

FORM OF ORDER SHEET

Appeal No. 313/2024

to be filed in accordance with the provisions with signature of judge

3

02/02/2024

The appeal of Mr. Afsar Ali resubmitted today  
by Mr. Mr. Zaman Safi Advocate. It is fixed for  
preliminary hearing before Single Bench at Peshawar on  
02.02.2024. Parha Peshi is given to counsel for the  
appellant.

By the order of Chairman  
REGISTRAR

Appeal of Mr. Afsarullah received today i.e on 16 .02.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondents no. 1 is un-necessary/improper party, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondents.

No. 371 /S.L.

Dt. 19/2 /2024.

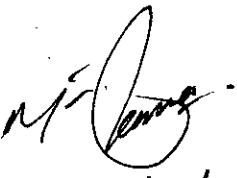
  
19/2/24

REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Mir Zaman Safi Adv.  
High Court Peshawar.

Sir,

The respondent no. 1 being appellate authority is the necessary party in the instant appeal to whom the appellant already filed his departmental appeal which is annexed as annexure-D, Page 12 & 13, hence the same may be put up before the bench.

  
19/02/2024.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**CHECK LIST**

Case Title: Afsar Ali Vs Police Deptt.

S#	CONTENTS	YES	NO
1.	This appeal has been presented by: <b>MIR ZAMAN SAFI</b>	✓Yes	No
2.	Whether Counsel/Appellant Respondent/Deponent have signed the requisite documents.	✓Yes	No
3.	Whether appeal is time barred?	Yes	✓ No
4.	Whether the enactment under which the appeal is filed mentioned?	✓Yes	No
5.	Whether the enactment under which the appeal is filed is correct?	✓Yes	No
6.	Whether affidavit is appended?	✓Yes	No
7.	Whether affidavit is duly attested by competent Oath Commissioner?	✓Yes	No
8.	Whether appeal/annexures are properly paged?	✓Yes	No
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓Yes	No
10.	Whether annexures are legible?	✓Yes	No
11.	Whether annexures are attested?	✓Yes	No
12.	Whether copies of annexures are readable/clear?	✓Yes	No
13.	Whether copy of appeal is delivered to AG/DAG?	✓Yes	No
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondent?	✓Yes	No
15.	Whether numbers of referred cases given are correct?	✓Yes	No
16.	Whether appeal contains cutting/overwriting?	Yes	✓ No
17.	Whether list of books has been provided at the end of the appeal?	✓Yes	No
18.	Whether case relate to this Court?	✓Yes	No
19.	Whether requisite number of spare copies attached?	✓Yes	No
20.	Whether complete spare copy is filed in separate file cover?	✓Yes	No
21.	Whether addresses of parties given are complete?	Yes	No
22.	Whether index filed?	✓Yes	No
23.	Whether index is correct?	Yes	No
24.	Whether Security and Process fee deposited? On	Yes	No
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice alongwith copy of appeal and annexures has been sent to respondents? On	Yes	No
26.	Whether copies of comments/reply/rejoinder submitted? On	Yes	No
27.	Whether copies of comments/reply/rejoinder provided to opposite party? On	Yes	No

It is certified that formalities/documentations as required in the above table have been fulfilled.

Name:-   
**MIR ZAMAN SAFI**  
Advocate

Signature:-  
Dated: 15-02-2024

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**Khyber Pakhtunkhwa  
Service Tribunal**

APPEAL NO. 3 /2024

Diary No. 11203

Dated 16.02.2024

Mr. Afsar Ali, Constable No.179/918/544,

Operation Wing, Nowshera.....APPELLANT

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer, Mardan Region at Mardan.

.....RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED  
ORDER DATED 10.10.2023 WHEREBY THE APPELLANT HAS  
BEEN TRANSFERRED/REPATRIATED FROM SPECIAL BRANCH  
TO RPO MARDAN AND REDUCED TWO STAGES OF HIS RANK  
i.e. FROM ASI TO COSTABLE AND AGAINST NO ACTION  
TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT  
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:**

That on acceptance of this service appeal the impugned order dated 10.10.2023 may very kindly be set aside and be posted the appellant in Special Branch against his original Rank of ASI with all back benefits. Any other relief which this august Tribunal deems appropriate may also be granted in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

*Brief facts of the present appeal are as under:-*

- 1- That appellant is the employee of respondent department and presently serving as Constable No.179/918/544 at Operation Wing, Nowshera quite efficiently and upto the entire satisfaction of his superiors.
- 2- That the appellant while performing his duty as Head Constable at District Police, Peshawar was transferred to Traffic Police and posted as ASI and as such later on was transferred to Special Branch, Khyber Pakhtunkhwa Peshawar and posted as ASI. That the appellant performed his duty at Special Branch for more than eight (8) years with full of his devotion and honesty. Copy of the Last Pay Certificate is attached as annexure.....A.

Re-submitted to-day and filed

Registrar  
26/2/24

Filed to-day  
Registrar  
16/2/24

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. 313 /2024

AFSAR ALI

VS

POLICE DEPTT:

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APPELLANT

THROUGH:

  
MIR ZAMAN SAFI  
ADVOCATE

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

APPEAL NO. 313 /2024

Mr. Afsar Ali, Constable No.179/918/544,  
Operation Wing, Nowshera.....APPELLANT

**VERSUS**

1- The Regional Police Officer, Mardan Region at Mardan.  
.....RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10.10.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED/REPATRIATED FROM SPECIAL BRANCH TO RPO MARDAN AND REDUCED TWO STAGES OF HIS RANK i.e. FROM ASI TO COSTABLE AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.**

**PRAYER:**

That on acceptance of this service appeal the impugned order dated 10.10.2023 may very kindly be set aside and be posted the appellant in Special Branch against his original Rank of ASI with all back benefits. Any other relief which this august Tribunal deems appropriate may also be granted in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

*Brief facts of the present appeal are as under:-*

- 1- That appellant is the employee of respondent department and presently serving as Constable No.179/918/544 at Operation Wing, Nowshera quite efficiently and upto the entire satisfaction of his superiors.
- 2- That the appellant while performing his duty as Head Constable at District Police, Peshawar was transferred to Traffic Police and posted as ASI and as such later on was transferred to Special Branch, Khyber Pakhtunkhwa Peshawar and posted as ASI. That the appellant performed his duty at Special Branch for more than eight (8) years with full of his devotion and honesty. Copy of the Last Pay Certificate is attached as annexure.....A.

Re-submitted to -day  
and filed.

Registrar

- 3- That the appellant while performing his duty as ASI Special Branch, Khyber Pakhtunkhwa, Peshawar repatriated/transferred to Mardan Region, and posted at Operation Wing, Nowshera and as such reduced two stages of his Rank from ASI to Constable without any reason and lawful justification vide impugned order dated 10.10.2023. Copy of the impugned order dated 10.10.2023 is attached as annexure.....**B.**
- 4- That it is pertinent to mention that the appellant has performed for more than eight (8) years service in Special Branch with dedication and honesty and as such he opted for permanent duty/posting in Special Branch but the authority concerned refused his request and without giving any opportunity of hearing transferred the appellant to Mardan Region and posted in the lower Rank of Constable by violating the law and rules *ibid*.
- 5- That it is also pertinent to mention that as per Standing Order 1 of 1996 if an employee wants to retain his services in Special Branch after completion of his tenure of 5 years, he will be promoted on regular basis but the appellant has been transferred from Special Branch without giving any opportunity of hearing/option and posted him in the lower Rank of Constable in violation of the above mentioned standing order. Copy of the standing order No.1 of 1996 is attached as annexure.....**C.**
- 6- That the appellant feeling aggrieved from the impugned order dated 10.10.2023 preferred departmental appeal to the appellate authority but no reply has been received so far. Hence the present appeal on the following amongst the others. Copy of the departmental appeal is attached as annexure.....**D.**

**GROUND:**

- A- That the impugned order dated 10.10.2023 is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside.
- B- That the respondent department has not been treated the appellant in accordance with law and rules on the subject noted above and as such violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- C- That the impugned order dated 10.10.2023 is violative of the Principle of natural justice and the same is not tenable in the eye of law and liable to be set aside.
- D- That the appellant is willing to retain his services on permanent basis in Special Branch as per standing order No.1 of 1996 but the authority

concerned illegally and unlawfully transferred the appellant from Special Branch to Mardan Region vide impugned order dated 10.10.2023 and as such posted in the lower Rank of Constable which is not tenable in the eye of law and the same is liable to be set aside.

- E- That the respondent department acted in arbitrary and malafide manner while issuing the impugned order dated 10.10.2023 while not considering his stance/option of permanent posting in the Special Branch.
- F- That the appellant has the longest service in the Special Branch as ASI for more than term specified in the Standing Order 1/1996, therefore, the appellant is fully entitled to be retain in Special Branch against his original post of promotion as ASI on permanent basis.
- G- That the appellant has served the Special Branch with dedication and honesty and up to the entire satisfaction of his superiors but inspite of that the appellant has been repatriated/transferred to his parent department.
- H- That many colleagues of the appellant serving in the special branch on permanent basis which is evident from the judgment of this august Tribunal in appeal No. 1225/2017 titled Shafqat Ullah Vs Police Department, therefore, such act of the authority i.e. repatriating/transferring the appellant from Special Branch to Mardan Region is based on discrimination. Copy of the judgment is attached as annexure.....E.
- I- That the appellant seeks permission to advance any other grounds and proof at the time of hearing.

It is, therefore, most humbly prayed that the appeal of appellant may be accepted as prayed for.

Dated: 14.02.2024.

**APPELLANT**

**AFSAR ALI**

**THROUGH:**

**MIR ZAMAN SAFI**

**&**

**ANWAR HAIDERI**

**ADVOCATES**



**CERTIFICATE:**

It is certified that no other earlier appeal was filed between the parties.

  
**DEPONENT**

**LIST OF BOOKS:**

- 1- CONSTITUTION OF PAKISTAN, 1973.
- 2- SERVICES LAWS BOOKS.
- 3- ANY OTHER CASE LAW AS PER NEED.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

APPEAL NO. \_\_\_\_\_/2024

AFSAR ALI


VS

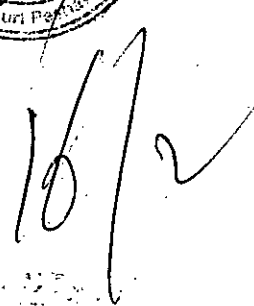
POLICE DEPTT:

**AFFIDAVIT**

I **Mir Zaman Safi**, Advocate High Court, Peshawar on the instructions and on behalf of my client do hereby solemnly affirm and declare that the contents of this **service appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



  
**MIR ZAMAN SAFI**  
Advocate  
High Court, Peshawar



# LAST PAY CERTIFICATE

PERSONAL NO	29990
GP FUND NO.	43749

LAST PAY CERTIFICATE IN R/O ASSTT: SUB INSPECTOR AFSAR ALI  
OF THE: SPECIAL BRANCH KHYBER KHYBERPAKHTUNKHWA, PESHAWAR.  
TRANSFERRED TO RPO MARDAN  
HE HAS BEEN PAID UP TO 31, JULY 2023 (AN).  
AS PER FOLLOWING RATES:-

A-6

PAYMENTS		DEDUCTIONS	
0001 Basic Pay	46,160.00	3011 GPF Subscription	1,920.00-
1004 House Rent Allow 45%	6,909.00	6505 GPF Loan Principal	6,000.00-
1210 Convey Allowance 20	2,856.00	3530 Police wel:Fud BS-1	923.00-
1300 Medical Allowance	1,500.00	4004 R. Benefits & Death	600.00-
1547 Ration Allowance	1,000.00	3609 Income Tax	1,036.00-
1567 Washing Allowance	150.00	<b>DEDUCTIONS</b>	<b>10,479.00-</b>
1646 Constabulary R Allow	300.00		
1902 Special Incentive Al	775.00		
2148 15% Adhoc Relief All	610.00		
2168 Fixed Daily Allowanc	2,730.00		
2199 Adhoc Relief Allow @	405.00		
2314 Risk Allow Police -	8,600.00		
2347 Adhoc Rel Al 15% 22(	4,284.00		
2378 Adhoc Relief All 202	16,156.00		
<b>PAYMENTS</b>	<b>92,435.00</b>		

- He made over the charge of his duty after 31, JULY 2023 (AN).
- He is entitled to draw the following
- He is also entitled to joining time for \_\_\_\_\_ days.
- The details to the income tax recovered from him up to the date from the beginning of the current year are noted on the reverse.

VERIFIED

ACCOUNTS OFFICER

D/O A.G Khyber Pakhtunkhwa

D.O/Special Branch  
Peshawar  
DDO

SPECIAL BRANCH  
KHYBER PAKHTUNKHWA,  
PESHAWAR

NO. 114 Acctt:/SB

DATED. 02 /08/2023

ATTESTED  
m



OFFICE OF THE  
ADDITIONAL INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH KHYBER PAKHTUNKHWA  
PESHAWAR

No. 8440 / EB, dated Peshawar the, 30/08/2023

(7)

To:- The Regional Police Officer,  
Mardan.

Subject:- SERVICE RECORD.

Memo:

Please refer to CPO order No.935/E-III, Dated. 05-07-2023 On the subject noted above.

Service record of ASI Afsar Ali 179/918/544/SB is sent herewith for record in your office. The receipt of which may please be acknowledged.

Enclosed:

Service Book= 02

Service Roll =01

Fauji Missal =01

No. 6570/ES

CH 10-10-23

For Addl: Inspector General of Police  
Special Branch Khyber Pakhtunkhwa  
Peshawar

EC/BPO Nowshera  
For information & record

RPO/Mardan  
10/10/23  
For.

ATTESTED

B-  
8

**ORDER**

Consequent upon repatriation from Special Branch Khyber Pakhtunkhwa, Peshawar to Mardan Region, vide Central Police Office, Peshawar Order No. 935/E-III dated 05.07.2023, Constable Afsar Ali No. 179/918/544 is hereby transferred/posted to Operation Wing, Nowshera with immediate effect and till further orders.

(MUHAMMAD SULEMAN) PSP  
Regional Police Officer,  
Mardan.

No. 6566-69/ES,

Dated Mardan the 10/10/2023

Copy forwarded for information and necessary action to the:-

1. Additional Inspector General of Police, Special, Khyber Pakhtunkhwa, Peshawar.
2. Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa, Peshawar.
3. District Police Officer, Mardan.
4. District Police Officer, Nowshera. His Service Record alongwith LPC is sent herewith for record.

(\*\*\*\*\*)

MHC Lines  
AS  
HC

10/10/23  
36/20

ATTESTED  
MHC



ATTESTED

مقام کے لئے

Promotion :-

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ATTESTED

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FOR DI: INSPECTOR GENERAL OF POLICE,  
SPECIAL BRANCH, NWP, PESHAWAR.

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No. 591-25 /RB, Dated Peshawar the 24-1-1996.  
Special Branch for cyrographation amongst the staff.  
Copy of above is forwarded to All SAs, In

Handwritten notes in the middle section of the page, including a signature that appears to be 'S. S.' and some illegible text.

A large section of handwritten text in Urdu, enclosed in a hand-drawn oval border. The text is dense and appears to be a detailed report or communication.

Handwritten number '11' inside a circle, with '13' written below it.

Handwritten text at the bottom of the page, including the word 'Intelligence'.



To,

The Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

D-12

Subject:

**DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 10.10.2023 WHEREBY THE APPELLANT HAS BEEN TRANSFERRED FROM SPECIAL BRANCH, PESHAWAR TO MARDAN REGION AND POSTED AT OPERATION WING, NOWSHERA AND AS SUCH REDUCED TWO STAGES OF HIS RANK FROM ASI TO CONSTABLE WITHOUT ANY REASON AND LAWFUL JUSTIFICATION.**

Respected Sir,

With great reverence it is stated that the appellant is the employee of your good self department and presently serving as Constable at Mardan Region, Operation Wing, Nowshera quite efficiently and upto the entire satisfaction of his superiors.

That the appellant while performing his duty as Head Constable at District Police, Peshawar was transferred to Traffic Police and posted as ASI and as such later on was transferred to Special Branch, Khyber Pakhtunkhwa Peshawar as ASI. That the appellant performed his duty at Special Branch for more than eight (8) years with devotion and honesty.

That the appellant while performing his duty as ASI at Special Branch, Khyber Pakhtunkhwa, Peshawar repatriated/transferred to Mardan Region, and posted at Operation Wing, Nowshera and as such reduced the Rank of appellant from ASI to Constable without any reason and lawful justification.

That it is pertinent to mention that the appellant has performed more than eight (8) years service in Special Branch with honesty and dedication and as such opted for permanent duty in Special Branch but the authority concerned without giving any opportunity of hearing transferred the appellant to Mardan Region and posted in the lower Rank of Constable by violating the law and rules ibid.

That it is also pertinent to mention that as per Standing Order 1 of 1996 if an employee wants to retain his services in Special Branch after completion of his tenure of 5 years, he will be promoted on regular basis but the appellant has been transferred from Special Branch without giving any opportunity of hearing and posted him in the lower Rank of Constable.

That the impugned order dated 10.10.2023 is violative of the Principle of natural justice and the same is not tenable in the eye of law and the same is liable to be set aside.

ATTESTED

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That the appellant is willing to retain his services on permanent basis in special branch as per standing order No.1 of 1996 but the authority concerned illegally and unlawfully transferred the appellant from special branch to Mardan Region vide impugned order dated 10.10.2023 and as such posted in the lower Rank of Constable which is not tenable in the eye of law and the same is liable to be set aside.

It is, therefore, most humbly prayed that on acceptance of this departmental appeal the impugned order dated 10.10.2023 may very kindly be set aside and retain the appellant in special branch on permanent basis as per standing order No.1 of 1996 on his original Rank of ASI with effect from the date of transfer i.e. 10.10.2023 with all back benefits. Any other relief which your good self deems appropriate may also be granted in favor of the appellant.

Dated: 20.10.2023.

APPLICANT



AFSAR ALI, Constable No.179/918/544,  
Operation Wing, Nowshera

ATTESTED  


E-24

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1225/2017

Date of Institution ... 06.11.2017

Date of Decision ... 10.01.2022



Shafqat Ullah, No. 392/SB Sub Inspector Special Branch Police Department  
... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,  
Peshawar and two others. ... (Respondents)

Muhammad Alamzeb Khan,  
Advocate ... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents.

**SALAH-UD-DIN** ... **MEMBER (JUDICIAL)**  
**ATIQ-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** This single judgment shall dispose of the instant service appeal, as well as connected Service Appeals bearing No. 1167/2017 "titled Mumtaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1177/2017 "titled Imtiaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1192/2017 "titled Samin Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1193/2017 "titled Saeed Khan Versus Government of Khyber Pakhtunkhwa through Chief

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**ATTESTED**

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Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1196/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1197/2017 "titled Israil Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1204/2017 "titled Muhammad Iqbal Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1228/2017 "titled Muhammad Ashraf Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1235/2017 "titled Muhammad Asif Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1236/2017 "titled Habibullah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1237/2017 "titled Asif Saleem Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others" and Service Appeal bearing No. 1238/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", as common questions of law and facts are involved therein.

02. Brief history of the case is that the appellants are employees of special branch of police department, which is the most un-attractive off branch shoot of the department. In order to make it attractive, certain incentives were offered to the employees, particularly the lower staff and one step promotion was one of them. The appellants were basically constables, but while joining special branch, they were granted one step promotion, who subsequently reached to the posts of Assistant Sub Inspectors (ASI) and Sub Inspectors (SI) in due course of time and

ATTESTED  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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after due process. The incentives so offered were given legal cover in shape of a standing order of 1996 issued on 24-01-1996. In the wake of judgment of August Supreme Court of Pakistan reported as 2013 SCMR 1752, respondent No. 2 issued instructions to all heads of police offices vide the impugned order dated 21-03-2016 to done away with out of turn promotions. In pursuance of the instructions, respondent No. 3 issued the impugned order dated 27-04-2016, whereby all orders issued regarding second and third step promotions to the officials of special branch including the appellants, were withdrawn. Feeling aggrieved, the appellants filed departmental appeals followed by writ petition No 2088-P/2016, which was dismissed vide judgment dated 12-01-2017 on the ground of jurisdiction, leaving the appellants at liberty to approach proper forum for redressal of their grievance. The appellants then filed the instant appeals, with prayer that the impugned orders dated 21-03-2016 and 27-04-2016 may be set aside and the appellants may be restored to their respective positions alongwith all back benefits.

03. Learned counsel for the appellants has contended that judgment of supreme court of Pakistan has been misinterpreted and has wrongly been applied upon appellants, as promotions of the appellants were made on merit after due process and in due course of time; that judgment was announced in 2013, whereas the same has been executed upon appellants in 2016 and the appellants have been penalized for no good reason; that such promotions were made after fulfilling all the codal formalities in accordance with law, which cannot be termed as out of turn promotions; that such promotions have not affected rights of any other person, otherwise they would have challenged such promotions; that the appellants were otherwise fit for promotions like their other colleagues in regular police; that their other colleagues in regular police have reached the position of inspectors, whereas the appellants were demoted to the rank of head constables,

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

ATTESTED

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inspite of the fact that all the appellants are having more than 35 years of service at their credit; that valuable and fundamental rights of the appellants are involved in the matter and is a case of public importance; that the impugned orders are without jurisdiction, arbitrary in nature, hence not tenable in the eye of law; that the impugned orders are unfair, as the appellants has been condemned unheard.

04. On the other hand learned Deputy District Attorney for the respondents has contended that it is correct that incentives of one step promotions were allowed to the police officials who voluntarily opted for transfer to special branch; that it is also correct that in view of standing order of 1996, those officials, who had spent more than five years in special branch, were further promoted to the rank of ASIs and SIs after observing the codal formalities; that it is also correct that such promotions were granted in due course of time, against existing vacancies; that such promotions were considered as legal until pronouncement of judgment of the supreme court of Pakistan reported as 2013 SCMR 1752 and in light of the said judgment, such promotions were declared as out of turn, as the appellants though were otherwise eligible for promotion, but were not equipped with the mandatory trainings, which are necessary for promotion to the next grade, therefore in light of the said judgment, second and third step promotions availed by police officials in special branch were withdrawn.

05. We have heard learned counsel for the parties and have perused the record.

06. In order to properly understand the issue in hand, it would be useful to have a glimpse of the background of the case. Special branch being an important wing of the police department remained one of the neglected and un-attractive areas for police personnel and nobody would opt to be transferred to special branch in any rank. In order to make it attractive, 20% special allowance was

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allowed for officials serving in special branch, but it did not work, hence the respondents went one step ahead and issued a standing order of 1996. Salient features of such order would elucidate that there is no defined standard for bringing police personnel on deputation to special branch and normally unfavorable employees or those who were not considered as efficient, had been transferred to special branch on deputation with certain time period, thus the special branch became hub of unwilling workers, adversely affecting efficiency level of the institution. In order to improve the status of special branch, it was felt eminent to regulate such transfers by devising rules and regulations for special branch. For the purpose, standing order of 1996 was brought into force, where inter-alia, incentives of adhoc promotions were offered to such employees, who were willing to serve for a period of five years in special branch, but on return to their respective districts, they will be reverted to their previous positions and their seniority will be maintained in their respective districts. Those who stay beyond the period of five years, will be granted regular promotions and to this effect a case will be submitted to the government for establishment of a training school in collaboration with intelligence bureau school, which ultimately would impart necessary trainings to employees of special branch, pertaining to intelligence courses, VVIP security training and many others, so as to enable them to handle their respective jobs efficiently as well as to equip them to be promoted on regular basis without qualifying police courses and such practice of promotion will continue till establishment of such training school for special branch.

07. As per practice in vogue in special branch and subsequently, in light of standing order of 1996, a written agreement was required to be signed between the employee and the special branch, containing the conditions that his seniority will be maintained in his respective district and his promotion would be on officiating/adhoc basis and on return to his respective district, he will be reverted

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to his original position. Record reveals that police personnel were normally transferred to special branch on deputation basis with the option to return to their respective districts, but the appellants are amongst those, who had decided to remain in special branch until their retirement. Since cases of the appellants are similar in nature having common questions of law and facts, so case of one Mr. Mumtaz Ali is taken as an example, who joined police force as Constable on 20-10-1975. On 04-11-1981, he was transferred to special branch and was granted one-step promotion as Head Constable. After 15 years, on 11-06-1996 he was promoted as Assistant Sub Inspector (ASI) and on 04-09-2002, he was promoted as Sub Inspector (SI). Record would suggest that such promotions had been made by promotion committees against the available sanctioned posts purely on officiating/adhoc basis only as an incentive to such employees, who would opt to remain in special branch for a period of more than five years. Mr. Mumtaz Ali travelled a long way in earning promotion to the post of SI and it took almost 27 long years for him to reach to the post of SI and that too on officiating/adhoc basis, which was good only for monetary consideration in terms of enhanced salary, which ultimately would yield benefit in case of pension. During the course of litigation, six of the appellants retired from service upon reaching their age of superannuation, while others are serving as head constables and are at the verge of retirement.

08. With such considerations, the appellants opted to remain in special branch with anticipation that they had signed a written agreement with respondent No. 3 wherein it was mentioned that such arrangements would continue until alternate arrangements are made. Record is silent as to whether any alternate arrangements were made or not, but subsequently in order to make the special branch functional, promotions of subordinate ranks in regular police were made conditional with mandatory stay for certain period in special branch, which was/is

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mandatory for all but in wake of announcement of Judgment of Supreme Court of Pakistan reported as 2013 SCMR 1752, the provincial police officer issued directives vide order dated 19-06-2013 that special case promotions should be discontinued in future to provide level playing field for all police personnel in career progression. Such letter was addressed to all heads of police offices, but no adverse action was taken against employees of special branch, as such directives were meant for future. In another developing story, this tribunal in service appeals No. 561, 562, 563, 537, 715 & 538, in similar nature cases pertaining to investigation wing of the police, vide its judgment dated 16-11-2015, remitted their appeals to respondents with direction to the respondents to examine appeals of the appellants and decide the same strictly on merit without any discrimination. The appellate authority (Provincial Police Officer) examined such appeals in light of judgment of Supreme Court of Pakistan and decided that the present appellants as well as all such promotions in other units have been made against the law and rule, hence may be done away with it. Such instructions were issued vide order dated 21-03-2016 and in compliance, respondent No. 3, issued order dated 27-04-2016, whereby orders regarding second and third step promotions were declared as out of turn promotions, hence were withdrawn with immediate effect and the appellants were left with one step promotion as head constables.

09. In order to reach to a logical conclusion, it would be useful to briefly introduce the judgment in question. While disposing of constitutional petitions challenging vires of statutes, the supreme court of Pakistan, declared impugned legislations and benefits extended thereunder by government for being violative of the Constitution. It was the Government of Sindh, which empowered the Chief Minister to grant out of turn promotion to civil servants by bringing amendment in civil servants Act, 1973 through promulgation of ordinances, where non-civil

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servants and non-cadre civil servants were transferred to cadre posts in Sindh government by way of deputation and their absorption against cadre posts with backdated seniority by chief minister pursuant to Sindh Civil Servants Act, 1973 as amended by Sindh civil servants (second amendment) Ordinance 2012, Sindh Civil Servants (Amendment) Act, 2013 and Sindh Civil Servants (second amendment) Act, 2013. Such deputationists, despite not having matching qualifications to cadre in which they were transferred and liable to be repatriated, had been absorbed against cadre posts against language of section-10 of Sindh Civil Servants Act, 1973 on the basis of legislations so made. The supreme court of Pakistan in its judgment in question has held that neither a non-civil servant nor a civil servant from non-cadre post could be transferred to a cadre post in government by way of deputation as same would affect rights of civil servants serving in government and create sense of insecurity in them. The impugned legislation meant for specific class of persons was declared violative of Article-25, 143 and 240 of the Constitution, which ultimately would encourage nepotism and discourage transparent process of appointment of civil servants in prescribed manner. Further held that benefits extended to different employees or civil servants through impugned legislations would not attract principle of locus poenitentiae, hence the Supreme Court struck down such legislations and withdrew the benefits of out of turn promotions. The judgment so announced was sent to all chief secretaries of the province for compliance.

W/h

10. Now the moot question before us is as to whether the promotions of the appellant were illegal and the same come under the parameters drawn for out of turn promotions. For the purpose, we have carefully examined the judgment in question, which has delineated various aspects involving out of turn promotions, relevant portion of which is reproduced as under:

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*"We are of the considered opinion that a person/litigant, who has availed benefit for promotion under Article-9-A without application of the criteria laid down under Rule-8-B by way of underhand means or by any mode other than merit, cannot get protection on such benefit on the principle of locus poenitentiae, unless he could show that the benefit availed by him was in accordance with law; in good faith and without ulterior motive or malafide."*

The verdict provides for a chance to the beneficiaries to show as to whether the benefits so availed were in accordance with law or otherwise. The same would equally apply to the appellants, who were required to be afforded an opportunity to defend their cause, which however was not granted by the respondents and without proper examination of the judgment as well as without application of independent mind, competent authority unilaterally decided their cases. The principle of Audi alteram partem has always been considered as mandatory in such cases, as no adverse action can be taken against any one without providing him an opportunity to defend himself. The appellants however is having as strong case on merit, as their promotions were duly protected by standing order of 1996, which were made after fulfilling the required codal formalities and such promotions were not promotions in real meaning, rather it was an incentive granted to the appellants in lieu of services rendered in special branch, with a tacit understanding between the appellants and the respondents. The appellants served in special branch due to such incentives, otherwise they would have earn such promotions, if they were in their respective districts, like their other colleagues in their respective districts, who had elevated to the post of inspectors, hence such promotions cannot be termed as out of turn promotions.

11. For the purpose, we need to understand as to what is out of turn promotion. Out of turn, promotion is a promotion, when it is not your turn, but in the instant case, the appellants were promoted in their own turn and nobody else

*Wm*

*MD*

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were affected by such promotions nor they were given any benefit of seniority over their seniors. The supreme court of Pakistan in the judgment in question has held as under;

*"Grant of out of turn promotion were class specific, prejudicial to public interest and not based on intelligible differentia, rather having distorted service structure, affected inter-se-seniority between officers serving on cadre posts after acquiring jobs through competitive process."*

12. We have observed that promotions in the instant case are neither class specific nor prejudicial to public interest or affected seniority of others, rather such promotions were made amongst the deputationists in light of standing order of 1996. The appellants in the instant case are not the deputationists in a sense, which has been discussed in the judgment in question. The appellants spent their whole lives serving in an un-attractive place only for the purpose of getting promotions, but in the last leg of their service, they were reverted back to the post of head constables. For the sake of comparison of the case of the appellants with those discussed in the judgment, relevant portion of the judgment is reproduced as under:

*"The procedure provided under the ESTACODE requires that a person who is transferred and appointed on deputation must be a government servant and such transfer should be made through the process of selection. The borrowing government has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in government must have matching qualifications, expertise in the field with required experience. In absence of these conditions, the government cannot appoint anyone by transfer on deputation."*

In the instant case, the appellants are regular police personnel and their transfers on deputation were made on solid reasons and in exigency of service by

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the special branch by offering them incentives of officiating promotions. The appellants having matching qualifications, expertise as well as the required experience, thus they were fit to be appointed on deputation in special branch. In the instant case, neither they were absorbed against posts infringing rights of other employees, nor were they promoted through bypassing of their colleagues. In nutshell, case of the appellants is distinguished from the one discussed in the judgment in question. In the judgments reported as PLD 1993 SC 109 and PLD 1961(WP) Lahore 78, worthy superior courts have graciously held that while taking something as a precedent and while considering the value of the principles of a case, emphasis has to be placed on material facts, before the court, for such facts may serve as a guide for the reasons for pronouncement of law by the judge or the statement of rule of law followed by him; that precedents primarily apply to their own fact and can have but little weight where facts are different. August supreme Court of Pakistan in the judgment in question has held as under:

*"The provincial assembly (Sindh) through the impugned instruments pronounced a legislative judgment with the sole object to accommodate their blue-eyed, who were neither civil servants nor government servants. The deputationists brought in were not recruited through the process of the competitive exams and were appointed on deputation to the cadre posts, which appointments affected the rights of the civil servants serving in different government departments, as their promotions were blocked."*

In the instant case, the situation is totally different, as the appellants were brought in to special branch through incentives of officiating promotions, against which they served for considerable time period and such incentives were withdrawn wrongfully under the pretext of the judgment in question without proper examination of such judgment, which however was not warranted. In last Para of the judgment in question, it has been ordered that copy of the same be

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sent to all Chief Secretaries of the provinces with direction to streamline the service structure of civil servants in line with the principles laid down in the judgment. In light of the said judgment, the respondents were required to have streamlined service structure of the employees of special branch, however instead of doing so, the respondents have wrongly and illegally withdrawn promotions granted to the appellants by complying the required legal formalities.

13. Provincial Police Officer, Punjab, while deriving wisdom from the judgment of supreme court of Pakistan reported as 2015 SCMR 456, extended the same benefit to SI Abdul Ghani, whose case was similar to that of the appellants vide order dated 09-04-2020. On the same analogy, the IG Islamabad vide order dated 29-09-2020 extended the same benefit to SI Muhammad Zahid, where he was granted promotions on the same dates, when his erstwhile colleagues were promoted. Relevant portion of the judgment is reproduced as under:

*..... the officers/officials who have been repatriated to their parent departments shall be entitled to salaries and other benefits from the date they were relieved to join their parent departments. Their seniority shall be maintained in their parent departments with their batch-mates as if they were never relieved from their parent departments. Expiry of period lien shall not come in the way of the officers to deprive them from joining the parent department....."*

14. We have observed that in the said judgment, though repatriation to parent departments have been upheld but rights of promotion and seniority of the affectees have been taken care of, as their cases were not considered in the category of out of turn promotions. The instant case is eccentric to the effect that appellants were not repatriated to their parents department, but were only downgraded and kept absorbed in the special branch. In a manner, they were deprived of the benefits, which were accrued to them, if repatriated to their parent departments. We are of the considered opinion that the appellants

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suffered twice, as on one hand, they were not repatriated to their parent departments, hence deprived them of the opportunity to re-gain their seniority and promotions in their parent department and on the other hand, their ad-hoc promotions were also withdrawn, which were good only to the extent of monetary benefits in lieu of the services rendered by appellants in special branch. In such a situation, natural justice demands that the appellants shall not suffer for any wrongdoing of the respondents. We are of the considered opinion that judgment of the supreme court of Pakistan reported as 2013 SCMR 1752 has been misinterpreted and erroneously made applicable upon the promotion cases of the appellants because such promotions cannot be termed as out of turn promotions.

15. In view of the foregoing discussion, the instant service appeal as well as connected Service Appeals bearing No. 1167/2017 "titled Mumtaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1177/2017 "titled Imtiaz Ali Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1192/2017 "titled Samin Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1193/2017 "titled Saeed Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1196/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1197/2017 "titled Israil Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1204/2017 "titled Muhammad Iqbal Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No.


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1228/2017 "titled Muhammad Ashraf Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1235/2017 "titled Muhammad Asif Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1236/2017 "titled Habibullah Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", Service Appeal bearing No. 1237/2017 "titled Asif Saleem Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others" and Service Appeal bearing No. 1238/2017 "titled Humayon Khan Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others", are accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.


**ANNOUNCED**  
10.01.2022

  
(SALAH-UD-DIN)  
MEMBER (J)

  
(ATIQU-UR-REHMAN WAZIR)  
MEMBER (E)

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

\_\_\_\_\_ OF 2028

Afsar Ali

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

VERSUS

Police Department

(RESPONDENT)  
(DEFENDANT)

I/We Afsar Ali

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 15/02/2028

Afsar Ali  
CLIENT

MIR ZAMAN SAFI  
ADVOCATE

ANWAR HAIDRI  
Advocate

OFFICE:  
Room No.6-E, 5<sup>th</sup> Floor,  
Rahim Medical Centre, G.T Road,  
Hashnagri, Peshawar.  
Mobile No.0333-9991564  
0317-9743003