

SA 366/17

28.02.2024

Appellant present in person. Mr. Muhammad Jan, District Attorney alongwith Wajid Khan ASI (Legal) for the respondents present.

Former requested for adjournment due to illness of one of the members of family of his learned counsel. Absolute last/final opportunity is granted, failing which no further

adjournment will be granted and the case will be decided on the basis of available record. To come up for arguments on

21.03.2024 before the D.B. PP given to the parties.

SCANNED
FOR
PRESERVATION

(Fareeha Paul)
Member(E)

(Rashida Bano)
Member (J)

Fazle Subhan, P.S

ORDER

21.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Wajid Khan, ASI (Legal) for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed having no force in it. Costs shall follow the event. Consign.

3. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 21th day of March, 2024.

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

*M.Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 366/2017

BEFORE: **MRS. RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Nadeem Shah, Constable No. 618, CTD, Kohat Region.

... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
2. The Additional Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer, Kohat.

... (Respondents)

Mr. Noman Ali Bukharai
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....10.04.2017
Date of Hearing.....21.03.2024
Date of Decision.....21.03.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the order dated 08.12.2016 may be set aside and the respondents may further please be directed to restore the appellant to the post of Head Constable with all back benefits. Any other remedy which this August



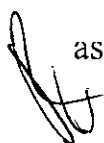
Tribunal deems fit that may also be awarded in favor of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant was enlisted as Constable in Police Department in the year 2007. Appellant alongwith other were granted accelerated promotion due to their excellent performance vide order dated 13.07.2009 w.e.f. 29.06.2009. On 08.12.2016 promotion order of the appellant was withdrawn/cancelled. The appellant feeling aggrieved, filed departmental appeal, which was not responded, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that he has not been treated in accordance with law and rules. He further argued that the impugned order is against the law facts, norms of justice, hence not tenable and liable to be set aside; that no proper procedure has been adopted before passing the impugned order as no charge sheet and statement of allegation has been issued which is violation of law and rules; that no chance of personal hearing was afforded to him and he was condemned unheard which is against the norms of natural justice.

5. Conversely learned Deputy District Attorney contended that the appellant was given accelerated promotion from the rank of Constable to the rank of Head Constable. The august Supreme Court of Pakistan vide its judgment in CRI Original Petition No.89/2011 has held out of turn promotions as illegal, violation of article 189 of the constitutional law and rules. Therefore,



in compliance to the judgment of august Supreme Court of Pakistan, all out of turn promotions/accelerated promotions were withdrawn and the officers/officials were brought to their original/substantive rank including the appellant.

6. Perusal of record reveals that the appellant joined Police Department as Constable in year 2007, who due to his commendable services was given commendation certificates by his high ups. PPO recommended accelerated promotion to different police officers due to their excellent performance vide letter dated 26/09/2009, as a result of which many police officials including appellant was promoted as head constable vide order of DPO Kohat dated 13/07/2009 w.e.f 26/06/2009. Appellant said accelerated promotion order from constable to head constable was withdrawn by respondent vide impugned order dated 08/12/2016.

7. Appellant challenged order of withdrawal of his promotion on the ground that no inquiry was conducted and no chance of defense was provided to him which was violation of law and rules and order of promotion was issued by the competent authority and was acted upon for long seven years. Therefore appellant alleged on the basis of principle of locus penitentiae that the same cannot be withdrawn. Respondent in reply mentioned that appellant was given out of turn/accelerated promotion from constable to head constable, which as per verdict of Supreme Court of Pakistan in CRI. original petition no.89/2011 was declared illegal, violation of constitutional law and rules; therefore in compliance of said judgment of apex court all out of turn promotion orders were withdrawn and officers/officials were brought to their original ranks.


8. It is worth mentioning here that apex court of country declared out of turn promotion illegal therefore all promotion orders issued out of turn by not

following due process and not going through proper trainings were withdrawn by the respondent. Perusal of promotion order dated 13/7/2009 reveals that appellant was given accelerated promotion to the rank of head constable from constable in pursuance of PPO dated 29/6/2009, which was issued on the basis of standing order No.6/2008 accelerated promotion means out of turn promotion.

9. Moreover, rules/laws are always superior than standing orders. In accordance with Police Rules 1975, there are some requirements for promotion to the rank of Head Constable from Constable i.e. passing of A1, B1 exam by the concerned constable, but in the instant case no such exam was passed by the appellant before his accelerated promotion. It is also important to note here that out of turn promotion was withdrawn as consequence of implementation of Supreme Court's judgment, therefore, there was no need to conduct any inquiry and provide chance of defense because from promotion order of the appellant, it is clear that it was out of turn promotion, when there was a judgment of Supreme Court of Pakistan on the same issue specifically in field, than the principle of *locus poenitentiae* is not attracted to the facts and circumstances of the case of appellant.

10. For what has been discussed above, the appeal in hand is dismissed having no force in it. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 21th day of March, 2024.*


(Farzha Paul)
Member (E)


(Rashida Bano)
Member (J)