

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN... MEMBER (Executive)**

*Service Appeal No. 2811/2021*

Date of presentation of Appeal.....15.02.2021  
Date of Hearing.....18.04.2024  
Date of Decision.....19.04.2024

**Ghafoor Shah** IHC No. 166, presently working and posted as Reader to DSP Investigation,, City Division Peshawar. ....*Appellant*

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Central Police Officer, Peshawar.
2. The Capital City Police Officer (CCPO) Peshawar.
3. The Commandant, Frontier Reserve Police (FRP), Khyber Pakhtunkhwa, Police-line Peshawar.
4. The Regional Police Officer, Malakand Region at Saidu Sharif Swat.
5. Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa, Central Police Officer (CPO) Peshawar.
6. The Deputy Superintendent of Police (Investigation) City Division Peshawar. . ....(*Respondents*)

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Present:

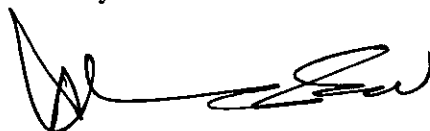
Mr. Rizwanullah, Advocate.....For the appellant  
Mr. Umair Azam, Additional Advocate General,.....For respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT  
1974 FOR FIXATION OF ACCURATE SENIORITY BY  
PLACING THE NAME OF THE APPELLANT WITH HIS  
COLLEAGUE/BATCHMATES OF LOWER CLASS  
COURSE, ENABLING HIM TO GET EQUAL  
TREATMENT OF SENIORITY AND SUBSEQUENT  
PROMOTION LIKEWISE.**

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**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Appellant joined the Police Department as Constable in the year 1995 and was promoted as Head Constable in the year 2001 and remained in Frontier



Reserve Police/HQrs Khyber Pakhtunkhwa till 2007; that as per the decision of DPC and in light of the order dated 14.11.2007, the services of the appellant were stood transferred to Malakand Region (Domicile District) and vide orders dated 10.12.2007 & 14.11.2007 he was posted to Swat and Dir (Lower) respectively till 23.10.2008 but the decision of DPC held on 29.10.2007 regarding inter-se seniority was never complied with and never implemented; that vide impugned order dated 23.08.2008, the appellant was transferred from Dir (Lower) to District Peshawar but his lien was not transferred to Peshawar and still remained in Malakand Region till date, which created great anomaly, hardship and discrimination in service and was thrown away from his colleagues in his due seniority as well as promotion to higher ranks; that Constable namely Zubair Shah, at the same time, was also transferred from District Swat but his lien simultaneously was transferred to Peshawar and he was granted seniority and promotion but the appellant was discriminated; that in light of order dated 14.11.2007, followed by the decision of DPC, the appellant, for the reason of lien so maintained, had reserved his right of seniority in Malakand Region and resultantly subsequent promotion to next higher ranks as well, whereas he was dept deprived of such right due to negligence on part of the respondents by not transferring his lien to Peshawar; that colleagues of the appellant and his batchmates of lower course in Malakand region were selected for intermediate course and were promoted to the rank of ASI/SI in the year 2010-2011 whereas the



appellant was neither selected nor intermediate course with his colleagues/batchmates of lower course in Malakand region nor likewise promoted to the rank of ASI or SI, hence, highly discriminate; that the appellant aggrieved of his fate of seniority and subsequent promotion, filed departmental appeal dated 20.12.2020 but the same was discarded vide impugned order dated 05.01.2021, which was delivered to the appellant on 14.02.2021, hence the instant appeal on the grounds of discrimination as well as compliance of transfer order dated 14.11.2007 followed by the decision of DPC and by placing the name of appellant with his colleagues/batchmates of list C/I & D in which they passed lower intermediate college course.

2. On admission of the appeal to regular hearing, notices were issued to the respondents. Respondents contested the appeal by way of filing replies. Respondents No. 1, 4 & 5 submitted their combined replies while respondents No. 2, 3 & 6 also submitted their combined replies. Respondents No. 1, 4 & 5 have taken the stance in their combined replies to the facts is as under:-

**"FACTS**

1. *Pertain to record, hence need no comments.*
2. *That the appellant was enlisted as Constable on 19.01.1995 in FRP Headquarter Peshawar who later on qualified Lower College Course during term ending 20.10.2001 on the strength of FRP Headquarter Peshawar and stood at serial No. 19 vide Notification No. 4397/S/Result dated 14.12.2001.*
3. *Correct to the extent that appellant was transferred to Malakand Region in light of Departmental Selection Committee meeting held on 29.10.2007 at CPO Peshawar wherein it was recommended that the promotion of FRP personnel*



(all the literate Head Constable and ASI of FRP) be transferred to their domicile district who were accordingly transferred and the name of the appellant was mentioned at serial No. 66 of Order Endst: No. 5709-25/EC dated 15.11.2007.

4. That after transferred to Malakand Region vide office Order No. 5709-25/EC dated 15.11.2007, the appellant on repatriation from FRP was placed at the disposal of DPO Swat at serial No. 10 of Office Order No. 4699-4702/E dated 10.12.2007 of RPO Malakand. Lateron, appellant was transferred to his parent district Dir Lower by RPO Malakand vide his office Order Endst: No. 2626/E dated 17.06.2008, wherein the appellant spent 04 months and 06 days in district Dir Lower and from onward he was transferred to CCP Peshawar vide Order No. 28560-62/E-II dated 23.10.2008 by DIG HQrs:. It is pertinent to mention here that the appellant was selected for intermediate college course on the strength of CCP Peshawar which creates confusion that how he was selected for intermediate college course on the strength of CCP Peshawar despite the fact that his lien was not transferred to CCP Peshawar.

5. Pertain to record. However it is necessary to mention that the appellant was transferred from district Dir Lower to CCP Peshawar vide Order No. 28560-62/E-II dated 23.10.2008 but in his transferred order, there is no mention of transferred of lien in the said transfer order. The appellant himself admitted that his lien was not transferred to CCP Peshawar then how he was selected for intermediate college course on the strength of CCP Peshawar.

6. Pertain to record, hence needs no comments.

7. That the appellant has qualified intermediate college course on the quota of CCP Peshawar and his name was also brought on promotion list "D" by CCP Peshawar vide notification No. 12966/E-I dated 07.07.2015. His case of promotion as ASI for consideration is the domain of CCP Peshawar as he has qualified intermediate college course on the strength of CCP Peshawar.

8. Incorrect. The appellant was selected for intermediate college course on the strength of Peshawar Region, therefore, his seniority will be maintained at Peshawar Region.

9. That appellant has qualified the Intermediate College Course during the term ending 31.05.2015 on the count of CCP Peshawar and his name was



brought on promotion list "D" vide CCP Peshawar notification No. 12966/E-I dated 07.07.2015.

10. *The appellant has wrongly challenged the legal and valid order of respondents before this honorable Tribunal through unsound grounds."*

3. Likewise respondents No. 2, 3 & 6 have taken the stance in their combined reply to the facts which is as under:-

### **REPLY ON FACTS**

1. *Pertains to record.*
2. *Pertains to record.*
3. *Pertains to record.*
4. *Incorrect. The appellant was received on transfer to CCP Peshawar from District Dir and while serving here he was selected to Intermediate College Course on the strength of CCP Peshawar and on his own turn meaning by that his lien was transferred and permanently absorbed. Had he not absorbed and his lien not transferred, the appellant would have definitely agitated this issue by not joining the course from the strength of CCP Peshawar.*
5. *Incorrect. The appellant joined Intermediate College Course on the strength of CCP Peshawar which impliedly prove that he was on the strength of CCP and will earn promotion on the strength of CCP on his own turn and intermediate class batch mates.*
6. *Incorrect. First part of the Para pertains to record while rest is correct as he was selected for Intermediate College Course on the strength of CCP Peshawar and on his own turn which clearly depicts that he belongs to the rank and file of CCP Peshawar. Further, he is eligible to get promotion to next higher rank on the quota/available vacancy of CCP Peshawar along with his colleagues/ batch fellows.*
7. *Incorrect. No discrimination has been done against him as the appellant being literate office of FRP was rightly transferred to his district of domicile i.e Malakand region as per decision of DPC held on 15.11.2007 but soon after his arrival there, he managed his transfer to Capital City Police Peshawar. Here he was selected and joined and course on the strength/quota of Peshawar Police. His name is rightly placed on the seniority list "D" of CCP Peshawar along with his other batch fellows of Intermediate College Course and he will be*



*promoted to next higher rank of ASI on his own turn. Therefore, claiming oneself to Malakand Region while serving in the rank and file of Capital City Police, Peshawar shows his malafide intention in order to get promotion there after lapse of more than 14 long years. Had he considered himself on the strength of Malakand Region then obviously he would have raised any voice or have filed any sort of representation but his silence coupled with no documentary proof shows his willingness and admission that he is on the strength of CCP Peshawar.*

*8. Incorrect. His appeal was without any substance or legal footings hence rightly filed/rejected by the competent Authority. The appellant is rightly placed at the seniority list "D" of CCP Peshawar alongwith his batch fellows/colleagues after qualifying Intermediate College Course from the quota/ strength of CCP Peshawar.*

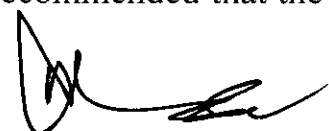
*9. Incorrect. The appellant qualified Intermediate College Course on the strength of CCP Peshawar and his name his brought on promotion list "D" by CCP Peshawar therefore his case of consideration for promotion as ASI is also the domain of CCP Peshawar instead of Malakand Region.*

*10. Incorrect. No miscarriage of justice or discrimination has been done with the appellant, therefore his grievance are not based on lawful grounds."*

4. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order (s).

6. It is in para-3 on facts of the reply filed by the respondents that the appellant was transferred to Malakand Region in the light of decision of the Departmental Selection Committee meeting held on 29.10.2007 at CPO Peshawar, wherein it was recommended that the



promotion of FRP personnel (all the literate Head Constable and ASI of FRP) be transferred to their domicile district who were accordingly transferred and the name of the appellant was mentioned at serial No. 66 of order Endst: No. 5709-25/EC dated 15.11.2007. In order to decide this appeal we consider it important to reproduce paragraphs 3, 4, 5, 7, 8 & 9 of reply which are as below:-

“3. Correct to the extent that appellant was transferred to Malakand Region in light of Departmental Selection Committee meeting held on 29.10.2007 at CPO Peshawar wherein it was recommended that the promotion of FRP personnel (all the literate Head Constable and ASI of FRP) be transferred to their domicile district who were accordingly transferred and the name of the appellant was mentioned at serial No. 66 of order Endst: No. 5709-25/EC dated 15.11.2007.

4. That after transferred to Malakand Region vide office Order No. 5709-25/EC dated 15.11.2007, the appellant on repatriation from FRP was placed at the disposal of DPO Swat at serial No. 10 of Office Order No. 4699-4702/E (**annexure “B”**) dated 10.12.2007 of RPO Malakand. Later on, appellant was transferred to his parent district Dir Lower by RPO Malakand vide his office Order Endst: No. 2626/E dated 17.06.2008 (**annexure “C”**), wherein the appellant spent 04 months and 06 days in district Dir Lower and from onward he was transferred to CCP Peshawar vide Order No. 28560-62/E-II dated 23.10.2008 (**annexure “D”**) by DIG HQrs:. It is pertinent to mention here that the appellant was selected for intermediate college course on the strength of CCP Peshawar which creates confusion that how he was selected for intermediate college course on the strength of CCP Peshawar despite the fact that his lien was not transferred to CCP Peshawar.

5. Pertain to record. However it is necessary to mention that the appellant was transferred from district Dir Lower to CCP Peshawar vide Order No. 28560-62/E-II dated 23.10.2008 but in his transferred order, there is no mention of transferred of lien in the said transfer order. The appellant



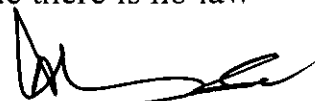
himself admitted that his lien was not transferred to CCP Peshawar then how he was selected for intermediate college course on the strength of CCP Peshawar.

7. That the appellant has qualified intermediate college course on the quota of CCP Peshawar and his name was also brought on promotion list "D" by CCP Peshawar vide notification No. 12966/E-I dated 07.07.2015. His case of promotion as ASI for consideration is the domain of CCP Peshawar as he has qualified intermediate college course on the strength of CCP Peshawar.

8. Incorrect. The appellant was selected for intermediate college course on the strength of Peshawar Region, therefore his seniority will be maintained at Peshawar Region.

9. That appellant has qualified the Intermediate College Course during the term ending 31.05.2015 on the Count of CCP Peshawar and his name was brought on promotion list "D" vide CCP Peshawar notification No. 12966/E-I dated 07.07.2015."

7. From the above paragraphs it is gathered that in the light of the decision of the Departmental Selection Committee in its meeting held on 29.10.2007 at CPO Peshawar, the appellant was transferred vide order dated 15.11.2007 and contention of the respondents is that the appellant, had managed his transfer from Malakand Region to the CCPO Peshawar himself but there is nothing on the record about transfer of his lien and the fact whether his rights regarding seniority, promotion etc would be exclusive on his such transfer. There is no order of any authority on the file to justify the stance taken by the respondents in the replies as well as during the course of arguments that after transfer of the appellant from Malakand Range to CCPO Peshawar he became member of the establishment of CCPO for all intent and purposes including seniority, promotion etc extinguishing all his rights in the Malakand Range. Even if the contention of the respondents is considered to be true there is no law





Service Appeal No.2811-2021 titled "Ghafoor Shah versus The Provincial Police Officer, Khyber Pakhtunkhwa, Central Police Office, Peshawar and others", decided on 18.04.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

or rules or standing order referred in this respect. In the absence of any material placed before the Tribunal to decide the contentions of the either side conclusively or finally, we are constrained to allow this appeal, set-aside the appellate order dated 05.01.2021 and remit the matter back to the departmental authorities to re-decide the fate of the appellant in light of the observations made above within a period of 90 days of receipt of this judgment. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of April, 2024.*



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

\*Naeem Amin\*

18<sup>th</sup> April, 2024 1. Appellant alongwith his counsel present. Mr. Umair Azam, Additional Advocate General alongwith Mr. Ali Rehman, DSP (Legal) for the respondents present.

2. Arguments heard. To come up for consideration and order on 19.04.2024 before the D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)  
Member (Executive)

(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*

**ORDER**

19<sup>th</sup> April, 2024

1. Appellant in person present. Mr. Umair Azam, Additional Advocate General for the respondents present. Arguments have already been heard and record perused.

2. Vide our judgment of today placed on file, we are constrained to allow this appeal, set-aside the appellate order dated 05.01.2021 and remit the matter back to the departmental authorities to re-decide the fate of the appellant in light of the observations made in the judgment within a period of 90 days of receipt of this judgment. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19<sup>th</sup> day of April, 2024.*

(Muhammad Akbar Khan)  
Member (Executive)

(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*