BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR

Service Appeal No. 1793/2023 converted from Writ Petition No. 2191-P/2023.

Muhammad Iqbal..... .....(Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-wise comments		1-11
2.	Affidavit		12
3.	Authority Letter		13
4.	Copy of Standing Order No. 02/2014	A	14-18
5.	Copy of Letter No. 991/ Legal dated 11.03.2023	B	19
6.	Copy of demotion Order dated 28.03.2023	C	20-21
7.	Copy of Letter dated 14.02.2023	D	22

DEPONENT

DSP/ Legal,
CPO, Peshawar

16-02-2024

(1)

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PARAWISE COMMENTS BY RESPONDENTS NO. 1, 2 & 4

Khyber Pakhtukhwa
Service Tribunal
Diary No. 11104
Dated 13-02-2024

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:-

a) That the instant appeal pertains to out of turn promotions of Police officers deprecated by the Hon'ble Supreme Court of Pakistan in its judgments in Cr.Org.P. No. 89/2011 etc 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 and the petition, therefore, is not maintainable in its present form.

b) That the appellant has got no locus standi.

c) That the appeal is bad for mis-joinder and non-joinder of necessary parties.

d) That the appellant is estopped by his own conduct to file the instant appeal.

e) That the appellant has not come to this Hon'ble Tribunal with clean hands.

f) That the appellant has got no cause of action to file the present appeal.

FACTS:

1. Pertains to service record of the appellant, hence no comments.
2. Correct to the extent of creation of separate establishment of KP Police Force named as Frontier Arms Reserve (FAR). Nevertheless, the overall scheme of the Police Rules, 1934 envisage the police force as one indivisible body possessing various establishments performing the assigned functions such as District Police, Police Training Center, Crime Branch, Special Branch, Reserve Police and so on. Each of these establishments is in fact an integral part of the Police Force, and under no rules of construction they can be construed as separate or independent Cadres. Moreover, all the establishments, other than the executive police establishment, i.e., in-charge District police and Range DIG, are barred from making direct or indirect recruitments or promotions.
3. Pertains to record, hence no comments.
4. Pertains to record, hence no comments.
5. Pertains to record, hence no comments.
6. Correct to the extent of the then Recruitment Policy. However, all the establishments, other than the executive police establishment, i.e., in-charge District police and Range DIGs, are barred from making direct or indirect recruitments or promotions. This fact has been further clarified in the august apex court judgment reported in 2016 SCMR 1254, relevant Para of which is reproduced below;

62. We are disturbed in the manner the powers were being exercised by the DIGs heading different establishments under the nose of the government, which was not only against the Police Rules but such practice has actually divided the Police Force. The establishments were

created to facilitate the smooth working of the Police. There is no concept of cadre within the Police, which is one indivisible force. However, as referred to hereinabove the Police Rules prescribe three modes in recruiting the Police personnel. The first recruitment mode is appointment of the Executive Police, the second recruitment mode, which has a different set of Rules refers to appointment of technical District Police and the third mode brings the recruitment of the Inspectors / Sub-Inspectors Prosecution (Legal). There can be employees in the Police Department, which are non-uniformed like ministerial staff and / or I.T. Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed thereunder.

7. Pertain to record, however, all previous Standing Orders issued with regard to FRP have been repealed through Standing Order No. 02/2014 which is in field. (Copy annexed as **Annexure 'A'**)

8. Incorrect, the appellant belonged to Khyber Pakhtunkhwa Frontier Reserve Police (FRP) which is a separate establishment of KP Police Force. Previously, DIGs of such establishments started exercising the administrative powers of the Range DIGs. However, all the establishments, other than the executive police establishment, i.e. in-charge District Police and Range DIG, are barred from making direct or indirect recruitment or promotion. It has been clearly provided in the Chapter XIII of Police Rules, 1934 that there should be common seniority of Police Personnel serving in all establishments to be maintained by the District Police, the Range DIG and Central Police Office. Being the custodian of the service record etc. of the Police personnel, the District Police/Range DIG, shall make selection of Police personnel for police trainings and practical trainings, and no other establishment shall be authorized to make such selection.

9. As already explained vide above para, under Police Rules, the District Police/Range DIG, shall make selection of Police personnel for police trainings, and no other establishment shall be authorized to make such selection. The appellant on the other hand undergone their requisite trainings as Out of Turn or with accelerated intervals enabling them to jump from their original colleagues and conferring them seniority far ahead from colleagues as Out of Turn Promotion. The same Out of Turn Promotions have been withdrawn by the department in compliance with Apex Court above mentioned Judgments.

10. Incorrect and misconceived, the appellant himself admits that in consequence of the decision of the DSC, he was placed in concerned list while his other colleagues of FRP remained in A, B & C lists. The appellant on the other hand had undergone his requisite trainings as Out of Turn or with accelerated intervals enabling him to jump from their original colleagues and conferring them seniority for ahead from colleagues as Out of Turn Promotion. The same Out of Turn Promotions have been withdrawn by the department in compliance with Apex Court above mentioned Judgments. The record in respect of the appellant is as under;-

S. NO	NAME OF COURSE	DATED
1.	Basic Recruit Course at PTC Hangu	08.06.1992
2.	List A	28.02.1996
3.	List B	10.03.1998
4.	Lower College Course	10.10.1998
5.	List C	-
6.	Intermediate College Course	20.04.2000
7.	Promotion as ASI	20.04.2000
8.	List E	01.07.2003
9.	Upper College Course	-
10.	Promotion as SI	04.12.2004
11.	Confirmation as SI	04.12.2006
12.	List F	05.11.2004
13.	Promotion as Inspector	05.11.2014

11. Pertains to record.

12. Pertains to record, hence no comments.

13. Pertain to record.

14. Incorrect, the appellant belonged to Khyber Pakhtunkhwa Frontier Reserve Police (FRP) which is a separate establishment of KP Police Force. Previously, DIGs of such establishments started

exercising the administrative powers of the Range DIGs. However, all the establishments, other than the executive police establishment, i.e. in-charge District Police and Range DIG, are barred from making direct or indirect recruitment or promotion. It has been clearly provided in the Chapter XIII of Police Rules, 1934 that there should be common seniority of Police Personnel serving in all establishments to be maintained by the District Police, the

Range DIG and Central Police Office. Being the custodian of the service record etc. of the Police personnel, the District Police/Range DIG, shall make selection of Police personnel for police trainings and practical trainings, and no other establishment shall be authorized to make such selection. The appellant, on the other hand, have been selected to various out of turn promotion trainings by virtue of which he gained out of turn promotions and this fact has been deprecated by the Hon'ble Supreme Court of Pakistan in its judgments reported as 2016 SCMR 1254. Thus the appellant's case fall in the definition of out of turn promotion declared illegal and unconstitutional by the august Apex Court in its landmark judgments reported in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions.

15. Incorrect, in compliance with Order dated 26.01.2023 of the Hon'ble Supreme Court of Pakistan in Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 and in pursuance of Judgments passed by the 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 basis or otherwise belonging to different Units, Regions & Districts across the board have been withdrawn by the concerned authorities and consequently their seniority has been re-fixed along with their Batch mates/ among immediate seniors and juniors who were promoted during their intervening period by maintaining original inter-se-seniority. As the appellant also availed out of turn promotion, therefore, being beneficiary of out of turn promotion, his seniority was also revised with his batchmates.

16. Every Police officer/ official is under obligation to perform his duties anywhere he posted.

17. Incorrect, the Hon'ble Supreme Court of Pakistan had started Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 regarding non-compliance of court orders concerning out of turn promotions of Police officials and vide its order dated 26.01.2023 had given period of one-month for implementation. Therefore, in compliance with the 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 and to avoid imposition of Contempt of Court by the Hon'ble Supreme Court of Pakistan on Khyber Pakhtunkhwa Police, out of turn promotions of all the officials of Khyber Pakhtunkhwa Police who erstwhile had availed out of turn promotions were withdrawn.

18. As already explained vide above para, the letter dated 11.03.2023 was issued in compliance with the 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 to avoid imposition of Contempt of Court by the Hon'ble Supreme Court of Pakistan on Khyber Pakhtunkhwa Police. While personal hearing of appellant was a rightful legal remedy for the appellant.

19. Incorrect, the appellant has been given proper opportunity of hearing vide CPO Peshawar letter No. 991/ Legal dated 11.03.2023 (copy of the letter is attached as **Annexure-B**). Moreover, the letter dated 12.03.2023 had been issued in compliance with the 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 and to

avoid imposition of Contempt of Court by the Hon'ble Supreme Court of Pakistan on Khyber Pakhtunkhwa Police. Acts of the respondent department are justified, lawful, legal and in accordance with Apex Court judgments.

20. Incorrect, in compliance with Order dated 26.01.2023 of the Hon'ble Supreme Court of Pakistan in Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 and in pursuance of Judgments passed by the 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 basis or otherwise belonging to different Units, Regions & Districts across the board have been withdrawn by the concerned authorities and consequently their seniority has been re-fixed along with their Batch mates/ among immediate seniors and juniors who were promoted during their intervening period by maintaining original inter-se-seniority. Hence, the appellant was demoted from the rank of Inspector to the rank of Sub-Inspector vide CPO Order No. 205/E-II-Legal dated 28.03.2023 and his seniority was placed above the name of SI Sahib Ali at Serial No. 130 in the seniority list 'F' of Sub-Inspectors issued vide dated 01.12.2022. (Copy of demotion order of the appellant is annexed as Annexure **'C'**). The appellant, on the other hand, have been selected to various out of turn promotion trainings by virtue of which he gained out of turn promotions and this fact has been deprecated by the Hon'ble Supreme Court of Pakistan in its judgments reported as 2016 SCMR 1254. Thus the appellant's case fall in the definition of out of turn promotion declared illegal and unconstitutional by the august Apex Court in its landmark judgments reported in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions. The relevant Paras of Supreme Court Judgments mentioned above are reproduced as under:-

2016 SCMR 1254

46. Before we could travel into the scheme of the Police Act and the Rules framed thereunder, it has been conceded by the learned Advocate General, Sindh, that the Standing Orders issued at times by the different I.G Police were without the approval of the Provincial Government and, therefore, did not have any legal status. In view of this conceding statement of the Advocate General, no argument was advanced by either party to the validity or otherwise of the Standing Orders issued by the I.Gs Police at times.

2013 SCMR 1752

158. *On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9A would affect the performance of hundreds of thousands of the civil Crl.Org.P.No.89/11 etc. 120 servants serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter-se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9A.*

162. *The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self respect and dignity of Crl.Org.P.No.89/11 etc. 122 the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the*

unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.

164. *We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sind Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word 'Gallantry' in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.*

172. *The contention of the learned Advocate General that the Provincial Assembly has absolute powers to promulgate law which may nullify the effect of a judgment is misconceived, as a general rule the legislature cannot destroy, annul, set aside, vacate, reverse, modify or impair a final judgment of a court of competent jurisdiction, nor fundamental rights guaranteed under the Constitution can be abridged by the legislature. The legislature is not only prohibited from reopening cases previously decided by the courts, but is also forbidden to affect the inherent attributes of a judgment through a piece of legislation as has been done in the case in hand. In ultimate analysis, therefore, the primary test for examining the vires of an instrument (validating) is whether the new provision removes the defect, which the court had found in the existing law and whether adequate provisions in the validating law have been introduced to the terms 'absorption', 'out of turn promotion', 're-employment and 'deputation'. We have already discussed hereinabove, the aforesaid terms, used in the impugned legislative instruments and have been interpreted by the courts prior to coming into field the impugned legislations. After examining the impugned legislations, we are of the considered view that these instruments cannot be construed to have nullified the effect of the judgments discussed hereinabove, as the instruments sought to be challenged, in fact, encourages nepotism and discourages transparent process of appointments of civil servants by recruitment and or by transfer in all the three modes provided by the Act of 1973 and the rules framed there-under. This court in fiscal matters has applied restraints from interfering in the legislative domain while examining the vires of a statute, but in the case in hand, the impugned Crl.Org.P.No.89/11 etc. 131 legislations through amendments and validation/regularization have hampered the fundamental rights of the civil servants with the sole object to extend favours to few blue-eyed of the government.*

173. *We, therefore, are clear in our mind that amendments brought in the Act of 1973 by the impugned validating instruments do not meet the standards of jurisprudence which mandate safeguard provided to the civil servants under the Constitution. The impugned legislative instruments, therefore, do not have the effect to neutralize or nullify the judgments of the Courts referred to hereinabove.*

175. *For the aforesaid reasons we allow Constitution Petitions.No.71/2011, 23-K/2012, 21/2013 and 24 of 2013, and dispose of all the Misc. Applications and hold that the impugned legislations mentioned in para 115 are violative of the provisions of the Constitution discussed hereinabove. We further hold and declare that benefit of 'absorptions' extended by the Sindh Government since 1994, with or without backdated seniority, are declared ultra vires of the Constitution, as the learned Additional Advocate General has made a statement during hearing that the impugned validation instruments have granted legal cover to the employees/civil servants, who were absorbed since 1994. Likewise, we further hold and declare that all out of turn promotions made under section 9-A of the Sindh Civil Servants Act, 1973, by the Sindh Government to an employee or civil servant with or without backdated seniority since 22.1.2002, when section 9-A was inserted through Ordinance IV of 2002, are ultra vires of the Constitution. All Misc. Applications made by the absorbees in which interim orders were passed by this Court restraining the Government from complying with the orders of this Court dated 02.05.2012 stand vacated. We also hold that all the re-employment/rehiring of the retired Civil/Government Servants under the impugned instruments being violative of the constitution are declared nullity. We further direct that the nominations made by the Chief Minister*

in excess of the quota given by Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, are without lawful authority and all the 15 nominees (Assistant Commissioners) are reverted to their original positions.

2015 SCMR 456

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.*

2017 SCMR 206

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. CRP.49/2016 etc 53 99. In another case, Suo Moto case No.16/2011, this Court again deprecated the practice of conferring out of turn promotions in the following terms:- "It is also a hard fact that the police has been politicized by out of turn promotions and inductions from other departments time and again, through lateral entries which has brought unrest amongst the deserving police officers waiting their promotions on merits. The posting and transfers of the police officers also lack merits. The complete service record of a police personnel which could reflect posting and transfer is not maintained by the relevant wing. Even many police officers posted within the Karachi on senior positions lack qualifications and competence both.....If this is the state of affairs, how can there be peace in Karachi. It seems instead of depoliticizing police force further damage has been caused by the government by introducing their blue eyed persons in police force through lateral entries and then granting them retrospective seniority and out of turn promotions."*

100. *Subsequently, this Court reiterated, inter alia, the principle of declaring the law of out of turn promotion unconstitutional and void ab initio in the Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752). The relevant para is reproduced as under:- "158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9-A would affect the performance of hundreds of thousands of the civil servants CRP.49/2016 etc 54 serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter-se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9-A."*

101. *This Court also highlighted the pernicious effects of the conferment of out of turn promotions, at paras 161 and 162 (ibid):- "161.....The ultimate casualty of the impugned instruments would not only be the establishment of meritocratic public service but more ominously the certainty of law which undermines both legitimate expectancy individually among the civil servants as regards the smooth progression of their career, but also the overall administrative environment. Article 143 of the Constitution has been promulgated to harmonize and regulate the service of the civil servants from federal government and provincial governments on their opting for All Pakistan Unified Group/PSP. The impugned legislation would distort interse seniority of the civil servants not only within the province but also the federal civil servants. 162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the selfrespect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have CRP.49/2016 etc 55 prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of*

turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers."

102. The Court then determined the unconstitutionality of the out of turn promotion and provided a direction for boosting the morale of police personnel at Paragraph 164 of the said judgment:- "164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sind Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9-A, the Sindh CRP.49/2016 etc 56 Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word 'Gallantry' in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down."

103. The Review Petitions were filed against the aforementioned judgment by the Sindh Government besides those who were aggrieved on their de-notification in terms of the directives contained therein. These Review Petitions were dismissed on 05.01.2015, by a three Member Bench of this Court, maintaining the findings recorded in the judgment reported in 2013 SCMR 1752. The judgment passed in Review Petitions is reported in 2015 SCMR 456. The learned Counsel for Appellant raised a number of grounds challenging various findings of this Court, including the issue of out of turn promotion. Upholding the unconstitutionality and nullity of the legislative instrument pertaining to out of turn promotions, this Court recorded the following findings which are reproduced hereunder:- OUT OF TURN PROMOTIONS. 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 Article 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, CRP.49/2016 etc 57 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 promotion s as un-constitutional. 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. "126. The contention of the learned ASC that the judgment of the High Court of Sindh relating to the out of turn promotion is still in field, therefore, he prayed for formulation of a Committee to scrutinize the cases of the Police Officers, who were given out of turn promotion, is without substance. We have already declared "out of turn promotion" as unconstitutional, therefore, after recording such findings, the need of forming a Committee under Rule 8-B for scrutinizing the cases of Police Personnel is of no significance. However, they could be awarded or rewarded compensation for their exceptional acts of gallantry."

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.

111. Yet another anomalous consequence of this argument is that while two identical provincial laws are enacted and acted upon and one province repeals the law while the other continues with its operations. Subsequently, the vires of the law that continues on the statute books is examined by the Court and its provisions have found to be inconsistent with the Constitution or Fundamental Rights with the result that the benefits conferred or availed thereunder, unless protected by the category of past and closed transaction, have to be reversed and its deleterious effects undone. This category, quite obviously, consists of the cases wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court. They shall remain intact unless reviewed. Even otherwise, it does not appeal to logic that in such a situation, while those benefitting from a law which continued to be on the statute book and eventually found to

be ultra vires the Constitution would stand deprived of such illegal benefits, those continuing to enjoy the same under the omitted/repealed law in other Province would stand protected. If an illegal benefit was accrued or conferred under a statute, whether repealed (omitted) or continuing, and its benefits continue to flow in favour of beneficiaries of such an unconstitutional Act, and it is declared ultra vires, the benefits so conferred would have to be reversed irrespective of the fact that the conferring Act was still on the statute book or not. Where such an CRP.49/2016 etc 62 anomalous situation surfaces – i.e. where one province continues to countenance the benefits of an unconstitutional (though repealed/omitted) Act, while the other Provincial statute has been struck down on the same touchstone, and thereby determined whether those enjoying benefits pursuant to the repealed law are entitled to continue to do so, such reversal of benefits is imperative.

2018 SCMR 1218

69. *Similarly, other argument advanced by the learned counsel for the parties was that the out of turn promotions were earned when section 8-A ibid was a valid law, and the rights created under the said law are protected in light of Article 264(c) of the Constitution, moreover, it was not the fault of the appellants/appellant that they were promoted out of turn, so they have vested rights which need to be protected. This argument was also considered in Shahid Pervaiz's case (supra), and it was observed that:- "118. The contention of the learned Counsel that the effect of the aforesaid judgments which declares the concept of out of turn promotion unconstitutional cannot be extended to apply retrospectively on the cases where law granting out of turn promotions was omitted, is without force. Insofar as the issue of examining the Intra Court Appeals No.4 of 2017 etc. -: 48 :- provisions of a repealed statute is concerned, such an exercise is carried out by Courts in routine in the context of section 6 of the General Clauses Act, as well as Article 264 of the Constitution of Pakistan. Whenever any right, obligation, privilege or liability acquired, accrued or incurred under the repealed law is raised, the Courts are necessarily required to examine the provisions of the repealed statute. Thus, there is neither any reason in principle nor any precedent which bars the Courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights, as enumerated in the Constitution. Any other conclusion would lead to the absurd consequences that while the statute remains on the statute book, the Courts can examine its vires but once it was repealed by a subsequent statute, its effect, even if ex facie inconsistent with the Constitution or Fundamental Rights goes beyond the realm of judicial review. If such were the effect of repeal, then all that would be required to create a protected class of legislation is promulgation of patently unconstitutional statutes creating rights in favour of certain interested persons which though completely destructive of the Fundamental Rights of others, stood protected behind an impenetrable wall by the mere repeal of the statute through such unconstitutional Act. Such would not only be a fraud upon the statute but would be completely destructive of the rule of law and constitutional governance. Thus, there is no reason which compels the Court to sustain such an absurd proposition. As and when a repealed statute is invoked or raised in support of any claim, right, office or act, before the Court, the Court would always be entitled to examine its validity on the touchstone of the Constitution and Fundamental Rights. We have not been able to discover any instance from our own history as well as that of other legal systems with entrenched judicial review on the Intra Court Appeals No.4 of 2017 etc. -: 49 :- touchstone of the Constitution, where the Courts have refrained from examining the vires of the statute on the mere ground that at the time of review such law stood repealed by a subsequent statute."*

71. *When the very concept of out of turn promotion was declared to be unconstitutional then the exception created in Para 111 could not be said to be extended to the in service employees whether they had any judicial verdict in their favour or not. They were not protected under the doctrine of past and closed transaction as observed above. Moreover, no such protection was provided in the cases of Contempt Proceedings against the Chief Secretary Sindh (Supra) and Ali Azhar Khan Baloch (Supra), which were required to be followed by all the provinces to streamline the civil service structure. It would not be justified if any such benefit were to be extended to the employees of the Punjab Police. Although no one has sought review of this exception and the judgment in Shahid*

Pervaiz's case (supra) was already passed under the review jurisdiction. Second review is barred by law and no party can now approach this Court for a second review, however, this Court has absolute power to re-visit its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. This Power is not dependant upon an application of any party and it was so held in the case of Khalid Iqbal Vs. Mirza Khan (PLD 2015 SC 50), in the following words:- "12. The question of maintainability of the 2nd Criminal Review Petition on the ground that this Court has to do complete justice by invoking Article 187(1) of the Constitution is also misconceived. The provisions of Article 187(1) cannot be attracted in the present case, as this Court has already recorded findings against the petitioner by the Judgment dated 28-2-2001, against which review was also dismissed and there was no 'lis' pending before this Court warranting exercise of its Intra Court Appeals No.4 of 2017 etc. -: 51 :- jurisdiction under Article 187(1) of the Constitution, besides Rule 9 of the Order XXVI of the Supreme Court Rules, bars 2nd Review Petition. There is a distinction between right of a party to approach the Court and jurisdiction of the Court to do complete justice on its own. Once this Court has finally determined the right of the petitioner in the judgment dated 28-2-2001, holding him guilty, the petitioner through 2nd Review Petition, cannot re-agitate it. If such a Review Petition is allowed to be entertained, it will land in a situation where findings of this Court against a party will never attain finality. 13. This, however, does not mean that the jurisdiction of this Court is barred by any restriction placed by the Constitution; there is no Article in the Constitution which imposes any restriction or bar on this Court to revisit its earlier decision or even to depart from them, nor the doctrine of stare decisis will come in its way so long as revisiting of the judgment is warranted, in view of the significant impact on the fundamental rights of citizens or in the interest of public good. ... ... On perusal of the paragraphs referred to hereinabove, we can safely reach a conclusion that this Court has absolute powers to re-visit, to review and or to set aside its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. The Powers of this Court to exercise its inherent jurisdiction under the above referred Articles of the Constitution are not dependant upon an application of a party." The same view has been reiterated in a recent judgment dated 5.1.2018 passed in the case of Syed Shabbar Raza Rizvi Vs. Federation of Pakistan (Const.P.No.1/2016). Intra Court Appeals No.4 of 2017 etc. -: 52 :-

72. The acts of gallantry in no way justify out of turn promotions. However, in order to increase the morale of the police personnel, we support the proposition that on exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits and this concept is in line with the spirit of Article 259 (2) of the Constitution.

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 Moto 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 appellant 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); Intra Court Appeals No.4 of 2017 etc. -: 55 :- 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.

21. Pertain to the Hon'ble Peshawar High Court, however, appellants writ petition No. 2191-P/2023 was remitted by the court vide order dated 29.08.2023 to Service Tribunal for further determination of question of law being related to terms and conditions of service.

22. Correct to the extent that after issuance of withdrawal Orders of Out of Turn Promotions, Writ Petitions have been filed in the Hon'ble Peshawar High Court, Peshawar by virtue of which Court had granted interim relief in the shape of Restraining Orders/ Suspension Orders to the appellant (Out of Turn beneficiaries), later on all the Writ Petitions regarding Out of Turn Promotions have been decided vide consolidated judgment dated 29.08.2023. Similarly, on the same date Writ Petition of the appellant bearing No. 2191-P/2023 titled Muhammad Iqbal was also remitted to the Hon'ble Khyber Pakhtunkhwa Service Tribunal along with similar nature writ petitions.

23. That the appellant has been dealt in accordance with law and in compliance of the judgments of the Hon'ble Supreme Court of Pakistan pertaining to out of turn promotions. The letter dated 12.03.2023 and demotion order dated 31.03.2023 are legal, lawful, as per law/rules and Apex Court judgment. The appellant failed to bring a prima facie case hence, the instant Service Appeal may be dismissed on the following Grounds.

GROUNDS:

a) Incorrect, the respondent department has issued withdrawal orders of all the Khyber Pakhtunkhwa Police officials across the province who erstwhile have availed out of turn promotions in compliance with the directions of the august apex court. Therefore, act of the respondents is in accordance with principle of justice, legal, lawful and liable to be upheld.

b) Incorrect, the respondent has issued withdrawal orders of out of turn promotions of Khyber Pakhtunkhwa Police 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 and to avoid imposition of Contempt of Court by the Hon'ble Supreme Court of Pakistan on Khyber Pakhtunkhwa Police. Therefore, no illegality and malafide on part of respondents is involved.

c) Incorrect. Proceedings were legal and lawful.

d) The appellant case falls within the definition of out of turn promotions declared illegal and unconstitutional by the august apex court once for all in its landmark judgments reported in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions.

e) The matter of out of turn promotions has been decided once for all by the august Apex Court.

f) Incorrect and misleading, out of turn selection to trainings and promotions thereof of officials of Sindh Reserve Police has been declared illegal by the august apex court in its judgment reported in 2016 SCMR 1254. The appellant by virtue of similar establishment i.e. Frontier Reserve Police has availed erroneous promotions.

g) Incorrect, the Memo dated 08.02.2021 has been declared redundant in the wake of CPO Peshawar subsequent directions issued vide Memo. No. CPO/ CPB/ 75 dated 14.02.2023 (copy of the letter is attached as **Annexure 'C'**). Furthermore, all such legal instruments, law/rules, policies, opinions or instructions have been declared as void ab-initio by the Apex Court that provide for out of turn promotions.

h) Incorrect, the respondent department acted in compliance with the directions of the hon'ble Supreme Court of Pakistan. Therefore, no provision of the Constitution has been violated.

i) Incorrect, one-time withdrawal orders of out of turn promotions of the appellant has been issued in compliance with judgments of the Hon'ble Supreme Court of Pakistan and its Order dated 26.01.2023 in Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 and contention of multiple jeopardy is misleading.

j) The respondent department may also be allowed to adduce additional grounds at the time of hearing before the Hon'ble court.

PRAYERS

Keeping in view the above submissions and for the fact that the petitioner's absorption in Khyber Pakhtunkhwa Police as deprecated by the judgments of the Hon'ble Supreme Court of Pakistan has been withdrawn by the respondent in the first instance to avoid imposition of Contempt of Court by the hon'ble Supreme Court of Pakistan on Khyber Pakhtunkhwa Police vide Crl.O. Petition No. 38/2021, the instant writ petition, being devoid of merits, not maintainable and barred by law, may kindly be dismissed with costs, please.

(TAHIR AYUB KHAN) PSP
Commandant,
FRP, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 6)

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

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

BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR

Service Appeal No. 1793/2023 converted from Writ Petition No. 2191-P/2023.

Muhammad Iqbal..... .....(Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa etc.....(Respondents)

AFFIDAVIT

I, Tahir Ayub Khan, Commandant, FRP, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents No. 1, 2 & 4 are correct to the best of my knowledge/ belief. Nothing has been concealed from this Hon'ble Service Tribunal.

it is further stated on oath that answering Respondent have neither been place exparte nor their defense struck off/ cost.

(TAHIR AYUB KHAN) PSP
Commandant,
FRP, Khyber Pakhtunkhwa,
Peshawar

ATTESTED
Oath Commissioner
High Court Peshawar

BEFORE THE HONORABLE PESHAWAR HIGH COURT PESHAWAR

Service Appeal No. 1793/2023 converted from Writ Petition No. 2191-P/2023.

Muhammad Iqbal..... .....(Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa etc.....(Respondents)

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, 2 & 4.

(TAHIR AYUB KHAN) PSP
Commandant,
FRP, Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 4)

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

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

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

STANDING ORDER NO. 2/2014

Frontier Reserve Police (FRP)

This Standing Order is issued under Article 10(3) of Police Order 2002, in supersession of all previous Standing Orders issued with regard to Frontier Reserve Police(FRP) and to give effect to the recommendations of the Committee on the Re-organization of FRP as subsequently approved and notified vide PPO Notification No. 4126-40/SE-1 dated Peshawar 11th April 2014.

1. **General:-** The provisions of Police Order 2002, Police Rules 1934 and/or any other laws and rules applicable to Police shall apply mutatis mutandis to the members of FRP.

2. **Aim:-** This Standing Order aims to streamline the organization, administration and functioning of FRP in accordance with the provision of Police Order 2002, Police Rules 1934 and other laws and rules applicable to Police Department.

3. **Establishment of FRP:-** The Frontier Reserve Police (FRP), originally known as Frontier Armed Reserve (FAR), was established within Police Department vide Home Department Order No. SO(P-II)HD/8-10/146-149 dated 16-01-1988, by merging together a number of small units of Police Department.

4. **Mandate:-** FRP shall assist the District Police in the following duties:
   a) Anti-riot operations;
   b) Operations against criminals and Proclaimed Offenders;
   c) Security of VVIPs/VIPs, sensitive and vulnerable establishments;
   d) Deployment on Highway Patrolling Posts; and
   e) Any other duty assigned by the Provincial Police Officer.

5. **Organization:-** FRP organization shall include Police officers of senior and junior ranks, ministerial and follower staff posted in, or hitherto (so far) enrolled in FRP.

5.1 FRP shall be headed by an officer not below the rank of Deputy Inspector General of Police as Commandant FRP. He shall work under the direct supervision of the Provincial Police Officer.

5.2 The Commandant FRP shall be assisted by as many Deputy Commandants (SPs BS-18), SPs FRP Ranges, Assistant Commandants (DSPs/ASP BS-17), other junior rank officers, and ministerial staff as determined by the Provincial Police Officer from time to time.

5.3 FRP shall be organized into such active Companies, Platoons and Sections and support staff, posted in FRP Headquarters, Police Regions and Police Districts, as determined by the Provincial Police Officer. An FRP Company, headed by an Inspector

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designated as Company Commander, shall consist of 3 FRP Platoons, each consisting of 1 SI/ASI as In-charge, 4 HCs and 40 FCs. An FRP Section shall consist of 1 HC and 10 FCs. The "illiterate" officers/officials of FRP shall be distributed in such a manner that they are evenly represented in each Platoon.

5.4 The FRP Headquarters shall be located at Peshawar or at any other place declared as FRP Headquarters by the Provincial Police Officer.

6. **Requisitioning of FRP:-** The administrative and operational control of FRP shall rest with the Commandant FRP. However, the Capital City Police Officer (CCPO) or any Regional Police Officer (RPO) may requisition FRP strength for the mandated duties, subject to the approval of Provincial Police Officer.

6.1 The Commandant FRP, subject to any general or specific order of the Provincial Police Officer, may place the services of the FRP strength so requisitioned, for a specific period, at the disposal of CCPO or RPOs. The Commandant FRP may, subject to any general or specific order of the Provincial Police Officer, extend for a specific period the stay of FRP strength placed at the disposal of CCPO or RPOs.

6.2 Once the FRP strength is placed in a District, the operational command of the FRP strength so placed shall rest with the District Head of Police concerned. The FRP strength deployed, permanently or temporarily, on Highway Patrolling Posts shall also be subject to the operational command of the District Head of Police. The District Head of Police will ensure to make suitable arrangements for the lodging of the FRP strength placed in the District.

6.3 The senior most officer of FRP in a District shall be responsible for the general administration, welfare and discipline of the FRP strength, including maintenance of daily parade statement and daily duty roster. He shall keep the Commandant FRP and the District Head of Police informed about the administration, discipline, welfare or any other important matter with regard to the FRP strength in the District.

6.4 SP FRP Range shall be responsible for the general administrative, welfare and discipline of the FRP strength placed in a Region, including maintenance of daily parade statement and daily duty roster. He shall also keep the Commandant FRP, RPO, and the District Head of Police, informed about the administration, discipline, welfare or any other important matter with regard to the FRP strength in the Region.

7. **Recruitment in FRP:-** According to Police Order 2002, recruitment of constables is the exclusive authority of the District Head of Police. FRP is neither a Police District nor a Police Region. Therefore, henceforth, there shall be no recruitment or enrollment of constables in FRP.

8. **Vacancies in FRP:-** Vacancies occurring in FRP in any junior rank shall be filled through posting of officers from each District for a specific tenure. The Central Police Office (CPO) shall transfer junior most officers in each rank to FRP in accordance with the share of the respective District (Ref: section 8.3 below). Once transferred to FRP, following shall be the minimum tenure of junior rank officers in FRP:

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a. Inspector 1 Year; (Excluding any period of leave other than casual leave)
b. SI/ASI: 1 Year; (- do -)
c. HC/FC: 2 Years; (- do -)

8.1 This tenure criteria shall not apply to the illiterate officers of FRP.

8.2 The vacancies occurring in a District due to transfer of officer to FRP shall be filled in the following manner and order:

a) Repatriation of officers from FRP to the District concerned;
b) Promotion of officers on the strength of the District;
c) Fresh recruitment.

8.3 Each District shall have a percentage share in the vacancies of FRP in junior ranks proportionate to the total strength of that District. Since presently, some Districts are over-represented in FRP, this balance shall be gradually restored.

9. **Transfer of FRP officers to their Districts of Domicile:-** All junior rank officers of FRP, except illiterate officers, shall be transferred to their Districts of Domicile after completion of their tenure in FRP. First should be transferred those who have served longest periods in FRP.

9.1 In case no vacancy is available in the District of Domicile, the officer transferred from FRP shall be adjusted against vacancies in his respective Region till the availability of vacancy in his District of Domicile.

9.2 The 'illiterate' officers of FRP shall not be transferred to Districts/Regions. Only the following categories of junior rank officers of FRP may be transferred to Districts/Regions:

a) **Constables** who have been recruited on the basis of Matric qualifications;
b) **Head Constables** who have qualified Lower Course as constables;
c) **ASIs** who have qualified Intermediate Course as Head Constables or have been directly recruited through Public Service Commission;
d) **SIs** who have qualified Intermediate Course or have been directly recruited as ASIs through Public Service Commission; and
e) **Inspectors** who have qualified Upper College Course.

10. **Fixing seniority of FRP personnel on transfer to their Districts of Domicile:-** An officer repatriated from FRP to his District of Domicile shall not be placed on the bottom of the seniority list merely due to transfer from FRP.

10.1 Seniority of an officer of FRP on transfer to his respective District of Domicile shall be determined first on the basis of entry into service and then from the date of entry into the relevant promotion list. Should the date of entry into service or the date of entry into a promotion list of an officer transferred from FRP to a District and an officer already borne on the strength of that District are the same, the officer older in age shall be placed ahead on the promotion list.

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11. **Promotion of FRP Personnel:-** FRP is neither a Police District nor a Police Range. Therefore, promotion lists A, B, C, D and E shall no more be maintained in FRP. Instead, promotion of officers posted in FRP, as is the case of other units, shall be done by District Heads of Police or the RPOs, as the case may be, against the available vacancies in accordance with Chapter 13 of Police Rules 1934. The District Heads of Police or the RPOs, as the case may be, shall maintain consolidated lists of all officers, whether posted in the District/Range or in any other unit, including FRP.

12. **Promotion Courses for FRP personnel:-** Since the promotion lists of all junior rank Police officers of FRP will be henceforth maintained in their respective Districts of Domicile and respective Ranges, nominations of FRP personnel for promotion courses i.e. Lower, Intermediate and Upper Course, shall be carried out by their respective Districts and Ranges.

12.1 All training quotas/seats hitherto allocated to FRP for promotion courses are hereby withdrawn.

12.2 The District Heads of Police or the RPOs, as the case be, shall nominate officers for promotion courses strictly in accordance with seniority and merit position, irrespective of the fact whether the officers so nominated are working in the Districts are have been posted to FRP.

12.3 In order to ensure fairness to all, the District Heads of Police or the RPOs, as the case may be, shall maintain consolidated promotion lists of all officers whether they are posted in the Districts, Regions, FRP, Special Branch, Investigation, Elite Force, Counter Terrorism Department, Traffic, CPO or any other unit or who are serving on deputation in other departments.

12.4 The Commandant FRP, however, may nominate officers working in FRP for professional courses or other capacity building training/courses. For this purpose, the CPO will ensure the allocation of fair share to FRP.

13. **Issues of 'Illiterate' officers of FRP:-** Since 'illiterate' officers of FRP cannot be transferred to Districts/Regions, their issues with regard to seniority, promotion, promotion courses and capacity building courses, shall be dealt with through a separate Standing Order.

14 **Standard Operating Procedures of FRP:-** The Commandant FRP shall formulate, subject to the approval of the Provincial Police Officer, detailed Standard Operating Procedures (SOPs) for the smooth implementation of the provisions of this Standing Order.

15. **Indemnity:-** Any order passed, instruction issued or duty assigned with regard to FRP or its personnel so far under any previous Standing Order shall stand valid.

16. **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.

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17 **Repeal:** All previous Standing Orders issued with regard to FRP are hereby repealed.

(NASIR KHAN DURRANI)
Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar

No:- 172-235/GB dated Peshawar the 8th September 2014

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.

(MUBARAK ZEB) PSP
DIG Headquarters
Khyber Pakhtunkhwa
Peshawar

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(19)

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

No. 991 / Legal dated the 11 / 03 / 2023.

To: All Regional Police Officers/ CCPO, Peshawar.
Khyber Pakhtunkhwa.

All Head of Units/ DIG Operations
Khyber Pakhtunkhwa.

Subject: **PERSONAL HEARING Of POLICE OFFICIALS/ OFFICERS FALLING UNDER THE AMBIT OF OUT OF TURN PROMOTIONS**

Memo:

Giving personal hearing to address the grievances of Police officials/ officers is part and parcel of Police Department for their redressal, in most impartial and transparent manner.

2. Keeping in view the above, it is being requested to give personal hearing to all those Police officials/ officers who availed out of turn promotions in their respective regions positively for tomorrow i.e. on 12th March, 2023. In this regard Police officials/ officers who availed out of turn promotions and are borne at lists A, B & C will be heard by respective District Police Officers whereas officers enlisted to lists 'D' & 'E' will be heard by concerned Regional Police Officers. Rest of officers on list 'F' and above will be heard at CPO who shall be informed by the concerned RPOs/ DPOs offices. Therefore, necessary arrangements may be made for tomorrow on 12th March, 2023 regarding compliance on urgent basis.

3. Furthermore, all officers borne on 'F' list and other officers from the rank of Inspector and above will be heard by Deputy Inspector General of Police, Operations, Khyber Pakhtunkhwa who will be assisted by DSP/ Legal, CPO, Peshawar.

4. All officers being heard shall be bound to sign the attendance sheets and proceedings of such hearings should be shared with office of AIG/ Legal, CPO Peshawar by 13th March, 2023.

The matter should be treated as Most Immediate, please.

(RIZWAN MANZOOR) PSP
Deputy Inspector General of Police, HQrs
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

C.C

- Additional Inspector General of Police, HQrs: Khyber Pakhtunkhwa, Peshawar.
- PSO to W/ Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- DSP/ Operations, CPO, Peshawar with direction to circulate to all concerned.
- DSP/ Legal, CPO, Peshawar.

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LEGIBLE COPY

No. 205/E-II/Legal dated 28.03.2023

Order

In compliance with the order sheet of hon'ble supreme court of Pakistan dated 26.01.2023 in sue moto contempt proceedings wide 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 petition no 1996, 2026, 2431 , 2437 to 2450, 2501, 2502 of 2019 on issue of out of turn promotion, all unit heads, regional police officers and district police officer of Khyber pukhtunkhwa police were directed wide the office letter no CPO/CPB/75 dated 14.02.2023 to insure compliance of the above mentioned order in letter and spirit accordingly, all out of turn promotions granted to police personal either on gallantry or otherwise belonging to different units, regions, and districts having been withdrawn by the concerned authority and consequently their seniority has been re fixed along with their batch mates/ among immediate seniors and juniors who were promoted during their intervening period by maintaining original inter se seniority.

2. In view of the above case regarding out of turn promotion of inspector Muhammad iqbal no MR/40 was examined as per details provided by officer of commandant FRP Khyber pukhtunkhwa Peshawar wide letter bearing no 3012/EC dated 27.03.2023 on subject "collection of data of police officer falling under the definition of out of turn promotion" he qualified lower college course wide PTC hangu letter no 5974-6012/S dated 27.10.1998 while his name was brought on list 'D" w.c from 20.04.2000 wide CPO Peshawar order no 25317-23/E-11 dated 14.11.2007 this violating police rules 13-18 and has gained out of turn promotion . at present he stands at serial no 5 in the seniority list of inspectors issued wide CPO Peshawar no 431/E-11/CPO/seniority dated 06.12.2022 withdrawl of this out of turn promotion order shall bring his name with his lower college course batch mates and will be placed above the name of SI sahib ali present at serial no 130 in the seniority list "F" of sub inspector issued by CPO Peshawar wide n 424/E-11/CPO dated 01.12.2022.

3. In this regard 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 promotion has been dealt with in detail 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 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 violated of the constitution for the reasons incorporated in para 158 to 164 of the judgment under review.

4. Similarly, as per para 73 of judgment of hon'ble supreme court of Pakistan 2018 SCMR 1218 (Intra code appeal no 4 of 2017 etc) when any legislative instrument is declared unconstitutional, it is declared void ab inito. The para no 73 is being reproduced as under.

73. the contention of khwaja haris ahmad learned Sr. ASC that in para number no 123 of shahid pervaiz case (supra) this code has 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 to say that in para 104 of shahid pervaiz case (supra). It was observed that "104. Through the succession of its orders, this court has constantly mentioned the unconstitutionality and the consequential nullity of the instruments providing for the out of turn promotions" 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 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 here under. "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.

Attested 29-12-24

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5. similarly 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 a judgments this court has declared out of turn promotions as being unconstitutional, un-islamic, and void ab initio. The principal of unconstitutionality attached to the instrument providing for out of turn promotions was led down first in the case of Muhammad nadeem arif Vs IG of police (2011 SCMR 408) the view taken in this judgment was followed in another case reported as ghulam shabir vs Muhammad munir abbasi (PLD 2011 SC 516) Wherein it was held as out of turn promotion was 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 bases for out of turn promotion.

6. Mr. Muhammad Iqbal MR40 Inspector was given chance of personal hearing on 12.03.2023. he was patiently heard. He was of the view that his case did not fall within the ambit of out of turn promotions. However, parousal of his records reveals that as mentioned in para no 2 of this order he qualified lower college course wide PTC hangu letter no 5974-6012/S dated 27.10.1998 while his name was brought on list "D" with w.e. from 20.04.2000 wide Cpo Peshawar order no 25317-23/E-II, dated 14.11.2007, thus violating police rules 13-18 and has gained out of turn promotion. At present he stands at seriel no 5 in the seniority list of inspectors wide Cpo Peshawar no 431./E-II/CPO/seniority dated 06.12.2022. withdrawl of this out of turn promotion order shall bring his name with lower college coarse batch mates and will be placed above the name of SI sahib ali present at seriel no 130 in the seniority list "F" of sub inspector issued by CPO Peshawar wide no 424/E-II/Cpo dated 1.12.2022.

7. Consequently, the above mentioned out of turn promotion order is withdrawn through this order and he is demoted from the rank of inspector to the rank of sub inspector with immediate effect. After withdrawal of his out of turn promotion his name is placed above the name of SI Sahib ali present at serial no 130 in the seniority list "F" of sub inspectors issued by CPO Peshawar wide no 424/E-II/CPO, dated 1.12.2022.

SD

Akhtar Hayat khan (PSP)

PROVINCIAL POLICE OFFICER

KHYBER PAKHTUNKHWA

Attested
12-2-24

ATTESTED
to be true Copy

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

No. CPO/CPB/ 75 Dated Peshawar 14 February, 2023

COURT MATTER
MOST IMMEDIATE

To: All Heads of Unit Police,
Khyber Pakhtunkhwa.
The Regional Police Officers,
Malakand, Mardan, Hazara, Kohat and Bannu.
The Capital City Police Officer,
Peshawar.

Subject: **COLLECTION OF DATA OF POLICE OFFICERS FALLING UNDER THE DEFINITION OF OUT OF TURN PROMOTION.**

Memo:

Please refer to this office letter No. CPO/CPB/45, dated 27.1.2023 on the subject noted above.

Perusal of record available with CPO and the reports coming from your range reveal that there is an urgent need to personally examine case of each and every police officer who is deemed to have been promoted out-of-turn.

2. You are, therefore requested to ensure that:-

i) Case of each police officer is examined afresh carefully with a view to ascertain as to whether or not his/her promotion falls under the definition of out-of-turn promotion provided in the following judgments of the Supreme Court of Pakistan:-

i). 2013 SCMR 1752
ii). 2015 SCMR 456
iii). 2016 SCMR 1254
iv). 2017 SCMR 206
v). 2018 SCMR 1218

Note: copies of the judgments are being emailed to your Establishment Branch as a ready reference and perusal.

ii) Those orders of promotion / confirmation are identified and recorded in your replies / reports with a certified copy of the same attached therewith.

iii) A comprehensive reports on the line stated above may be submitted to this office by 20/02/2023.

Encl:
Sample Proforma of DIKhan Region.

14/02/23

(SHAUKAT ABBAS) PSP
DIG/HQrs.
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar

Endst: No. and dated even

Copy of above is forwarded for information to the:-

1. Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa.
4. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
5. PA to AIG/Establishment Khyber Pakhtunkhwa.

14/02/23

(SHAUKAT ABBAS) PSP
DIG/HQrs.
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar

Attested
15-2-24