

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No **1626/2023**


Mukaram Shah (Inspector) s/o Ahmad Shah r/o Rabat Baroon Tehsil Timergara
District Dir Lower..... Appellant.

VERSUS.

- 1) Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police Headquarter CPO Peshawar.
- 3) Deputy Inspector General of Police Headquarter CPO Peshawar.
- 4) Deputy Inspector General of Police Malakand at Saidu Sharif,
Swat..... Respondents.

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(IBRAHIM KHAN)
DSP- Legal
Dir Lower

06.03.2024
S.B.

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No **1626/2023**

Mukaram Shah (Inspector) s/o Ahmad Shah r/o Rabat Baroon Tehsil Timergara
District Dir Lower..... Appellant.

VERSUS.

- Khyber Pakhtunkhwa
Service Tribunal
Diary No. 11630
Dated 06-03-2024
- 1) Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
 - 2) Additional Inspector General of Police Headquarter CPO Peshawar.
 - 3) Deputy Inspector General of Police Headquarter CPO Peshawar.
 - 4) Deputy Inspector General of Police Malakand at Saidu Sharif,
Swat..... Respondents.

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the present service appeal is not maintainable in its form.
- 2) That the appellant has not come to this August Tribunal with clean hands.
- 3) That the present appeal is badly time barred.
- 4) That this Honorable Service Tribunal has no jurisdiction to entertain the present service Appeal.
- 5) That the appellant has got no cause of action.
- 6) That the appellant has suppressed the material facts from this Honorable Tribunal.
- 7) That the appellant deliberately concealed the real facts from this August Tribunal.
- 8) That the present appeal is barred by law and rules.

ON FACTS:

1. Pertains to initial appointment of the appellant as P/ASI on 12.02.2009 and probationary period as per Police Rules 12.8, hence needs no comments.
2. Needs no comments.
3. Pertains to Regional Police Officer Malakand Order dated 11.02.2013. However, same was devoid of rules as Rules 12.8 and 19-25(5) of Police Rules 1934 clearly state that ASI appointed direct shall be on probation for a period of 03 years after their appointment as such and that they may be confirmed in their appointment of being an ASI on the termination of the prescribed period of probation for 03 years with immediate not with retrospective effect i.e from the date of their appointment by the Regional Deputy Inspector General on the report of respective DPOs. Rules 12.8 and 19-25(5) of Police Rules 1934 is reproduced below:-

PR 12.8: "Probationary nature of appointments: (1) *Inspectors, Sergeants, Sub-Inspectors and Assistant Sub-Inspectors who are directly appointed will be considered to be on probation for three years and are liable to be discharged at any time within the period of their probation if they fail to pass the prescribed examinations including the riding test, or are guilty of grave misconduct or are deemed for sufficient reasons, to be unsuitable for service in the Police. A probationary inspector shall be discharged by the Inspector General, and all other Upper Subordinates by Range Deputy Inspector General, Assistant Inspector General, Government (Railway Police, and Assistant Inspector General, Provincial Additional Police. No appeal lies against an order of discharge. (2) The pay admissible to a probationary Inspector, Sergeant, Sub-Inspector or Assistant Sub Inspector is shown in appendix 10.64 Table*".

PR 19.25-(5): "*On the termination of the prescribed period of probation the Superintendent shall submit to the Deputy Inspector General for final orders the full report required by form 19.25 (5) on the probationers working and general conduct, with a recommendation as to whether he should or should not be confirmed in his appointment. In the case of Inspectors such reports shall be forwarded to the Inspector General*".

The above rules clearly state that PASIs appointed direct shall be on probation for a period of three years after their appointment as such and that they may be confirmed in their appointments (appointment of being an ASI) on the termination of the prescribed period of probation for three years with immediate effect not with retrospective effect.

Moreover paragraph VI of the promotion policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhawa (Revised Edition) 2011 states that "*Promotion will always be notified with immediate effect*".

Moreover, the Supreme Court of Pakistan vide its judgments dated 02.11.2022 underlined the difference between date of appointment and date of confirmation. Therefore, in this regard CPO Peshawar issued instruction vide letter No. CPO/CPB/64 dated 13.02.2023 to revise confirmation in the ranks of ASI accordingly in the light of august Supreme Court judgments and Police Rules *ibid.* (Copies enclosed as annexure "A" and "B").

4. Incorrect, the letter was issued by the competent authority in light of Rules 12-08, 19-25(5) of Police Rules 1934 and promotion policy of ESTA Code Establishment Code Khyber Pakhtunkhawa (Revised Edition) 2011, apex court judgments. Therefore same is based on solid reasons and is legal, and no illegally has been committed, by the respondents.

As per rules 13-10, 13-11 and 13-13, the Regional DIG has the powers to make addition or removal in the seniority lists at any time. The rule is reproduced below:-

PR 13.10: List E. Promotion to sub-inspectors: *"(1) A list of all assistant sub-inspectors, who have been approved by the Deputy Inspector General as fit for trial in independent charge of a police station, or for specialist posts on the establishment of sub-inspectors, shall be maintained in card index form by each Deputy Inspector General. Officiating promotions of short duration shall ordinarily be made within the district concerned (vide sub-rule 13.4 (2), but vacancies of long duration may be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector General. Half-yearly reports on all men entered in the list maintained under this rule shall be furnished in form No. 13.9 (3) by the 15th October, in addition to the annual report to be submitted by the 15th January in accordance with Police Rules 13.17 (1)*

PR 13.11: Publication of list E in the Police Gazette: *"List E of each range shall be published annually in Police Gazette. Additions to the list may be made at any time by Deputy Inspector General but all such addition and the removal of all names under sub rules 13.12 (2) shall be published in the Gazette by special notification. Names shall be entered in the list in order according to the date of admission, length of police service deciding the relative position of assistant sub-inspectors admitted on the same date"*.

PR 13.13: Control of Deputy Inspector General: *"Apart from the special requirements of the foregoing rules regarding the confirmation or revision of orders, Deputy Inspector General are required to pay special attention at their inspections to the working of lists A, B, C and D by Superintendents, they have authority to remove any name which they consider has been improperly admitted, and to give such orders as may be expedient in respect of the methods of selection and the tests applied";*

5. Incorrect, as already discussed that all the proceeding have been carried out in accordance with rules and no such illegality has been committed by the respondents. Police Rules 1934 does not provide for confirmation of P/ASI (appointed direct) from the date of appointment.
6. Incorrect, all the process has been carried out in accordance with rules and no such discrimination has been done, as all are entitled to avail equal rights as per rules.

7. Incorrect, in order to address certain anomalies in the seniority lists and in order to streamline seniority lists, these have been revised in the light of Police Rules and the august apex court judgments. Promotion and confirmation shall be carried out in the light of revised seniority lists.
8. Available record is silent regarding any representation of the appellant.
9. Pertains to record of honorable Peshawar High Court Mingora Bench and the respondent No. 04 issued the seniority list by exercising his rights as per rules 13-11, 13-12 read with 13-13 of Police Rules 1934.
10. Pertains to record, hence needs no comments.
11. Incorrect, the honorable Service Tribunal has got not jurisdiction and the instant appeal is not based on law/rules and liable to be dismissed on the following grounds.

GROUNDS

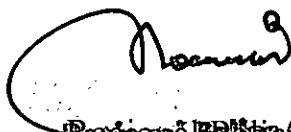
- (A) Incorrect, the notification was issued in accordance with law/rules relating to probation, confirmation, seniority and no illegality has been committed by the respondents.
- (B) Incorrect, as already discussed in preceding pars, that the appellant was directly appointed as ASI and as per rules 12-08 and 19-25(5) of Police Rules 1934, he was on probation for a period of three years and after termination of the probation period, he was confirmed in his appointment with immediate effect and not with retrospective effect. The appellant's contention of break in service holds no grounds.
- (C) Incorrect, already explained above.
- (D) Incorrect, as disused in preceding para, that as per Police rules, confirmation shall take effect on the termination of probation period of 03 years with immediate effect not retrospective effect as per Police Rules. Police Officers are governed under Police Rules. Moreover Special Law prevails over general law.
- (E) Para first regarding initial appointment through public service commission is correct, while the remaining para is incorrect, and the details are discussed in above paras.
- (F) Incorrect, the notification was issued in accordance with rules and no violation or illegality has been committed by the respondents.
- (G) Incorrect, each and every case has its own facts and merits. The notification regarding confirmation relating to appellant and others was issued in light of the rules *ibid*.

- (H) Incorrect, already explained vide above para.
- (I) Pertains to Civil Servants Rules. However, in the instant case, special law prevails over general law.
- (J) Incorrect, as already explained above.
- (K) Incorrect, as already discussed in preceding paras, that confirmation of direct appointee and ranker ASIs are made as per rules and no violation has been committed by the respondents. Police Rules provide for promotion to lists "E" and "F" indiscriminately of the promotees and direct appointees. The only difference is that promotes ASIs are confirmed after termination of 02 years period as per rules 13.18 of Police Rules 1934 while directly appointed ASIs on termination of 03 years period as per rule 12.8 and 19.25 (5) of the rules *ibid*.
- Relevant rules discussed above in detail, hence needs no comments.
 - Relevant rules discussed above in detail, hence needs no comments.
 - Relevant rules discussed above in detail, hence needs no comments.
 - Relevant rules discussed above in detail, hence needs no comments.
 - Relevant rules discussed above in detail, hence needs no comments.
 - Relevant rules discussed above in detail, hence needs no comments.
- (L) Incorrect, all the process relating to confirmation of ASIs (direct/ranker) has been carried out as per law/ rules and no illegality has been committed by the respondents.
- (M) Already explained vide above para and no constitutional provision has been violated by the respondents.
- (N) Incorrect, no discrimination with appellant has been done, as appellant and his other colleagues were treated as per rules equally.
- (O) Incorrect, the notification issued by the competent authority is in accordance with rules and no illegality has been committed by the respondents.
- (P) Incorrect, no violation of the rules has been committed by the respondents, as all the process has been done as per merit and the seniority of the appellant and his other colleagues have been issued as per rules.
- (Q) Incorrect, all the process carried out by the competent authority is in accordance with rules laid down for confirmation/ promotion which is based on principle of natural justice. These rules are applicable to all members of police force not only to the appellant.
- (R) The respondents also seek leave of this honourable tribunal to rely on additional grounds at the time of arguments/hearing.

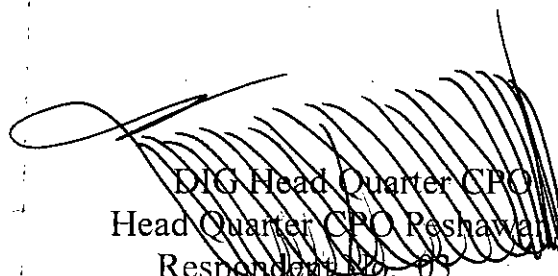
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PRAYER:

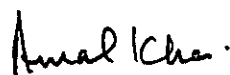
It is therefore humbly prayed that on acceptance of this Para-wise reply, the appeal may graciously be dismissed with cost, please.



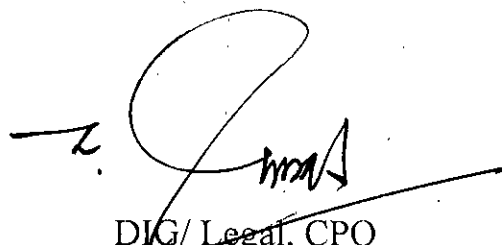
Regional Public Officer,
Malakand at Saidu Sharif Swat
Respondent No. 04
(Muhammad Ali (PSP))
Incumbent



DIG Head Quarter CPO
Head Quarter CPO Peshawar
Respondent No. 05
(Rizwan Manzoor)
Incumbent



Additional Inspector General of police
Head Quarter CPO Peshawar
Respondent No. 02
(AWAL KHAN)
Incumbent



DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 01
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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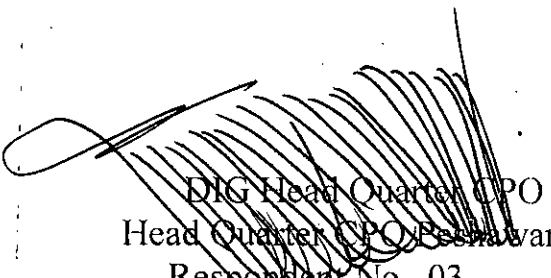
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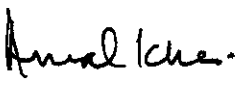
- 1) Inspector General of Police, Khyber Pakhtunkhawa Peshawar.
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- 4) Deputy Inspector General of Police Malakand at Saidu Sharif,
Swat..... Respondents.

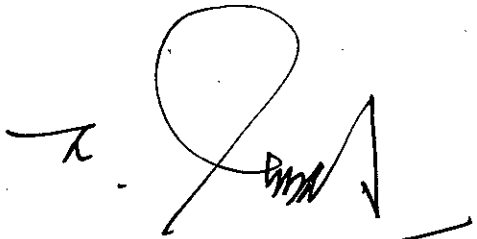
POWER OF ATTORNEY

Mr. Ibrahim Khan DSP- Legal Dir Lower is hereby authorized to appear on our behalf and submit all the relevant documents as required by the Honorable Service Tribunal in the above Service Appeal.


Regional Police Officer,
Regional Police Officer,
Malakand at Saidu Sharif Swat.
Respondent No. 04
(Muhammad Ali (PSP)
Incumbent


DIG Head Quarter CPO
Head Quarter CPO Peshawar
Respondent No. 03
(Rizwan Manzoor)
Incumbent


Additional Inspector General of police
Head Quarter CPO Peshawar
Respondent No. 02
(AWAL KHAN)
Incumbent


DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 01
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No 1626/2023

Mukaram Shah (Inspector) s/o Ahmad Shah r/o Rahat Haroon Tehsil Timergara District Dir Lower Appellant.

MERSUS.

- 1) Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
- 2) Additional Inspector General of Police Headquarter CPO Peshawar.
- 3) Deputy Inspector General of Police Headquarter CPO Peshawar.
- 4) Deputy Inspector General of Police Malakand at Saidu Sharif, Swat Respondents.

AFFIDAVIT.

I, Muhammad Ali Khan Regional Police Officer Malakand do hereby solemnly affirm and declare on Oath that the contents of Para-wise reply is 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 the answering respondent neither been place exparte nor their defense struck off / cad

Muhammad

Regional Police Officer,
Malakand at Saidu Sharif Swat
Respondent No. 04

(Muhammad Ali Khan (PSP)
Incumbent

Regional Police Officer,
Malakand, at Saidu Sharif Swat.



9

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

Civil Appeals No.1172 to 1178 of 2020

and

Civil Petitions No. 3789 to 3796, 2260-L to 2262-L and CP 3137-L of 2020

(Against the judgment dated 30.11.2018, passed by the Punjab Service Tribunal, Lahore in Appeals No.3780, 3779, 3852, 3778, 3425, 3851 of 2015, 3160/2014 & 214/2017)

and

C.M.Appeals No.23 & 33 of 2021

(Applications for impleadment in CA-1172 & 1178 of 2020 respectively)

Syed Hammad Nabi, etc. (In C.A. 1172 to 1178 of 2020)
Shujaat Ali Babar, etc (Appellants/Applicants in C.M. Appeal No.23 of 2021)
Maqsood Ali, etc (Appellants/Applicants in C.M. Appeal No.33 of 2021)
Jaseem Ahmad (in CP 3789/2020 to CP 3796/2020)
Muhammad Imran Haider, etc (In CP 2260-L/2020)
Ibrar Ahmed Khan, etc. (In CP 2261-L/2020)
Muhammad Yaseen (In CP 2262-L/2020)
Muhammad Sarwar Awan (In CP 3137-L/2021)

..... **Appellants/Petitioners**

Versus

Inspector General of Police Punjab, Lahore, etc. (In all cases)

For the appellant(s)/:
Petitioner(s)

Mian Bilal Bashir, ASC.
Syed R.H. Shah, AOR.
Ch. Zulifqar Ali, ASC.
(Through V.L. Lahore Registry)
Mr. Maqbool Hussain Sh. ASC
Mr. Talaat Farooq Sh. ASC.
(Through V.L. Lahore Registry)

For the applicant(s):
(In CMA 8616/2022)

Mr. Safdar Shaheen Pirzada, ASC.

For the respondent(s):


Mr. Muddasar Khalid Abbasi, ASC.
Mr. Muhammad Ramzan Khan, ASC.
Mr. M. Sharif Janjua, AOR.
Mr. Kaleem Ilyas, ASC.
Raja Muhammad Khan, ASC.
Atta Muhammad-respondent-in-person

For the Govt. of Punjab:

Mr. Ashfaq Ahmad Kharral, Addl. A.G.
a/w Kamran Adil, DIG (Legal)
Sh. Asif, S.P.
Amir Khalil Syed, S.P.
Kashif Butt, A.D.

Date of hearing:

02.11.2022


.....**Respondent(s)**

JUDGMENT

Syed Mansoor Ali Shah, J.- There are three sets of police officers before us: (i) Appellants (Hammad Nabi and others); (ii) Respondents (Atta Muhammad and others); (iii) Impleaders through applications (CMAs) (Jaseem Ahmad, Shujaat Ali Babar and others).


2. *Appellants* belong to a batch of direct Sub-Inspectors ("SI") who were selected in BS-14 through the Punjab Public Service Commission ("Commission") in October, 1997. The order of appointment of Hammad Nabi (appellant) was issued in Multan Region on 30-10-1997. He was subjected to probation¹ for three years and after successful completion of probationary courses² (A, B, C and D), he was confirmed in the same rank i.e., Sub-Inspector with effect from 28.11.2000 by DIG/Multan vide order dated 29.11.2000. By this time, this Court in *Qayyum Nawaz*³ held that the date of confirmation is the same as the date of appointment. The Inspector General of Police ("IGP") in order to implement *Qayyum Nawaz* issued circular dated 10-03-2004 that stated that date of appointment and confirmation shall be the same. In consequence thereof, Hammad Nabi was confirmed as SI from the date of his appointment i.e. 30-10-1997 vide order dated 07-04-2004 passed by the DIG/Multan. In addition, Hammad Nabi was admitted to Seniority List F (that is maintained for the promotion to the post of Inspectors)⁴ with effect from 21-11-2002 and was also promoted to the rank of Inspector with effect from 07-01-2003 vide order dated 14-01-2005. The officer was kept at Seniority List F and his name was notified in the List regularly. Before the implementation of the impugned judgement of Punjab Service Tribunal ("Tribunal"), the Seniority List of Inspectors was displayed on 07-02-2019 showing Hammad Nabi at Seniority No. 281 of the Seniority List F. However, after the implementation of the impugned judgement of the Tribunal, the Seniority List F notified on 13-03-2020 placed the Appellant at Seniority No. 323. This relegation of Hammad Nabi from Seniority No. 281 to Seniority No. 323 is a result of the implementation of impugned judgement of the Tribunal which is under challenge before us. Accordingly, the Appellant has prayed to set aside the impugned judgment dated 30-11-2018 passed by the Tribunal.

¹ Rule 12.8 of the Police Rules, 1934.

² Rule 19.25 of the Police Rules, 1934.

³ 1999 SCMR 1594.


⁴ Rule 13.15 of the Police Rules, 1934

CJC

 DSP-legal

3. Respondent Atta Muhammad, alongwith other officers arrayed as respondents, belongs to a batch of officers which were selected as direct Assistant Sub-Inspectors (ASIs) in BS-9 by the Commission on 10-11-1993. He was assigned to the Punjab Constabulary (PC), a reserve police unit within the Punjab Police that was treated at par with a Range for legal purposes. The officer was subjected to three years probationary period⁵ and after successful completion of his training courses (A, B, C and D)⁶, he was confirmed on 16-03-1999 and his name was placed on Seniority List E maintained by DIG/Commandant/Range/Regional Police Officer with effect from 18-11-1996. Later on, due to administrative arrangements within the Punjab Police, the officer was assigned to Rawalpindi Range/Region by the IGP vide order dated 13-08-2002. He was promoted as an Officiating Sub-Inspector in Rawalpindi Range/Region on 27-08-2003. Atta Muhammad obtained his revised confirmation with effect from 10-11-1993 (his date of appointment) as a result of implementation of *Qayyum Nawaz (supra)*. Thereafter, he agitated that he stood senior to the promotee ASI Muhammad Arshad (who had by now reached to the rank of Inspector). His argument was that he was senior to Muhammad Arshad due to his date of appointment/confirmation, which was 10-11-1993 as compared to the date of appointment/confirmation of Muhammad Arshad on 13-11-1993. The legal requirements of three years probationary period and completion of training courses (A, B, C and D) for direct ASIs was not appreciated by any fora while comparing cases of Atta Muhammad and Muhammad Arshad. His claim on the basis of Muhammad Arshad was accepted and his standing on List E was revised with effect from 01-02-1996. Based on this revision of his standing at List E, he was granted revised promotion to the rank of SI with effect from 22-12-1996 by the Commandant PC on 07-08-2006. He was admitted to Seniority List F with effect from 21-11-2002 and promoted to the rank of Inspector with effect from 07-01-2003. As a result, whereas before implementation of impugned judgement, he was not listed on Seniority List and was treated as a SI, after implementation of the impugned judgement of the Tribunal, he was placed at Seniority No. 241 of the Seniority List of Inspectors dated 13-03-2020. Amongst the *Impleaders* some support the case of the Appellants while the others support the case of the Respondents. The Comparative Table hereunder gives a tabular representation of the

⁵ Rule 12.8 of Police Rules, 1934.

⁶ Rule 19.25 of Police Rules, 1934


G. C. J.
Dsp legal

service record of the parties for better understanding the dispute in hand.

COMPARATIVE TABLE

PARTIES TO LITIGATION	Date of appointment as ASI	Initial Date of confirmation as ASI	Revised date of confirmation as ASI	Date of appointment as SI	Initial Date of Promotion as SI	Revised promotion as SI	Initial date of confirmation as SI	Revised date of confirmation as SI
1	2	3	4	5	6	7	8	9
Hammad Nabi etc. (Group-a)	-	-	-	30.10.97	-	-	28.11.00	30.10.97
Atta Muhammad etc. (Group-b)	10.11.93	18.11.96	10.11.93	-	27.08.03	22.12.96	27.08.03	22.12.96
Jaseem Ahmad (Group-c)	30.09.90	11.03.96	30.09.90	-	25.09.01	25.09.01	25.09.01	25.09.01
Shujaat Ali Babar Etc (Group-d)	08.06.88	01.07.93	08.06.88	-	01.04.99	-	01.04.99	01.04.99

4. We have heard the learned counsel for the parties and Mr. Kamran Adil, DIG (Legal) at some length and have carefully gone through the case law⁷ cited at the bar, as well as, the Police Rules, 1934 ("**Police Rules**") and Police Order, 2002. The question before us is the mode of determination of seniority of a police officer holding the post of Inspector in the Punjab Police under the Police Rules. The answer to the said question is clearly provided under Rule 12.2(3) of the Police Rules, which is reproduced hereunder for convenience:

12.2. Seniority and probation. - (1) The seniority of Assistant Superintendents of Police is regulated by the orders passed from time to time by the Secretary of State and the Central Government.

No Probationary Assistant Superintendent of Police shall be permanently appointed as an Assistant Superintendent of Police until he has passed the prescribed departmental examinations.

A Probationary Assistant Superintendent of Police who does not qualify by passing these examinations within two years, or at the first examination after two years, from the date of his joining the service, will be removed from Government service; provided that the Provincial Government shall have power to relax this rule in special cases, when the Probationary Assistant Superintendent of Police is likely to make a good police officer.

(2) The rules governing the probation and seniority of Deputy Superintendents of Police are contained in Appendix 12.1.

(3). All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

⁷ 2015 SCMR 456; 1996 SCMR 1297; PLD 1985 SC 159; 1999 SCMR 1594 & 2016 SCMR 1254

gpc
Dep-L

Seniority in the case of upper subordinates⁸, will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority *inter se* of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.

The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12-24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.

(emphasis supplied)

Rule 12.2(3) provides that in the *first instance* the seniority of the upper subordinates shall be reckoned from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. The sub-Rule further provides that *seniority shall be finally settled by dates of confirmation*, the seniority *inter se* of several officers confirmed on the same date being that allotted to them on first appointment. Rule 12.2(3) provides for two stages for determining the seniority, one is prior to the probationary period and is to be reckoned from the first appointment and the final seniority is settled from the date of confirmation which is once the period of probation is successfully completed.⁹ Period of probation is important as the officers have to undergo various courses (A,B,C & D)¹⁰ and qualify the same. Once police officer has successfully undergone the said courses he stands confirmed at the end of the probationary period. The seniority is once again settled, this being the final seniority from the date of confirmation. The above rule is, therefore, very clear that final seniority list of Inspectors will be reckoned from the date of confirmation of the officers and not from the date of appointment.

5. The Appellants in this case had a probationary period of three years while the probationary period of the Respondents was two

⁸ Inspectors, Sub-Inspectors (SIs) & Assistant Sub-Inspectors (ASIs) - See Rule 19.25 of the Police Rules, 1934.

⁹ See Rule 12. 8 and 13.18 of the Police Rules, 1934

¹⁰ See Rule 19.25 *ibid*.

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years¹¹ and their dates of confirmation are different. It is submitted that the clarity of the said Rule has been muddled over the years due an earlier pronouncement of this Court in *Qayyum Nawaz*.¹² We have gone through *Qayyum Nawaz* and find that it is a leave-refusing order (described as a judgment), which has neither decided any question of law nor enunciated any principle of law in terms of Article 189 of the Constitution. Such leave-refusing orders do not constitute binding precedents.¹³ The impression that a leave-refusing order endorses the statements of law made in the impugned orders and thus enhances the status of those statements as that of the apex court is fallacious. This impression is based on inference drawn from the leave-refusing orders, while 'a case is only an authority for what it actually decides' and cannot be cited as a precedent for a proposition that may be inferred from it.¹⁴ The judgment of the Tribunal in *Qayyum Nawaz* totally ignores Rule 12.2(3) of the Rules as well as the earlier pronouncement of this Court in *Mushtaq Warriach*¹⁵ which underlines the difference between the date of appointment and the date of confirmation. Therefore, reliance on *Qayyum Nawaz* to hold that there is no difference between the date of appointment and date of confirmation under the Police Rules is absolutely misconceived and strongly dispelled.

6. The impugned judgment of the Tribunal before us also relies on *Qayyum Nawaz* when the said judgement does not pass as a precedent and settles no principle of law. The impugned judgement has misread Rule 12.2(3) and has ignored its substantive part which clearly deals with the formulation of the final seniority list which is to be settled from the date of confirmation of the Police Officers. The Tribunal through the impugned judgement has without any justification dismissed from consideration *M. Yousaf*¹⁶ which holds that seniority must be determined in accordance with the rules. For these reasons the impugned judgment is not sustainable.

7. It is also underlined that much water has flown under the bridge since *Qayyum Nawaz*. This Court has put an end to out of turn promotions in *Contempt Proceedings Against the Chief Secretary, Sindh*

¹¹ See Rule 12.18 ibid

¹² 1999 SCMR 1594.

¹³ Muhammad Salman v. Naveed Anjum 2021 SCMR 1675; Tariq Badr v. NBP 2013 SCMR 314.

¹⁴ Quinn v. Leathem 1901 AC 495; Trustees of the Port of Karachi v. Muhammad Saleem 1994 SCMR 2213; SHCBA v. Fedearion PLD 2009 SC 879 per Ch. Ijaz Ahmad, J.; Khairpur Textile Mills v. NBP 2003 CLD 326.

¹⁵ PLD 1985 SC 159

¹⁶ Muhammed Yousaf & others v. Abdul Rashid & others, 1996 SCMR 1297

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and others¹⁷ followed by *Ali Azhar Khan Baluch*¹⁸. The practice of ante-dated confirmations and promotions have been put down in *Raza Safdar Kazmi*¹⁹ and delay in confirmations after the probationary period have been regulated in *Gul Hasan Jatoti*²⁰.

8. It is best if the Police force is allowed to be regulated by its statutory framework i.e. the Police Order, 2002 and the Police Rules which provide a complete code of internal governance. Disputes, if any, amongst the police officers must first be resolved by the Inspector General of Police or his representatives. Only in case of any legal interpretation or blatant abuse of the process provided under the Police Order or Rules should the courts interfere in the working of the Police force so that the force can maintain its functioning, autonomy, independence and efficiency which is essential for Police which is charged with the onerous responsibility of maintaining law and order and with the onerous obligation to protect the life and property of the citizens of this country. More than any other organization, it is imperative that the Police must function as a rule based organization which is fully autonomous and independent in regulating its internal governance. Strong and smart Police force requires *organizational justice* firmly entrenched in the institution so that its officers are assured that they work for an institution that firmly stands for rules, fairness, transparency and efficiency. This upholds the morale of the police officers, especially junior police officers who are required to undertake dangerous and strenuous assignments on a daily basis and also uplifts the institution by making it more vibrant and progressive.

9. The importance of *organizational justice* cannot be undermined. It focuses on how employees judge the behavior of the organization and how this behavior is related to employees' attitudes and behaviors regarding the organization. The employees are sensitive to decisions made on a day-to-day basis by their employers, both on the small and large scale, and will judge these decisions as unfair or fair. Decisions judged as unfair, lead to workplace deviance. Employees also believe procedures are fair when they are consistent, accurate, ethical, and lack bias²¹. Organizational justice is concerned with all matters of workplace behaviour, from treatment by superiors to pay, access to

¹⁷ 2013 SCMR 1752

¹⁸ 2015 SCMR 456

¹⁹ Judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006, which was upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No.2017 to 2031 of 2006 (*erroneously mentioned as 2007 on the order*) and other connected matters.

²⁰ 2016 SCMR 1254

²¹ *Dr. Annette Towler*, The benefits of organizational justice and practical ways how to improve it. CQNet.

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training and gender equality²². Ensuring organizational justice should be a priority for any organization – it can reduce the incidence of workplace deviance, absence, disengagement and counterproductive workplace behaviours and also encourage positive attributes like trust and progressive communication.²³

10. Organizational justice is necessary for the police officers to perform their duties with complete commitment, dedication and fidelity, because they must perceive that the institution is fair and just towards them²⁴. Police officers who have such perceptions of fairness would demonstrate less cynicism towards the job and are also likely to have a more amiable attitude towards the public²⁵. Uncertainty in the promotion structure and delay in promotions weakens such perceptions of serving police officers, resulting in inefficiency, likelihood of misconduct and low morale, thereby, also adversely impacting the trust of the public in the police²⁶. Therefore, for an efficient and effective police force, it is necessary to ensure the provision of organizational justice in the police as an institution, especially with regards to career progression and promotion. As such, there must be no ambiguity in the promotion structure and any grievance with regards to career progression/promotion must be redressed expeditiously under the law. Organizational justice, therefore, stands firmly on the constitutional values and fundamental rights ensured to any person under the Constitution²⁷. The constitutional principle of social and economic justice read with due process and right to dignity, non-discrimination and right to carry out a lawful profession and the right to livelihood are basic ingredients of organizational justice.

11. Given the primacy of Police in the criminal justice system, organization justice must be ensured in the Police service. The issues of posting, transfer and seniority must be settled within the department strictly in accordance with the Rules and only matters requiring legal interpretation may come up before the Courts. Several junior officers approaching the courts for redressal of their grievance reflects poorly on the internal governance of the Police department when the elaborate Police Rules and the Police Order provide for such eventualities in detail.

²² It is originally derived from equity theory, which suggests individuals make judgements on fairness based on the amount they give (input) compared to the amount they get back (output).

²³ HRZone .com

²⁴ Volkov, M. "The Importance of Organizational Justice, Corruption, Crime & Compliance", 2015.

²⁵ Wolfe, Scott E., Justin Nix, & Justin T. Pickett. "The Measurement of Organizational Justice Matters: A Research Note", July 16, 2020.

²⁶ Weimer, C. "How would Organizational Justice Shape Police Officer's Attitudes in the Workplace?", 2019.

²⁷ Constitution of the Islamic Republic of Pakistan, 1973.

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We are sanguine that in future the Police department will take charge of its internal governance strictly in accordance with law and will restore a Rule-based approach in addressing the grievances of the police officers so that courts are not unduly burdened.

12. In this background, all the parties before us are in agreement that their seniority be worked out according to Rule 12.2(3) of the Police Rules and submit that the competent authority be directed to follow the said Rule in letter and spirit and make necessary amendments in the seniority list of the police officers before us. We, therefore, direct the IGP to constitute a committee to look into the question of seniority of the parties before us in terms of Rule 12.2(3) and in the light of this judgement. The said committee shall also address the grievance(s) of other Police Officers, if any, who are not before us but belong to the same batch of officers as the parties before us.

13. It is also noted that the Inspector General of Police, Punjab ("IGP") enjoys administrative powers over the Police organization under Article 10 of the Police Order, 2022 read with Rule 12.1 of the Police Rules, therefore, he is under an obligation to exercise his legal powers within the organization to ensure that the police officers are dealt with in accordance with law within the statutory timelines. In case there is any unexplained delay in following the timeline the concerned Police Officers be held accountable and any action taken or penalty imposed upon them be duly reflected in their performance evaluation reports. The IGP may also consider constituting a standing committee headed by an Additional Inspector General of Police or any appropriate officer to regularly address the concerns of junior police officers with respect to their inter se seniority so that a police officer feels empowered that there is organizational justice in his organization. This will lead to developing a more robust, efficient and strong police force in the country.

14. For the above reasons, the impugned judgment is set aside and the listed appeals are allowed in the above terms. The connected listed Civil Petitions are also converted into appeals and allowed in the same terms.

Judge

Islamabad,
2nd November, 2022.
Approved for reporting
Sadaqat

Judge


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Annex 'B'

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

No. CPO/CPB/ 64Dated Peshawar 13 February 2023IMMEDIATE

To: The Regional Police Officer,
Hazara Region.

Subject: LEGAL ADVICE ON THE QUESTION OF DATE OF CONFIRMATION OF PASIs
(ASIs APPOINTED DIRECT)

Memo:

Reference your office letter No. 29504/E dated 13.12.2022, wherein a legal advice was sought on the following law point: -

- i) Whether all PASIs on completion of 03 years' probation period shall be brought on promotion list "E" from date of appointment or not?
2. As per PR 12.8 of the Police Rules 1934, Assistant Sub-Inspectors appointed direct (Commonly known as PASIs) "will be considered to be on probation for three years" and that, under PR 19.25(5), "on the termination of the prescribed period of probation the Superintendent shall submit to the Deputy Inspector-General for final orders the full report required by Form 19.25(5) on the probationer's working and general conduct, with a recommendation as to whether he should or should not be confirmed in his appointment."
3. Both rules are hereby reproduced as a ready reference:

PR 12.8 Probationary nature of appointments. - (1) *Inspectors, Sergeants, Sub-Inspectors and Assistant Sub-Inspectors who are directly appointed will be considered to be on probation for three years and are liable to be discharged at any time during or on the expiry of the period of their probation if they fail to pass the prescribed examinations including the riding test, or are guilty of grave misconduct or are deemed, for sufficient reason, to be unsuitable for service in the police. A probationary inspector shall be discharged by the Inspector-General and all other Upper Subordinates by Range Deputy Inspector-General and Assistant Inspector-General, Government Railway Police, Assistant Inspector-General, Provincial Additional Police (designated as Commandant, Provincial Additional Police). No appeal lies against an order of discharge. (2) The pay admissible to a probationary Inspector, Sergeant, Sub-Inspector or Assistant Sub-Inspector is shown in Appendix 10.64, Table A.*

PR 19.25 Training of upper subordinates (1) *"Inspectors, sub-inspectors, and Assistant Sub-Inspectors, who are directly appointed, shall be deputed to the Police Training School to undergo the course of training laid down for such officers in the Police Training School Manual and are liable to discharge if they fail to pass the prescribed examinations or are badly reported on."*

(5) *"On the termination of the prescribed period of probation the Superintendent shall submit to the Deputy Inspector-General for final orders the full report required by Form 19.25(5) on the probationer's working and general conduct, with a*

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recommendation as to whether he should or should not be confirmed in his appointment. In the case of inspectors such reports shall be forwarded to the Inspector-General."

4. The two rules (12.8 and 19.25(5) of the Police Rules, 1934) clearly state that PASIs (ASIs appointed direct) shall be on probation for a period of three years after their appointment as such and that they may be confirmed in their appointments (appointment of being an ASI) on the termination of the prescribed period of probation for three years with immediate effect NOT with retrospective effect i.e. from the date of their appointment by the Range Deputy Inspector General of Police on the report of their respective District Police Officers provided they have completed the period of their probation of three years successfully in terms of the conditions laid down in the PR 19.25 (5) of the Police Rules, 1934.

5. Moreover, under paragraph VI of the Promotion Policy, provided in [ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011, "promotion will always be notified with immediate effect." Drawing analogy from this rule, all PASIs might be so confirmed on conclusion of probationary period of three years with immediate effect (the date on which order of their confirmation is issued).

6. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Waraich Vs IG Punjab (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the Apex Court, has held that "reliance on Qayyum Nawaz [a judgment of the Apex Court, reported as 1999 SCMR 1594] that there is no difference between the date of appointment and date of confirmation under the police rules is absolutely misconceived and strongly dispelled". The Apex court has further explained PR 12.3(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honourable Court further held that "the practice of ante-dated confirmation and promotions have been put down in Raza Safdar Kazmi" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters.).

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7. It is, therefore, made clear that PASIs on completion of 03 years' probation period shall NOT be brought on promotion list "E" from date of appointment. Their names may be brought on the Promotion List E in the manner provided in PR 13.10 and 13.11 of the Police Rules, 1934 NOT from the date of appointment but from the date of confirmation which, essentially, is a date different from their dates of appointment and compulsorily falls on the termination of the period of their probation for three years under PR 12.8 and 19.25(5) of the Police Rules, 1934.

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8. Keeping in view the above, this office letter No. CPO/CPB/317 dated 08.12.2022, that intended to create a parity between the dates of confirmation of ASIs appointed direct (PASIs) and those of the ASIs promoted from ranks (Ranker ASIs), is hereby withdrawn being against the letter and spirit of PR 12.8, 19.25(5) Police Rules, 1934, in case of PASIs and against the PR 13.18 of the Police Rules, 1934 in case of the ASI promoted from ranks (Ranker ASIs). The following was laid down in the said letter:

"a. All PASIs on successful completion of 03 years' probation period shall be brought on promotion list "E" from date of appointment.

b. All ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 03 years' probation period provided in the said letter.

Keeping the above in view, you are, therefore, requested to:

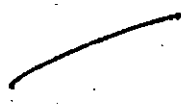
- (a) register that the Date of Appointment and Date of Confirmation of an Assistant Sub-Inspectors appointed direct (PASIs) are Not the Same, as has been misconceived by many, but are different from each other: Date of confirmation falls after three years of the date of appointment in case of an Assistant Sub-Inspectors appointed direct (PASIs) and the same (date of confirmation) falls after two years in case of an Assistant Sub-Inspector promoted from ranks (Ranker ASI) according to PR 12.8, and 13.8 of the Police Rules, 1934 respectively.
- (b) Withdraw all Changes Brought in the list E in compliance with this office letter No CPO/CPB/317 dated 08.12.2022 and Revise the List E of your Range and substitute all those dates of confirmation of all Assistant Sub-Inspectors appointed direct (PASIs) which were fixed retrospectively from the date of their appointment with those falling after the termination of the period of their probation for three years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6, 7, and 8 above.
- (c) ensure that ASIs appointed direct (PASIs) shall NOT be Confirmed from the Date of their Appointment but *might* be so confirmed "*On the termination of the prescribed period of probation*" of three years, with immediate effect (the date on which order of their confirmation was issued).
- (d) Send compliance report by 23.02.2023.



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

Endst. No. and dated even

Copy of above is forwarded for information to the:

1. Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
2. All Regional Police Officers in Khyber Pakhtunkhwa for compliance of the instructions given at Paragraph 9 of this letter by 23.02.2023.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa.
4. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
5. PA to Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
6. PA to Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa.
7. Office Superintendent Establishment I, II and III CPO Peshawar.


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

Accepted

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