPONENT

07-2-2024
Peshawar

DSP/ Legal,
CPO, Peshawar

7

(1)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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REPLY BY RESPONDENTS NO. 1 TO 4

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

a) That the appellant has got no locus standi to file the instant Service Appeal.
b) That the appellant is concealing material facts from this Hon'ble Tribunal.
c) That the appellant is estopped to file the present appeal.
d) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
e) That the appeal is badly barred by law.
f) That out-of-turn promotions have been declared illegal, unconstitutional by the Supreme Court of Pakistan.

FACTS:

1. Pertains to service record and career progression of the appellant, however, the appellant is concealing true facts from this Hon'ble tribunal as the appellant has gotten promotion as officiating ASI on 26.11.2009 while he was confirmed in the same rank vide order No. 6462-67/EC-1 dated 01.08.2011(copy is attached as Annexure- **A**) as a special case (gallantry) in violation of the rule 13.18 of Police Rules,.1934. Moreover, promotions and confirmations as ASI in lieu of gallantry acts have been deprecated by the august apex court in its judgments reported in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions. In this regard, specifically Para 122 of Judgment of Hon'ble Supreme Court of Pakistan 2015 SCMR 456 is reproduced as under;

> *122. The issue of out of turn promotions has been dealt with by us in detail in the judgment sought to be reviewed and we reached the conclusion that it was violative of Articles 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, learned Advocate Supreme Court has contended that section 9- A of the Act has not been struck down by this Court, while declaring the out of turn promotions as unconstitutional. We are mindful of this fact as we have held that the Competent Authority can grant awards or rewards to the Police Officers, if they show act of gallantry beyond the call of duty. However, we had struck down the very concept of 'out of turn promotion' being violative of Constitution for the reasons incorporated in paras 158 to 164 of the judgment under review.*

As per Para No. 73 of Judgment of Hon'ble Supreme Court of Pakistan 2018 SCMR 1218 (Intra Court Appeals No.4 of 2017 etc) when any legislative instrument is declared unconstitutional, it is declared void ab initio. The Para No. 73 is being reproduced as under;

> *73. The contention of Khawaja Haris Ahmad, learned Sr.ASC that in Para No. 123 of Shahid Pervaiz's case (supra) this Court had wrongly observed that "we have already*

declared void ab initio the legislative instruments that provided for out of turn promotions." because nowhere in the earlier judgment was such a declaration made, is also without force. Suffice it to say that in Para 104 of Shahid Pervaiz' Case (Supra), it was observed that: "104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion." Moreover, in Para 129 of the judgment of Ali Azhar Khan Baloch's case (supra), this Court was pleased to observe that when any legislative instrument is declared unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio. The relevant part of Para 129 is being reproduced hereunder: "129. ..... Now, it is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability."

Similarly, the Hon'ble Supreme Court of Pakistan Judgment reported as 2017 SCMR 456 vide Para No. 98 declared Out of Turn Promotions as null and void in the following terms which is reproduced as under;

98. In a series of judgments, this Court has declared out-of-turn promotions as being unconstitutional, un-Islamic, and void ab initio. The principle of unconstitutionality attached to the instrument providing for out of turn promotion was laid down first in the case of Muhammad Nadeem Arif vs. I.G of Police (2011 SCMR 408). The view taken in this judgment was followed in another case reported as Ghulam Shabbir vs. Muhammad Munir Abbasi (PLD 2011 SC 516); wherein it was held that out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam; and that reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

2. Pertains to service record of the appellant. However, the appellant's all promotions and/or elevation upto the rank of Inspector after his out of turn confirmation as ASI ahead of his original colleagues, thus violating their due rights, fall in the ambit of out of turn promotions deprecated by the august apex court highlighted above.

3. Pertains to the seniority list dated 07.09.2021 containing certain anomalies as was issued devoid of rules and against the spirit of the judgment of the august apex court reported in 2016 SCMR 1254. Therefore, CPO Peshawar issued instructions vide letter No. CPO/CPB/68 dated 28.02.2023(copy is attached as Annexure- **B)** and accordingly, seniority lists including revised seniority list (of Inspectors) dated 02.09.2022 were uniformly revised wherein dates of confirmations as Sis were revised as per spirit of rule 13.18 of Police Rules, 1934. The august apex court in its judgment reported in 2016 SCMR 1254 categorically observed that Police personnel shall automatically stand confirmed on the termination of the probationary period whether notification in this regard has been issued or not. Operating Para is reproduced as under;

74. "It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of the competent authorities concerned. Hence, we are of the view that this practice must be brought to an effective end so that injustice may not be perpetrated against such officials. Therefore, in future those Police Personnel who have completed their statutory period

of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued".

4. Correct to the extent of minutes dated 08.12.2022 of Departmental Selection Committee meeting. The appellant was beneficiary of out-of-turn promotion and so was rightly deferred in the light of directions of the august apex court.
5. Pertains to the judgment dated 23.02.2023 passed by the Hon'ble Peshawar High Court, Peshawar wherein the Writ Petition No. 48-P filed by the appellant was dismissed on point of maintainability.
6. Incorrect. The appellant is concealing material facts from this Hon'ble tribunal as he was beneficiary of out-of-turn promotion and so was rightly deferred in the light of directions of the august apex court. Moreover, in compliance with Order of the Hon'ble Supreme Court of Pakistan dated 26.01.2023 in Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 and in pursuance of Judgments passed by Hon'ble Supreme Court of Pakistan in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions, all Unit Heads, Regional Police Officers and District Police Officers of Khyber Pakhtunkhwa Police were directed vide CPO Peshawar Letter No. CPO/CPB/75, dated 14.02.2023, to ensure compliance of above mentioned Orders in letter and spirit. Accordingly, all Out of Turn Promotions granted to Police personnel either on gallantry or otherwise belonging to different Units, Regions & Districts have been withdrawn by the concerned authorities and consequently their seniority has been re-fixed along with their Batchmates who were promoted during their intervening period by maintaining original inter-se-seniority. Thus, the appellant's out of turn promotion was also withdrawn vide CPO Peshawar Order No. 582/Legal/ E-1 dated 15.03.2023 which until has not been challenged in this Hon'ble tribunal or any court of law thus, gaining finality. Thus, the appellant's instant appeal is pre-mature at this stage and not maintainable in law and is liable to be dismissed on following Grounds;

GROUNDS

A. Incorrect, the appellant has been treated duly in accordance with law and in pursuance of the august apex court judgments pertaining to out of turn promotions highlighted above. Moreover, no constitutional provision has been violated in respect of the appellant.

B. Incorrect, all the mentioned officials have been dealt in compliance of the august apex court judgments pertaining to out of turn promotions highlighted above who afterwards sought interim relief from the Hon'ble Peshawar High Court by filing writ petitions. However, the Hon'ble court has dismissed plea of all officers having gained benefits by virtue of gallantry acts vide its consolidated judgment dated 29.08.2023 in Writ Petition No. 1587-P/2022 titled Shah Mumtaz etc Vs Govt of Khyber Pakhtunkhwa etc.

C. Incorrect as already explained vide above Para.

D. Incorrect as already explained vide above Para.

E. Incorrect, no discrimination in respect of the appellant has been committed by the respondent department rather the appellant has been treated duly in accordance with law and in pursuance of the august apex court judgments pertaining to out of turn promotions highlighted above.

F. That the answering respondents may also be allowed to raise additional grounds at time of hearing of instant Service Appeal.

PRAYER:-

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

(SYED ASHFAQ ANWAR) PSP
Capital City Police Officer,
Peshawar
(Respondent No. 4)

Awal Khan.

(AWAL KHAN) PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)

DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1 & 2)
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent

(5)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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AFFIDAVIT

I, Syed Ashfaq Anwar, Capital City Police Officer, Peshawar (Respondent No. 4) do hereby solemnly affirm on oath that the contents of accompanying Reply to the instant Service Appeal are correct to the best of my knowledge and belief. Nothing has been concealed from this Hon'ble Tribunal.

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.

(SYED ASHFAQ ANWAR) PSP
Capital City Police Officer,
Peshawar
(Respondent No. 4)

ATTESTED
Muhammad Raza Shah
Oath Commissioner
Peshawar High Court Peshawar

01 FEB 2024

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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AUTHORITY LETTER

Mr. Faheem Khan DSP/ Legal, CPO, 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 Service Appeal on behalf of respondents No. 1 to 4.

(SYED ASHFAQ ANWAR) PSP
Capital City Police Officer,
Peshawar
(Respondent No. 4)

(AWAL KHAN) PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)

DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1 & 2)
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent

ORDER

10 Annex A"

Offg: ASI Sabz Ali No. 1993 (SI on acting charge basis) is hereby confirmed in the rank of ASI. He is brought on list "E" and promoted to the rank of Offg: SI in recognition of his outstanding performance in the following cases: -

14.	FIR No. 365 , dt: 20.04.2011 U/S 13/14 AO PS: Chamkani	
15.	FIR No. 415, dt: 01.05.2011 U/S 5-Exp: Sub Act/7ATA	–do-
16.	FIR No. 420, dt: 02.05.2011 U/S 17(3)H/411 PPC,	-do-
17.	FIR No. 431, dt: 04.05.2011 U/S 324/353/5Exp: Act/7ATA/13AO	-do-
18.	FIR No. 432, dt: 04.05.2011 U/S ¾ PO	-do-
19.	FIR No. 445, dt: 09.05.2011 U/S 17(3) Haraba	-do-
20.	FIR No. 479, dt: 15.05.2011 U/S 9CNSA	-do-
21.	FIR No. 549, dt: 01.06.2011 U/S 17(3) Haraba/411/13AO	-do-
22.	FIR No. 608, dt: 17.06.2011 U/S 457/381A PPC	-do-
23.	FIR No. 632, dt: 22.06.2011 U/S 13/14AO/9CNSA	-do-
24.	FIR No. 636, dt: 23.06.2011 U/S 13/14 AO	-do-
25.	FIR No. 675, dt: 05.07.2011 U/S 9CNSA	-do-
26.	FIR No. 731, dt: 18.07.2011 U/S 353/324/427/7ATA/411/13AO /34 PPC/17(3)(4) Haraba.	-do-

O.B No: 2869
Date: 30-7-2011

CAPITAL CITY POLICE OFFICER,
PESHAWAR. 25/7

No. /EC-I, dated Peshawar the / /2011.

Copy of above is sent to: -

1. The SSP/Operation, Peshawar
2. The SP/Rural, Peshawar.
3. EC-II, PO, CRC & OASI.

ATTESTED

Attested

A

(8)

OFFICE OF THE
INSPECTOR GENERAL OF POLICE,
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

No. CPO/CPB/ 68 Dated Peshawar 28 Feb: 2022

To : The Capital City Police Officer,
Peshawar.

All Regional Police Officers,
Khyber Pakhtunkhwa.

Subject: ANOMALIES RELATED TO CONFIRMATION STATUS AWARDED TO SUB INSPECTORS.

Memo:-

The Competent Authority has directed to streamline the seniority issues of DSsP, Inspectors and confirmed Sub Inspectors already on List "F". It has been observed that due to following reasons the problems arise in the seniority lists.

i. In majority of the cases received to CPO for admission to the centralized seniority list, it has been observed that the confirmation in the rank of Sub Inspectors is considered from the date of DPC instead of completion of mandatory period of two years for confirmation as per Police Rules 13.18.

ii. Similarly, Police Rules 13.10(2) provides for two years mandatory period as SHO/other Units.

In order to streamline the seniority issues, the Competent Authority has directed that all RPOs/CCPO should strictly follow Police Rules 13.18 for confirmation in the substantive rank and revise it accordingly, if there exists any anomaly. The requisite rules are quoted below for ready reference:-

a. Police Rules 13.18. All, Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether officer should be confirmed or reverted.

b Police Rules 13.10(2) No Sub Inspector shall be confirmed in a substantive vacancy unless he has been tested for at least a year as an officiating Sub Inspector in independent charge of a Police Station, a notified Police Post or as in-charge investigation of a Police Station or in Counter Terrorism Department.
According amendment Police Rules 2017, provided further that he shall also have to spend one year in any other Unit excluding the period spent on long leave, deputation or promotional training courses i.e. Upper College Course'.

The report may be communicated to this office within one week i.e. 08.03.2022 positively.

Attested

Sd/-
(SABIR AHMED) PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.