


1799/223

27th Nov. 2023

1. Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.
2. The appellant had filed Writ Petition No.1222-A/2022 before the Peshawar High Court, Abbottabad Bench and the Peshawar High Court vide order dated 29.08.2023 transmitted the writ petition to this Tribunal with direction to treat it as service appeal and decide the same in accordance with law. As the appellant had initially filed writ petition, therefore, the learned counsel requests for submission of appeal on the format of the appeal in accordance with provisions of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Granted. He may do so a week before the next date. Copy of the same also be handed over to the learned AAG. Reply has been placed on file. To come up for arguments on 27.02.2024 before D.B at Camp Court, Abbottabad.

P.P given to the parties.

Mutazem Shah


(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad

BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD

Appeal No. 1794-A/2023

Ijaz Ahmed son of Abdul Ghafar Khan, Presently serving as acting Superintendent of Police Investigation at Torghar.

...APPELLANT

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa Peshawar & others.

...RESPONDENTS

I N D E X

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4.	Address of parties(Already attached)	A	19
5.	Copy of notification(Already attached)	B	20
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10.	Copy of Representation (Already attached)	F	48-49
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Through

Appellant

Faraz Ahmad

Advocate, Peshawar

Dated: 17-02-2024

27-02-2024

Camp-court.

BEFORE THE HONOURABLE KPK SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

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...APPELLANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11243

Dated _____

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. Additional IGP Establishment for Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
3. Additional IGP Headquarters for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. Regional Police Officer Hazara Region, Abbottabad.

...RESPONDENTS

APPEAL UNDER SECTION 4 OF
KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL ACT 1974 FOR SETTING-
ASIDE OF NOTIFICATION NO. SO(E-
D)E&AD/2-4/2022 DATED 05/09/2022
ISSUED BY DEPARTMENTAL
SELECTION BOARD/ APPROVED BY
COMPETENT AUTHORITY IS
APPARENTLY ILLEGAL, UNLAWFUL,
ARBITRARY, BASED ON MALAFIDE,
PERVERSE, VOID-AB-INITIO,
CONTEMPTUOUS, AGAINST THE
NORMS OF JUSTICE AND SHEER
VIOLATION OF PROVISION OF
CONSTITUTION IBID AND AGAINST
THE DECISION MADE BY LARGER
BENCH OF HONOURABLE PESHAWAR
HIGH COURT IN WRIT PETITION NO.
684-A/2021 IN WHICH THE
HONOURABLE PESHAWAR HIGH
COURT WAS PLEASED TO DIRECT
THE PROVINCIAL GOVERNMENT OF
KPK, "FIRSTLY TO CLARIFY ITS
POSITION WHETHER IT WANTS TO
CONTINUE WITH THE MATTER OF
AWARDING ACCELERATED
POSITIONS TO MEMBERS OF ITS

POLICE FORCE IN LINE WITH THE
KHYBER PAKHTUNKHWA
VALIDATION OF STANDING ORDER
ACT 2005, PREVAILING POLICE RULES
AND KHYBER PAKHTUNKHWA
POLICE ACT 2017 OR NOT AND THEN
DECIDE THE ISSUE RAISED IN THE
PETITIONS ACCORDINGLY BUT TILL
SUCH POLICY IS STREAM LINED, NO
ADVERSE ACTION SHALL BE TAKEN
AGAINST THE APPELLANTS”,. THE
RESPONDENTS WITHOUT
DISCONTINUING THE POLICY OF
CADETSHIP/ ACCELERATED
PROMOTION AND DESPITE OF
ISSUING FINAL SENIORITY LIST OF
DSSP (BS-17) OF KPK POLICE VIDE
SENIORITY LIST NO. 1594/SE-I DATED
05/08/2022, THE RESPONDENT
DEPARTMENT DID NOT PROMOTE
THE APPELLANT ON THE BASIS OF
HIS SENIORITY CUM FITNESS TO THE
RANK OF SP (BS-18) AND PROMOTED
OTHER OFFICIALS DESPITE BEING
JUNIORS TO THE APPELLANT AS PER

FINAL SENIORITY LIST MENTIONED ABOVE. THE ACTS OF RESPONDENTS CONCERNED MAY GRACIOUSLY BE ORDER TO BE DECLARED NULL AND VOID BEING VIOLATIVE OF DECISION OF THE HONOURABLE PESHAWAR HIGH COURT AND AGAINST THE SENIORITY LIST AND THE APPELLANT BE PROMOTED BEING QUALIFIED BY ALL MEANS TO THE RANK OF SP (BS-18) WITH EFFECT FROM THE DATE OF ISSUING OF IMPUGNED NOTIFICATION. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEMS APPROPRIATE IN THE FACTS AND CIRCUMSTANCES OF THE CASE MAY ALSO BE GRANTED TO THE APPELLANT.

Respectfully Sheweth: -

The brief facts leading to the present writ petition are as under;

1. That the instant appeal is being filed in its proper format under Section 4 of Khyber Pakhtunkhwa Service Tribunal

Act 1974 in continuation of writ petition 1222-A/2022 filed earlier.

2. That the appellant joined the Police Department as constable and having unblemished service record to the entire satisfaction of high officers promoted upto the rank of Sub-Inspector.
3. That the appellant was promoted as Inspector on 19/07/2007 vide Notification No. 16568. Copy of Notification is already attached as Annexure "A".
4. That the appellant was confirmed as Inspector vide Notification No. 4178 dated 11/02/2014 alongwith his other colleagues with effect from 28/01/2010. Copy of Notification is already attached as Annexure "B".
5. That the appellant was promoted as DSP vide Notification No. 1092 dated 12.09.2014 During service the appellant was assigned different duties

Act 1974 in continuation of writ petition 1222-A/2022 filed earlier.

2. That the appellant joined the Police Department as constable and having unblemished service record to the entire satisfaction of high officers promoted upto the rank of Sub-Inspector.
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meeting held on 19/08/2022 and subsequent approval of the competent authority a list of promotees was issued vide Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022, in which officers mentioned at serial No. 13 to 46 Juniors to the appellant were promoted and vide Para No. 3 of the said impugned Notification their promotions were made subject to the decision of superior judiciary and cabinet regarding the issue of "out of turn promotion" and absorption in Khyber Pakhtunkhwa Police from other provinces/ department. Copy of Notification dated 05/09/2022 is already attached as Annexure "E".

9. That the appellant upon information of meeting of the Department Promotion Board approached the department for redressal of his grievance by filing representation but no such reply/ action has so far been taken by the department upon presentation of the appellant.

Copy of representation is already annexed as Annexure "F".

10. That feeling aggrieved by the Notification No. SO(E-I)E&AD/2-4/2022 dated 05/09/2022 the appellant approaches this Honourable Court through the instant writ petition on the following amongst other grounds;-

GROUND:-

- a. That the appellant gained the accelerated promotion and obtained the present position through sheer hard work, labour and ability. As regards the benefits acquired by the appellant through the incentive policy, it was only the opportunity offered to every one equally. Appellant happened to best utilized the opportunity, thus, qualified for accelerated promotion having placed himself on higher pedestal of fitness irrespective of position on

seniority list, amongst those officers who are junior to the appellant as per final seniority list.

- b. That the fundamental question out of the situation is to see whether appellant should be penalized for his better performance just because the competent authorities continued acting in the light of the incentive policy. Law does not envisage punitive action against one of lapses of another. The present position of the appellant reveals question of reverted rights which cannot be taken away irrespective of due course followed therefore. Hence the impugned Notification dated 05/09/2022 is untenable at law and facts.
- c. That the impugned notification ex-facie indicates adoption of easy path to correct an error at higher level. As such the impugned

notification being untenable at law and facts and is liable to be set aside and un-implementable.

- d. That being senior in the seniority list from the respondents No. 7 to 40, the appellant was entitled to be promoted from the rank of DSP (BS-17) to the rank of S.P (BS-18) on the basis of seniority cum fitness criteria, but the respondents did not comply with the requirements of law and policy, which is ineffective upon the rights of the appellant, hence, impugned notification is liable to be set aside.
- e. That the larger bench of Honourable Peshawar High Court in writ petition No. 684-A/2021 in its order announced on 24/03/2022 directed the government "firstly to clarify its position whether it wants to continue with the matter of awarding accelerated positions

to members of its police force in line with the Khyber Pakhtunkhwa validation of standing order Act 2005, prevailing Police Rules and Khyber Pakhtunkhwa Police Act 2017 or not and then decide the issue raised in the petitions accordingly but till such policy is stream lined, no adverse action shall be taken against the appellants” but the said directions has not still been implemented and proceeded by the respondent department and the Government.

- f. That in the light of said judgment of larger bench of Honourable Peshawar High Court the policy i.e. standing order No. 11 of 1987 and validation of standing order Act of 2005, alongwith all other relevant provisions of law through which the appellant alongwith others got their present positions in the department, are still holding the field and the government has

not declared its policy in respect of those enactments in the light of judgment dated 24/03/2022, so the department by not promoting the appellant on the basis of his seniority cum fitness criteria and by promoting the officers at serial No. 13 to 46 of the impugned notification who are juniors to the appellant has acted in discriminatory and contemptuous manner and on the basis of malafide, hence the impugned notification is untenable in the eye of law. Copy of judgment announced on 24/03/2022 in writ petition No. 684-A/2021 by the larger bench of Honourable Peshawar High Court is already annexed as Annexure "G".

- g. That the judgment of the Honourable Supreme Court of Pakistan reported as 2017 SCMR 206 which is made basis in the impugned Notification is

distinguishable and not applicable to the case of the appellant, because in that judgment the subject matter was of the officials who gained out of turn promotion under Section 8-A of Punjab Civil Servants Act 1974 and Section 9-A of Sindh Civil Servants Act 1973. It can be seen in that judgment that all the officials got out of turn promotion on the basis of police encounters or under sports policy, without any qualification/ courses/ examination, while the appellants' promotion is justified due to the fact that certain qualification/ courses/ examination have been prescribed in the incentive policy in order to be qualified for such promotions.

- h. That the official respondents were under obligation not to pass any adverse order against the appellant in presence of Act of 2005 which

merged the standing order in it and judgment of larger bench of this Honourable Peshawar High Court.

- i. That as the contents of impugned notification would reveal that the official respondents are poised to revert the appellant to far lower level which would subject him to irreparable loss and hardship. Therefore, restraining the respondents from acting upon the impugned notification would be in the better interest of justice.
- j. That the valuable rights of the appellant are involved in the matter
- k. That the other points shall be agitated at the time of arguments with the permission of this Honourable Tribunal.

Under these circumstances, it is very respectfully prayed that on acceptance of instant appeal, the impugned Notification

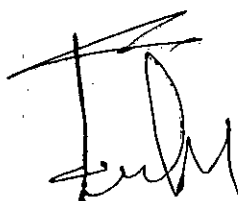
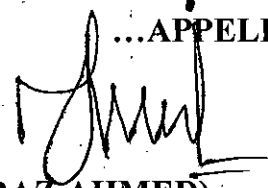
No. SO(E-I)E&Ad/2-4/2022 dated 05/09/2022 may kindly be set aside and the respondents concerned be directed to promote the appellant to the rank of S.P (BPS-18) w.e.f the date of promotion vide Notification dated 05/09/2022. Any other relief which this Honourable Tribunal deems appropriate in the facts and circumstances of the case may also be granted to the appellant.

INTERIM RELIEF;

In the meanwhile, the operation of impugned Notification No. SO (E-I)E&Ad/2-4/2022 dated 05/09/2022 may kindly be suspended till final decision of tilted appeal.

Dated: 17/02/2022

Through


...APPELLANT


(FARAZ AHMED)

Advocate High Court, Abbottabad.

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

...APPELLANT

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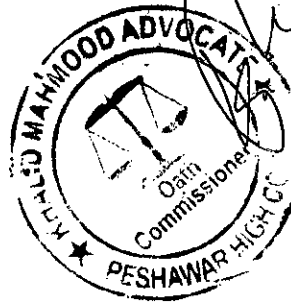
Provincial Police Officer, Khyber Pakhtunkhwa Peshawar & others.

...RESPONDENTS

APPEAL

AFFIDAVIT

I, Ijaz Ahmed son of Abdul Ghafar Khan, Presently serving as acting Superintendent of Police Investigation at Torghar, do hereby declare on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and that nothing has been suppressed from this Honourable Court.



DEPONENT