

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 694/2016

Date of Institution... 28.06.2016

Date of decision... 03.01.2018

Fazal Subhan No.647

Presently posted at Traffic Police at Police Station Gagra, Bunir. (Appellant)

Versus

1. District Police Officer, Bunir and 2 others. (Respondents)

Mr. Shamsul Hadi Advocate

For appellant.

MR. Mian Amir Qadar

Learned District Attorney

...

For respondents.

MR. NIAZ MUHAMMAD KHAN,

...

CHAIRMAN

MR. MUHAMMAD HAMID MUGHAL,

...

MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was reverted from the post of Head Constable to Constable on 13.07.2015 against which he filed departmental appeal which on 20.3.2016 which was not responded to and thereafter he filed the present service appeal on 28.06.2016.

3. At the very outset learned District Attorney objected to the maintainability of the appeal on the ground of being time barred. This Tribunal is therefore, to decide the issue of limitation first.

ARGUMENTS

4. Learned District Attorney argued that the order of reversion was passed on 13.07.2015 whereas the departmental appeal was filed on 20.03.2016 after almost 10 months. That no application for condonation of delay with the memorandum of appeal was submitted by the appellant.

5. On the other hand the learned counsel for the appellant argued that the reason for delay in filing the departmental appeal was the consideration of the case of the appellant before the department. He also argued that there was no need for condonation of delay as the departmental appeal was allegedly time barred and not the present service appeal.

CONCLUSION

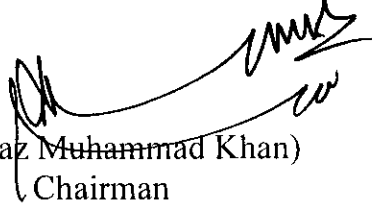
6. The departmental appeal was filed after almost 10 months of the passing of the original order. It is settled law that when departmental appeal is time barred, then service appeal is also time barred. In such situation it was incumbent upon the appellant to have filed application for condonation of delay which has not been done. Secondly the reason put forth today by the learned counsel for the appellant is also not convincing because the pendency or consideration of the case before the department does not provide any sufficient reason for condonation of delay.



7. Consequently this appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member



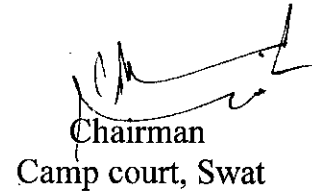
(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
03.01.2018

05.12.2017

Counsel for the appellant and Addl. AG alongwith Noshawan, SI (Legal) for the respondents present. Counsel for the appellant submitted that other connected appeals have been fixed for 30.1.2018 and requested that the instant appeal may also be adjourned to the same date. Learned counsel for the appellant further requested that the departmental representative be directed to provide C-II list of District Buner to the appellant. Departmental representative is directed to supply the same to the appellant within a week. To come up for arguments on 30.01.2018 before D.B at camp court, Swat.


Member

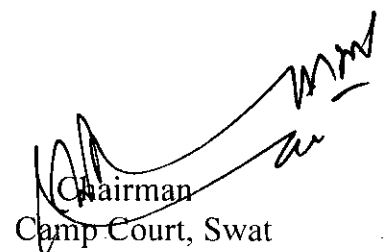

Chairman
Camp court, Swat

03.01.2018

Counsel for the appellant and Mian Amir Qadar, District Attorney alongwith Noshawan, S.I (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


Member



Chairman
Camp Court, Swat

ANNOUNCED
03.1.2018

694/16

09.12.2016


Appellant in person and Mr. Nosherawan, SI (Legal) alongwith Mian Amir Qadir, GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.04.2017 at camp court, Swat.


Chairman
Camp court, Swat

05.04.2017


Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader for respondents present. Rejoinder submitted. To come up for arguments on 04.09.2017 before D.B at Camp Court Swat.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat.

05.09.2017

Since 4th September, 2017 has been declared as public holiday on account of Eidul Azha, therefore, case is adjourned to 05.12.2017 for the same at camp court, Swat. Notices be issued to the parties for the date fixed.


Chairman
Camp court, Swat.

13.7.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Head Constable when reverted as Constable with immediate effect vide impugned order dated 13.07.2015 where-against he preferred departmental appeal on 20.3.2016 which was not responded and hence the present appeal on 28.06.2016.

That the impugned order is against facts and law and that officials junior to appellant were not reverted while the appellant was illegally reverted as Constable.

Points urged need consideration. Admit subject to limitation. Subject to deposit of security and process fee within 10 days. notices be issued to the respondents for written reply/comments for 07.10.2016 before S.B at camp court Swat.

Appellant Deposited
Security & Process Fee


Chairman
Camp Court, Swat

067.10.2016



Counsel for the appellant, and Mr. Nosherawan, S.I (Legal) alongwith Mian Amir Qadar, GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 09.12.2016 at camp court, Swat.


Chairman
Camp Court, Swat

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 694/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/06/2016	<p>The appeal of Mr. Fazli Subhan presented today by Mr. Shamsul Hadi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	29-6-2016	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on. <u>13-07-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 694/2016.

Fazli SubhanAppellant

V E R S U S

District Police Officer Bunir and others.....Respondents

I N D E X

S.N	Description of Documents	Annex	Pages
1.	Memo of Appeal along with Affidavit.		1---5
2.	Addresses of the Parties		6
3.	Copies Office order dated:11.07.2013 and FIR.	A	7-12
4.	Copy of impugned office order dated:13.07.2015 .	B	13
5.	Copy of departmental appeal.	C	14
6.			
7.	Wakalat Nama		15

Appellant

Through

Shams ul Hadi

Advocate, Peshawar.

Office: H/No.6 near Al-Falah

Mosque Hayat Abad, Mingora.

Cell No. 0347-4773440

Dated: 25/06/2016.

1

BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR

Service Appeal No. 694/2016.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 674

Dated 28-6-16

Fazal Subhan No.647

Presently Posted at Traffic Police at Police Station Gagra, Bunir
.....Appellant

V E R S U S

1. District Police Officer, Bunir.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.....Respondents

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE
ORDER DATED:13.07.2015.**

PRAYER IN APPEAL:

On acceptance of this appeal the impugned office Order dated; 13.07.2015 of reversion to the lower rank of Constable BPS-5 of the appellant may kindly be set aside and the appellant may kindly be re-instated to his rank i-e Offg;C-II, Head Constable BPS-7 with all back benefits of service.

Respectfully Sheweth:

1. That the appellant joined the respondent/department since long and as such performing his duties with zeal and zest and till date no compliant what so ever has been recorded from any quarter.

Filed to-day
[Signature]
Registrar

28/6/16

2. That initially, vide office order dated:11.07.2013 the appellant was promoted to List C-II as Head Constable BPS-7 on the basis of his excellent performance during the war against militancy and the ground for promotion FIR No.94 dated:04.08.2009 and as such some other police officials namely Liaqat Ali No.275 and Abdul Shakoor No.160 were also promoted to next higher rank on the basis of same FIR.(Copies Office order dated:11.07.2013 and FIR are annexure-A)
3. That latter on vide impugned office order dated:13.07.2015 without giving plausible reasons, the appellant was reverted back to his earlier rank i-e Constable BPS-5 and as such his name was removed from C-II List .(Copy of impugned office order dated:13.07.2015 is annexure-B)
4. That the impugned reversion order of the appellant was passed in his absence as no notice or proper hearing of opportunity was provided to the appellant and that too the impugned reversion order was also not communicated to the appellant within time.
5. That latter on when practically the impugned reversion order was implemented and the appellant got knowledge about his reversion so the appellant filed departmental

appeal before Resp No.3 which was not decided within statutory period of 90 days.(Copy of departmental appeal is annexure-C)

That being aggrieved from the impugned reversion order, the appellant approached this Hon'ble Tribunal on the following grounds amongst other inter alia:


GROUND:

- A. That the impugned office reversion order of the appellant, is against facts, law and procedure, hence, untenable being unjust and unfair.
- B. That the appellant was not treated in accordance with law and rules, thus acted in violation of the relevant laws laid down for the purpose.
- C. That the reversion order of the appellant is based on personal ill will and with ill intention the appellant was reverted which needs interference of this august Tribunal.
- D. That no opportunity in shape of personal hearing was afforded to the appellant and as such other police officials which were promoted on the basis of same FIR and performance, are still enjoying the same status but only the appellant was reverted to his earlier rank which is classical example of discrimination.

- E. That still there are vacancies available on C-II list of the district but the name of the appellant was removed from C-II list of the district without caring for law and appellant's service career.
- F. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed that On acceptance of this appeal the impugned office Order dated; 13.07.2015 of reversion to the lower rank of Constable BPS-5 of the appellant may kindly be set aside and the appellant may kindly be re-instated to his rank i-e C-II, Head Constable BPS-7 with all back benefits of service.


Appellant

Through 

25
Dated: **25**/06/2016

Shams ul Hadi
Advocate, Peshawar.

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2016.

Fazli SubhanAppellant

V E R S U S

District Police Officer Bunir and others.....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



A D V O C A T E

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2016.

Fazli SubhanAppellant

V E R S U S

District Police Officer Bunir and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Fazal Subhan No.647

Presently Posted at Traffic Police at Police Station Gagra, Bunir.

RESPONDENTS:

1. District Police Officer, Bunir.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu
Sharif Swat

Appellant

Through

Shams ul Hadi
Advocate, Peshawar.

Dated: 25/06/2016

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Annex A

ORDER,

Constable Fazal Subhan, No. 647, is hereby promoted as offg: C-II
Head Constable BPS-7 purely on temporary basis till further order on the
basis of excellent performance during the war against militancy ^{at last insurgency} with
immediate effect.

~~Signature~~
DISTRICT POLICE OFFICER,
BUNER

OB No. 100
Dated: 11-07 /2013

C.C.
~~Signature~~

خبر دوسرا سے دو صحتیں ہیں اور بلا غیر جھوٹے اور دھریں
 اور دو سرو رضا میگزین جیسی کہ اس کے بارے میں 30 روز
 کیلئے اسٹینڈ بڈ ہے اور اس کی کاپی بھی ہوگی۔ رقصہ پر ہزار
 کے نام کے لئے کیا حکم دیا ہے۔ اس کے بارے میں اس کے لئے فیڈ بک
 دیا ہے۔ اس کے لئے کیا حکم دیا ہے۔ اس کے لئے کیا حکم دیا ہے
 اس کے لئے کیا حکم دیا ہے۔ اس کے لئے کیا حکم دیا ہے
 اس کے لئے کیا حکم دیا ہے۔ اس کے لئے کیا حکم دیا ہے
 اس کے لئے کیا حکم دیا ہے۔ اس کے لئے کیا حکم دیا ہے
 اس کے لئے کیا حکم دیا ہے۔ اس کے لئے کیا حکم دیا ہے

ASD...
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۱۱۸/۸۱/۸۲

اطلاع کے لیے اطلاع دہندہ کا دستخط ہوگا اس کی نمبر پر نشان لگایا جائے۔ اگرچہ اس کے لئے اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف باب سرخ روشنائی۔
 ایک لازم یا مشترکہ علی الترتیب واسطے باشندگان علاقہ غیر واسطہ کے لئے درخواستیں قبول نہیں ہوں، لکھنا چاہئے۔

تعمیراتی روزنامہ 8/4/09 چوٹی نئی

صوبہ

(10)

275
112

درجہ روانہ سیرریم فائن وقت 09:30
4.8.13

میں خوشتر آخان 154، میاقت علی 112،
SPF غفران، SPF غنایت، 597، 697،
345، ~~محمد علی~~،
322
112

محمد علی 490، شایندہ 648، سلیم روضہ 645، ریاض SPF، سید خلیل
محمد رسول 13، نیر فائزادہ 7، امیر 559، محمد القام 407، محمد زادہ 18،
ریاضت علی SPF، زرفروش SPF، امیر حسن SPF، سلیم محمد اشرف
حب اطلاع حسب اظہار منہن بالاعراض گتہ ذیابیطر وغیرہ رواج ہوں
بانت خون میراہ لیا گیا

خدا تعالیٰ! فضل علیک اعلیٰ ہے

PP. Nagral
4.8.09

HC Liaqat Ali no. 275 was promoted to the rank ASI on the basis of good performance mentioned in the enclosed file, while —
He FC Abdushakur No 160 driver was also promoted to the rank of Head Constable on the basis of above criteria.

etc

(11)

مدیر واپسی سیرور عظیم خان وقت 23:50 میں سو میرا بیان رفته بحال مدد با لا
 4.8.09 DSPs DPo سے وابستہ وقت آریا دوران گنت جا۔
 صاحبان SHH صاحب اور دیگر لکھنوی کے ساتھ آگئے گاڑی سڑک کمرے ہونے جو اپنی
 لکھنوی پولیس نرد خانانوں ڈھیری پنیے تو نرد کی پہاڑ سے تین کان اسماء مسکن
 نامعلوم نے سرکاری گاڑیوں میں لکھنوی دیکھ کر جن میں سے ایک بند گنڈ گنڈ
 جگہ دو لکھنویوں نے اسلحہ آگ سے لکھنوی ہرج ارادہ مثل فائبر بند کی بلزمان
 کی بند گنڈ گنڈ بند سے سرکاری تو بائیل کو کافی نقصان پہنچا اور لکھنوی پولیس
 بالکل غائب گئی۔ فتح لکھنوی نے صحیح حفاظت خود اختیاری کے کفاز میں سرکاری
 اعلیٰ سے مائٹ شروع کر کے جن کے تیارے میں سرسید گمان شرت ہند اسماء مسکن
 نامعلوم بند کر دیا کر ہونے۔ بلزمان پانڈ شہدہ گمان سیرور کو ملزم سے بند گنڈ
 آگے ضرب۔ ملا شگوف بدافعہ مجموعہ میگزین کا عدد کارٹوس 7-62 اور جبکہ
 دیگر ملزمان سے دو ضرب ہتھیار اور بلا لکھنوی پانڈ۔ میگزین اور
 عدد اٹھائی میگزین جس میں کل 12 عدد کارٹوس 30 فوئر بلا لکھنوی ہر آم کر
 تیار کی ہے۔ اسی طرح ہلاک شدہ گمان شرت ہند میں سے ایک شہدہ
 ہند کے جان نداشتی سے ایک تو بائیل فون از قسم لوکیم اور ایک گاؤں
 جس پر دیات مردان شہاد کے نام تحریر ہے ہی ہر آم کر ہند
 فتح حالات، واقعات کے متعلق جا۔ SHH صاحب نے فرامع ہرج
 بعد ریٹیل رپورٹ گمان اٹھائی کی جس پر مقدمہ عد 99 درج رجسٹر ہر اسے
 میرا بیان سے اسلحہ، المونیشن درست لکھنوی ہر داخل مالکان سیرنی۔ دفتر ختم ہر

صاحب عالی نقل عملی اصل سے

PP. Nagrani 4.8.09

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ORDER

[Handwritten Signature] (12)

As per approval of w/ Deputy Inspector General of Police, Malakand Region Swat vide Memo No. 1240/E, dated 19-2-2011, the following constables are hereby promoted as offg: C-II HC BPS (07) (3530-190-9230) on the existing vacancies of this district with immediate effect.

S. No.	Name & No.
1	FC Rahim Jalal No. 12
2	FC Wazir Zada No. 334
3	FC Ihtisham Ul Haq No. 142
4	FC Ibad Ali Shah No. 413
✓ 5	FC Abdul Shakoor No. 160 -
6	FC Qimat Said No. 165
7	FC Hazrat Hayas No. 63
8	FC Mohabat Khan No. 308
9	FC Rizwan Ullah No. 88
10	FC Farid Khan No. 68
11	FC Musharaf Khan No. 15
12	FC Umar Rahman No. 673

[Handwritten Signature]
District Police Officer,
Buner

OB # 29

DATED 22/2 /2011.

No. 878-82 /E

26-2-11 Copy forwarded to:-

1. The Deputy Inspector General of Police, Malakand Region Swat for information please.
2. The District Accounts Officer, Buner for necessary action.
3. PO & EC OHC

[Handwritten Signature]
District Police Officer,
Buner

[Handwritten Signature]

ORDER

13

Amended -
B

Consequent upon the recommendation of the Committee / constituted vide this Office 6967/EC, Dated 15.06.2015, the following Head Constables over and above from the sanctioned strength of this District Police i.e 10% of the sanctioned strength of Head Constable are hereby reverted to their substantive ranks of Constable BPS-5 with immediate effect and the names of reverted Head Constables from Sr. No. 1-4, 06 and 08 are also removed from List-C-II, however, the names of reverted Head Constable at Sr. No. 5 and 7 shall be intact on List C-II.

1. Const: Ikhtishamul Haq No.142
2. Const: Umar Rehman No.673
3. Const: Abdul Shakir No.677
4. Const: Ali Zada No.715
5. Const: Maizar Shah No.450
6. Const: Sajid Ali No.598
7. Const: Amir Abdullah No.443
8. Const: Fazal Subhan No.647

(SYED KHALID HAMDANI)
PSP

District Police Officer,
Buner

OB NO 61.

Dated 13/7 2015

c.t.c
[Signature]

جناب ڈی آئی جی صاحب ملاکنڈ ڈویژن سوات

Answer
C

14

جناب عالی!

عنوان: فراہمی انصاف پروموشن ڈویژن

گزارش کی جاتی ہے۔ کہ بندہ پولیس ڈیپارٹمنٹ میں 01/01/2008 سے اپنے فرائض ایمانداری سے انجام دے رہا ہے۔ 2009 میں انتہائی خراب حالات میں بھی اپنی ڈیوٹی انجام دے رہا تھا اس دوران ایک واقعہ چونکہ نگری حال تھا نہ ناؤ گئی بونیر میں بندہ وساتھیوں سمیت اور دہشت گردوں کا آپس میں مقابلہ ہوا۔ جس میں بندہ اور ساتھیوں نے تین دہشت گردوں کو ہلاک کیا اور ان سے ایک ہینڈ گرنیٹ اور ایک کلاشنکوف قبضہ میں لے لیا تھا۔ جس کے باعث بندہ کو 11/07/2013 کو جناب جہانزیب خان ڈی پی او بونیر نے ہیڈ کانسٹیبل کی حیثیت سے ترقی دی۔ جس میں بندہ کے ساتھیوں عبدالشکور نمبر 160 اور لیاقت علی نمبر 275 بھی شامل تھے۔

بندہ کو جناب سید خالد محمود خان حمدانی ڈی پی او صاحب بونیر نے بغیر کسی وجہ سے ہیڈ کانسٹیبل سے دوبارہ کانسٹیبل پر ترقی کی۔ جبکہ متذکرہ بالاساتھی اب بھی اپنے اپنی ترقی دی گئی عہدوں پر برقرار ہیں۔

بندہ آپ سے درخواست کرتا ہے۔ کہ بندہ کو انصاف فراہم کر کے دوبارہ اپنے عہدے ہیڈ کانسٹیبل پر ترقی دی جائے۔ بندہ تاحیات آپ کا دعا گوہر شکر گزار ہے۔

شکریہ۔

منسلک کاغذات کی نقول بہ احترام

۱۔ ایف آئی آر برخلاف دہشت گرد

۲۔ پروموشن کاپی

۳۔ رپورٹ کاپی

آپ کا تابعدار

فضل سبحان نمبر 647

متعینہ ٹریفک سٹاف بونیر

Dated: 20/03/2016

CA-C

بعدالت

سرورس ریسونل جسٹریٹس کونسل

15

20 جون 2016ء منجانب

منزل بسکون نام ڈی پی او لوئیس وینس

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی متعلقہ آن مقام سرورس ریسونل کے لئے شمس الہا دی ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک نہ روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمد اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہے تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 20 جون 2016ء

العبد گواہ شمس العبد

بمقام سرورس ریسونل کے لئے منظور ہے۔

AH steel and accepted by
Shams ul Haadi Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL No. 694/2016

**Fazal Subhan No. 647 Presently Posted at Traffic Police at Police Station Gagra Buner
..... Appellant**

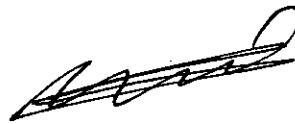
VS

- 1. District Police Officer, Buner**
- 2. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.**
- 3. Deputy Inspector General of Police, Malakand Region at Saidu Sharif Swat.**

..... Respondents

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**District Police Officer,
Buner
(Respondent No. 1)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 694/2016

**FC Fazal Subhan No. 647 presently posted at Traffic Staff Police Buner
..... Appellant**

VS

- 1. District Police officer, Buner**
- 2. Inspector general of Police Khyber Pakhtunkhwa Peshawar.**
- 3. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
..... Respondents**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS ON BEHALF ON
RESPONDENTS**

Respectfully sheweth:

Preliminary Objections:

- 1. That the Service Appeal is time barred.*
- 2. That the Service Appeal is not maintainable.*
- 3. That the appellant is bad in the present form and liable to be dismissed.*
- 4. That the appellant is estopped due to his own conduct.*
- 5. That the instant Appeal is bad due to mis-joinder and non-joinder of necessary parties.*
- 6. That the Appellant has concealed material facts from this August Tribunal.*
- 7. That the appellant has got no cause of action and locus standi to file the instant appeal.*

On Facts:


- 1. Para No. 1 relates to the service record of the appellant, hence needs no comments.*
- 2. Correct to the extent that the appellant was promoted has to the rank of offg: C-II Head Constable on 11/07/2013. The appellant promoted on temporary basis, regardless of seniority, against rules and in supersession of deserved personnel.*
- 3. Incorrect. The appellant was reverted on reasonable grounds. The appellant alongwith others were promoted to next rank (Head Constable) out of turn, without merit, regardless of seniority, in violation of rules and in supersession of other qualified police personnel, therefore, he alongwith others were reverted to his substantive rank of constable.*
- 4. Incorrect. The appellant was promoted as out of turn and against rules, therefore, rightly reverted to his substantive rank. The appellant was timely informed about the order. Furthermore; reversion is no punishment.*
- 5. Incorrect. The appellant was timely informed about his reversion to his substantive rank.*


Grounds:


- a. *Incorrect. The order of reversion is justified, legal and in accordance with rules.*
- b. *Incorrect. The appellant has been treated in accordance with law and rules no provision of law and rules has been violated so far.*
- c. *Incorrect. There is no malafide ill-will on the part of respondents against the appellant.*
- d. *Incorrect. Their quota 10% of C-II constables to be promoted as Head Countable under rule 13.8 Police Rules-1934, which promotion was against seniority and in excess of the prescribed / reserved quota. The case of the appellant is different from quota officials.*
- e. *Incorrect. The appellant seeks a short Gate channel for promotion which is not mandated in rules, however, if he is qualifies can be promoted on his own turn and order of merit.*
- f. *The respondents also the permission of this Honorable Tribunal to adduce more grounds / points at the time of arguments.*

Prayer:

In view of the above comments on facts and grounds it is prayed that Appeal of the appellant may be dismissed with costs.


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


**Regional Police Officer,
Malakand Region at Saidu Sharif Swat
(Respondents No. 3)
Regional Police Officer,
Malakand, at Saidu Sharif Swat.**


**District Police Officer,
Buner
(Respondent No. 1)
District Police Officer
Buner**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 694/2016

**FC Fazal Subhan No. 647 presently posted at Traffic Staff Police Buner
..... Appellant**

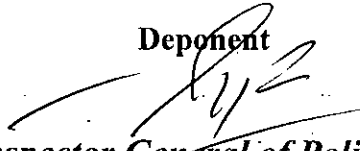
VS

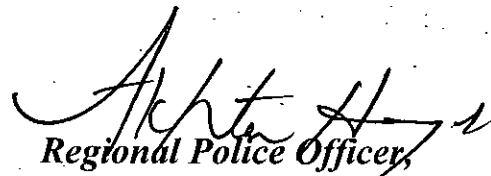
- 1. District Police officer, Buner**
 - 2. Inspector general of Police Khyber Pakhtunkhwa Peshawar.**
 - 3. Regional Police Officer, Malakand Region at Saidu Sharif Swat.**
- Respondents**

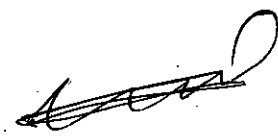
AFFIDAVIT:

We, the above respondents do hereby solemnly affirm and declare on oath that the reply / comments submitted by the respondents are correct to the best of our knowledge and belief, nothing has been kept secret from this Honorable Court.

Deponent


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


**Regional Police Officer,
Malakand Region at Saidu Sharif Swat
(Respondents No. 3)
Regional Police Officer,
Malakand, at Saidu Sharif Swat.**


**District Police Officer,
Buner
(Respondent No. 1)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 694/2016

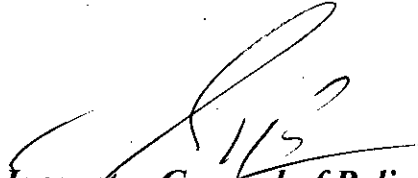
**FC Fazal Subhan No. 647 presently posted at Traffic Staff Police Buner
..... Appellant**


VS


- 1. District Police officer, Buner**
- 2. Inspector general of Police Khyber Pakhtunkhwa Peshawar.**
- 3. Regional Police Officer, Malakand Region at Saidu Sharif Swat.**
..... Respondents

AUTHORITY LETTER

We the above Respondents do hereby authorize and allow Mr. Nowsherawan SI Legal, Buner to attend the Court on each date fixed on our behalf and on belief and do whatever is needed in the Court.



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


**Regional Police Officer,
Malakand Region at Saidu Sharif Swat
(Respondents No. 3)
Regional Police Officer,
Malakand, at Saidu Sharif Swat.**


**District Police Officer,
Buner
(Respondent No. 1)**

ORDER,

Constable Fazal Subhan No. 647, is hereby promoted as offg: C-II
Head Constable BPS-7 purely on temporary basis till further order on the
basis of excellent performance during the war against militancy ^{of past insurgency} with
immediate effect.


DISTRICT POLICE OFFICER,
BUNER

OB No. 100

Dated: 11-07 /2013

(5)

COMMITTEE REPORT/RECOMMENDATION

The committee constituted by District Police Officer, Buner vides Office order Endst: No. 6976/EC, Dated 15.06.2015 regarding the over and above promoted Head Constables against the 10% quota. In this connection we the following committee members have checked all the service record of C-II Head Constables and relevant documents have also been checked. According to strength of this District total 22 Head Constables are required to be on list C-II but there are 27 Head Constables on list C-II against the 10% quota which is violations of Rules regulation and standing order. Five Head Constables promoted over and above are required to be reverted as the same vacancies are the right of B-I/Lower School passed constables. Detail of service record of all the Head Constables are tabulated below.

S.No	Name and No	D.O Birth	D.O Enlist	D.O Promotion as C-II HC	Course qualified
1	HC Taj Muhammad No. 186	29.09.1960	01.10.1979	01.10.1991	Drill
2	HC Sher Wali No. 933	16.08.1961	01.09.1981	10.10.1998	Drill
3	HC Sher Muhammad No. 1056	16.08.1962	01.09.1981	20.01.2001	Drill
4	HC Afareen No. 96	01.02.1960	10.11.1980	10.06.2002	Drill
5	HC Feroz Shah No. 98	30.08.1958	09.09.1979	08.12.2005	SC/PC
6	HC Muhammad Hanif No. 177	24.02.1972	09.04.1991	08.10.2008	Proficien/BRC
7	HC Bakht Shad No. 315	22.02.1966	11.08.1991	25.07.2009	Nil
8	HC Hawal Dad No. 94	13.09.1968	01.07.1989	29.10.2009	Nil
9	HC Muhammad Iqbal No. 403	01.01.1970	11.08.1991	08.12.2009	Proficient / Traffic /BRC
10	HC Tariq Iqbal No. 255	01.04.1967	01.04.1991	16.12.2009	Drill
11	HC Bakhti Rahman No. 166	04.05.1959	16.11.1982	26.02.2010	GAS/SC/PC
12	HC Qais Khan No. 400	16.03.1969	22.10.1992	26.02.2010	Weapon/SC/PC

Note: 1. The ...
2. Always quote ...

13	HC Gul Zainin No. 178	13.11.1961	01.12.1981	26.02.2010	Weapon/SC
14	HC Muhammad Gulab No. 384	15.01.1972	11.08.1991	24.01.2011	Proficient Traffic
15	HC Rahim Jalal No. 12	20.03.1966	27.03.1986	22.02.2011	Weapon /SC
16	HC Wazir Zada No. 334	12.11.1961	01.12.1980	22.02.2011	Weapon/SC/
17	HC Ihtisham Ul Haq No. 142	12.01.1982	11.12.2003	22.02.2011	Drill/LSC
18	HC Abdul Shakoor No. 160	15.06.1973	31.12.1996	22.02.2011	BRC/BDC/C
19	HC Rizwan Ullah No. 89	21.06.1957	29.06.1976	22.02.2011	Nil
20	HC Umar Rahman No. 673/MT	21.03.1977	01.04.2008	22.02.2011	C.T.C (Karia) Driver
21	HC Abdul Shakir No. 677/MT	21.06.1977	01.04.2008	08.01.2012	Nil
22	HC Ali Zada No. 715	10.03.1982	21.10.2004	31.05.2012	Weapon/BRC LSC
23	HC Maizar Shah No. 450	20.03.1977	06.02.2002	27.06.2012	Drill /BRC
24	HC Sajid Ali No. 598	10.04.1978	21.10.2004	27.06.2012	Drill /LSC
25	HC Amir Abdullah No. 443	20.01.1976	03.01.2005	21.05.2013	Drill
26	HC Fazal Subhan No. 647	15.12.1984	01.02.2008	11.07.2013	Weapon /CD

On perusal of record, it has been found that HCs at S.No. 17, 22 and 24 have been selected for Lower School Course and as per Standing Order No 03/2011 they have qualified B-I examination and thereafter selected for Lower School Course. Therefore, the afore mentioned three (03) Head Constables promoted against the 10% quota are required to be reverted to the rank of Constables, because they will be promoted to the rank of Head Constables against 90% of the total available seats of Head Constables in a District after passing Lower School Course/Merit.

Head Constables mentioned at S.No.20 and 21 have been promoted as Head Constable but they have in MT Staff and the MT Staff is a separate sanction in the District i.e. 03 Head Constables upon which other belongs from MT Staff have been promoted in the past therefore, Head Constables mentioned at S.No. 20 and 21 is also required to be reverted.


Head Constable Fazal Subhan mentioned at S.No. 26 has been promoted on the basis of Good Performance by the then DPO but he did not fulfill the required criteria for promotion as C-II Head Constable. However HC Fazal Subhan No. 647 has not completed his offg. period therefore he is also recommended to be reverted.

In case of reversion of 06 Head Constables, 05 Constables will be promoted from list C-I or 02 Head Constables received from Elite Force will be adjusted and owing to this, both the list will be regularized as per Rules and Regulations.

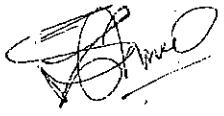
It is worth mentioning here that Head Constable at S.No. 23 and 25 is also required to be reverted to his substantive rank in this stage as they had been promoted without fulfill the required criteria and will be promoted in merit accordingly.

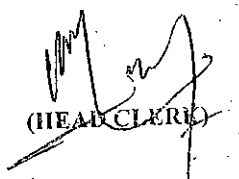

It is pertinent to mentioned here that 01 vacancy of Head Constable is required to be kept reserved for promotion of Constable as per PG-4.

Submitted for kind perusal and approval, please.

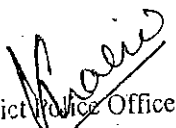

(DSP HQRs)


(ESSTT: CLERK)


(OASI)


(HEAD CLERK)

(ENQUIRY CLERK)

AGREED


District Police Officer,
Baher

ORDER

Consequent upon the recommendation of the Committee / constituted vide this Office 6967/E Dated 15.06.2015, the following Head Constables over and above from the sanctioned strength of this District Police i.e. 10% of the sanctioned strength of Head Constable are hereby reverted to their substantive ranks of Constable BPS-5 with immediate effect and the names of reverted Head Constable from Sr. No. 1-4, 06 and 08 are also removed from List-C-II, however, the names of reverted Head Constable at Sr. No. 5 and 7 shall be intact on List C-II.

1. Const: Ikhtishamul Haq No. 142
2. Const: Umar Rehman No. 673
3. Const: Abdul Shakir No. 77
4. Const: Ali Zada No. 715
5. Const: Maizar Shah No. 50
6. Const: Sajid Ali No. 598
7. Const: Amir Abdulliah No. 443
8. Const: Fazal Subhan No. 147

(Signature)
(SYED KHALID HAMDANI)
PSP

District Police Officer,
Buner

OB NO 61

Dated 13/7/2015

From: The District Police Officer,
Buner

To: The Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

No. 4115 /E: Dated Daggar the 22/6/2016

Subject: - C-I / C-II HEAD CONSTABLES

Memo:-

Kindly refer to CPO KPK Peshawar Signal No. 6177-6207/E-IV,
dated 20.06.2016.

The requisite information is submitted on the following prescribed
format as desired.

Sanctioned strength of District	90% quota of C-I HCs.	Available C-I HCs	10% quota of C-II HCs	Available C-II HCs
219	197.1	197	21.9	22

By name list of C-II Head Constables of this District is also
enclosed herewith as desired, please

Enclosed (01)

[Signature]
District Police Officer,
Buner

No. 4115 /E,

Copy of the above is submitted to Regional Police Officer,
Malakand at Saidu Sharif Swat with reference to his office Endst No. 5405-10/E, dated
21.06.2016, please.

[Signature]
District Police Officer,
Buner

LIST OF C-II HEAD CONSTABLES DISTRICT BUNER

S.No	Name and No	Date of promotion as C-II HC	Justification / criteria
1	Taj Muhammad No. 186	01.10.1991	On the basis of qualifying Drill Course. He also remained posted as ASI/PC for three years in the light of standing order No. 01/2006 from 07.12.2004 to 08.04.2008
2	Sher Wali No. 933	10.10.1996	On the basis of good performance
3	Painda Shah No. 1056	27.05.2000	On the basis of qualifying Section Commander and platoon commander courses. He also remained posted as ASI/PC for three years in the light of standing order No. 01/2006 from 29.08.2012 to 28.08.2015
4	Afsareen No. 96	10.06.2002	On the basis of Drill Course
5	Feroz Shah No. 98	08.12.2005	On the basis of qualifying Section Commander and platoon commander courses. He also remained posted as ASI/PC for three years in the light of standing order No. 01/2006 from 08.04.2008 to 28.08.2012
6	Muhammad Hanif No. 177	08.10.2008	As per verbally order of the then DIG Malakand On the basis of Good performance in case FIR No. 436, dated 16.09.2008 u/s 5 Exp: Sub act /7ATA, PS Pir Baba
7	Bakht Shad No. 315	25.07.2009	On the basis of good performance
8	Hawal Dad No. 94	29.10.2009	On the basis of good performance
9	Muhammad Iqbal No. 403	08.12.2009	As per approval of the then DIG Malakand
10	Tariq Iqbal No. 255	16.12.2009	As per approval of the then DIG Malakand on the basis of Drill Course
11	Gul Zamiri No. 178	26.02.2010	As per approval of the then DIG Malakand on the basis of weapon and section commander course
12	Bakhti Rahman No. 166	26.02.2010	As per approval of the then DIG Malakand on the basis Tear Gas, section commander and platoon commander course
13	Qais Khan No. 400	26.02.2010	As per approval of the then DIG Malakand on the basis of weapon, section commander, platoon commander course
14	Abdul Shakoor No. 160	22.01.2011	As per approval of the then DIG Malakand on the basis of performance
15	Muhammad Gulab No. 384	24.01.2011	As per approval of the then DIG Malakand on the basis of performance
16	Rizwan ullah No. 89	22.02.2011	As per approval of the then DIG Malakand on the basis of performance
17	Wazir Zada No. 334	22.02.2011	As per approval of the then DIG Malakand on the basis of weapon, section commander and platoon commander course
18	Rahim Jalal No. 12	22.02.2011	As per approval of the then DIG Malakand on the basis of weapon, section commander course
19	Baghistan No. 210	09.10.2015	As per approval of worthy RPO Mkd Swat in the light of standing order No. 6/2014.
20	Ajamaleen No. 91	09.10.2015	As per approval of worthy RPO Mkd Swat in the light of standing order No. 6/2014.
21	Akbar Hussain No. 101	09.10.2015	As per approval of worthy RPO Mkd Swat in the light of standing order No. 6/2014.
22	Ali Hassan No. 264	09.10.2015	As per approval of worthy RPO Mkd Swat in the light of standing order No. 6/2014.

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. 694/2016

Fazal SubhanAppellant.

V E R S U S

DPO Bunir and others.....Respondents.

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth:

Preliminary Objections:

1. Para No. 1 to 7 of the comments are Incorrect.

FACTS:

Para No.1, needs no comments.

Para No.2 to the extent promotion of the appellant of above the rules is incorrect.

Para No.3 is incorrect because appellant was reverted without any reason and one namely Shakoor was promoted on the strength of same FIR and performance but is still serving on same position which clearly showing the ill intention of appellant.

Para No.4 is incorrect because the appellant was reverted without any reason and that too without giving him opportunity of hearing and

10

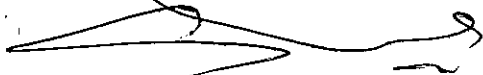
reversion of rank is major penalty so they should have to give notice of the same to appellant .

Para No.5 of the reply is incorrect, as no legal procedure was adopted in the case in hand. Because no show cause notice was served on appellant nor any other formalities were observed while imposing major penalty on appellant.

Grounds:

- A. Incorrect.
- B. Incorrect.
- C. Incorrect.
- D. Incorrect, already explained in Para No. 4 reply on facts.
- E. Para No. E to F are Incorrect.

It is, therefore prayed that on acceptance of this rejoinder this Hon'ble Tribunal may be pleased to accept the appeal as prayed for and the respondents be burdened with heavy cast.

Through  Appellant
Shams-ul-Hadi
Advocate High Court,

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 694/2016

Fazal SubhanAppellant.

V E R S U S

DPO Bunir and others.....Respondents.

AFFIDAVIT

I, **Shams-ul-Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



A D V O C A T E

