27.08.2018 Appellant in person and Shamrez SI for the respondents present.

Due to summer vacations, the case is adjourned .To come up for the same on 15.10.2018 at camp court Abbottabad.

Reader

15.10.2018 Clerk of counsel for the appellant present. Mr. Shamraiz Khan, ASI alongwith Mr. Usman Ghani, District Attorney for the respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 17.12.2018 before the D.B at camp court, Abbottabad.

Member **Chairman**
Camp Court, A/Abad

17.12.2018 Mr. Muhammad Arshad Tanoli, Advocate for appellant and Mr. Usman Ghani, District Attorney alongwith Shamraiz Khan, ASI for the respondent present.

Learned counsel for the appellant states that as grievance of the appellant has been redressed, he is not under instruction to withdraw the instant appeal.

Dismissed as withdrawn. File be consigned to the record room.

Member
ANNOUNCED
17.12.2018

Chairman
Camp Court A/Abad

Service Appeal No. 177/2015

19.12.2017 Clerk of the counsel for appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Shamraiz Khan, Reader for the respondents also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 21.02.2018 before D.B at Camp Court Abbottabad.

(Gul Zeb Khan)
Member (Executive)
Camp Court Abbottabad

(Muhammad Amin Khan Kundi)
Member (Judicial)
Camp Court Abbottabad

21.02.2018 Appellant in person and Addl AG alongwith Shamraiz Khan, H.C for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. To come up for arguments on 23.05.2018 before the D.B at camp court, Abbottabad.

Member

Chairman
Camp court, A/Abad.

23.05.2018 **Clerk to counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Shamrez Khan ASI for the respondents present. Clerk to counsel for the appellant requested for adjournment as learned counsel for the appellant is not in attendance. Request accepted. To come up for arguments on 27.08.2018 before the D.B at camp court A/Abad.**

Member

Chairman
Camp court, A/Abad

19.10.2017

Counsel for the appellant and Mr. Muhammad Siddique, Sr.GP alongwith Shamraiz Khan, Reader for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. Adjourned for final hearing to 15.3.2016 before the D.B at camp court, Abbottabad.

Member

Chairman
Camp Court, A/Abad

15.03.2017

Appellant in person and Mr. Shamraz Khan Reader alongwith Muhammad Siddique Sr.GP for the respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before the D.B on 18.09.2017 at camp court, Abbottabad.

Chairman
Camp Court, A/Abad

18.09.2017

Counsel for the appellant, Mr. Muhammad Bilal, Deputy District Attorney alongwith Shamraiz Khan, H.C for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for final hearing on 19.12.2017 before the D.B at camp court, Abbottabad.

Member

Chairman
Camp court, A/Abad.

21.07.2015 Since the 21st July 2015 has been declared as a public holiday on account of Eid-ul-Fiter. Therefore case is adjourned to 18.11.2015 at Camp Court Abbottabad.

Supdt.

18.11.2015 Agent of counsel for the appellant and Mr. Shamraiz Khan, Reader alongwith Mr. Muhammad Siddique, Sr.G.P for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for rejoinder and final hearing before D.B on 16.5.2016 at Camp Court A/Abad.

Chairman
Camp Court A/Abad

16.05.2016 Appellant in person and Mr. Shamraiz Khan, Reader alongwith Mr. Muhjammad Siddique Sr.GP for the respondents present. Rejoinder submitted. Appellant requested for adjournment. Adjourned for final hearing before D.B to 19.10.2016 at camp court, Abbottabad.

Member

Chairman
Camp court, A/Abad,

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 177/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.03.2015	The appeal of Mr. Muhammad Javed presented today by Mr. Muhammad Arshad Khan Tanoli Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2	9-3-15	This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up thereon 19-3-2015. CHAIRMAN

3 19.3.2015 Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as DSP in Police Department when reverted to the position of Inspector and was, therefore, enlisted at S.No.1 of the seniority list. That the appellant was entitled to b e considered for promotion from the position of Inspector to that of DSP in the meeting of DPC conducted on 24.10.2014 but he was not considered and junior officers to appellant were promoted. That the appellant preferred departmental appeal on 21.11.2014 which remained un-responded and hence the present service appeal on 2.3.2015.

That the promotion of the junior and non-consideration of the appellant to the post of DSP is against law and facts.

Appeal Deposited
Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 21.4.2015 before S.B at camp court A/Abad.

Chairman
Camp Court A/Abad

4 21.4.2015 Appellant in person and Hafiz Janas Khan, DSP (legal) alongwith Mr.Muhammad Tahir Aurangzeb, G.P for official respondents present. Written reply by official respondents submitted. None present for private respondents despite notice. Proceeded ex-parte. The appeal is assigned to D.B for rejoinder and final hearing for 21.7.2015 at camp court A/Abad.

Chairman
Camp Court A/Abad

BEFORE THE HONOURABLE CHAIRMAN SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 177 /2015

Muhammad Javed Inspector CTD (Police Department) Abbottabad.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs KPK, Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

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2.	Copy of reversion order dated 11/09/2014	10 - 11	"A"
3.	Copy of impugned promotion order dated 24/10/2014	12	"B"
4.	Copy of departmental appeal	13 - 14	"C"
5.	Wakalatnama.	15	

...APPELLANT

Through;

Dated: 26/02/2015

(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

BEFORE THE HONOURABLE CHAIRMAN SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 177 /2015

Muhammad Javed Inspector CTD (Police Department) Abbottabad.

...APPELLANT

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs KPK, Peshawar.
2. Provincial Police Officer KPK, Peshawar.
3. DIG Head Quarter Centre Police Office, KPK, Peshawar.
4. Regional Police Officer Hazara Range, Abbottabad.
5. DSP Jehangir, through Registrar CPO Office, KPK, Peshawar.
6. DSP Shamraiz Khan, through Registrar CPO Office, KPK, Peshawar.
7. DSP Faqir Hussain, through Registrar CPO Office, KPK, Peshawar.
8. DSP Muhammad Riaz, through Registrar CPO Office, KPK, Peshawar.
9. DSP Rehmatullah, through Registrar CPO Office, KPK, Peshawar.
10. DSP Zafrullah, through Registrar CPO Office, KPK, Peshawar.
11. DSP Noor Muhammad, through Registrar CPO Office, KPK, Peshawar.
12. DSP Muhammad Baran, through Registrar CPO Office, KPK, Peshawar.
13. DSP Alamzeb, through Registrar CPO Office, KPK, Peshawar.
14. DSP Sher Zada, through Registrar CPO Office, KPK, Peshawar.
15. DSP Zahid Shah, through Registrar CPO Office, KPK, Peshawar.
16. DSP Zafar Khan, through Registrar CPO Office, KPK, Peshawar.
17. DSP Asad Mehmood, through Registrar CPO Office, KPK, Peshawar.
18. DSP Fazal Raziq, through Registrar CPO Office, KPK, Peshawar.

....RESPONDENTS

private respondents No. 5 to 18 placed ex-parte vide order sheet No. 4 dt. 21-4-15

Filed to-day
Registrar
2/3/15

SERVICE APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974, FOR DECLARATION TO THE EFFECT THAT THE APPELLANT WAS ILLEGALLY REVERTED FROM THE RANK OF DSP TO INSPECTOR VIDE ORDER NO. 5023-35/SEI DATED 11/09/2014 AND RESPONDENT NO. 2 DID NOT INCLUDE NAME OF THE APPELLANT BEFORE SUBSEQUENT DPC FOR PROMOTION FROM INSPECTOR TO DSP HELD ON 24/10/2014, BEING SENIOR MOST INSPECTOR FROM RESPONDENTS NO. 5 TO 18 WHICH IS ILLEGAL, VOID, MALAFIDE, DISCRIMINATORY AND AGAINST THE PRINCIPLE OF NATURAL JUSTICE.

==========

PRAYER: ON ACCEPTANCE OF THE INSTANT APPEAL, IMPUGNED PROMOTION ORDER NO. S/3528/14 DATED 24/10/2014 OF RESPONDENT NO. 5 TO 18 ISSUED BY RESPONDENT NO. 2 MAY GRACIOUSLY BE DECLARED ILLEGAL AND BE SET ASIDE AND THE RESPONDENT NO. 2 MAY BE DIRECTED TO PROMOTE THE APPELLANT FROM THE RANK OF INSPECTOR TO DSP W.E.F.

24/10/2014 AND THE APPELLANT MAY BE PROMOTED FROM INSPECTOR TO DSP W.E.F THE DATE OF PROMOTION ORDER OF RESPONDENT NO. 5 TO 18 WHO ARE JUNIOR TO THE APPELLANT.

==========

Respectfully Sheweth: -

1. That the appellant is serving in the Police Department for the last 32 years and served the department with complete devotion and dedication and always earned ACR in A & B grade in the entire service.

2. That the appellant earned the rank of DSP by dent of hard work, devotion and merit.

3. That respondents reverted the appellant from the rank of DSP to Inspector vide order dated 11/09/2014. Copy of reversion order dated 11/09/2014 is attached as Annexure "A".

(15)

وکالت نامہ

کورٹ فیس

بعدالت KPK Service Tribunal

عنوان: محمد جاوید بنام حکومت KPK وغیرہ

منجانب: Appellant سکنہ ہوم وغیرہ

نوعیت مقدمہ: Promotion

باعث تحریر آنکہ

مقدمہ مندرجہ میں اپنی طرف سے واسطے پیروی و جواب دہی کل کاروائی متعلقہ آں مقام

محمد ارشد خان تنولی ایڈووکیٹ ہائی کورٹ

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ وتقرر ثالث و فیصلہ برحلف و دینے اقبال دعویٰ اور بصورت دیگر ڈگری کرانے اجراء وصولی چیک روپیہ وعرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا مختار صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو بھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پرداختہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بقایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ پیروی مقدمہ مذکورہ کریں اور اگر مختار مقرر کردہ میں کوئی جزو بقایا ہو تو وکیل صاحب موصوف مقدمہ کی پیروی کے پابند نہ ہوں گے۔ نیز درخواست بمراد استجارت نالش بصیغہ مفلسی کے دائر کرنے اور اس کی پیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا وکالت نامہ تحریر کر دیا تا کہ سند رہے۔

بمقام: Accepted

المرقوم: 26/2/2015

محمد جاوید

العبد العبد

4. That, after reversion of the appellant from the rank of DSP to Inspector, the appellant was placed at serial No. 1 of seniority list of Inspectors and was supposed to be promoted to the rank of DSP in subsequent DPCs which was held on 24/10/2014. But respondent No. 2 did not consider the appellant in the said DPC and promoted respondent No. 5 to 18 from the rank of Inspectors to the rank of DSP who are juniors to the appellant vide impugned promotion order No. S/3528/14 dated 24/10/2014 which is void, malafide, discriminatory and liable to be set aside. Copy of impugned promotion order dated 24/10/2014 is attached as Annexure "B".

5. That the appellant preferred departmental appeal dated 21/11/2014 to respondent No. 2 for cancellation of impugned promotion order dated 24/10/2014. Copy of departmental appeal is attached as Annexure "C". But respondents did not reply to the appellant.

GROUNDS:-

a) That impugned promotion orders of respondents No. 5 to 18 issued by respondent No. 2 who are juniors to the appellant which is void, without lawful justification, against the principle of natural justice, law and liable to be set aside.

b) That this is a settled principle of law on good administration that when law prescribe something which is to be done in a particular manner that must be done in that manner and not otherwise. As the appellant was illegally reverted without mentioning period of reversion and also did not consider the appellant for promotion to the rank of DSP in subsequent DPC held on 24/10/2014 which is against the law.

c) That, as per law, the employees who are promoted to the next basic pay scale/ grade on the basis of seniority cum fitness. Hence the appellant was eligible in all respect for

promotion from the rank of Inspector to DSP being senior most in the seniority list of Inspectors. The act of respondents towards the appellant is malafide and discriminatory.

d) That this fact may not be left to fade in oblivion that the appellant has vested rights of promotion to the rank of DSP but respondents did not consider the appellant for promotion to the rank of DSP subsequent DPC.

e) It is worth mentioning that the respondents did not debar the appellant in reversion order for earning promotion to the rank of DSP in any subsequent DPC, therefore, the name of the appellant was illegally dropped for consideration in the DPC held on 24/10/2014 which is against the service law.

f) That there is no cavil with the proposition that the Honourable Tribunal should not fold up its hands while granting relief to the aggrieved appellant.

g) That, respondents have led to the appellant to the place which is utterly unknown to the principle of natural justice, law and jurisprudence.

h) That it is submitted that the appellant was illegally reverted on 11/09/2014 and later on did not consider the appellant for promotion to the rank of DSP in subsequent DPC which is malafide and amounts to accommodation of some blue eyed chaps at the alter of appellant.

i) That this Honourable Tribunal has jurisdiction to entertain the instant appeal and the appeal is within the prescribed period of limitation.

It is therefore, humbly prayed, on acceptance of the instant appeal, impugned promotion order No. S/3528/14 dated 24/10/2014 of respondent No. 5 to 18 issued by respondent No. 2 may graciously be declared illegal and be set aside and the respondent No. 2 may be directed to promote the appellant from the rank of

inspector to DSP w.e.f. 24/10/2014 and the appellant may be promoted from inspector to DSP w.e.f the date of promotion order of respondent No. 5 to 18 who are junior to the appellant.

...APPELLANT

Through;

Dated: 26/02/2015

(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

VERIFICATION: -

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

...APPELLANT

BEFORE THE HONOURABLE CHAIRMAN SERVICES TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. _____/2015

Muhammad Javed Inspector CTD (Police Department) Abbottabad.

...APPELLANT

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs KPK, Peshawar & others.

....RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Muhammad Javed Inspector CTD (Police Department) Abbottabad, do hereby solemnly affirm and declare on oath that the contents of forgoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

DEPONENT

Identified By:-

(Muhammad Arshad Khan Tanoli)
Advocate High Court, Abbottabad

(19)

Annex "A"

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

No. [illegible]/SE-I, Dated Peshawar 11 September, 2014.

5023-35/SE-I

ORDER

Mr. Muhammad Javed DSP was issued Show Cause Notice under Rules 5 (3) Khyber Pakhtunkhwa Police Rules 1975 on the following charges:-

i. Deliberately failed to record the statement of lonely eyewitness namely Muhammad Ashraf u/s 161 CrPC properly in case FIR No. 397, dated 12.07.2009 U/S 302/324/353/404/436/147/148 PPC 6/7 ATA PS Shinkiari **in which 04 Police officials alongwith 01 person of Forest staff were brutally killed** and accused were acquitted by the court due to poor investigation.

ii. Also failed to conduct the identification parade of accused from the star witness of this case.

iii. The pointation of spot made by accused was not proper.

iv. The alleged weapons of offence were neither recovered from the possession of accused nor at the time of their arrest but the same have been taken from Malkhana of PS Shinkiari which were concerning to another case and shown recovery in the said case.

v. Neither recorded the statement of Khan Bahadur OII in this case nor Moharrir of PS Incharge of Malkhana, to substantiate weapon of offence.

vi. Failed to send the empties to FSL in time but also the record is silent about the return of empties by FSL to PS Shinkiari.

vii. Sent parcel No. 1, 8, 10, 7, 12 having seals monogram of "MN" to FSL but still same monogram "MN" is intact on parcel No. 8 & 10 instead of FSL seal after examination from the FSL.

2. The defaulter officer submitted his reply to the Show Cause Notice issued under Rules 5 (3) Khyber Pakhtunkhwa Police Rules 1975. The reply of the officer was found unsatisfactory as he could not justify poor investigation in the case mentioned in Show Cause Notice.

3. His reply was forwarded to Regional Police Officer Hazara Region whereupon he stated that the officer while posted as Circle Officer Investigation Shinkiari have made poor Investigation he traced the accused but the accused involved in the above cited case could not be arrested and after completion of the Investigation he handed over the case file to the SHO for submission challan U/S 512 Cr.Pc to the Court. The RPO did not agree with the plea taken by the officer in his defense.

4. The Officer was heard in person but he could not justify his misconduct. Although the Officer has committed a gross misconduct but looking to his general reputation, I, **NASIR KHAN DURRANI** Inspector General of Police Khyber Pakhtunkhwa taking a lenient view hereby award the punishment of reversion to Mr. Muhammad Javed DSP/CTD Khyber Pakhtunkhwa to the rank of Inspector with immediate effect.

(NASIR KHAN DURRANI)
Inspector General of Police,
Khyber Pakhtunkhwa

Attested

Muhammad Arshad Khan Tanoli
Advocate
Distt: Courts Abbottabad

(11)

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

Endst: No. & date even.
Copy forwarded to the:-

- All Addl: IGP in Khyber Pakhtunkhwa.
- Accountant General Khyber Pakhtunkhwa Peshawar.
- Regional Police Officer Hazara Region Abbottabad.
- DIG of Police CTD Khyber Pakhtunkhwa Peshawar.
- DIG of Police E & T Khyber Pakhtunkhwa Peshawar.
- PSO to IGP Khyber Pakhtunkhwa Peshawar.
- PRO to IGP Khyber Pakhtunkhwa Peshawar.
- District Police Officer Abbottabad & Haripur.
- DSP/Operation Room. Please fax the Order to all concerned.
- District Account Officer Abbottabad.
- Office Superintendent Secret CPO Peshawar.
- U.O.P. File.

CTD.

Attested

Muhammad Arshad Khan Tanoli
Advocate
Distt: Courts Abbottabad

Annex "B"

(12)

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

No. S/ 3528 /14, Dated Peshawar the 24/10/2014.

NOTIFICATION

No. S/ _____ /14.In pursuance of the provisions contained in Section-5 of the Khyber Pakhtunkhwa (Promotion of Superintendent of Police and Deputy Superintendent of Police) Rules-2007, the Competent Authority i.e Provincial Police Officer on recommendations of the Departmental Selection Committee meeting held on 16.10.2014 is pleased to promote the following Inspectors (BS-16) to the rank of Deputy Superintendent of Police (BS-17) on regular basis with immediate effect.

2. The officers on promotion shall remain on probation for a period of one year in terms of Section 6 (2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15 ( ) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

Their promotion will take effect from the date they actually assume the charge of higher responsibility:-

S. No.	Name and No.
1.	Inspector Jehangir, H/89
2.	Inspector Shamraiz Khan, H/92
3.	Inspector Faqir Hussain, H/94
4.	Inspector Muhammad Riaz, H/38
5.	Inspector Rehmatullah, P/65
6.	Inspector Zafrullah, K/43
7.	Inspector Aslam Pervez, H/90
8.	Inspector Noor Muhammad, D/20
9.	Inspector Muhammad Baran, D/16
10.	Inspector Alamzeb, MR/61
11.	Inspector Sher Zada, M/14
12.	Inspector Zahir Shah, M/196 (Subject to repatriation from ACE)
13.	Inspector Zafar Khan, M/197
14.	Inspector Asad Mehmood, P/85
15.	Inspector Fazal Raziq, MR/58

On promotion their posting orders will be issued separately.

Sd/-
NASIR KHAN DURRANI
Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 3529-60 /14, dated Peshawar, the 24/ 10 /2014.

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

1. Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar.
3. Secretary to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
4. Secretary Govt: Khyber Pakhtunkhwa, E & AD Deptt: Peshawar.
5. Secretary Govt: Khyber Pakhtunkhwa, Finance Deptt: Peshawar.
6. Secretary Govt: Khyber Pakhtunkhwa, Home & T.As Deptt: Peshawar.
7. Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. Addl: IGP/HQrs, Khyber Pakhtunkhwa, Peshawar.
9. Addl: IGP/Operations, Khyber Pakhtunkhwa, Peshawar.
10. Addl: IGP/Special Branch, Khyber Pakhtunkhwa, Peshawar.
11. Addl: IGP/Investigation, Khyber Pakhtunkhwa, Peshawar.
12. Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
13. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.
14. Commandant, PTC, Hangu.
15. Director General, FIA, Islamabad.
16. Capital City Police Officer, Peshawar

N.S.P.

Attested

Muhammad Arshad Khan Tanoli
Advocate
Distt: Courts Abbottabad

(13) Annex "C"

From: The Superintendent of Police,
CTD, Hazara Region Abbottabad.

To: The Deputy Inspector General of Police,
CTD, Kyber Pakhtune Khawa Peshawar.

No: 480 /R dated 21 - /11/2014.

Subject: **APPEAL IN RESPECT OF INSPECTOR MUHAMMAD JAVAID FOR PROMOTION IN THE RANK OF DSP**

Memo:

Enclosed please find an appeal in respect of Inspector Muhammad Javaid of this unit is submitted herewith for kind perusal and further necessary action at your end please.

Superintendent of Police,
CTD, Hazara Region Abbottabad.

Attested

Muhammad Arshad Khan Tanoli
Advocate
Distt. Courts Abbottabad

(14)

To: The Provincial Police officer,
Khyber Paktunkhawa, Peshawar.

Trough: Proper Channel.

Subject: **APPEAL FOR PROMOTION IN THE RANK OF DSP ACCORDING TO SENIORITY LIST.**

Respected Sir,

It is humbly submitted that I was promoted as Dsp on 12-02-2014 Later on reverted to the rank of Inspector due to the acquittal of accused involved in case FIR No.397 dated 12-07-2009 U/s 302-324-353-404-436-427-148/148 PPc read with section 6/7,ATA Police Station Shinkiari District Mansehra.

Thereafter a DPC for promotion of DSsp was held and notification issued vide No. S/3528/14 dated 24-10-2014 but my name has not been included in the said DPC.My reversion in the rank of Inspector was made by your good -self vide notification No.5023-23/SE1dated 11-09-2014 but not framed the period of reversion and time of my promotion as Dsp.

15 Inspectors who have been promoted as Dsp in the above mentioned DPC are most junior from me according to seniority list.

In view of the facts and circumstances mentioned above, it is most earnestly prayed that my case may kindly be given your kind and sympathetic consideration. It is therefor,requested that my promotion as Dsp (BS-17) may kindly be accorded and included in the above cited notification according to my seniority keeping into consideration my long and outstanding services in the department.

I shall be very thankful for this act of kindness and pray for your long life and prosperity.

Your, s obediently,

Mohammad Javaid.
Inspector CTD, Abbottabad.
dt. 21-11-2014.
Phone-. 03005623170.

Attested

Muhammad Arshad Khan Tanoli
Advocate
Distt: Courts Abbottabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PEASHAWAR.

Service Appeal No. 177/2015.

Muhammad Javed.....(Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa through Secretary Home & TA's Deptt: Peshawar and other..... (Respondents)

Subject:- REPLY ON BEHALF OF RESPONDENTS 1,2 & 3.

Respectfully Sheweth!

Preliminary Objections:-

a) The appeal of appellant is not maintainable in the present form as according to Section 4 (b) (i) of NWFP (KPK) Service Tribunal Act, 1974, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.

b) The appeal has not been based on facts.

c) The appeal is barred by law and limitation.

d) The appellant has wrongly invoked the jurisdiction of this Honorable Tribunal against the order of promotion of Inspector made on seniority cum fitness basis.

e) The appeal of appellant is bad for joinder of unnecessary parties and mis-joinder of necessary parties.

f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:

1) Need no comments as it pertain to the service record and dossier of the appellant.

2) Incorrect, appellant had earned promotion to the rank of DSP on his own turn and he was reverted to the substantive rank of Inspector as he was found guilty of charges mentioned in the reversion order. Copy of the order is already enclosed with original appeal as Annexure-A

3) Correct, he was reverted to the substantive rank and speaking order to this effect was passed by respondent No.2. Copy of the order is enclosed with original appeal as Annexure-A

4) Incorrect, appellant was reverted to the substantive rank of Inspector vide order dated 11.09.2014 as he was found guilty of the charges mentioned in the reversion order. The impugned promotions of Inspectors to the rank of Deputy Superintendents of Police were made on 24.10.2014. Therefore appellant was not considered for promotion soon after his reversion order referred above. Furthermore, his departmental appeal/review petition against reversion order is still pending consideration.

5) Incorrect, appellant has wrongly challenged the promotion order of Inspectors to the rank of Deputy Superintendents of Police made on the basis of seniority cum fitness. Therefore his appeal is not maintainable.

GROUNDS:

a) Incorrect, seniority is not the sole criteria for promotion. Appellant was reverted to the rank of Inspector on 11.02.2014 therefore he could not be promoted soon after his reversion. Furthermore, departmental appeal/review of appellant against the reversion order is still under consideration.

b) Incorrect, appellant was reverted to substantive rank of Inspector vide order dated 11.09.2014 and he has filed separate departmental petition against the reversion order therefore he has wrongly contended for promotion on the basis of seniority soon after his reversion.

c) Incorrect, appellant was promoted to the rank of DSP on the basis of seniority cum fitness and was reverted to the substantive rank of Inspector vide order dated 11.09.2014 as he was found guilty of certain departmental charges therefore he was not consider for promotion just after two (02) months of his reversion.

d) Incorrect, Service Tribunal would be approach into the matter involving terms and conditions of the service. Promotion to next rank does not fall within the terms and condition of

service therefore appellant has knocked the door of wrong forum.

e) Incorrect, appellant was reverted to the substantive rank of Inspector from the rank of DSP on 11.09.2014 therefore there was no justification for considering appellant for promotion soon after his reversion to the substantive rank.

f) Needs no comments this Para pertains to the powers and functions of this Honorable Tribunal.

g) Incorrect, appellant has been treated in accordance with law and rules.

h) Incorrect, appellant was reverted to the substantive rank of Inspector vide order dated 11.09.2014 as he was found guilty of certain departmental charges therefore he was not considered for promotion just after two (02) months of his reversion.

i) Incorrect, appellant has knock the door of wrong form as the appeal of appellant is not maintainable and is hit by section 4 (b) (i) of NWFP (KPK) Service Tribunal Act, 1974.

It is therefore prayed that the appeal of appellant may be dismissed with costs.

Secretary Home & Tribal Affairs,
Khyber Pakhtunkhwa Peshawar
(Respondent No. 1)

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)

Deputy Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3& 4)

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No 177/2015

Muhammad Javed. .....**Appellant**

VERSUS

Govt. of KPK & others .....**Respondents**

Rejoinder of Preliminary objection

A. Para A of Preliminary objection is incorrect and denied as Peshawar High Court Bench Abbottabad did not entertain writ petition and directed the appellant to seeks remedy from Service Tribunal vide Peshawar High Court Bench decision in Writ petition No 854-A/2014 is attached as annexure "A"

B. Para No B of Preliminary objection is incorrect.

C. Para No C is incorrect. Service Appeal of appellant is well within time.

D. Para D of the preliminary objection is incorrect. Honourable Tribunal has jurisdiction to entertain the instant appeal.

E. Para E of preliminary objection is incorrect. The appellant arrayed respondents as necessary party as per law.

F. Para No F is incorrect and denied.

Rejoinder on Facts:

1. Para No 1 of the appeal of the appellant is correct. As per law the appellant was to be promoted as DSP in the DPC which was convened soon after the reversion of the appellant from DSP to inspector .

2. Para No 2 of fact is correct as to the extent that appellant earned promotion to the rank of DSP and he was reverted to the substantive rank but rest of the para is incorrect .In this regard, the appellant was to be placed at serial No.1 of the seniority list. It is further submitted that the charges mentioned in the reversion order against the facts and law.

3. That in reply of Para No 3 of the comments is incorrect and denied. it is stated that no speaking order of reversion has been passed.

4. Para No 4 of the comments is incorrect against the law and procedure, natural justice, violation of right of the appellant. That the appellant was placed at serial No.1 of the seniority list of the inspectors and supposed to be promoted to the rank of DSP in subsequent DPC. Which was held on 24-10-2014.and 6-4-2015.

5. Para No 5 of the comments is incorrect and denied. stated that the respondents with mala fide did not consider the appellant's name in the said DPC and promoted respondent no 5 to 18 from the rank of inspectors to the rank of DSP who were juniors to the rank of DSPs and also junior to the appellant, which is void mala fide, discriminatory and liable to be set aside.

Re-Joinder on Grounds

a. Para A of the grounds is correct whereas Para A of the comments is incorrect.

b. Para No b of the grounds of the appeal is correct whereas Para b of comments is incorrect and denied.

c. Para No c of the grounds of the appeal is correct whereas Para No c of comments is incorrect and denied, as the respondent did not look into the matter in through detail and reversion order has been made on surmises and conjecture. Hence reversion order is invalid.

d. Para No d of the comments is incorrect. Promotion with next rank comes within the definition of terms and conditions of service therefore, the Honourable Tribunal has jurisdiction to entertain the appeal of the appellant.

e. Para No e of comments is incorrect .whereas it has explained in Para e of the appeal that the reversion of appellant is not due to his fault but due poor investigation of his successors investigating officers.

f. No comments on Para No f.

g. Para G of the comments is incorrect. As the respondent did not act fairly justly and according to law.

h. Para No h of comments is incorrect

i. Para No.i is incorrect and denied. Reply has already been given in Para No1 of preliminary objection of the rejoinder.

It is, therefore, prayed that the appeal of the appellant as per pray may graciously be accepted with cost.

Dated: _____/2015

Appellant

Through

Muhammad Arshad Khan Tanoli
Advocate, High Court
Abbottabad