9. This case is similar to the above mentioned appeal and is allowed accordingly. Costs shall follow the event. Consign.

10. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of May, 2024.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

year tenure as Inspector in Investigation Branch or CTD or Special Branch or in any Police training institute.

7. There is nothing on the record to show that the appellant was ever posted by his superiors in any of the above branches and he refused to join that and it was because of his fault, the requisite criteria for promotion was not fulfilled by him, rather it was the Department, who had not provided any opportunity of posting him in any of the above branches enabling him to fulfill the criteria for promotion.

8. This Tribunal in a judgment dated 30.08.2021 in Service Appeal No.291/2019 titled "Abdullah Jan versus Provincial Police Officer" has already decided a similar matter in the following terms:

> *"04. We have heard leaned counsel for the parties and have perused the record. Contention of the learned counsel for the appellant holds ground, as it was not within the authority of the appellant to post himself in a desired place or to attend to a course without his nomination by the competent authority. Had the relevant authority posted the appellant in the relevant time and nominated him for such course and had the appellant failed to do so, then the appellant would have not been found entitled to the relief claimed. Since the omission is on part of the respondents, as such the appellant cannot be deprived of his right to antedate hiss promotion from the date, when his other colleagues were promoted. We have also found that the appellant in due course has fulfilled the deficiencies and is otherwise eligible for promotion. We have also noted that case of the appellant has been deferred and he is not superseded, so as per rule, on attaining promotion after meeting deficiencies, he will re-gain his due seniority amongst his other batch-mates.*
>
> *05. In view of the foregoing discussion, the instant appeal is accepted by setting-aside the impugned order dated 09.01.2019 and the appellant is held entitled to promotion from the date, when his other batch-mates were promoted along with all back benefits. Parties are left to bear their own costs. File be consigned to the record room."*

not posted in the CTD, therefore, he was deferred from promotion on that ground and his colleagues were promoted to the post of DSP vide impugned order dated 29.11.2018.

2. Feeling aggrieved of the impugned order dated 29.11.2018, the appellant filed departmental appeal on 30.11.2018, which was rejected on 15.01.2019, therefore, he filed the instant service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellant and learned District Attorney for 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 District Attorney controverted the same by supporting the impugned order(s).

6. The only reason, for deferment of the appellant at the time of his consideration for promotion at different points of time as well as in the reply of the respondents, was stated to be that the appellant had served for only five months in the Investigation Wing, whereas, as per Amended Rule 13-16 (A) of the Police Rules, an Inspector was to be promoted to the post of DSP after successful completion of mandatory training i.e. Advance Course and completion of one

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.211/2019

Date of presentation of Appeal.....15.02.2019
Date of Hearing.....03.05. 2024
Date of Decision.....03.05. 2024

Ali Khan Inspector P/174 Malakand Region-III Dir Lower.
.....***(Appellant)***

Versus

1. **Provincial Police Officer,** Khyber Pakhtunkhwa, Peshawar.
2. **Inspector General of Police,** Khyber Pakhtunkhwa, Peshawar.
3. **Capital City Police Officer,** Peshawar.....(***Respondents***)

Present:
Miss. Roeeda Khan, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney .....For respondents

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 29.11.2018 WHEREBY THE NAME OF THE APPELLANT HAS NOT BEEN CONSIDERED FOR PROMOTION TO THE RANK OF DSP AS HIS OTHER COLLEAGUE HAS BEEN PROMOTED AND WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 30.11.2018 HAS BEEN REJECTED ON 15.01.2019 COMMUNICATED TO THE APPELLANT ON 25.01.2019 ON NO GOOD GROUNDS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Appellant's case in brief, as per the averments of the Appeal, is that he was appointed as Constable in the year 1988 was ultimately promoted to the rank of Inspector. That for promotion to the next higher rank i.e. DSP, he had to spend period in Counter Terrorism Department, but he was