

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal No. 1627/2023

Amjad Iqbal (Inspector) S/O Abdul Latif R/O Damorai, Tehsil Alpurai District Shangla..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others..... (Respondents)

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Deponent

06-03-2024
S.B.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service appeal No. 1627/2023

Amjad Iqbal (Inspector) S/O Abdul Latif R/O Damorai, Tehsil Alpurai District
Shangla..... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others
..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth,

Khyber Pakhtunkhwa
Service Tribunal

Preliminary Objections:

Diary No. 11631

Dated 06.03.2024

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant has not come to the Honorable Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

FACTS:

1. Admitted to the extent that the appellant was appointed as PASI in the year 2009 against substantive vacancy by way of initial appointment on the recommendation of KP Public Service Commission. However, before confirming the appellant in the rank of ASI, appellant will be considered on probation for three years from the date of appointment in accordance with Police Rules 12-08.
2. First portion of this Para is subject to proof, however, with respect to the remaining Para, as per PR-12-08 (**Annexure-A**) of the Police Rules 1934, Assistant Sub Inspector appointed direct (Commonly known as PASIs) will be considered on probation for three years under PR-19.25(5) (**Annexure-B**) of Police Rules 1934. On the termination of the prescribed period of probation, the Superintendent shall submit to the DIG for final orders the full report required by Form 19-25(5) of the probationer's working and general conduct, with a recommendation as to whether he should or should not be confirmed in his appointment.
3. Pertains to record.
4. Pertains to record.
5. Incorrect and mis-leading one. 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 (appointments of being as ASI) on the termination of the prescribed period of probation of 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 Officer provided they have completed the period of their probation of three years successfully in terms of the condition laid down in the PR-19-25(5) of Police Rules, 1934. Moreover, under paragraph IV 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). 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 (date 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and civil petition No. 3789 to 3896, 2260-L, 2262-L, and CP 3137-L) the Apex Court, has held that "reliance on Qayyum Nawaz [a judgment of the Apex Court, report as 1999 SCMR 1594] that there is no difference between that 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 officer not from the date of appointment. The honorable 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 Appeal No. 2017 to 2031 of 2006 and other connected matters). Therefore, PASIs on completion of three years probation period shall not brought on promotion list "E" from date of appointment. Their name is 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 Police Rules, 1934.

6. Incorrect. Promotion and confirmation of police officers are being dealt in accordance with set rules in Police Rules.
7. Incorrect, misleading and misconceived of rules. In fact, Rule 13-18 was uniformly applied across the board, in compliance of Apex Court judgment reported as 2016 SCMR 1254 vide CPO letter No.CPO/CPB/63 dated

13.02.2023, similarly seniorities of all police officers have also been revised in compliance of letter No.CPO/CPB/63 and letter No.CPO/CPB/64 dated 13.02.2023. In consequence of these revisions, all Regional Police Officers revised the seniority lists and sent their reports for revision of lists 'F' and DSP/SP lists. That why some officers who were not confirmed for want of prescribed courses/trainings/periods and lost their seniority, were confirmed in accordance with law and granted due seniority. (*Copies of letters are enclosed as Annexure C and D*).

8. Incorrect. That initially in order to create a parity between the dates of confirmation of ASIs appointed direct (PASIs) and those of the ASIs promoted from ranks (Ranker ASIs), the worthy PPO issued letter No. CPO/CPR/317, dated 18-12-2022, however, that was accordingly withdrawn being against the letter and spirit of PR-12-8, 19-25 (5) of Police Rules, 1934, in case of PASIs and against the PR-13-18 of the Police Rules, 1934 in case of the ASIs promoted from ranks (Ranker ASIs). The following was laid down in the said letter: "*a. All PASIs in on successful completion of 03 years period shall be brought on promotion list "E" from the date of appointment. b. All ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years probation period date of officiating promotion*". Therefore, in order to follow the true spirit of PR 12-8 and 19-25(5) of Police Rules, 1934, all RPOs of KPK were requested to register to the date of appointment and the date of confirmation of an ASIs 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 ASIs appointed direct (PASIs) and the same (date of confirmation) falls after two years in case of an ASIs promoted from ranks (Ranker ASI) according to PR 12.8 and 13.8 of the Police Rules 1934 respectively. Furthermore, the relevant authorities were also requested to withdraw changes brought in list "E" in compliance with this office letter No.CPO/CPB/317 dated 08.12.2022 and revised the list "E" of your Range and substitute all those date of confirmation all ASIs appointed direct (PASIs) which were fixed retrospectively from the date of their appointment with those falling after the termination of the period of the their probation for three years.
9. Pertains to record.
10. Pertains to record.
11. Being member of discipline force, there is special rules in shape of Police Rules, 1934, The Khyber Pukhtunkhwa Police Act, 2017 and Standing Orders which deals with promotion from one rank to the next higher rank and confirmation in the substantive rank after fulfilling requisite criteria/mandatory

periods for the subject purpose, therefore, the instant petition may kindly dismissed on the following grounds:

GROUND:

- A. Incorrect. Being member of discipline force, there is special rules in shape of Police Rules, 1934, The Khyber Pukhtunkhwa Police Act, 2017 and Standing Orders which deals with promotion from one rank to the next higher rank and confirmation in the substantive rank after fulfilling requisite criteria/mandatory periods for the subject purpose.
- B. Incorrect. As already discussed above at Para No. 05 of Facts, the confirmation of the appellatant has been dealt in accordance in prevailing law/rule.
- C. Incorrect. As briefly discussed about at Para No. 05 of Facts.
- D. Incorrect. Under paragraph IV 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). 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 (date 2nd November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and civil petition No. 3789 to 3896, 2260-L, 2262-L, and CP 3137-L) the Apex Court, has held that "reliance on Qayyum Nawaz [a judgment of the Apex Court, report as 1999 SCMR 1594] that there is no difference between that 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 officer not from the date of appointment. The honorable 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 Appeal No. 2017 to 2031 of 2006 and other connected matters). Therefore, PASIs on completion of three years probation period shall not brought on promotion list "E" from date of appointment. Their name is 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 Police Rules, 1934.
- E. Incorrect and mis-leading one. Rest of explanation is already given at Ground No. D.
- F. Incorrect. The appellatant confirmation has been done in accordance with under PR-12-8 and 19-25(5) of Police Rules, 1934.
- G. This Para is for the appellatant to prove.
- H. Incorrect. Being member of discipline force, the confirmation and promotion of appellatant is being dealt in accordance with Police Rules, 1934 and KP Police Act, 2017.
- I. As already explained above.

J. As already explained above.

K. As already explained above.

L. As already explained above.

M. Incorrect. That the appellant has been treated in accordance with law/ rules.

N. Incorrect. That no discrimination has been done to the appellant.

O. Incorrect. That the list F issued by CPO is in accordance with law/rules.

P. Incorrect.

Q. Incorrect.

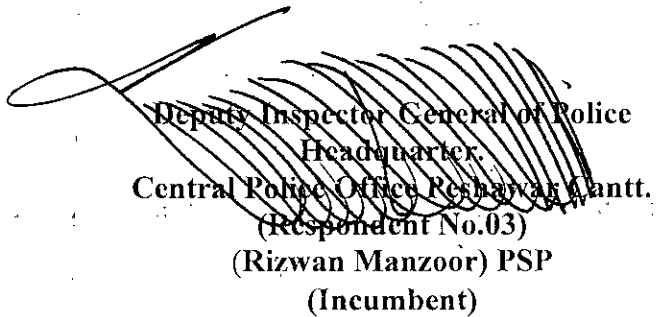
R. That the respondents may be allowed to add any other grounds at the time of hearing of appeal.

PRAYER:

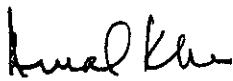
Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.



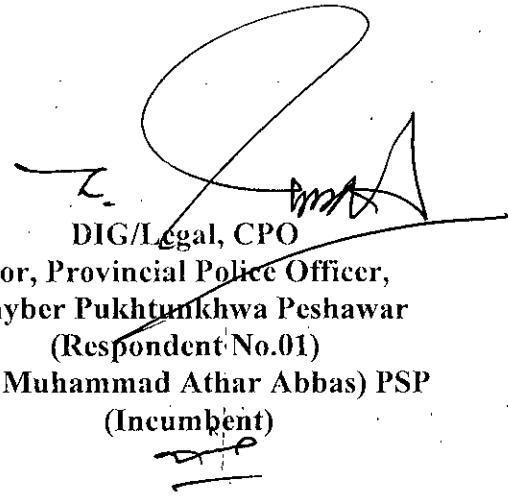
Deputy Inspector General of Police
Malakand Region at Saidu Sharif
Swat.
(Respondent No.04)
(Muhammad Ali Khan) PSP
(Incumbent)
Regional Police Officer
Malakand Region,
Saidu Sharif, Swat.



Deputy Inspector General of Police
Headquarter,
Central Police Office Peshawar Cantt.
(Respondent No.03)
(Rizwan Manzoor) PSP
(Incumbent)



Additional Inspector General of Police
Headquarter.
Central Police Office Peshawar Cantt.
(Respondent No.02)
(Awal Khan) PSP
(Incumbent)



DIG/Legal, CPO
For, Provincial Police Officer,
Khyber Pukhtunkhwa Peshawar
(Respondent No.01)
(Dr. Muhammad Athar Abbas) PSP
(Incumbent)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service appeal No. 1627/2023**

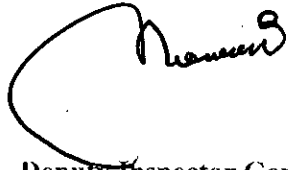
Amjad Iqbal (Inspector) S/O Abdul Latif R/O Damorai, Tehsil Alpurai District
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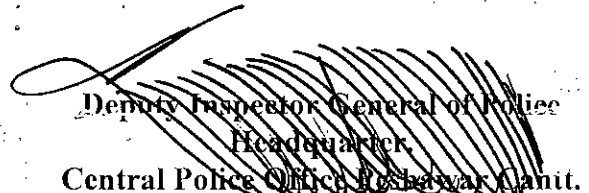
AUTHORITY LETTER

Shams Ur Rahman Inspector Legal, Shangla is hereby authorized to appear on the behalf of Respondents below before the Honorable Tribunal. He is authorized to submit all the required documents and replies etc to the Honorable Tribunal.

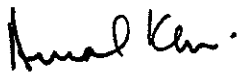


Deputy Inspector General of Police
Malakand Region at Saidu Sharif Swat.
(Respondent No.04)
(Muhammad Ali Khan) PSP
(Incumbent)

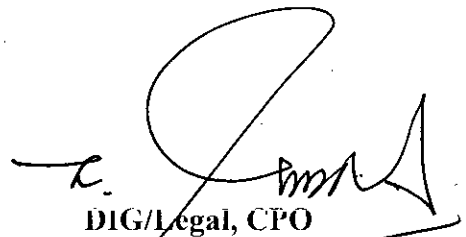
Regional Police Officer
Malakand Region,
Saidu Sharif, Swat.



Deputy Inspector General of Police
Headquarter,
Central Police Office Peshawar Cantt.
(Respondent No.03)
(Rizwan Manzoor) PSP
(Incumbent)



Additional Inspector General of Police
Headquarter,
Central Police Office Peshawar Cantt.
(Respondent No.02)
(Awal Khan) PSP
(Incumbent)



DIG/Legal, CPO
For, Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondent No.01)
(Dr. Muhammad Athar Abbas) PSP
(Incumbent)

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ANNEXURE (A)

12.8. Probationary nature of appointments. - -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 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 and Assistant Inspector-General, Provincial Additional Police (designated at Commandant, Provincial Additional Police). No appeal lies against an order of discharge.

(2) The pay admissible to probationary Inspectors, sergeants, sub-inspectors and assistant sub-inspectors is shown in Appendix 10.64 Table-A.

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.

(2) On successfully completing the course at the school, upper subordinates will be posted to districts for practical training. The following programme of instruction shall be followed:-

Course A. - - Prosecuting inspector's work-

- (a) Maintaining registers.
- (b) Checking chalans.
- (c) Making a police brief.
- (d) Working as assistant prosecuting inspector.
- (e) Working as assistant prosecuting inspector in the Session Court.
- (f) Personally prosecuting cases.

Course B. - - Police Lines-

- (a) Working as orderly head constable, keeping up files and registers and doing the actual work of the orderly head constable.
- (b) Reserve inspector's and Lines officer's duties, doing the actual work.

Course C. - - Office of Superintendent-

- (a) Working as assistant clerk in English office.
- (b) Working as record-keeper.
- (c) Working as return-writer.
- (d) Working as assistant reader to Superintendent.
- (e) Working as assistant accountant.

Course D. - - Training at a Police Station-

- (a) Working as station clerk for 70 months.
- (b) Assisting in the investigation of cases and learning the duties of officer in charge of a police station under the immediate supervision of the officer in charge of such a station for a period of six months.
- (c) Working as additional investigating officer in a police station for one year, or, in the case of an inspector, as additional district city or reserve inspector.

Officers undergoing courses A, B and C shall attend all parades in lines.

(3) Ordinarily course A shall last for 3 months, course B and C for 6 weeks each and course D for the remaining probationary period. Directly appointed upper subordinates will thus be under training for 3 years before they are confirmed.

(4) On the completion of each course the probationer shall be examined the Superintendent, who shall satisfy himself that the officer has obtained efficiency before allowing him to commence another course, and a concise report regarding the progress made shall be submitted to the Deputy Inspector-General in Part IV of form 19.25(5).

(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. In the case of inspectors such reports shall be forwarded to the Inspector-General.

The progress and final reports shall be filed with the character rolls of the officers concerned.

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

No: PO/CPB/63

Dated Peshawar 13 February 2023

To

The Regional Police Officer
Hazara Region

Subject: ***Date of confirmation of ASIs promoted from ranks (ranker ASIs)***

Reference your office letter No 2 504/7: dated 13.12.2022 wherein a legal advice was
sought on the following law point:

- i. Whether all ASIs promoted from, lower rank shall be brought on promotion list "E" af successful completion of 02 years' probation period from the date of officiating promotion not?
- ii. ASIs promoted from ranks (Ranker ASIs) may be confirmed in their ranks "on the conclusion of the probationary period" of two years. They shall NOT be confirmed from the date of the promotion as ASIs from the lower rank of IIC. PR 13.18 of Police Rules 1934 is hereby reproduced a ready reference:

Rule 13.18. Probationary Period of Promotion" all Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether the officer should be confirmed or reverted."

This rule shall not apply to constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules, 13.5 and 13.4,

- iii. 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 Ranker ASIs might be so confirmed on conclusion of probationary period of two years with immediate effect (the date on which order of their confirmation is issued).
- iv. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Waralsh vs IG Punjab (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2012 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 1896, 2260-110 2262-Land 13-) the Apex Court has held that "reliance on Nawaz (a

ANNEXURE (C)



507/c
14/2/23

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

No. CPO/CPBI/ 63

Dated Peshawar 13 February 2023

IMMEDIATE

To: The Regional Police Officer,
Hazara Region.

Subject: DATE OF CONFIRMATION OF ASIs PROMOTED FROM RANKS (RANKER ASIs)

Memo: Reference your office letter No. 507/CE dated 13.12.2022 wherein a legal advice was sought on the following law point:

- 1. Whether all ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period from the date of officiating promotion or not?
- 2. ASIs promoted from ranks (Ranker ASIs) may be confirmed in their ranks "on the conclusion of the probationary period" of two years. They shall NOT be confirmed from the date of their promotion as ASIs from the lower rank of IIC. PR 13.18 of Police Rules 1934 is hereby reproduced as a ready reference: -

Rule 13.18. Probationary Period of Promotion" all Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether the officer should be confirmed or reverted."

This rule shall not apply to constables and Sub-Inspectors promoted to the selection grade, whose case is governed by rules, 13.5 and 13.4."

Al
13/02/23

3. 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 Ranker ASIs might be so confirmed on conclusion of probationary period of two years with immediate effect (the date on which order of their confirmation is issued).

4. The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Warach Vs IG Punjab (PLD 1985 SC 159). In a recent judgment (dated 2nd November 2022 in Civil Appeal No. 1172 to 1175 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 Quinn Nawaz (a

A.OIG/EC
not complete report (Sent)

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Judgment of the Apex Court, reported as 1999 SCMIR 1594] that there is no difference between the date of appointment and date of confirmation winter the police rules is absolutely in conceived 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 inte dated confirmation and promotions have been put down to Raza Safdar Kazmi ja juvinent 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).

- v. It is, therefore, made clear that ASIs promoted from Inwer rank shall be brought on promotion list "F" after successful completion of 12 years' probation period NOT from the date of officiating promotion. 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 promotion but from the date of confirmation which, essentially, is a date different from their dates of promotion and compulsorily falls on the termination of the period of their probation of two years under PR. 13.8 of the Police Rules, 1934.
- vi. Mode of bringing names of Assistant Sub-Inspectors (ASIs- both PASIs and Ranker ASIs) on promotion list E, confirmed in the manner provided above, is given in PR 13.10 and 13.11 of the Police Rules, 1934. Therefore, their names may be brought on the Promotion List E in the manner provided in the said two rules..
- vii. 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 ASIs 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 promaten list "E" from date of appointment,
 - b. All ASIs promoted from lower rank shall be brought on promotion list "E" after successful compleilon of 02 years' prabatlon period from date of officiating promotion.
- viii. You are, therefore, requested to:
 - a. register that the Date of Promotion and Dale of Confirmation of a Ranker ASI are Not the Same as has been misconceived by many, but are different from each wiker: Date of confirmation falls after two years of the date of promotion in case of Ranker ASI according to PR 12.8, and 13,8 of ilis Police Rules, 1934 respectively,
 - b. Withdrawal all changes brought. In it's List. In compliance with this office letter No CPO/CPB/317 dated 08.12.2012 and Ravias the lin E of your Range to substitute all those dates of confirmation of all Assistant Sub-inspectors appointed by way

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 Sajdar 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).

5. It is, therefore, made clear that ASIs promoted from lower rank shall be brought on promotion list "E" after successful completion of 02 years' probation period NOT from the date of officiating promotion. 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 promotion but from the date of confirmation which, essentially, is a date different from their dates of promotion and compulsorily falls on the termination of the period of their probation of two years under PR 13.8 of the Police Rules, 1934.

6. Mode of bringing names of Assistant Sub-Inspectors (ASIs- both PASIs and Ranker ASIs) on promotion list E, confirmed in the manner provided above, is given in PR 13.10 and 13.11 of the Police Rules, 1934. Therefore, their names may be brought on the Promotion List E in the manner provided in the said two rules.

7. 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 ASIs 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 02 years' probation period from date of officiating promotion."

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13/12/23

8. You are, therefore, requested to:

- (a) register that the Date of Promotion and Date of Confirmation of a Ranker ASI are Not the Same, as has been misconceived by many, but are different from each other. Date of confirmation falls after two years of the date of promotion in case of 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 to substitute all these dates of confirmation of all Assistant Sub-Inspectors appointed by way of

promotion from lower rank (Ranker ASIs) which were fixed retrospectively from the date of their Promotion with those falling after date of conclusion of the period of their probation for two years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6, & 7 above.

- c. Ensure that ASIs promoted from ranks (Ranker ASIS) shall NOT be Confirmed from the Date of their Promotion (from the rank of Head Constable to ASI) rather, might be so confirmed "on the conclusion of the probationary period" of two years, with immediate effect (the date on which order of their confirmation was issued).
- d.
- e. 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 8 of this letter by 23.02.2023.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa for compliance.
4. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
5. PA to Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
6. PA to AIG/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

promotion from lower rank (Ranker ASIs) which were fixed retrospectively from the date of their Promotion with those falling after date of conclusion of the period of their probation for two years in the light of observations noted at paragraphs No. 2, 3, 4, 5, 6, & 7 above.

- (c) ensure that ASIs promoted from ranks (Ranker ASIs) shall NOT be Confirmed from the Date of their Promotion (from the rank of Head Constable to ASI) rather, *might* be so confirmed "on the conclusion of the probationary period" of two years, with immediate effect (the date on which order of their confirmation was issued).
- (d) Send compliance report by 23.02.2023.



13/02/23
(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 8 of this letter by 23.02.2023.
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5. PA to Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
6. PA to AIG/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

Balls copy

(1)
**OFFICE OF THE
INSPECTOR GENERAL OF POLICE,
KHYBER PAKHTUNKHWA,
CENTRAL POLICE OFFICE,
PESHAWAR**

D

No: CPO/CPB/64

Dated Peshawar 13 February 2023

IMMEDIATE

To

The Regional Police Officer
Hazara Region

Subject: ***Legal advice on the question of date of confirmation of PASIs (ASIs appointed direct)***

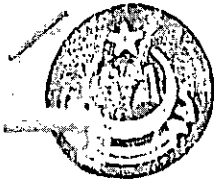
Memo:

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

1. 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 examination of the prescribed period of probation the Superintendent shall submit to the Deputy Inspector General for final orders the full report required by Form 19.23(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 such charged 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



503/2
13/2/23

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

ANNEXURE (D)

No. CPD/CPW/ 64

Dated Peshawar 13 February 2023

IMMEDIATE

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:

ll
13/12/23

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 Commanlant, 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

Handwritten notes and signatures at the bottom of the page, including "K. Dilg / K. ...", "Completed on 13/2/23", and a signature "A. M. W." dated 13/2/23.

recommendation as to whether to should we should not be confirmation in his appointment in the rose of inter such open to be forwarded to the Inspector General.

4. The two rules (12.8 and 19.23(3) of the Police Rules, 1934) clearly stated, that PASI (TASIE appointment direct) shall be and 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) in the termination of the period of probation for these years with immediate effect NOT with retrospective effect 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 tenure years successfully in down 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 USTA COD: Etable Code Khyber Pakhtunkhwa (Revised Edition) 2011, roastian will legs be notified with pemedinte effect Drawing analogy from this tule, all PASIk might be se confirmed on conclusion of probationary perind of these years with immenfiate effect (the dag en which order of their confirmatine is issued
6. The Supreme Court of Pakisite underlined the difference between the date of appointment and date of confirmation in Muslitag Waraich Vs IG Punjab (PL.D 1985 SC 159). In a recent judgment (dated 2 November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 le 3896, 2260-1 to 2262-L and C 3137-L) the Apex Court, has held that "reliance on Cheyyam Nawaz ja judgment of the Apex Court, reported as 1999 SCMR 1594] flut there is no difference between the slate of appointment wid date of confirmation wonder the police rules is absolutely misemevived and trungly dispellent. The Apex court kas furtier 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 "he practice of use-dated confirmation and promotions have becis put dan u in Muze Sofilar Kazmi" (a judgment af the Punjab Service Tribunal dated 15.08.2006, passed in Appral No. 239/2006 and upheld by the Supreme Court vide onder dated 29.01.2008, passed in Civil Appeals No. 2017 to 203 tof 2006 and other countered maners)
7. It is, therefore, made clear that l'AS te un rompletion 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 l'alice Rules, 1934 NOT from the date of appointment but from the date of confirmation which, essentially, is a dare different from their dates of appointment and compulsorily falls on the termination of the period of their probation for three years under l'R 12.8 and 19.25(5) of slit Police Rules, 1934.
8. Keeping in view the above, this office letter No. CPO/CPB/317 dated 08.12.2022, thai intended to create sparity between the dates of confionation of AS ts appointed direct (PASIs) and those of the AS ts promoted from anisanker AS14), is hereby withdrawa being against the letter and splati of PR 12,8, 19.25 (5) Police Rules, 1934), in case of PASIs and against the PIR 13.18 of the Police Rules, 1934 in case of the Asle promoted from ranks (Kanker AS14). The following was laid down in the sald lener
 - a. "All Pais un successful completion of 03 years probation perist kalt brought an promotion list "E" from date of appointment
 - b. All ASI promoted from lower rank shall e brought on promotion on the after successful completion of 02 years probation priod from date of official promotion.

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.).

10/9/23
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.

8. Keeping in view the above, this office letter No. CPO/CIB/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 ASIs 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 after successful completion of 03 years' probation period from date of appointment.

(13)

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


- 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

Ends L No. and dated even

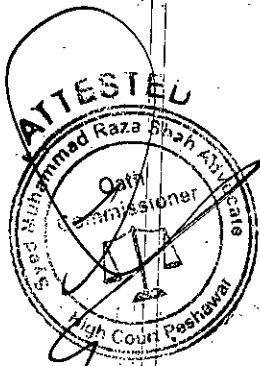
Copy of above is forwarded for information to the:

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service appeal No. 1627/2023**Amjad Iqbal (Inspector) S/O Abdul Latif R/O Damorai, Tehsil Alpurai District
Shangla..... (Appellant)**VERSUS**Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others
..... (Respondents)**AFFIDAVIT**

I **undersigned**, do hereby solemnly affirm and state on oath that the whole contents of this Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal. It is further stated on oath that answering respondents have neither place expiate nor their defense struck off/cost.



Deputy Inspector General of Police
Malakand Region at Saidu Sharif Swat.
(Respondent No.04)
(Muhammad Ali Khan) PSP
(Incumbent)
Regional Police Officer
Malakand Region,
Saidu Sharif, Swat.

No 17995 /wpc date 28-12-23

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"B"

Regional Police Officer
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
Saidu Sharif, Swat.
**JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No. 10

SB

Appeal No. 1627 of 20²³

Amjad Iqbal

Appellant/Petitioner

I-G-P Versus Peshawar

Respondent

Respondent No. (4)

Notice to: Deputy Inspector General of Police Malakand
Region at Saidu Sharif Swat.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 25/01/2024 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 19th
Day of Dec 20²³

For Reply

[Signature]

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

(2)

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

Service appeal No:- 1627/2023

A.njad Iqbal (Inspector) **Versus**

The Inspector General of
Police & others
..... Respondents

..... Appellant

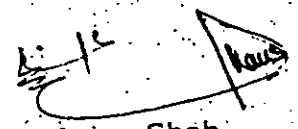
INDEX

S#	Description of the Documents	Annex	Pages
1.	Grounds of Service Appeal with affidavit	*	1-17
2.	Addresses of parties		18
3.	Notice to respondents		19
4.	Copy of appointment order	"A"	21-22
5.	Copy of the order dated 11/02/2023	"B"	23-24
6.	Copies of order dated 13/02/2023 & list dated 08/03/2023	"C" & "D"	25-52
7.	Copies of officiating promotion and confirmation	"E" & "F"	53-60
8.	Copies of the appeals	"G" & "H"	61-72
9.	Copies of grounds of WP, order dated 07/03/2023 of Peshawar High Court Mingora Bench & consolidated seniority list dated 11/01/2023	"I", "J" & "K"	73-114
10.	Copy of Revised Seniority list of Inspectors	"L"	115-132
11.	Wakalat Nama		133

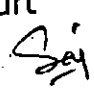
Dated:- 07/08/2023

Through:-

Appellant


Syed Ghaus Azam Shah
Advocate High Court


Sohaib Hassan
Advocate High Court


Sa'id Ali Khan
Advocate High Court

- 8/1
- (4)
- i) Set aside the impugned notification of RPO Malakand notification confirming the services of the Petitioner with effect from 12/02/2012 instead of 12/02/2009, direct the Respondents to confirm the services of the Appellants from the date of their appointment in accordance with law.
 - ii) Set aside/withdraw the revised seniority list No 3061-79 dated 08/03/2023 issued by the respondents and restore the seniority list No 457-75 dated 11/01/2023 issued by the respondent as original.
 - iii) Any other remedy deemed appropriate by this Honourable tribunal in circumstances of the case.

The appellant submits as under:-

1. That the addresses of the parties are the same as mentioned in the title which are evidently given for the efficacious purpose of deliverance of summons/notices/orders, issued/ passed by this Honourable Tribunal.
2. That the Appellant seeks the indulgence of this Honourable Tribunal with the prayer to issue directions to the Respondents to set aside/ withdrawn the Revised Seniority List issued by Respondent No 2 vide order No. 3061-79/E dated 08/03/2023 wherein the Appellant services was confirmed three years later from the date of his initial

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(5)

appointment against the substantive post of ASIs in contravention to the established principle of confirmation from the date of such appointment.

3. That the Appellant as per S.4 (a) of the KP Civil Service Tribunal Act, 1975, and before invoking the jurisdiction of this Honourable Tribunal first sought departmental remedy by way of an appeal submitted to the authorities on 04.04.2023 but since then no action whatsoever had been taken upon the same, therefore leaving no other alternative but to approach this Honourable Tribunal by way of the instant appeal for proper remedy in accordance with law.

Respectfully Sheweth:-

That succinctly stated the facts giving rise to the filing of the instant Appeal are mentioned and jotted down for the kind considerations of this Honourable Tribunal which inter alia included but not limited to the following:-

Facts:-

- ✓ 1) *That the Appellant was appointed on 12/02/2009 in the rank of Assistant Sub Inspector (hereinafter referred to as ASI) by way of "initial appointment" on the recommendation of the then NWFP Public Service Commission, hence he was considered to be on probation for a period of three years from the date of appointment in accordance with R. 12.8.*

(6)

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Police Rules (1934). (Copy of appointment order enclosed and marked A)

✓ 2) *That the Appellant since then performed his official obligation with utmost zeal, vigor and to the best satisfaction of his seniors as such he was entitled for confirmation in his substantive ranks in view of Police Rules 12.8 & 19.25 (5) after successful completion of their probationary period.*

✓ 3) *That the Respondent No.4 vide order No.665-73/E, dated Saidu Sharif, 11/02/2013 accordingly confirmed his services from the date of appointment i.e. 12.02.2009 after successful completion of his probationary period in accordance with law. (Copy of the order dated 11/02/2023 is annexed and marked B).*

✓ 4) *That the Respondent No 4 in compliance of a Memo No. CPO/CPB/64 dated Peshawar 13th February 2023 addressed by respondent No 3 to all Regional Police Officers asking him to confirm the services of the directly recruited ASIs from the date of termination of probationary period and not from the date of his appointment, accordingly vide order No. 3061-79/E dated 08.03.2023 changed his confirmation date to 12.02.2012 without any solid reason or legal justification. (Copies of order dated 13/02/2023 & list dated 08/03/2023 annexed and marked C & D respectively).*

(7)

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✓5) *That the above act of the respondents was an infraction of the time tested principle whereby the law on the subject requires confirmation of services of public officials from date of regular appointment and not from the date on which his probationary period last; however and in spite of the fact that the appellant was appointed against substantive vacancies yet he was confirmed three years later in defiance of law and rules due to which he was deprived of his rightful place in seniority.*

✓6) *That the Appellant also suffered unjustified delay in making to the promotion list whereas the names of his juniors who were promoted from rank on officiating basis were entered in the said lists over and above their names in contravention to rules and procedure.*

7) *That on the contrary respondent No 4 confirmed the services of more than 50 officials promoted from rank on officiating basis unlawfully and in deviation of all rules due to which the appellant was not only deprived of his rightful seniority but was also made junior to them. (Copies of officiating promotion and confirmation annexed and marked as E & F).*

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✓8) That aggrieved by the revised confirmation notification the Appellant made departmental representation before the Respondents on 04/04/2023 however; no official reply was communicated to him till date about the action taken upon his submission. (Copies of the appeals annexed and marked as G & H).

✓9) That a Writ Petition to the same effect was also filed by the appellant in the Honourable Peshawar High Court Mingora Bench Qar-ul-Qaza Swat for the grant of relief however during the pendency whereof the Respondent No 4 submitted a consolidated seniority list stating therein that the Appellant's grievance to the extent of confirmation from the date of his appointment and placing of name in promotion list E is redressed thereby rendering the petition infructuous which was disposed off accordingly. (Copies of grounds of WP, order dated 07/03/2023 of Peshawar High Court Mingora Bench & consolidated seniority list dated 11/01/2023 are annexed and marked as I, J & K.)

✓10) That the appellant is performing duties as Inspectors (BPS-15) in respondent department. (Copy of Revised Seniority list of Inspectors is attached as annexure "L").

✓11) That grossly aggrieved the Appellant approach this Honourable Tribunal for seeking its indulgence into the case

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and with the prayers to set aside the impugned notification confirming his services three years later and not from the date of his appointment in violation to law, rules and procedure inter alia on the following grounds:-

Grounds:-

- ✓ A) That the impugned notification confirming the services of the Appellant three years later and not from the date of his appointment is based on misconceived appreciation of law and contrary to facts and circumstances of the case wherein the authorities erred in taking into account the correct perspective of the law and existing rules on the subject of probation, confirmation and seniority laid down by Police Rules 1934 and further supplemented by the KP, Civil Servant Act 1973; KP Appointment, Promotion & Transfer Rules 1989, Fundamental Rules and Supplementary Rules.
- ✓ B) That the Appellant confirmation three years later from the date of appointment amounts to a break in his service which is abhorred in law and procedure; services deprecate vacuum and favours continuity provided substantive vacancy exist and an appointment is being made against the same.
- C) That P.R.12.2 (3) states that seniority amongst the upper subordinates besides other shall finally be settled from the date of confirmation. The Police Rules also provides for the

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confirmation of officials upon successful termination of probationary period with in the view of R. 12.8. 13.19 & 19.25, the plain language whereof the stated provisions nowhere state or suggest that such confirmation shall take effect upon the termination of successful completion of the probationary period and not from the date of appointment.

- D) That, conversely speaking the stated provisions do not stipulate or provides the exact date from which confirmation shall take effect hence, this would bring us to the general law on the subject for guidance and help. In circumstances S.7 (5) of the KP, Civil Servant Act 1973 can help us determine the exact time where from the confirmation may take effect which inter alia says that confirmation of a civil servant in a service or post shall take effect from the date of occurrence of a permanent vacancy or from the date of continuous officiating in such service or post whichever is later.

- E) That the Appellant was recommended for initial appointment in the post of ASI by the then NWFP Public Service Commission on the available and existing substantive vacancies hence he was entitled for confirmation from the date of appointment and not from the date of termination of their probation within the spirit of S.7 (5) of the KP, Civil Servant Act 1973.

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- (1)
- F) That the notification confirming the services of the appellant three years later and not from the date of appointment is thus perverse, patently flawed, legally inaccurate and in gross violation of law.
- G) That the principle of law enunciated on the subject by the superior courts held continually that directly recruited ASIs, SIs and Inspectors were to be confirmed from the date of his appointment when his period of probation is successfully completed and not three years later.
- H) That the appointment of the Appellant was made against substantive vacancies and was thus placed on probation in accordance with law and in view of R.2 (15) of the Supplementary Rules that provides "a probationer means a government servant employed on probation in or against a substantive vacancy in the cadre of a department" as such he was entitled for confirmation from the date of his appointment in accordance with law.
- I) That S.7 provides that only a civil servant promoted/appointed to a post on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation. It further says that there shall be no confirmation against any temporary post. Rule

(12)

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16 of the KP, APT Rules 1989 also provides that a civil servant after successfully completing his period of probation shall be eligible for confirmation provided he holds a substantive post.

- J) That R 17(2) of the KP, APT Rules 1989 lays down that seniority between an official appointed through initial recruitment and the one appointed otherwise (through promotion) shall be determined with reference to the date of their regular appointment. Since the petitioner was appointed to the rank of ASI through regular appointment all those officials who were officiating in the said ranks legally stood junior to him as his promotion/appointment was not regular but on officiating basis.
- K) That confirmation of officiating promotees was in flagrant violation of law and facts inasmuch as officiating promotion is temporary and is made on a vacancy on which another official holds a lien, the details whereof are summarized below.
- That R. 13.4, 13.9 and 13.12 of Police Rules 1934 throw light on "officiating promotion" the cumulative effects whereof are not difficult to discern which inter alia state, that officiating promotion to the rank of ASI should be made on rotation basis; while substantive promotion shall

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be made in accordance with P.R 13.1, officiating promotion on the other hand be made in accordance with P.R 13.4(2). Further it is made to fill temporary vacancies in the rank of Sub Inspector; the object is to test all men on promotion list "E". The provision further says the order in which the names occur in the "E" list should be disregarded, the opportunities of officiating in a higher rank being distributed as evenly as possible.

- That the above mentioned rules clearly indicate that officiating promotion is purely temporary, being made on rotation to benefit maximum numbers of officials and in disregards (seniority) to the names falling in the order in the "E" list. Promotion/appointment to a substantive post however is made in accordance with P.R 13.1 which lays down the established principle of seniority cum fitness being the sole criteria for such appointment.*

- That police rules 1934 although provides for officiating promotion but it nowhere properly defined either the word itself or threw light on what is officiating promotion/appointment, hence recourse to Fundamental Rules 9 (19) reveals that a government servant officiate in a post when he performs the duties of a post on which another person holds a lien.*

- (14)
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- That F.R 12 states that two or more government servants cannot be appointed substantively to the same permanent post at the same post, or a government servant cannot be appointed substantively except as temporary measure to two or more permanent posts at the same posts and a government servant cannot be appointed substantively to a post on which another government servant holds a lien.
 - That confirming the services of officiating officials as against the Appellant who was not even regularly promoted/appointed to his posts is in stark conflict with the above mentioned rules which inter alia says that a Civil Servant cannot be appointed on regular basis to a post on which another government servant hold a lien.
 - That S.6 of the KP, Civil Servant Act 1973 read with R.15 of the KP APT Rules 1989 provides that a person appointed to a post on regular basis shall remain on probation; officiating appointment is purely a stop gap arrangement which is not a regular appointment by any stretch of imagination given the legal position, as such confirmation of officiating officials is flagrantly in conflict with the law and raft of judgments rendered by the superior courts in this country.

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L) That confirming officiating ASIs who was temporarily appointed to posts on which other Civil Servants was holding lien militates against the law which provides that confirmation can only be made on substantive posts and two civil servants cannot be appointed to a substantive post at the same time.

M) That Article 4 of the Constitution of Islamic Republic of Pakistan terms equal protection of law and treatment in accordance with law as the inalienable right of every citizen and every other person while Art 25 ensures equality before law, however the petitioner was neither extended the right of equal protection of law and treatment in accordance with law nor equality before the law within the contemplation of Arts 4 and 25 respectively.

N) That Article 27 of the Constitution provides protection against discrimination in services on parochial grounds however, the petitioner was discriminated against by placing his juniors as senior to him in disregard to the same constitutional protection.

O) That the impugned notification confirming the services of the Appellant three years after the date of his regular appointment is perverse, contrary to facts and circumstances of the case; the interpretation of P.R.13.18 was made in

complete isolation and stand alone manner and in disregard to law. The period of probation shall always commence from the date of regular appointment which is evident from R.15 of the KP, APT Rules 1989 and the seniority as such shall also take effect per P.R 12.2(3) and S. 8.4 of the KP, Civil Servant Act 1973 from the date of regular appointment.

✓ P) That the confirmation of Appellants in the rank of ASI three years late by Respondents is also in violation to S.7 (1) of the KP, Civil Servant Act, 1973 and R 16 of the KP, APT rules 1989 which provides confirmation after successful completion of the probationary period: an error with snow ball effects depriving the appellant of his lawful place in seniority in subsequent career progression culminating in wrong placing his names in promotion list F.

Q) That the amended version of list F by the CPO was unilateral, capricious and fanciful which was made without affording an opportunity to the appellant of being heard and thus is found to be egregiously flawed and contrary to the fundamental principle of natural justice finding its expression in the Latin maxim "Audi Alteram Partem".

R) That any other grounds will be agitated at the time of hearing of instant departmental appeal.

Prayers:-

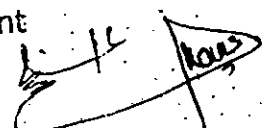
In light of the stated facts and grounds it is humbly prayed that on acceptance of the instant Service Appeal, this Honourable Tribunal may graciously be pleased to order:-

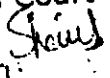
- i) Set aside the impugned notification of RPO -Malakand notification confirming the services of the Petitioner with effect from 12/02/2012 instead of 12/02/2009, direct the Respondents to confirm the services of the Appellants from the date of their appointment in accordance with law.
- ii) Set aside/withdraw the revised seniority list No 3061-79 dated 08/03/2023 issued by the respondents and restore the seniority list No 457-75 dated 11/01/2023 issued by the respondent as original.
- iii) Any other remedy deemed appropriate by this Honourable tribunal in circumstances of the case.


Dated:- 07/08/2023

Through:-

Appellant


Syed Ghaus Azam Shah
Advocate High Court


Sohaib Hassan
Advocate High Court


Sajid Ali Khan
Advocate High Court