

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No 1391/2022

Zahir-ur-Rehman, Driver Head Constable, Police Line Dir Upper.

.....Appellant.


VERSUS.

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 5
others.

.....Respondents.

Index.

S: No.	Documents	Annexures	Pages
1	Para wise Comments	-	1-4
2	Power of Attorney	-	5
3	Affidavit	-	6
4	Copy of Seniority List	-A-	7
5	Order of promotion	-B-	8
6	Copy of order dated 23.12.2020	-C-	9


Fazal Wali,
SI Legal,
Dir Upper. ...

next date
2/4/24
SB

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No 1391/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11524

Zahir-ur-Rehman, Driver Head Constable, Police Line Dir Upper.

Dated 1/3/24

.....Appellant

VERSUS.

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & 5 others.

.....Respondents.

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS 1 TO 3.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the service appeal is not maintainable in its present form.
- 2) That the Appellant has got no cause of action and locus standi to file the instant Appeal.
- 3) That the appellant has not come to this honourable Tribunal with clean hands.
- 4) That the present Service appeal is badly barred by law and limitation.
- 5) That the appellant has suppressed material facts from this honorable tribunal.
- 6) That the Appeal is bad for mis- Joinder and non- Joinder of necessary parties.

ON FACTS:

1. Para pertain to record, hence needs no comments.
2. Para No.2 of appeal is correct to the extent that in compliance of CPO Peshawar memo No.3014/E-IV dated 17-03-2016, a committee was constituted to fix the seniority of MT staff of Dir Upper. The committee after thoroughly examination fixed the seniority of 12 officials in the light of police rules 12.2(3) including appellant and private respondents (Copy of seniority list is annexed as A).
3. Para No.3 of appeal is incorrect. The respondent department promoted private respondent No.4 to 6 strictly in accordance with seniority list issued for the year 2014. Appellant has not challenged such seniority list, before any forum In fact the private respondent mentioned in the appeal namely Naseeb Ullah No. 453, Khaista Rahman No.17 and Muhammad Munir No.427 were

falling at serial No. 05, 06 and 07 respectively of the seniority list issued for the year 2014, while the appellant was at Serial No.8 of such list. However, he has not challenged such seniority list. On the basis of such seniority list, promotion of 05 Driver Constable to the rank of Driver Head Constable as per rules including private respondent Driver Constable Nasib Ullah No.453 mentioned at Serial No.5. Later on in order to streamline the seniority list of Drivers and in compliance of CPO Peshawar letter No. 3014/E-IV dated 17-03-2016 a committee was constituted to fix the seniority list of drivers and drivers head constable as per spirit of the police rule 12.2 (3) in the revised seniority list appellant was placed at Serial No.8 while private respondent Naseeb Ullah No. 453 (promoted as driver HC in 2014) was placed at serial No 9. The appellant contention is baseless as the seniority list of Drivers (Constables and Head Constables) has been revised as per spirit of police rules, 1934 and after such revision, no illegal or against the merit position any promotion has been done.

4. Para No.4 of appeal is incorrect and misleading the said orders were communicated to the appellant well in time but he never challenged such order which is hit by the maxim, that law aid those who are vigilant, not those who sleep.
5. Para pertain to this honourable tribunal. In fact the private respondent mentioned in the appeal namely Naseeb Ullah No. 453, Khaista Rahman No.17 and Muhammad Munir No.427 were falling at serial No. 05, 06 and 07 respectively of the seniority list issued for the year 2014, while the appellant was at Serial No.8 of such list. However, he has not challenged such seniority list. On the basis of such seniority list, promotion of 05 Driver Constable to the rank of Driver Head Constable as per rules including private respondent Driver Constable Nasib Ullah No.453 mentioned at Serial No.5. Later on in order to streamline the seniority list of Drivers and in compliance of CPO Peshawar letter No. 3014/E-IV dated 17-03-2016 a committee was constituted to fix the seniority list of drivers and drivers head constable as per spirit of the police rule 12.2 (3) in the revised seniority list appellant was placed at Serial No.8 while private respondent Naseeb Ullah No. 453 (promoted as driver HC in 2014) was placed at serial No 9. The appellant contention is baseless as the seniority list of Drivers (Constables and Head Constables) has been revised as per spirit of police rules, 1934 and after such

revision, no illegal or against the merit position any promotion has been done.

6. Incorrect, the judgment/orders of this Honorable Tribunal has already been implemented in letter and in spirit and the appellant has been promoted vide order No. 856 dated 28/12/2021 (order of promotion is annexed as B).
7. Pertain to this honorable tribunal.
8. Incorrect, appellant was promoted as Driver Head Constable vide order dated 28.12.2021, on the basis of such order execution petition No.46/2020 was consigned vide order dated 12.01.2022 moreover, the practice of ante-dated confirmation and promotion have been put down by the superior court.
9. Incorrect, the order of the respondent are quite legal in accordance with law/rules.
10. That the appellant has got no cause of action to invoke the jurisdiction of this Honorable Tribunal and instant appeal being devoid of merit is liable to be dismissed on the following grounds.

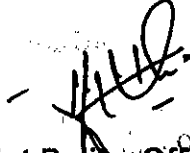
GROUND

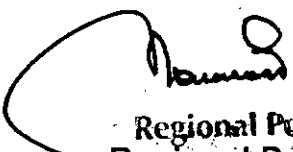
- A. Incorrect, the order dated 28/12/2021 is in accordance with law rules and in accordance with the norms of natural justice.
- B. Incorrect, the appellant has been treated by the respondent in accordance with law and respondent have not violated any constitutional right of appellant.
- C. Incorrect, appellant has not challenged the seniority last issued by the respondent No.3 for the year 2014.
- D. Incorrect, No malafide exist on the part of respondents and no illegality committed by the respondent in issuing promotion orders.
- E. Incorrect, private respondent No.4 has not been promoted to the rank of Driver ASI rather he was struck down vide order dated 23-12-2020(copy of order is annexed as C).
- F. Incorrect, the order of the respondents are quite legal in accordance with law/rules.
- G. That appellant was considered for promotion as Driver Head Constable in the light of revised seniority list issued in the year 2016 as discussed in Para 2 above and promoted vide order dated 28-12-2021. Appellant's further promotion to the rank of Driver ASI is subject to eligibility and seniority cum fitness.

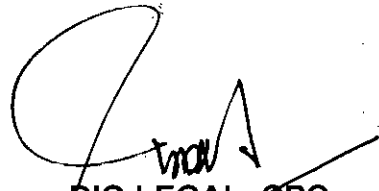
H That the respondents seek permission of this Honorable Tribunal to advance other grounds and proofs at the time of hearing.

PRAYER:

It is therefore humbly prayed that on acceptance of this Para-wise reply, the appeal may graciously be dismissed with cost.


District Police Officer,
Dir Upper
Respondent No. 3
(Waqar Ahmad)
Incumbent


Regional Police Officer,
Regional Police Officer,
Malakand at Saidu Sharif Swat.
Respondent No.2
Muhammad Ali Khan, (PSP)
Incumbent


DIG LEGAL, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

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

Service Appeal No 1391/2022

Zahir-ur-Rehman, Driver Head constable, Police Line Dir Upper.

.....Appellant.

VERSUS.

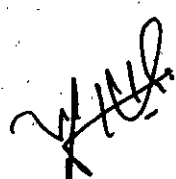
Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 5
others.

.....Respondents.

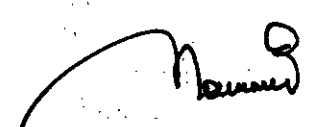
Power of Attorney

We, the undersigned do hereby authorized Fazal Wali , Inspector Legal to appear on our behalf before the honorable Service Tribunal in the cited above case on each and every date.

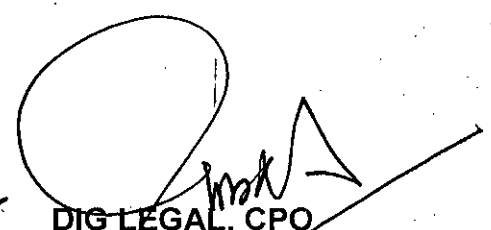
He is also authorized to file para wise comments/ reply, prefer appeal and to submit the relevant documents before the Honorable Tribunal.



**District Police Officer,
District Police Office,
Dir Upper,
Upper Dir
Respondent No. 3
(WAQAR AHMAD)
Incumbent**



**Regional Police Officer,
Regional Police Officer,
Malakand at Saidu Sharif Swat.
Respondent No.2
MUHAMMAD ALI KHAN (PSP)
Incumbent**



**DIG LEGAL, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
Respondent No.1
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent**

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

Service Appeal No 1391/2022

Zahir-ur-Rehman, Driver Head constable, Police Line Dir Upper.

.....Appellant.

VERSUS.

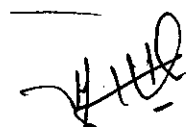
Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 5
others.

.....Respondents.

Affidavit

I, the undersigned do hereby solemnly affirm and declared that the contents of parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

It is further stated on oath that in this appeal, the answering respondents have neither been ex-parte nor their defense has been struck off.



District Police Officer,
Dir Upper.
Respondent No. 1
(WAQAR AHMAD)
Incumbent



10-1 MAR 2024



COMMITTEE REPORT.

Dated: 24/05/2016

F-11

CamScanner

In compliance of CPO, Peshawar memo: No. 3014/E-IV, dated 17/03/2016, a committee was constituted to fix the seniority of MT Staff of Dir Upper District vide this office order Endst: No. 4415-20/E, dated 16/05/2016.

The committee after thoroughly examination of service records of the MT Staff Dir Upper, fixed their initial seniority in the light of PR 12.2(3) as under:-

S #	Name & No.	D/O Birth	D/O Enlisted as Driver Constable / Constable	D/O Absorption, Adjustment in MT Staff as Driver Constable.
1.	HC Bacha Khan No. 236	1964	16/08/1982	OB No. 318 dated 19/05/1999
2.	HC Inayat Jan No. 79	15/03/1982	23/03/2000 as Driver Constable MRR quota of Dir Upper	30/04/2008
3.	HC Rehman Hakim No. 465	12/01/1980	01/07/2001 as Driver Constable	30/04/2008
4.	HC Islam Yousaf No. 489	1978	21/03/2002 as Driver Constable	30/04/2008
5.	DFC Alam Zeb No. 52	22/04/1978	26/07/2002 as Driver Constable. Latter on his appointment order was converted as Constable due to non availability of the sanctioned post / vacancy of Driver vide DPO, Dir Upper OB No. 506, dated 07/09/2002.	30/04/2008
6.	HC Khalista Rahman No. 17	09/01/1978	09/01/2003 as Driver Constable	30/04/2008
7.	HC Muhammad Munir No. 427	09/01/1978	09/01/2003 as Driver Constable	30/04/2008
8.	FC Zahir Rahman No. 449	05/04/1978	09/01/2003 as Driver Constable	30/12/2010
9.	HC Nasib Ullah No. 453	10/03/1980	09/01/2003 as Driver Constable	21/12/2010
10.	DFC Khalid Khan No. 263	1980	25/11/2010 as Driver Constable	25/11/2010
11.	DFC Bahadar Zeb No. 621	15/01/1981	27/07/2007 as Constable	14/12/2010
12.	DFC Shakirullah No. 20	1980	16/09/2011 as Driver Constable	16/09/2011

(Muhammad Zahid)
DSP, HQrs: Dir Upper

(Darvesh Khan)
DSP, HQrs: Swat.

(Imran Ullah)
Inspector Legal, Swat

(Muhammad Riaz)
Office Supdt:
Region Office, Swat

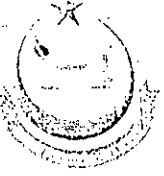
(Hazrat Hussain)
Establishment Assistant,
Region Office, Swat

(Hanifullah)
OASI, Dir Upper

(APPROVED)

(AZAD KHAN) TST, PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

Attested



OFFICE OF THE
DISTRICT POLICE OFFICER,
UPPER DIR

Ph: 0944-880531 Fax: 0944-880119
Email: dir_upperdir@policetd.gov.pk

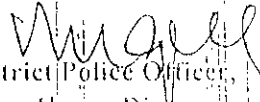
Order No. 856

Dated Dir Upper the 27-12-2021

ORDER

On the recommendation of the departmental Committee constituted vide this office Endst: No.1132/EB, dated 17/02/2021, the following Driver Constables were found senior as well as fit for promotion as they have not earned any major bad entry in the last five years according to their service record and eligible for promotion in the rank of Driver Head Constables BS-09(11770-730-33670), therefore, they are promoted as Driver Head Constables BS-9 with immediate effect.

1. Alam Zaib No.52
2. Zahir Rahman No.449


District Police Officer,
Upper Dir

Attested


Alleged

OFFICE OF THE DISTRICT POLICE OFFICER, DIR UPPER

ORDER

Driver Head Constable Bacha Khan No. 236 and Driver Constable Zahir Rehman No. 44 filed Service Appeals No. 226/2019 and No. 291/2019 stating therein that the promotion orders dated 11/03/2019 issued vide Region Office, Swat, dated 11/03/2015, this office OR No. 840/291/2019 & the following Driver ASI and Driver Head Constables are against the law and illegal respectively:

1. Driver ASI Ghulam Hakim No. 13
2. Driver Head Constable Nasrullah No. 453
3. Driver Head Constable Khairul Rehman No. 17
4. Driver Head Constable Muhammad Muhriz No. 27

The August Forum of Service Tribunal, Khyber Pakhtunkhwa, Peshawar Camp Court awarded the Service Appeals in favour of the applicants on 03/12/2019 and the promotions orders of above named drivers staff was declared as illegal, void ab-initio and required to be struck down.

The department filed CPLA No. 91-B and 92-P/2020 respectively before August Supreme Court of Pakistan, wherein the judgment dated 12/11/2020 received from Administrative Officer of the office of Advocate General, Khyber Pakhtunkhwa, Peshawar vide the office Memorandum 14548-19/AG/Supreme Court, dated 11/12/2020 mentioned that "The learned Counsel for the petitioner was asked to show whether there exists any post of driver Constable or driver ASI in the Police Rules. The answer being he is not familiar with the same. He also does not have any material or Rules which he is to show us that any such post exists in the Police Rules. Learned Additional Advocate General, Khyber Pakhtunkhwa, Peshawar stated that no such post exists in the Police Rules. This being the position on the record, we find that there is no illegality in the impugned judgment dated 03/12/2019, the same is, therefore, maintained. Even otherwise, no substantial question of law of public importance in terms of Article 212(3) of the Constitution is raised. The petitions are, therefore, dismissed and may be refused".

Therefore, in light of the judgments cited 03/12/2019 and 12/11/2020 of August Courts, the promotion order of the following drivers are hereby struck down with immediate effect and their pay is withheld as noted against each:-

Sl. No.	Name with struck down ranks	Pay
1.	Head Constable to Dvr Constable Nasrullah No. 453	Rs. 20530/- PM in BS-07
2.	Head Constable to Dvr Constable Khairul Rehman No. 17	Rs. 20530/- PM in BS-07
3.	Head Constable to Dvr Constable Muhammad Muhriz No. 27	Rs. 19800/- PM in BS-07

Furthermore, there is no provision in Police Rules for enrolment and prescribing promotion for drivers or driver Constable(s) to next higher ranks in this regard, therefore, this office is unable to consider the promotion of Drivers/DHC Bacha Khan No. 236 and Driver Constable Zahir Rehman No. 44 for promotion as Driver ASI and Driver Head Constable respectively at this stage.

ORDER ANNOUNCED

Distt. Upper
District Police Officer

Distt. Upper
District Police Officer

No. 11/173/2019, Dated the Upper the 11/03/2019

OB No. 11/173/2019
Dated 11/03/2019

Regional Police Office, Atakand at Saidu Sharif, Swat with request that issuance of struck down order of Driver ASI Ghulam Hakim No. 13 to the post of Driver Head Constable falls in the domain of Region Office, may be issued accordingly under intimation to this office please.
Assistant Inspector General of Police, Legal, CPO, Khyber Pakhtunkhwa, Peshawar
3. Advocate General, Khyber Pakhtunkhwa, Peshawar with reference to above.