13.11.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Vide common judgment of today of this Tribunal placed on file, of service appeal No. 49/2017 filed by Ziarat Gul, the present service appeal is dismissed without costs with the directions to the respondents that the appellants shall not be kept deprived of their genuine due rights of promotion on the basis of their seniority and qualification. If need be special training/course be arranged for the appellants. Parties are left to bear their own costs. File e consigned to the record room.

(Muhammad Hamid Mughal)
Member

(Hussain Shah)
Member

ANNOUNCED
13.11.2019

16.09.2019 Clerk to counsel for the appellant present. Addl: AG alongwith Mr. Zubair Ali, ASI for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourn. To come up for arguments on 15.10.2019 before D.B.

Member Member

15.10.2019 Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Shoaib Ali ASI present. Arguments heard. To come up for order on 29.10.2019 before D.B.

Member Member

29.10.2019 Due to incomplete bench the case is adjourned. To come up for the same on 13.11.2019 before D.B.

Reader

06.05.2019 Mr. Rizwanullah, Advocate is present for Mr. Khushdil Khan, Advocate for appellant. Addl: AG alongwith Mr. Zewar Khan, SI for respondents present.

States that learned counsel for the appellant has proceeded to Islamabad for medical checkup. Adjournment is therefore sought.

Adjourned to 21.06.2019 for arguments before D.B.

Member

Chairman

21.06.2019 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Zewar Khan SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on18.07.2019 before D.B.

Member

Member

18.07.2019 Clerk to counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Clerk to counsel for the appellant requested for adjournments as counsel for the appellant has proceeded to Saudi Arabia to perform hajj. Adjourned. To come up for arguments on 16.09.2019 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

10.10.2018 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Zaiwar Khan S.I legal for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.11.2018 before D.B.

Member Member

13.11.2018 Due to retirement of Hon'able Chairman, the Tribunal is defunct. Therefore, the case is adjourned for the same on 01.01.2019 before D.B.

Reader

01.01.2019 Clerk to counsel for the appellant present. Mr. Zewar Khan, SI(Lgal) alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment, as counsel for the appellant is not available today. Granted. Case to come up for arguments on 13.02.2019 before D.B.

(Ahmad Hassan) (M. Hamid Mughal)
Member Member

13.02.2019 Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 22.03.2019 before D.B.

(Hussain Shah) (Muhammad Amin Khan Kund))
Member Member

01.03.2018 Clerk to counsel for the appellant and Addl: AG alongwith Mr. Zewar Khan, SI (Legal) for respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 07.05.2018 before D.B.

Member Chairman

07.05.2018 Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 20.07.2018 before D.B.

Reader

20.07.2018 Due to engagement of the undersigned in judicial proceeding before S.B further proceeding in the case in hand could not be conducted. To come on 14.09.2018 before D.B.

Member(J)

14.09.2018 Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Zaiwar Khan S.I legal for the respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourned. To come up for arguments on 10.10.2018 before D.B

(Hussain Shah) Member

(Muhammad Hamid Mughal) Member

13.07.2017 Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Zewar Khan, SI(Legal) for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.08.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Ahmad Hassan)
Member

25.08.2017 Clerk to counsel for the appellant and Addl:AG for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 4.12.17

(Gul Zeb Khan)
Member

(Ahmad Hassan)
Member

04.12.2017 Junior to counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Zewar Khan, S.I (Legal) for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.01.2018 before D.B.

Member
(Executive)

Member
(Judicial)

1233/2016

08.02.2017 Clerk counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents not submitted. Learned Additional AG requested for further time for submission of written reply. To come up for written reply/comments positively on 16.03.2017 before S.B.

(ASHFAQUE TAJ)
MEMBER

16.03.2017 Counsel for the appellant and Mr. Zaver Khan SI (Litigation) alongwith Addl: AG for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 8/05/2017 before D.B.

(AHMAD HASSAN)
MEMBER

08.05.2017 Clerk of the counsel for appellant present. Mr. Muzaffar Khan, S.I (legal) alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Rejoinder submitted. Due to strike of the bar learned counsel for the appellant is not available today. Adjourned for arguments to 17.07.2017 before D.B.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

19.12.2016 Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, appellant has impugned order dated 24.06.2016 vide which appellant was reverted to his substantive rank of Constable against which appellant filed departmental appeal which was rejected by the appellate authority on 04.10.2016 hence, the instant service appeal.

Since the instant appeal is within time and matter required further consideration of this Tribunal therefore, the same is admitted for regular hearing, subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 16.01.2017 before S.B.

Member

16.01.2017 Clerk counsel for appellant and Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents not submitted. Learned Additional AG requested for adjournment on behalf of respondents. Adjourned. To come up for written reply/comments on 08.02.2017 before S.B.

(ASHFAQUE TAJ)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1202/**2016**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge or Magistrate
1	2	3
1	02/12/2016	The appeal of Mr. Zubair Khan resubmitted today by Mr. Khushdil Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 19-12-16 MEMBER

The appeal of Mr. Zubair Head Constable Belt No.675 office of the DPO Dir Lower at Timergra received today i.e. on 01.12.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures of the appeal may be attested.
2- Page No. 13, 16, 17 and 19 to 23 of the appeal are illegible which may be replaced by legible/better one.
3- Page no. 1 of the memo of appeal is missing.

No. 2018 /S.T,

Dt. 2/12/2016

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

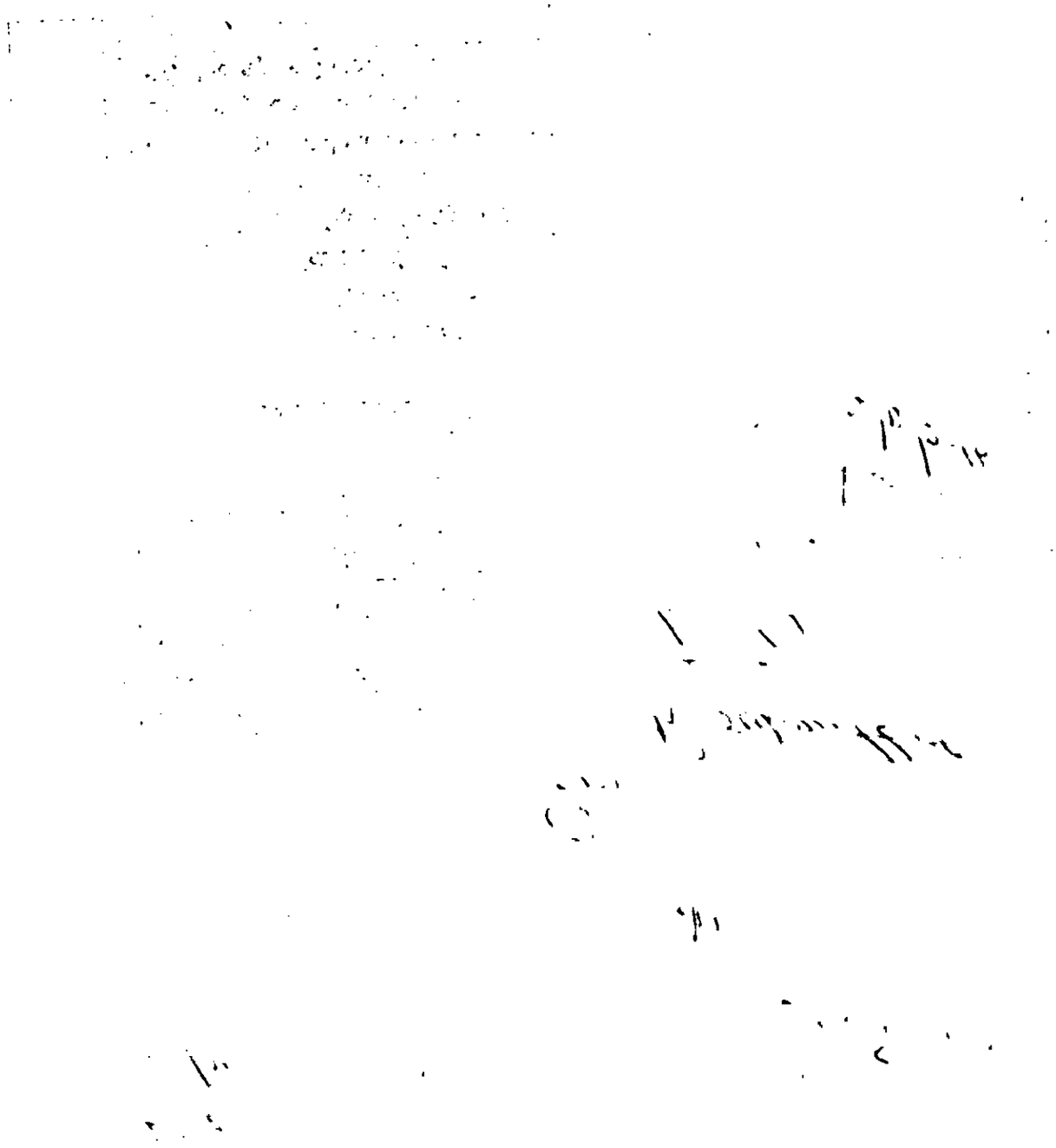
Mr. Khushdil Khan Adv. Pesh.

Sir,

Resubmitted

Thanks

2/12/2016



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1202 /2016

Zubair,
Head Constable, Belt No. 675,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

The District Police Officer,
Dir Lower at Timergara & others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Copy of the office order thereby the name of appellant was brought on promotion list C-II.	10-07-2011	A	0-5
3.	Copy of the Standing Order No. 6/2014.	14-09-2014	B	6-7
4.	Copy of office order thereby appellant was promoted to the rank of Head Constable.	20-05-2013	C	0-8
5.	Copy of the impugned order thereby appellant was reverted to lower rank of constable.	24-06-2016	D	9-10
6.	Copy of Departmental Appeal filed before respondent No. 2.	24-07-2016	E	0-11
7.	Copy office order thereby appeal of appellant was rejected and received in the office of respondent No. 1 on 03-11-2016.	04-10-2016	F	0-12
8.	Copy of the judgment passed in Service Appeal No. 941/2003 with the order dated 08-06-2006.	29-11-2005	G	13-27
9.	Copy of judgment passed in Service Appeal No. 397/2006.	20-10-2006	H	28-32
10.	Wakalat Nama			

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of Pakistan

Dated: 29 /11 /2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1202 /2016

Zubair,
Head Constable, Belt No. 675,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

1. The District Police Officer,
   Dir Lower at Timergara.

2. The Regional Police Officer,
   Malakand Range, at Saidu Sharif, Swat.

3. Inspector General of Police,
   Khyber Pakhtunkhwa,
   Central Police Office, Peshawar.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 24-06-2016 THEREBY APPELLANT WAS REVERTED TO HIS SUBSTANTIVE RANK OF CONSTABLE AGAINST WHICH HE FILED DEPARTMENTAL APPEAL ON 24-07-2016 BEFORE THE RESPONDENT NO. 2 WHO FILED THE SAME VIDE LETTER DATED 04-10-2016 WHICH WAS RECEIVED IN THE OFFICE OF RESPONDENT NO. 1 ON 03-11-2016.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. That appellant has initially inducted in the respondent department as Constable in the year 1983 and by an order dated

10-07-2011 **(Annexed-A)** his name was brought on promotion list C-II with immediate effect in pursuance of Standing Order No. 6 of 2014 **(Annexed-B)**. Later on he was promoted as Head Constable (BPS-7) by an office order dated 20-05-2013 **(Annexed-C)** on its own merit.

2. That on 24-06-2016 **(Annexed-D)** the respondent No. 1 issued an office order vide OB No. 698/EC thereby appellant was reverted to lower rank of Constable without cogent reasons against which appellant filed departmental appeal on 24-07-2016 **(Annexed-E)** which was rejected on 04-10-2016 **(Annexed-F)** and copy of which was received in the office of respondent No. 1 on 03-11-2016.

Hence the present appeal is submitted on the following amongst other grounds:-

Grounds:

A. That when the appellant has crossed the age limit prescribed for A-1/B-1 examinations and older in age, his name was placed on promotion list C-II and subsequently he was promoted to the rank of Head Constable under the rules. Thus the impugned order thereby he was reverted to his lower rank of Constable is illegal, without lawful authority and unjustified and liable to be set aside.

B. That the appellant in the same capacity served the force for more than 4 years efficiently, honestly and devotedly but he was reverted in colourful manner and against the prescribed procedure enunciated in the rules. Thus the impugned order is illegal, unjustified, unfair and not tenable under the rules.

C. That the principle of locus poenitentiae is applicable in the case of appellant because the order was acted upon, implemented and has got finality which cannot be rescinded at a single stroke of pen except adhering to law.

D. That appellant was neither served with any notice nor he was given any opportunity of defence and he was condemned unheard thus the impugned order is unlawful, invalid being violative of the principle of natural justice.

E. That this Hon'ble Tribunal in similar circumstances has allowed the service appeal No. 941/2003 **(Annexed-G)** along with other identical appeals against the respondent department and the decision was duly implemented vide office order 08-06-2006. This judgment was further adopted by this Hon'ble Tribunal in other like cases vide the service appeal No. 397/2006 dated 20-10-2006 **(Annexed-H)**. Thus the case of appellant is at par with the above referred cases and appellant is entitled to the same treatment.

F. That respondent No. 2 being appellate authority has not acted in accordance with law and rules on subject and filed the departmental appeal of the appellant without cogent reasons which is not sustainable under the law and liable to be set aside.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order of reversion of appellant to lower rank of Constable and appellate order may kindly be set aside and his rank and status of Head Constable may graciously be restored with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Appellant

Through

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 29 / 11 /2016

Annex: "A"

P: 5

ORDER.

The name of Constable Zubair No.675 is hereby brought on promotion List C-II with immediate effect.

OB No. 242

Dated 10-7- /2011.

District Police Officer,
Dir Lower at Timergara.

ATTESTED

Annexure "B"

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

P: 6

STANDING ORDER NO. 6/2014

Promotion of Constables as C-II Head Constables

This Standing Order is issued under Article 10(3) of Police Order 2002 in pursuance of the Police Policy Board decision taken in its 11th meeting held on 21st August 2014.

2. Aim:- This Standing Order aims to streamline and standardize the criteria and procedure of placement of Constables on promotion List C-II and their subsequent promotion as C-II Head Constables.

3. **Placement on C-II List:-** Those Constables who have crossed the age limit prescribed for A-1/B-1 Exams without qualifying the same may be considered for placement on promotion List C-II.

4. A Selection Board at the District level, constituted by CCPO or RPO, as the case may be, and consisting of the DPO concerned (SSP Operations in case of District Peshawar) and two other officers not less than the rank of SP, may consider Constables for placement on C-II list as per the following criteria:

a. Outstanding performance.
b. Good general reputation.

5. **Procedure:-** Seniority of Constables placed on List C-II shall be determined from the date of entry into the promotion List C-II.

6. The Selection Board constituted under section 4 above may recommend to CCPO or RPO, as the case may be, Constables placed on C-II List for promotion as Head Constables in accordance with the following criteria:

a. Seniority-cum-outstanding performance.
b. Good general reputation.

7. After approval of CCPO or RPO, as the case may be, the DPO (SSP Operations in case of Peshawar) shall promote such Constables as C-II Head Constables.

8. **Promotion of Constables as C-II Head Constables on reaching superannuation:-** A large number of Constables retire without being promoted as Head Constables. Such Constables deserve to be promoted as C-II Head Constables, before their superannuation, in recognition of their long-standing services for the Police department.

8.1 The criteria and procedure given in section 3 to 7 above shall not apply to the promotion of Constables promoted as C-II Head Constables on superannuation. Instead,

such constables shall be promoted, in line with the IGP Policy Guidelines No. 04/2013 dated 5th December 2013, according to the following procedure:

a) The District Head of Police or the Head of a Police Unit, as the case may be, shall place the name of a Constable on promotion List C-II on the first day of the last six months before the date of his superannuation.

b) Once the name of a constable has been placed on promotion List C-II under section 8.1 (a), the District Head of Police or the Head of a Police Unit, as the case may be, shall promote the Constable as Head Constable (C-II) on the first day of the last three months before the date of his superannuation.

c) **This procedure shall not apply to constables going on LPR.**

d) The District Head of Police or the Head of Police Unit, as the case may be, shall maintain a list of all Constables well before their superannuation.

9. Only upto 10% of the vacancies of Head Constables in a District or Unit, as the case may be, shall be filled thrqugh promotion from List C-II. In any case, such promotions shall not exceed 10% of the total vacancies of Head Constables in a District or Unit.

10. **Power to remove difficulties:-** If any difficulty arises in giving effect to this order, the Provincial Police Officer may by notification make such provisions as deemed appropriate.

11. **Amendment:-** All previous Standing Orders on the subject, to the extent of the provisions of this order, shall stand amended.

(NASIR KHAN DURRANI)
Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar

No:- 428-91/GB dated Peshawar the 14th September 2014

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

1. All Heads of Police Offices in Khyber Pakhtunkhwa;
2. PRO to PPO;
3. Registrar CPO.

ATTESTED

(MUBARAK ZEB) PSP
DIG Headquarters
Khyber Pakhtunkhwa
Peshawar

Annex: "C"
P: 8

ORDER:-

Constable Zubair No. 675 on promotion List C-II is hereby promoted as Head Constable BPS-07 (5800-320-15400) on adhoc basis in existing vacancy with immediate effect and till further order. However he will not claim any seniority of this promotion on his colleagues.

District Police Officer,
Dir lower at Timergara
(Karim)

OB No. 638
Dated 20-5-013

ATTESTED

Annex "D"
P: 9

un lawfully promoted and reverted to the rank

OFFICE OF THE DISTRICT POLICE OFFICE DIR LOWER AT TIMERGARA.

ORDER.

In compliance with the directives CPO Peshawar Letter No.S/2262-2312/16, dated 21-03-2016, the following committee was constituted: -

1- Mr. Aziz Ur Rahman SP Investigation Dir Lower (Chairman).
2- Mr. Aqiq Hussain DSP HQrs Dir Lower. (Member)
3- Mr. Rashid Ahmad Inspector Legal Dir Lower. (Member)

The committee scrutinized the promotion cases under purview of Supreme Court decisions as quoted in PLD 1992 SC 207,2000 SCMR 207 and 1998 SCMR 882 ref: 2004 PLC (C.S) 392(A) which describes that when a Police Official had performed some extra ordinary act, he could be rewarded with cash or other material award, but no Police authority could be allowed to disturb the seniority of his colleagues, because seniority was a vested right Policy letter whereby out of turn promotion was granted to civil servants subsequently was withdrawn even otherwise any such letter could not supersede or even substitute the substantive legislation available in form of Police Rules, 1934, which did not allow any out of turn promotion. Illegal orders once passed would not come irrevocable and a close transaction. No perpetual right could be derived on the basis of such an order. Public authority which could pass an order was empowered to rescind it. Principle of locus poenitentiae as claimed by civil servant was not attracted in their case, in circumstances. Contention that civil servant had been condemned un-heard as no show –cause notice was issued to them before reverting them, was repelled because civil servant was who were not entitled to out of turn promotion could not seek protection of principle of natural justice. Civil servants had also not been subjected to discrimination. In absence of any legal sanction in promoting civil servants out of turn, civil rightly reverted.

In light of Police Rules 13.1, the following Head Constables have got out of turn promotion and they were not eligible for it.

Therefore, on the recommendation of committee coupled with the decisions of august Supreme Court of Pakistan, they are hereby reverted as per detail mentioned against their names : -

S.No	Name & rank	
1	HC Mumtaz Khan No.11	un lawfully promoted and reverted to the rank
2	HC Gul Habib No.444	un lawfully promoted and reverted to the rank
3	HC Razi Shah No.501	un lawfully promoted and reverted to the rank
4	HC Muhd: Azim NO.1054	un lawfully promoted and reverted to the rank
5	HC Muhd: Zubair NO.675	un lawfully promoted and reverted to the rank
6	HC Said Zaman No.712	un lawfully promoted and reverted to the rank
7	HC Sarzamin NO.89	un lawfully promoted and reverted to the rank
8	HC Hamim Ul Hakim No.33	un lawfully promoted and reverted to the rank
9	HC Hamad Ali NO.608	un lawfully promoted and reverted to the rank
10	HC Fahim Khan No.217	un lawfully promoted and reverted to the rank
11	HC Saif Ur Rahman No.81	un lawfully promoted and reverted to the rank
12	HC Ayub Khan No.1048	un lawfully promoted and reverted to the rank
13	HC Said Rahman No.235	un lawfully promoted and reverted to the rank
14	HC Ziarat Gul No.118	un lawfully promoted and reverted to the rank

ATTESTED

	HC Aman Ur Rahman No.882	, un lawfully promoted and reverted to the rank
7	HC Zafar Ali No.780	un lawfully promoted and reverted to the rank
8	HC Hama yoon No.579	, un lawfully promoted and reverted to the rank
9	HC Hazrat Said No.688	un lawfully promoted and reverted to the rank
10	HC Khurshid No.34	un lawfully promoted and reverted to the rank
21	HC Azam Khan No.1291	un lawfully promoted and reverted to the rank
22	HC Sajjad Ahmad No.1162	un lawfully promoted and reverted to the rank
23	HC Rab Nawaz Khan No.197	un lawfully promoted and reverted to the rank
24	HC Mukhtair Ali No.1234	, un lawfully promoted and reverted to the rank
25	HC Ali Rahman No.828	, un lawfully promoted and reverted to the rank
26	HC Nizam Uddin No.389	, un lawfully promoted and reverted to the rank
27	HC Umar Farooq No.912	, un lawfully promoted and reverted to the rank
28	HC Muhd: Nawaz No.1877	, un lawfully promoted and reverted to the rank
29	HC Muhd: Ali Shah No.1408 /UC6	, un lawfully promoted and reverted to the rank

District Police Officer,
Dir Lower at Timergara
22/6

OB No. 698 /EC,
Dated 24/6 /2016.

No._____/EB, Dated Timergara, the _____/2016.

Copy Submitted to the Regional Police Officer, Malakand Swat for favour of information, please.

ATTESTED

بخدمت جناب RPO صاحب [illegible]

[illegible]

Annex "E"

11

درخواست برائے بحالی عہدہ [illegible] دوبارہ بحال [illegible]

جناب عالی!

گزارش ہے کہ سائل محکمہ پولیس ضلع [illegible] میں کنسٹیبل [illegible]

1983ء کا بھرتی شدہ ہے۔ سائل نے نہایت ایمانداری، فرض شناسی

سے فرائض منصبی انجام دی ہے۔ سائل دوران ڈیوٹی [illegible] گرفتاری

مجرمان اشتہاری [illegible] دوران [illegible] کی علاج [illegible]

کے بعد [illegible] زخم [illegible] ہے۔ [illegible]

35 مورخہ 8/1988 جرم 13 / 307/353/34PPC تھانہ [illegible]

محکمہ OB 638 / 30-5-2013 [illegible] سائل کو بحال

OB 698 / 24-6-2016 [illegible] احکامات [illegible] سائل نے بحال

کیا [illegible] گئی ہے۔

جناب والا۔ سائل 1983ء کا بھرتی شدہ ہے۔ نہایت ایمانداری اور

فرض شناسی سے فرائض منصبی انجام دیے ہیں [illegible]

[illegible] سائل [illegible]

[illegible] لہٰذا [illegible] بالا وجوہات [illegible]

سائل کو دوبارہ عہدہ [illegible]

[illegible] آپ کا [illegible]

عین نوازش ہوگی۔

مورخہ 24/7/2016

العارض

تابعدار کنسٹیبل نمبر 675 [illegible] پولیس لائن [illegible]

Sir, Forwarded [illegible]

[illegible] -016

ATTESTED

Forwarded

RI [illegible] 26-7-016

Sir, Forwarded P

DSP HQR 26-7-16

Annex: F

P: 12

Office of the Superintendent of Police Dir Lower Timergara
6596
3-11-2016

From : **The Regional Police Officer, Malakand, at Saidu Sharif, Swat.**

To : **The District Police Officer, Dir Lower.**

No. 8304 **/E, dated Saidu Sharif, the** 04-10- **/2016.**

Subject: **APPLICATION.**

Memorandum:

Please refer to your office memo No. 41138/EB, date 19/09/2016.

Applications of the following Officials of Dir Lower District f restoration their ranks have been examined by Worthy Regional Police Office Malakand and filed:-

1. FC Hussain Ahmad No. 79
2. FC Muhammad Zubair No. 675
3. FC Nizam Ud Din No. 389

(OFFICE SUPDT)
For **Regional Police Officer,**
Malakand, at Saidu Sharif Swat

Fc/OHC
Raw information

ATTESTED

Annex "G" Better Copy 1.

P-13

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 941/2003

Date of institution: 22.09.2003
Date of decision: 29.11.2005

Jumdad Khan, Ex-SI/Pc, FRP HQrs, Peshawar .....Appellant

VERSUS

1. Deputy Commandant, FRP, Peshawar.
2. Commandant, FRP, NWFP.
3. I.G.P, NWFP, Peshawar .....Respondents

Mr. Saadullah Khan Marwat, Advocate..... For Appellant
Mr. Zaffar Abbas Mirza, Acting Govt. Pleader..... For respondents

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ABDUL KARIM QASURIA ..... MEMBER
GHULAM FAROOQ KHAN..... MEMBER

JUDGMENT

ABDUL KARIM QASURIA, MEMBER:- This judgment will dispose off the appeal filed by Jamdad Khan appellant against the order dated 07-06-2003 of Deputy commandant FRP Peshawar, whereby he was reverted from the post of SI/PC (B-14) to the rank of Head Constable (B-7) in the FRP, Peshawar. The appellant has prayed that the impugned order may be set aside and he be re-instated in service with full back benefits.

ATTESTED

P.14

2. Brief facts of the case as narrated in the memo of appeal are that the appellant was initially appointed in the Force on 02-12-1979. He was promoted to the rank of Head Constable on 06-06-1987. He further promoted to the rank of S.I. on 04-06-1982. He was also granted selection grade. Without any reason and justification when the appellant was at the verge of retirement, he was reverted from the rank of S.I. to the rank of Head Constable vide the impugned order dated 07-06-2003 against which the appellant submitted a representation before respondent No.2 which met with dead response till date. The Force was brought on regular basis by the Provincial Government.

3. The grounds of appeal are that after the lapse of statutory period of 90 days, the appellant preferred the present appeal before the Tribunal challenging the impugned order as illegal, without lawful authority and having been passed in violation of the existing laws on the ground that the said post was still in existence. He was reverted straightaway from BS-14 to BS-7 while usually reversion order has to be made step by step. Selection Grad (B-9) as also recalled from him for no reason. The appellant was also promoted to the rank of SI/PC, being eligible, qualified and fit for the said post and he in the same capacity served the Force for 10/11 years but he reverted in colourful manner and against the prescribed procedure enunciated in the rules. In the years 2000, FRP was brought on permanent and regular basis and Standing Order No. 3 was not applicable in the case of

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Not punishment and no proceedings were required to be initiated against the appellant under the E&D Rules.

6. The appellant has submitted his replication in rebuttal. According to replication the appeal is well within time. No lacuna has been pointed out. No such party has been pointed out as to who was necessary party and the parties impleaded in the appeal are quite sufficient for the purpose. The appellant has a cause of action as not only he was reverted from the higher rank to lowest rank but his monthly pay was also reduced from Rs. 11,000/- to Rs.4,000/-. No element of unclean hands has ever been pointed out. The Tribunal has the exclusive jurisdiction in the matter.

7. On factual it has been submitted that every change in pay scale, whether temporary, officiating, stop gap arrangements, acting charge basis, etc amounts to promotion as per the judgments of the Hon'ble Supreme Court of Pakistan. Even grant of selection grade also amounts to promotion. The appellant was never served with any notice for the purpose. Till date, no rejection order has been received by the appellant. Even the same is not attached with the copy submitted before the Tribunal what to speak of supply of copy to the appellant. Standing order No. 3 has no legal force no there exists any difference in the orders of promotion of the appellant. The promotion of the appellant was on merit and is not open to fire. Apart form the above, in orders dated 11-04-2003 and 07-06-2003 numerous officials were promoted like appellant but they have not been reverted and are still serving as such. In order dated 11-05-1994, Khurshid Anwar SI/PC is still serving as promotee and has not been reverted and this order has been kept secret. In order dated 28-01-1998 at S. No. 1 and 2 Ali Hussain and Syed Asghar Ali are still serving as promotee ASIs, Riazuddin, Haq Dad Kha, Fazal Hussain, etc were given promotions on the same basis and retired as Inspectors. Some Inspectors were given warning of reversion but they have not been reverted as yet.

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8. Arguments heard and record perused.

9. At the time of hearing, the Tribunal observed that apparently, the appeal is directed against the order of reversion issued by the Deputy Commandant, FRP, Peshawar (Respondent No. 1) but the order of promotion was made by the commandant, FRP, NWFP, Peshawar (Respondent No. 2). So legally and as is held by the apex superior courts, inferior authority cannot interfere with the order of the superior authority and was not amenable to any interference by the inferior authority. The post of SI/PC carries a higher pay scale B-14, status and responsibility as compared to the Head Constable and to say the least, the appellant was reverted from the post of SI/PC without any valid reason.

10. The preliminary objection raised by the Government Pleader on the behalf of the respondents were considered at length but they were ruled out of the contents. The appellant categorically mentioned in the para of the appeal that on 14-06-2003, the preferred and appeal to the Commandant, FRP, NWFP, Peshawar (Respondent No. 2), against the order dated 07-06-2003 of the respondent No.1 but the same is still pending before respondent No. 2 while more than 90 days have been elapsed. The respondents in their reply have mentioned that the representation of the appellant was rejected by the Authority but this was controverted on an affidavit and mentioned that the reply of the respondents is vague and incorrect in the sense that no order of the Authority in respect of the filing of the appeal have ever been communicated to him. On perusal of the record, there seems nothings that the order of rejection has even been communicated to the appellant, so the appeal is well within time. Other preliminary objections raised by the respondents are also of flemiscal nature. It has been held in several cases that this Tribunal is competent to entertain appeals of the aggrieved officials because they are civil servants. Since this objection has been settled once for all and the Tribunal as well as apex higher courts have entertained such like cases in numbers, so we need not dwell upon the issue any more.

11. the appellant has a cause of action because his terms and conditions of service have been violated as he was reverted from the rank of SI/PC (B-14) straightaway to the rank of Head Constable (B-7) on no legal reason, so the appellant has cause of action and this Tribunal has the exclusive jurisdiction regarding the subject matter. The points impliedly are sufficient for the purpose to resolve the issue in hand. No element of un-clean hands has ever been pointed out.

12. While discussing the merit of the case, the learned counsel for the appellant contended that the appellant was promoted to Grade-14. After 11 years, he was reverted to Grade-7 without any rhyme or reason. Other Head Constables, who were promoted alongwith the appellant on completion of 10/11 years tenure were either kept in service or retired from service as SI/PCs instead of reverting them to the rank of Head Constables. In order dated 11-04-2003, the officials at S. No. 4, Gul Shaid Kha, Habibur Rehman at S.No. 16, Rehmant Ali at S.No. 17 were not reverted but are still serving as such. Similarly, in the order dated 28-01-1998 the officials at S.No. 3,4 and 5 have been reverted while the officials at S.No. 12 and 6 were not reverted and are still serving as such. Such is the position of the order of the year of 1995 wherein all the officials were retired from service in capacity of SI/PCs except at S.NO 16, Fazal Muhammad who was not reverted while at S.No. 17 Gul Tazeer No. 872 was reverted. In order dated 04-06-1992, the appellant was reverted. Rest of the incumbents were retired from service in BS-14 while the incumbent at S.No. 2, namely Hayat Khan No. 41 was not reverted. In order dated 07-06-2003 incumbent at S.No. 9 Taj Hussain was not reverted and is still serving as such.

13. The learned counsel for the appellant drew the attention of this Tribunal to other officials namely Hamayun khan, Hayat Khan, Altaf Khan, Mian Zada who were promoted to the post of ASI/PCs on 01-07-1992 but they are still serving the Force as such. Similar other instances also exist.

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Annex: "G"

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 941/2003

Date of institution 22.09.2003
Date of decision 29.11.2005

Jamdad Khan, Ex-SI/PC FRP Hqrs, Peshawar.....(Appellant)

VERSUS

1. Deputy Commandant, FRP Peshawar.
2. Commandant, FRP, NWFP Peshawar.
3. A.G.P. N.W.F.P, Peshawar.....(Respondents)

Mr. Saadullah Khan Marwat, Advocate.....For appellant.
Mr. Zaffar Abbas Mirza, Acting Govt. Pleader.....For respondents.

ABDUL KARIM QASURIA.....MEMBER.
GHULAM FAROOQ KHAN.....MEMBER.

JUDGMENT.

ABDUL KARIM QASURIA, MEMBER :- This judgment will dispose off the appeal filed by Jamdad Khan appellant against the order dated 7.6.2003 of Deputy Commandant FRP Peshawar, whereby he was reverted from the post of SI/PC (B-14) to the rank of Head Constable (B-7) in the FRP, Peshawar. The appellant has prayed that the impugned order may be set aside and he be re-instated in service with full back benefits.

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2. Brief facts of the case as narrated in the memo of appeal are that the appellant was initially appointed in the Force on 2.12.1979. He was promoted to the rank of Head Constable on 6.6.1987. He was further promoted to the rank of S.I. on 4.6.1982. He was also granted selection grade. Without any reason and justification when the appellant was at the verge of retirement, he was reverted from the rank of S.I. to the rank of Head Constable vide the impugned order dated 7.6.2003 against which the appellant submitted a representation before respondent No. 2 which met with dead response till date. The Force was brought on regular basis by the Provincial Government.

3. The grounds of appeal are that after the lapse of statutory period of 90 days, the appellant preferred the present appeal before the Tribunal challenging the impugned order as illegal, without lawful authority and having been passed in violation of the existing laws on the grounds that the said post was still in existence. He was reverted straightaway from BS-14 to BS-7 while usually reversion order has to be made step by step. Selection Grade (BS-9) was also recalled from him for no reason. The appellant was also promoted to the rank of SI/PC, being eligible, qualified and fit for the said post and he in the same capacity served the Force for 10/11 years but he was reverted in colourful manner and against the prescribed procedure enunciated in the rules. In the year 2000, FRP was brought on permanent and regular basis and Standing Order No. 3 was not applicable in the case of

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appellant because the same was for administrative arrangements and has no legal sanctity as the same was not passed at that time by the competent forum. It must be kept in mind that the appellant served the Force for 10/11 years as stated earlier without any complaint, so the principle of locus poenitentiae is applicable in his case because the order was acted upon, implemented and has got finality which cannot be rescinded at a single stroke of pen, except adhering to law. Much less the appellant was neither served with any notice nor he was given opportunity of defence what to speak of holding of enquiry in the matter. In similar circumstances while reverting the other officials, they were served with prior notices before the passing of the demotion orders. Legally reversion amounts to termination of service but such act was without re-coursing to law and in similar circumstances this Tribunal was pleased to accept "Appeal No. 15/1980 of Fazal Hussain Vs. IGP NWFP and others and Appeal No. 70/1995 of Taj Muhammad Vs. Commandant FRP and others.

4. The respondents were served with notices who submitted their written statements by contesting the appeal on merit as well as on law points. Preliminary objections to the extent of limitation, mis-joinder and non joinder of necessary parties, without cause of action and jurisdiction were raised.

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On factual side, it was urged that the appellant was recruited as constable in Additional Police, which was later on converted into FRP as per record. He was promoted to the rank of SI/PC on officiating basis as such he was reverted to his substantive rank. The reversion from officiating rank is not punishment and no proceedings were required to be initiated against the appellant under the E&D Rules.

6. The appellant has submitted his replication in rebuttal. According to replication the appeal is well within time. No lacuna has been pointed out. No such party has been pointed out as to who was the necessary party and the parties impleaded in the appeal are quite sufficient for the purpose. The appellant has a cause of action as not only he was reverted from the higher rank to the lowest rank but his monthly pay was also reduced from Rs. 11,000/- to Rs. 4,000/-. No element of unclean hands has ever been pointed out. The Tribunal has the exclusive jurisdiction in the matter.

7. On factual it has been submitted that every change in pay scale, whether temporary, officiating, stop gap arrangements, acting charge basis, etc amounts to promotion as per the judgments of the Hon'ble Supreme Court of Pakistan. Even grant of selection grade also amounts to promotion. The appellant was never served with any notice for the purpose. Till date, no rejection order has been received by the appellant. Even the same is not attached with the copy submitted before the Tribunal what to speak of

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supply of copy to the appellant. Standing order No. 3 has no legal force nor there exists any difference in the orders of promotion of the appellant. The promotion of the appellant was on merit and is not open to fire. Apart from the above, in orders dated 11.4.2003 and 7.6.2003 numerous officials were promoted like appellant but they have not been reverted and are still serving as such. In order dated 11.5.1994, Khurshid Anwar SI/PC is still serving as promotee and has not been reverted and this order has been kept secret. In order dated 28.1.1998 at S.No. 1 and 2 Ali Hussain and Syed Asghar Ali are still serving as promotees ASIs, Riaziddin, Haq Dad Khan, Fazal Hussain, etc were given promotions on the same basis and retired as Inspectors. Some Inspectors were given warning of reversion but they have not been reverted as yet.

8. Arguments heard and record perused.

9. At the time of hearing, the Tribunal observed that apparently, the appeal is directed against the order of reversion issued by the Deputy Commandant, FRP, Peshawar (Respondent No.1) but the order of promotion was made by the Commandant, FRP, NWFP, Peshawar (Respondent No.2). So legally and as is held by the apex superior courts, inferior authority cannot interfere with the order of the superior authority and was not amenable to any interference by the inferior authority. The post of SI/PC carries a higher pay scale B-14, status and responsibility as compared to th

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Head Constable and to say the least, the appellant was reverted from the post of SI/PC without any valid reason.

10. The preliminary objections raised by the Government Pleader on behalf of the respondents were considered at length but they were ruled out of the contents. The appellant categorically mentioned in the para of the appeal that on 14.6.2003, he preferred an appeal to the Commandant, FRP, NWFP, Peshawar (Respondent No. 2), against the order dated 7.6.2003 of respondent No. 1 but the same is still pending before respondent No. 2 while more than 90 days have been elapsed. The respondents in their reply have mentioned that the representation of the appellant was rejected by the Authority but this was controverted on an affidavit and mentioned that the reply of the respondents is vague and incorrect in the sense that no order of the Authority in respect of the filing of the appeal has ever been communicated to him. On perusal of the record, there seems nothing that the order of rejection has ever been communicated to the appellant, so the appeal is well within time. Other preliminary objections raised by the respondents are also of flemsical nature. It has been held in several cases that this Tribunal is competent to entertain appeals of the aggrieved officials because they are civil servants. Since this objection has been settled once for all and the Tribunal as well as apex higher courts have entertained such like cases in numbers, so we need not dwell upon the issue any more.

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11. The appellant has a cause of action because his terms and conditions of service have been violated as he was reverted from the rank of SI/PC (B-14) straightaway to the rank of Head Constable (B-7) on no legal reason, so the appellant has cause of action and this Tribunal has the exclusive jurisdiction regarding the subject matter. The points impliedly are sufficient for the purpose to resolve the issue in hand. No element of un-clean hands has ever been pointed out.

12. While discussing the merit of the case, the learned counsel for the appellant contended that the appellant was promoted to the Grade-14. After 11 years, he was reverted to Grade-7 without any rhyme or reason. Other Head Constables, who were promoted alongwith the appellant on completion of 10/11 years tenure were either kept in service or retired from service as SI/PCs instead of reverting them to the rank of Head Constables. In order dated 01.4.2003, the officials at S.No. 4, Gul Shaid Khan, Habibur Rehman at S.No. 16, Rehmat Ali at S.No. 17 were not reverted but are still serving as such. Similarly, in the order dated 28.1.1998 the officials at S.No. 3, 4, and 5 have been reverted while the officials at S.No. 12 and 6 were not reverted and are still serving as such. Such is the position of the order of the year of 1995 wherein all the officials were retired from service in capacity of SI/PCs except at S.No. 16, Fazal Muhammad who was not reverted while at S.No. 17 Gul Tazeer No. 872 was reverted. In order dated 4.6.1992, the appellant was reverted. Rest of the incumbents were retired from service in

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BS-14 while the incumbent at S.No. 2, namely Hayat Khan No. 41 was not reverted. In order dated 7.6.2003 incumbent at S.No. 9 Taj Hussain was not reverted and is still serving as such.

13. The learned counsel for the appellant drew the attention of this Tribunal to other officials namely Humayun Khan, Hayat Khan, Altaf Khan, Mian Zada who were promoted to the post of ASI/PCs on 1.7.1992 but they are still serving the Force as such. Similar other instances also exist. There is no provision in the Police Rules to the effect that Head Constable when promoted and posted as SI/PC would stand reverted after three years. In support of this contention he quoted authority of the Supreme Court of Pakistan, PLD-1965-SC,P-106 "Constitution of Pakistan, 1962" Article 96 (Government Servants) Service Rules not in existence - letters issued by Executive Authorities regarding service matter, increments, etc, cannot take the place of properly framed Rules (P-110-C).

14. The counsel for the appellant further contended that if it is presumed without conceding that the appellant was reverted after completion of normal tenure as SI/PC and this reversion was not by way of punishment, even then the issue of show cause notice to the appellant was mandatory. In support of this contention reliance was placed on PLD-1958 Ka Page-35 "(a) Constitution of Pakistan, Article 181 (ii) reduction in rank - provision, show cause notice applied even if reduction is not by way of penalty or punishment P-40 (e) SCMR-1994-2232.

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15. The counsel for the appellant further claimed that the appellant was eligible and qualified for his promotion on the basis of seniority-cum-fitness as he has 26 years unblemished service record at his credit. As such he could not be reverted except by way of punishment and that too in accordance to law. Since the appellant did not commit any irregularity/illegality nor he was proceeded against under any rule, his reversion was without any lawful authority.

16. The Government Pleader while replying to some of the points raised by the counsel for the appellant stated that the appellant was promoted on officiating basis and not on regular basis after completion of normal tenure of 6 years, he was reverted to Grade-7 in normal course. The temporary promotion cannot be claimed as a matter of right as it is not guaranted. The counsel further argued that the provision does not exist in Police Rules with regards to the promotion of Head Constable to the rank of Sub Inspector/Platoon Commander. The promotion is granted to the incumbents in the interest of administration as a temporary measure. Only those upper subordinates were allowed to remain in officiating capacity for a longer period who are qualified in the Intermediate as well as Upper School Courses. The appellant has not undergone that courses and as such, he could not be allowed to remain as officiating Sub Inspector for ever. He was promoted as SI/PC in officiating capacity and on completion of three years tenure, he was considered for reversion to his substantive rank of Head Constable who was promoted to officiate as Sub Inspector/Platoon

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Commandant for 6 years and was allowed to retire after completion of 25 years service on their own request. In the normal course, they had to be reverted to the rank of head Constable after completion of 3 years tenure.

17. While rebutting the stand of Government Pleader, the counsel for the appellant stated that "officiating" does not exist in the promotion order of the appellant but even if it is presumed without conceding that the promotion of the appellant was ordered on officiating/temporary basis, even then demotion from the post of Platoon Commander to that of Head Constable could not be ordered without issuing show cause notice to the appellant. The appellant relied on High Court judgment appearing in PLD-1958 (W.P) Karachi 35 which is set out as under :-

> "Government Servant (Railways) Promotion by authority competent to promote temporarily - Promotee un-aware of restricted character of such authority order, reverting Railway servant set aside in circumstances of case law of agency and estoppel –
>
> Constitution of Pakistan (1975), Art. 170. (P.805)A and SCMR 1994 2232. (I) Constitution of Pakistan (1973), Art 129. Maxim: "Audi alteram partem" Employee of statutory corporation- Reversion – Absence of statutory rules - remedy. Corporation while taking action against its employee, either issuing show cause notice to him for giving him opportunity of hearing Corporation become violated principles of natural

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justice, its action in reverting employee was declared to be without lawful authority and of no legal effect.

18. In view of the conflicting views and contradictory stands taken by the parties, it would be difficult to resolve the controversy unless a reference is made to promotion/demotion orders issued by the authorities from time to time. The first order of promotion was issued by the DIG Police Peshawar Range on 4.6.1992. This order is silent about the nature of promotion i.e. regular or otherwise. It also does not mention that the appellant would be reverted as Head Constable after completion of fixed tenure of 3/6 years. We have considered this difference in the two orders on the same subject but we have come to the conclusion that the orders issued by the higher authority i.e. DIG Peshawar would naturally take preference. The claim of the appellant that he was unaware of the restricted character of the promotion would therefore prevail. The appellant is thus entitled to the benefit of the judgment of the Dacca High Court in the Writ Petition No. 239 of 1961 (PLD-1963- Dacca 801) (para 11).

19. The appellant was considered suitable for promotion by the DIG Peshawar Range. This suitability naturally meant seniority-cum-fitness. The appellant is un-doubtedly senior. He is also fit for promotion as he has 23.26 years service at his credit. The appellant possess more than satisfactory record of service. He has earned certificates and cash rewards on several occasions. Entries with regard to all these facts are available in the service

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documents of the appellant. The vacancies for promotion were also available at the relevant time.

20. The net result of the above discussion is that the appellant was promoted on regular basis and some orders of respondents, no doubt, bear the word "officiating" but since these orders were not endorsed to the appellant, he is entitled to the benefit of the judgment of Dacca High Court in Writ Petition of 239/1961. Moreover, the appellant could not be demoted on the basis of a Standing Order because such letter had no force of law in view of the judgment of Hon'ble Supreme Court of Pakistan appearing in PLD-1965 (S.C) 16. It is also evident that the appellant became the victim of differential treatment. Other Head Constables who were promoted with the appellant were retired as Platoon Commanders whereas the appellant was reverted back as Head Constable.

21. The counsel for the appellant further contended that after expiry of the probationary period, an official on completion of probationary period becomes permanent and his probationary period automatically ceases. Reliance was placed on PLC-1994-CS-84-PLC-92 CS1327.

22. That most of the orders of promotion to the next higher ranks have been passed by the Commandant, FRP (Respondent No.2), while the orders of reversion to the lower ranks were prompted by the Deputy Commandant, FRP Peshawar, so the same have no legal value as subordinate authority can not legally interfere with the orders of the higher authority. Only on this score, the impugned order is liable to be set aside.

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23. That on 16.1.1988 the Finance Department circulated order of the Government of NWFP, Home & Tribal Affairs Department that all the Forces are hereby regularized.

Para No. 5 at Page-2 of the said order reads as under :-

"5. The location of staff created are shown in Annexure-B. The duties and responsibilities of the new set up will be the same as those of regular police else where and its services will be governed by the police rules or any other rules applicable to their counter parts in regular police."

24. In view of the above discussion, the Tribunal agrees with the arguments advanced by the learned counsel for the appellant, accepts the appeal, sets aside the impugned order and re-instates the appellant in service.

25. This judgment will also dispose off the following connected appeals, as identical questions of law and facts are involved in all these cases :-

S.No.	Appeal No.	Name of appellant	Versus	Impugned order
1.	836/2003	Asal Khan	Dy.cammandan FRP etc.	16.4.2003
2.	896/2003	Nazir Badshah	-do-	7.6.2003
3.	1185/2003	Farhad Khan	-do-	1.7.2003
4.	948/2003	Gulfaraz Khan	-do-	7.6.2003
5.	949/2003	Muhammad Irshad	-do-	7.6.2003
6.	950/2003	Abdul Rehman	-do-	7.6.2003
7.	951/2003	Nasrullah Khan	-do-	7.6.2003
8.	952/2003	Gul Tazar	-do-	18.10.2004
9.	169/2005	Saidur Rehman	-do-	18.10.2004
10.	170/2005	Hayatullah	-do-	18.10.2004
11.	171/2005	Iqbal Khan	-do-	18.10.2004
12.	172/2005	Fida Muhammad	-do-	18.10.2004
13.	173/2005	Mahir Khan	-do-	18.10.2004

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14.	105/2005	Karim khan	-do-	18.10.2004
15.	653/2004	Sher Akbar	-do-1	7.6.2003
16.	796/2003	Malak Zada	-do-	24.5.2003
17.	264/2005	Farhad Khan	-do-	18.10.2004
18.	106/2005	Rajmali Khan	-do-	18.10.2004
19.	107/2005	Raza Khan	-do-	18.10.2004
20.	108/2005	Haji Niaz Muhammad	-do-	18.10.2004
21.	109/2005	Yousaf Khan	-do-	7.6.2003
22.	942/2003	Sartaj Khan	-do-	7.6.2003
23.	943/2003	Akbar Khan	-do-	7.6.2003
24.	944/2003	Alauddin	-do-	7.6.2003
25.	945/2003	Ghulam Akbar.	-do-	7.6.2003
26.	946/2003	Abdul Haleem	-do-	7.6.2003
27.	947/2003	Luqman Hakim	-do-	7.6.2003
28.	953/2003	Ali Muhammad	-do-	7.6.2003
29.	954/2003	Mir Alam Khan	-do-	7.6.2003
30.	955/2003	Muhammad Gul	-do-	7.6.2003
31.	956/2003	Habibur Rehman	-do-	7.6.2003
32.	957/2003	Noor Bahadur	-do-	7.6.2003
33.	958/2003	Hastam Khan	-do-	24.8.2004
34.	706/2004	Amir Nawaz	SP FRP etc	

26 No order as to costs. File be consigned to the record.

ANNOUNCED.
29.11.2005.

(ABDUL KARIM QASURIA)
MEMBER.

(GHULAM FAROOQ KHAN)
MEMBER.
29/11/05

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O R D E R.

As ordered by the Provincial Police Officer NWFP Peshawar vide letter No. 9600/E-I dated 27.5.2006, the decision of NWFP Service Tribunal dated 29.11.2005 is hereby Implemented & the OI/TCs/ASIs/PC are hereby Re-instated in the ranks as noted against their names from the date of their reversion:-

S.No.	Name	Rank in which re-instated.
1.	Habib-ur-Rehman	SI/PC
2.	Ali Mohammad	SI/PC
3.	Abdur Rehman	SI/PC
4.	Ghulam Akbar	SI/PC
5.	Akbar Khan	SI/PC
6.	Gul Tamir	SI/PC
7.	Nasrullah	SI/PC
8.	Sartaj	SI/PC
9.	Mohammad Gul	SI/PC
10.	Mohammad Irshad	SI/PC
11.	Sher Akbar	SI/PC
12.	Mir Alam	SI/PC
13.	Noor Bahadur	SI/PC
14.	Jamdad	SI/PC
15.	Farhad	SI/PC
16.	Gul Faraz	SI/PC
17.	Said Rehman	SI/PC
18.	Hayatullah	SI/PC
19.	Mera Khan	SI/PC
20.	Fida Mohammad	SI/PC
21.	Mahar Khan	SI/PC
22.	Karim Khan	SI/PC
23.	Raj Mali	SI/PC
24.	Roza Khan	SI/PC
25.	Haji Niaz Mohammad	SI/PC
26.	Yousaf Khan	SI/PC
27.	Allo-ud-Din	SI/PC
28.	Abdul Hafeez	SI/PC
29.	Luqman Hakeem	SI/PC
30.	Hastam Khan	SI/PC (Old SPL)
31.	Amir Nawaz	SI/PC
32.	Nazir Badshah	ASI/PC
33.	Malik Zada	ASI/PC
34.	Mohammad Tahir	HC
35.	Farhad	

The case of SI/PC Asal Khan will be decided seperately after finalization of his case of compulsorily retirement.

COMMANDANT
FRONTIER RESERVE POLICE NWFP
PESHAWAR.

No. 3460-69 /EC dated Peshawar the 8-6-2006.

Copy of above is forwarded for information & n/a to the:-

1. Provincial Police Officer, NWFP Peshawar, w/r to his letter quoted above.
2. All SsP FRP Range in NWFP.
3. Distt: Police Officer Batgram.
4. DSP/FRP/Hqrs: Peshawar.
5. Accountant/OASI/FRP/Hqrs:Peshawar.

ATTESTED

Annex "H"

P: 28

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR

Appeal No. 397/2006

Date of institution – 23.05.2006
Date of decision - 20.10.2006

Muhammad Nihar Head Constable,
Peshawar High Court, Peshawar. .....(Appellant)

VERSUS

1. Deputy Commandant, FRP, Peshawar.
2. Commandant FRP, NWFP Peshawar.
3. I.G.P. NWFP Peshawar.....(Respondents)

Mr. Saadullah Khan Marwat, Advocate.....For appellant.
Mr. Zaffar Abbas Mirza, Acting Govt. Pleader.....For respondents.

MR. ABDUL KARIM QASURIA.....MEMBER.
MR. FAIZULLAH KHAN KHATTAK.....MEMBER.

JUDGMENT.

ABDUL KARIM QASURIA, MEMBER :- This appeal arises against the order dated 7/6/2003 of respondent No. 1 whereby the appellant was reverted from the rank of Platoon Commander to the Rank of Head Constable for no reason.

2. The facts of the case according to the appellant are that he was initially appointed as constable in the respondent department on 2.3.1982 and served the department to the best of his ability and entire satisfaction of his superiors. He was promoted as Head Constable vide order dated 26.6.1989 and he continued in that capacity when on 7.6.2003 he was promoted against the rank of S.I./P.C. on merit. He

ATTESTED

ATTESTED
EXAMINER

was granted selection grade. That vide order dated 7.6.20[illegible] any rhyme or reason while he was at the verge of retirement was reverted to the rank of Head Constable from the rank of Platoon Commander. After exhausting the departmental remedy the appellant approached the Tribunal for the redressal of his grievance.

3. Notices were served on the respondents. They turned up and contested the appeal by filing their joint written reply. Various factual and legal points were raised. It was also inter-alia alleged that the appellant has no cause of action and that the appeal is time barred. It was further alleged that the appellant was given promotion to the rank of S.I./PC as per Standing Order No. 3 of 1994, purely on temporary basis for two years and he was not given any selection grade. It was next alleged that the appellant was reverted to the rank of Head constable as he had completed the tenure of 6 years as per Standing Order No. 3 of 1999. Moreover, reversion from officiating rank is not a punishment as per rules. No replication was filed in rebuttal by the appellant.

4. Arguments heard and record perused.

5. The learned Counsel for the appellant vehemently argued that the Service Tribunal in similar circumstances had accepted the appeals of Jamdad Khan and others in Service Appeal No. 941/2003 and that the case of appellant is at par with them and he is also entitled to the same treatment which has been meted out to his colleagues. Reliance was also placed on authorities reported as 1996-SCMR-1185 and 2005-SCMR-499. It was next argued that on the basis of principle of locus poenitentiae a vested right had accrued to the appellant which cannot be taken back in a slipshod manner. Regarding limitation it was argued that the Supreme Court had always

ATTESTED

EXAMINER Service Tribunal NWFP

ATTESTED

encouraged the decision of cases on merits instead of deciding the same on technical grounds including the limitation.. Reliance was placed on authority reported as PLJ-2004 (SC)435. Lastly, it was argued that since Standing Order has not been adopted by the Provincial Government, therefore, it has no legal value and that there is no mentioning in the promotion order, regarding time limit as well as promotion on officiating basis, therefore, the impugned order being bad in law is liable to be set aside/reversed.

6. The learned Acting Government Pleader argued that the appellant was promoted purely on temporary basis under Standing Order 3 for a period of 2 years and was liable to be reverted after the expiry of the said period. That the instant appeal is hopelessly time barred therefore, liable to be dismissed.

7. The Tribunal holds that the claim of the appellant is bonafide. The Tribunal in service Appeal No. 941/2003 titled Jamdad Khan etc Vs. Deputy Commandant FRP etc while accepting the appeals set aside the reversion order. The case of the present appellant is also identical to that of his colleagues whose appeals were accepted. It has been held in Hameed Akhtar Niazi and Tara Chand's case that "when Tribunal or court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum... Article 25 of the Constitution was also explicit on the

ATTESTED

ATTESTED

point that all citizens were equal before law and were ent[illegible] equal protection of law."

The delay in filing the appeal is condoned in the interest of justice in view of the authority reported as PLJ-2004-SC-435.

8. In view of the above discussion, the appellant has made out a case for indulgence of the Tribunal. The appellant is also entitled to the same treatment which has been meted out to his other colleagues. Accordingly the appeal is accepted and the impugned order is set aside by restoring the appellant to his original position with back benefits.

9. This judgment will also dispose of the other connected appeals bearing No.424/2006 Muhammad Islam, 425/2006 Mohabat Khan, 436/2006 Muhammad Saleem Khan, 437/2006 Fida Muhammad, 443/2006 Wazir Zada, 483/2006 Sher Ali, 547/2006 Aslam Khan, 548/2006 Karim Khan, 602/2006 Muhammad Aslam Khan Versus Deputy Commandant, FRP, Peshawar etc, in the same manner because in all these appeals common questions of law and facts are involved.

ATTESTED

10. No order as to costs. File be consigned to the record.

ANNOUNCED.
20.10.2006.

(ABDUL KARIM QASURIA)
MEMBER.

(FAIZULLAH KHAN KHATTAK)
MEMBER.

Certified to be true copy
[illegible]
Service Tribunal
Peshawar

Date of Presentation of Applicant 7-11-06
Number of Words 1600
Copying Fee 10
Urgent 2
Total 12
Name of Copyist
Date of Completion of Copy 7.11.06
Date of Copy 7.11.06

P. 32

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 424 /2006

Muhammad Nihar S/O Umar Zahid,
R/O Mena Batal, Dirstrict Dir.
H.C. No.31, Malakand Range, Swat. ..... APPELLANT

VERSUS

1. Deputy Commandant,
   Frontier Reserve Police, Peshawar.
2. Commandant, FRP, N.W.F.P, Peshawar.
3. Inspector General of Police,
   N.W.F.P, Peshawar. ..... RESPONDENTS

Filed to-day
Registrar
7/6/06

APPEAL AGAINST ORDER NO.472-74/PC DATED 19.01.2004 OF RESPONDENT NO.1, WHEREBY APPELLANT WAS REVERTED FROM THE RANK OF PLATOON COMMANDER/ SUB-INSPECTOR TO THE RANK OF HEAD CONSTABLE FOR NO REASON.

20.10.2006	Parties present with their counsel. Arguments heard. Vide our detailed judgment of today in Appeal No. 397/2006 titled Muhammad Nihar Head Constable Versus Deputy commandant, FRP NWFP Peshawar and others, this appeal is accepted. No order as to costs. File be consigned to the record. ANNOUNCED. 20.10.2006. Member. Member

ATTESTED

WAKALAT NAMA

IN THE COURT OF K.P. Service Tribunal Pesh

Zubair Head Const No 990. Dir Lower

Appellant(s)/Petitioner(s)

VERSUS

The District Police Officer Dir Lower & others

Respondent(s)

I/We _____ do hereby appoint **Mr. Khush Dil Khan, Advocate** Supreme Court of Pakistan in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.

2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.

3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Signature of Executants

Attested & Accepted by

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan
9-B, Haroon Mansion
Off: Tel: 091-2213445

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1202/2016.

Ex -HC Zubair No.675r/o Lower Dir ..... Appellant.

VERSUS

1) *Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.*
2) *Regional Police Officer Malakand at Saidu Sharif, Swat.*
3) *District Police Officer Dir Lower.....Respondents.*

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

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

ON FACTS:

1. *Pertains to record, hence no reply.*
2. *Incorrect, the reversion of the appellant was based on the Judgment of Supreme Court of Pakistan, received vide order No. S/2262-2312/16 dated 21-03-2016. Copy enclosed as annexure "A". Not only the appellant but other more police personnel's were also reverted to the Lower ranks.*

ON GROUND

(A). *Incorrect, The appellant being Junior among his other colleagues and not fit for promotion according to the*

criteria laid down for the purpose. The reversion of the appellant was made in light of Supreme Court Judgment in which the out of turn promotion was declared Nul and void.

(B). The first paragraph pertains to record. Upon receipt of Order from high ups to cancel the out of turn promotion in light of Supreme Court Judgment, the competent authority constituted a committee to Scrutinize the files of all relevant persons. The committee after proper scrutiny recommended that the appellant has been illegally promoted to high rank. No violation of any rule has been committed by respondent with the appellant.

(C). Incorrect, As replied in above paras.

(D). Incorrect, In compliance with the direction, a committee was constituted to examine the case of out of turn promotion of the executive staff. The committee in this finding recommended that the appellant being illegally promoted be reverted to Lower rank. Copy enclosed as annexure "B"& "C". No violation has been committed with appellant.

(E) Incorrect, every case has its own facts and merits. To comply the orders of Service Tribunal is binding in nature. The present case doesn't fall in the ambit of the referred judgment.

(F) Incorrect, there were no grounds available to decide the case in favour of the appellant, hence the same was decided on merit.

PRAYER:

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

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.

District Police Officer
Dir Lower

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1202/2016.

Ex -HC Zubair No.675r/o Lower Dir ..... Appellant.

VERSUS

1) *Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.*
2) *Regional Police Officer Malakand at Saidu Sharif, Swat.*
3) *District Police Officer Dir Lower.....Respondents.*

AFFIDAVIT

We the following respondents do hereby solemnly affirm and declare on Oath that the contents of Para-wise reply are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.

District Police Officer
Dir Lower at Timergara

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1202/2016.

Ex -HC Zubair No.675r/o Lower Dir ..... Appellant.

VERSUS

1) *Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.*
2) *Regional Police Officer Malakand at Saidu Sharif, Swat.*
3) *District Police Officer Dir Lower.....Respondents.*

POWER OF ATTORNEY

We the following respondents do hereby authorize Mr. Zewar Khan SI Legal Dir Lower to appear on our behalf before the Honourable service Tribunal in the above Service appeal and pursue the case on each and every date.

He is also authorized to submit all the relevant documents in connection with the above case.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.

District Police Officer
Dir Lower

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

No. S/2362-2372/16, Dated Peshawar the 21/9/2016.

All Heads of Police offices
in Khyber Pakhtunkhwa.

Subject: **ORDER**

Memo

Annex 'A'

It is submitted that the appellants namely Muhammad Ijaz, Muhammad Tariq, Fazl-ur-Rehman, Hamayun Khan, Nisar Muhammad and Shabir Ahmad (Computer Operator), while serving as ASIs/SI in Investigation CPO, were reverted to their substantive rank of Constables by the then Addl: IGP/Investigation Khyber Pakhtunkhwa Peshawar vide order dated 20.01.2014 because it was found that they have not undergone the basic promotion courses i.e lower Intermediate and were promoted in violation of rules.

The above mentioned officers filed Service Appeal No. 561, 562,563,537, 715 & 538/2014 respectively, which were vide consolidated judgement 16.11.2015 as referred to above. The relevant para of the judgement review is as follows:-

> *"This cannot be disputed that the Crimes Branch is part and parcel of the Khyber Pakhtunkhwa police, being regulated by its rules for the purpose of promotion and maintaining the seniority list. Evidently this aspect of the matter was lost sight by the concerned officers who passed the promotion orders. Irony of the issue is that the appellant has served on the promoted post for sufficient time in the course of which they also received emoluments but nobody took notice of the same. This being so it would be also irony if the impugned cancellation order are found based on whims, likes and dislikes and pick and choose as alleged by the appellants that HC Shafiullah and Mujahid Hussain were left untouched. Since departmental appeal of the appellant has also not been responded, therefore, the Tribunal of the considered view that further indulgence by the Tribunal at this stage may cause further complications. Hence the appeal is remitted to the appellate authority with the direction to examine appeals of the appellants and decide the same strictly on merits without any discrimination"*

Meeting of the Appeal/Review Board was held on 02.08.2016, and the appellants were heard in person. The cases were perused; lists obtained from Addl: IGP/Investigation, Khyber Pakhtunkhwa Peshawar was also perused/examined by the board. The Board decided that all promotions in the Investigation Wing/Computer Section as well as other Units have been done against law and rules. Therefore, the cases of these Constables may be dealt with the recommendation that all such promotions in the light of the Supreme Court of Pakistan decision on out of turn promotions be cancelled.

This order is passed in the light of judgement of Service Tribunal Khyber Pakhtunkhwa Peshawar that all promotions in the Investigation Wing, SIs, ASIs, HCs & Constables as well as other Units of Police have been done against law and rules may be set aside/cancelled. All such promotions in the light of the Supreme Court of Pakistan decision on out of turn promotions may also be cancelled.

This order is issued with approval by the Competent Authority.

No 2832-43/E Dated 25-3-16
EC/All DPOs + Heads of
Invest
To Swabi Street
Compliance

(MUHAMMAD ALAM SHINWARI)
DIG/HQrs:
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

EC
Formalities Pls

Regional Police Officer,
Malakand, at Saidu Sharif Swat.

Annex "B"

ORDER

In compliance with the order issued vide C.P.O Peshawar Memo: No. S/2262-2312/16, dated 21-03-2016 and subsequent Memo: No. S/3352-3408/16, dated 27-04-2016. A committee consisting of the following Police Officers is here by constituted to examine out of turn promotion of the Executive Staff, recommend them for reversion / cancellation of their out of turn promotion orders and submit their recommendation to the undersigned at the earliest:-

01. Mr. Aziz Ur Rahman S.P Investigation, Dir Lower. . . . . Chairman.
02. Mr. Aqeeq Hussain, DSP-Headquarter, Dir Lower . . . . . Member.
03. Mr. Rasheed Ahmad, Inspector Legal, Dir Lower. . . . . Member.

District Police Officer,
Dir Lower at Timergara

OFFICE OF THE DISTRICT POLICE OFFICER, DIR LOWER AT TIMERGARA

No. 23645-49/EB, dated Timergara the 2-5 /2016.

Copy submitted to the:-

01. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for favour of information with reference quoted above, please.
02. Regional Police Officer, Malakand at Saidu Sharif, Swat for favour of information with reference to Region Office Swat Endst: No. 2832-43/E, dated 25-03-2016 and subsequent Endst: No. 3973-80/E, dated 28-04-2016, please.
03. All concerned
04. Establishment Clerk & OSI with the direction to prepare list of those Upper & Lower Subordinates who's given such out of turn promotion and submit to the committee.

District Police Officer,
Dir Lower at Timergara

Annex "C"

OFFICE OF THE
DISTRICT POLICE OFFICE
DIR LOWER AT TIMERGARA.

ORDER.

In compliance with the directives CPO Peshawar Letter No.S/2262-2312/16, dated 21-03-2016, the following committee was constituted: -

1- Mr. Aziz Ur Rahman SP Investigation Dir Lower (Chairman).
2- Mr. Aqiq Hussain DSP HQrs Dir Lower: (Member)
3- Mr. Rashid Ahmad Inspector Legal Dir Lower. (Member)

The committee scrutinized the promotion cases under purview of Supreme Court decisions as quoted in PLD 1992 SC 207,2000 SCMR 207 and 1998 SCMR 882 ref: 2004 PLC (C.S) 392(A) which describes that when a Police Official had performed some extra ordinary act, he could be rewarded with cash or other material award, but no Police authority could be allowed to disturb the seniority of his colleagues, because seniority was a vested right Policy letter whereby out of turn promotion was granted to civil servants subsequently was withdrawn even otherwise any such letter could not supersede or even substitute the substantive legislation available in form of Police Rules, 1934, which did not allow any out of turn promotion. Illegal orders once passed would not come irrevocable and a close transaction. No perpetual right could be derived on the basis of such an order. Public authority which could pass an order was empowered to rescind it. Principle of locus poenitentiae as claimed by civil servant was not attracted in their case, in circumstances. Contention that civil servant had been condemned un-heard as no show –cause notice was issued to them before reverting them, was repelled because civil servant was who were not entitled to out of turn promotion could not seek protection of principle of natural justice. Civil servants had also not been subjected to discrimination. In absence of any legal sanction in promoting civil servants out of turn, civil rightly reverted.

In light of Police Rules 13.1, the following Head Constables have got out of turn promotion and they were not eligible for it.

Therefore, on the recommendation of committee coupled with the decisions of august Supreme Court of Pakistan, they are hereby reverted as per detail mentioned against their names : -

S.No	Name & rank	Remarks
1	HC Mumtaz Khan No.11	Being junior, un lawfully promoted and reverted to the rank of constable.
2	HC Gul Habib No.444	Being junior, un lawfully promoted and reverted to the rank of constable
3	HC Razi Shah No.501	Being junior, un lawfully promoted and reverted to the rank of constable
4	HC Muhd: Azim NO.1054	Being junior, un lawfully promoted and reverted to the rank of constable
5	HC Muhd: Zubair NO.675	Being junior, un lawfully promoted and reverted to the rank of constable
6	HC Said Zaman No.712	Being junior, un lawfully promoted and reverted to the rank of constable.
7	HC Sarzamin NO.89	Being junior, un lawfully promoted and reverted to the rank of constable.
8	HC Hamim Ul Hakim No.33	Being junior, un lawfully promoted and reverted to the rank of constable.
9	HC Hamad Ali NO.608	Being junior, un lawfully promoted and reverted to the rank of constable.
10	HC Fahim Khan No.217	Being junior, un lawfully promoted and reverted to the rank of constable.
11	HC Saif Ur Rahman No.81	Being junior, un lawfully promoted and reverted to the rank of constable.
12	HC Ayub Khan No.1048	Being junior, un lawfully promoted and reverted to the rank of constable.
13	HC Said Rahman No.235	Being junior, un lawfully promoted and reverted to the rank of constable.
14	HC Ziarat Gul No.118	Being junior, un lawfully promoted and reverted to the rank of constable.
15	HC Hussain Ahmad No.79	Being junior, un lawfully promoted and reverted to the rank of constable.

16	HC Aman Ur Rahman NO.882	Being junior, un lawfully promoted and reverted to the rank of constable.
17	HC Zafar Ali No.780	Being junior, un lawfully promoted and reverted to the rank of constable.
18	HC Hama yoon No.570	Being junior, un lawfully promoted and reverted to the rank of constable.
19	HC Hazrat Said No.688	Being junior, un lawfully promoted and reverted to the rank of constable.
20	HC Khurshid No.34	Being junior, un lawfully promoted and reverted to the rank of constable.
21	HC Azam Khan No.1291	Being junior, un lawfully promoted and reverted to the rank of constable.
22	HC Sajjad Ahmad No.1162	Being junior, un lawfully promoted and reverted to the rank of constable.
23	HC Rab Nawaz Khan No.197	Being junior, un lawfully promoted and reverted to the rank of constable.
24	HC Mukhtair Ali No.1234	Being junior, un lawfully promoted and reverted to the rank of constable.
25	HC Ali Rahman No.828	Being junior, un lawfully promoted and reverted to the rank of constable.
26	HC Nizam Uddin No.389	Being junior, un lawfully promoted and reverted to the rank of constable.
27	HC Umar Farooq No.912	Being junior, un lawfully promoted and reverted to the rank of constable.
28	HC Muhd: Nawaz No.1877	Being junior, un lawfully promoted and reverted to the rank of constable.
29	HC Muhd: Ali Shah No.1408 1066	Being junior, un lawfully promoted and reverted to the rank of constable.

District Police Officer,
Dir Lower at Timergara
22/6

OB No. 698 /EC,
Dated 24/6 /2016.

No. 3040 **/EB, Dated Timergara, the** 24-6 **/2016.**

Copy Submitted to the Regional Police Officer, Malakand Swat for favour of information, please.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1202/2016

Zubair,
Head Constable, Belt No. 675,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

The District Police Officer,
Dir Lower at Timergara & others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder.			1-4

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of Pakistan

Dated: 04 / 05 /2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1202p/2016

Zubair,
Head Constable, Belt No. 675,
Office of the District Police Officer,
Dir Lower at Timergara .....Appellant

Versus

The District Police Officer,
Dir Lower at Timergara & others.....Respondents

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO REPLY FILED BY RESPONDENTS.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

Preliminary objections raised by answering respondents are erroneous and frivolous which are denied in toto. The detail reply of each one is given as under:-

I. That the appeal is fully maintainable in all respects and the same was filed against the impugned order dated 24-06-2014 which was passed in glaring violation of principle of natural justice.

II. That grievances of appellant are genuine which he explained in the appeal in detail.

III. That the appeal is well within time and the same was filed after the rejection of the appellant's departmental appeal.

IV. That by impugned order, appellant was reverted to lower rank which is one of the terms and conditions of his service against which he rightly approached to this Hon'ble Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974.

V. That the service of appellant was adversely affected by the impugned order which given rise him cause of action and rightly filed this appeal.

VI. That the appeal of appellant is very clear and in proper language therein all the facts have been narrated clearly

REJOINDER TO REPLY OF FACTS:

1. That the answering respondents admitted that this para need no comments meaning thereby they have admitted the contents thereof.

2. That the answering respondents admitted that this para need no comments meaning thereby they have admitted the contents thereof.

3. That the answering respondents have wrongly based the impugned order on the judgment of Supreme Court of Pakistan which is totally distinguished from the case of appellant and not applicable to his case. Thus the impugned order is illegal and without lawful authority liable to be set aside.

REJOINDER TO REPLY OF GROUNDS:

A. That the answering respondents have misconceived the case of appellant and unlawfully dealt with the case appellant in view of judgment of Hon'ble Supreme Court of Pakistan. He was

properly promoted to higher post and rank on its own merit due to which none of his colleague has been suffered and objected by anyone else.

B. That the reply is totally incorrect so denied. The answering respondents have incorrectly treated the case of appellant at par with other cases though his promotion was made by competent authority in accordance with rules and policy on subject.

C. Furnished no reply so meaning thereby that answering respondents have admitted that appellant was condemned unheard and the order is unlawful being violative of the principle of natural justice.

D. That the reply is incorrect so denied. Neither committee has been appointed to scrutinize the case of appellant nor such recommendation/decision was ever communicated to appellant enabling him to defend his case. The answering respondents have shown that the requisite copies have been attached as Annexure B and C with the reply but the same were not available with the reply.

E. That the reply is incorrect so denied. The identical matter under similar circumstances was decided by this Hon'ble Tribunal therefore the same is binding upon the department to follow the same in the case of appellant also.

F. That the reply is incorrect so denied. The departmental appeal of appellant was rejected in arbitrary manner which is unfair and unjust.

It is, therefore, humbly prayed that the reply of answering Respondents may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Appellant

Through

Khush Dil Khan
Advocate,
Supreme Court of
Pakistan

Dated: 24/05/2017