

Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torghar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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

Service Appeal No.36/2017

Date of presentation of Appeal.....19.12.2016
Date of Hearing.....30.05.2024
Date of Decision.....30.05.2024

Ayaz IHC, No. 254, District Torhgar Elite Force, Khyber Pakhtunkhwa.....(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
2. **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
3. **RPO/DIG, Hazara Region, Abbottabad.**
4. **District Police Officer, Torghar.**
5. **C Abdul Sattar No.4 Torghar.**
6. **HC Qasim Ali Shah No.981 Torghar.**
7. **HC Shahzad Ahmad, No/282 Torghar.**
8. **HC Muhammad Sohail No.283 Torhgar.**
9. **HC Sarfaraz Ahmad No.280 Torghar.**
10. **Niaz Ahmad ASI, 327/H posted at CTD Hazara Region, District Mansehra.....(Respondents)**

Present:

Mr. Sardar Muhammad Irshad, Advocate.....For the appellant
Mr. Mr. Asif Masood Ali Shah, Deputy District Attorney ...For official respondents
Mr. Zulfiqar Ahmad, AdvocateFor private respondents
Mr. Qasim Ali Shah.....Private respondent No.6

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR DECLARATION TO THE EFFECT THAT AS PER RULE 13(8) OF POLICE RULES, 1934 SENIORITY OF D-LIST HEAD CONSTABLE IS TO BE MAINTAINED FROM THE DATE OF TO BE MAINTAINED FROM THE DATE OF PASSING OF INTERMEDIATE COURSE ON THE BASIS OF ORDER OF MERIT ISSUED BY PTC HANGU, WHEREAS RESPONDENTS, DEPARTMENT SPECIALLY IN DISTRICT TORGHAR, SENIORITY OF THE APPELLANT HAS BEEN MAINTAINED ON THE BASIS OF TRANSFER TO DISTRICT TORGHAR AND HAS BEEN PLACED AT THE BOTTOM OF SENIORITY LIST

Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torhar and others". Decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

OF D-LIST OF RESPONDENT NO.5 TO 9 WHO COMPLETED THEIR INTERMEDIATE COURSE AFTER THE PASSING OF SAID COURSE BY THE APPELLANT VIDE LETTER NO.25349/E-IV DATED 09.10.2013 WHICH HAS BEEN UPHELD BY RESPONDENT NO.2 VIDE LETTER NO.7859/E-IV DATED 16.08.2016 WHICH IS ULTRA VIRES TO RULE 12(8) OF POLICE RULES 1934 AND THE SAID IMPUGNED LETTER OF RESPONDENTS DEPARTMENT IS LIABLE TO BE SET ASIDE.

Service Appeal No.37/2017

Date of presentation of Appeal.....19.12.2016
Date of Hearing.....30.05.2024
Date of Decision.....30.05.2024

Muhammad Naveed IHC, No. 159, District Torhgar Elite Force, Khyber Pakhtunkhwa.....(**Appellant**)

Versus

1. **Government of Khyber Pakhtunkhwa**, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. **Inspector General of Police**, Khyber Pakhtunkhwa, Peshawar.
3. **RPO/DIG**, Hazara Region, Abbottabad.
4. **District Police Officer**, Torghar.
5. **HC Abdul Sattar No.4** Torghar.
6. **HC Qasim Ali Shah No.981** Torghar.
7. **HC Shahzad Ahmad, No/282** Torghar.
8. **HC Muhammad Sohail No.283** Torghar.
9. **HC Sarfaraz Ahmad No.280** Torghar.
10. **Niaz Ahmad ASI, 327/H** posted at CTD Hazara Region, District Mansehra.....(**Respondents**)

Present:

Mr. Sardar Muhammad Irshad, Advocate.....For the appellant
Mr. Mr. Asif Masood Ali Shah, Deputy District Attorney ...For official respondents
Mr. Zulfiqar Ahmad, AdvocateFor private respondents
Mr. Qasim Ali Shah.....Private respondent No.6

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 FOR DECLARATION TO THE EFFECT THAT AS PER RULE 13(8) OF POLICE RULES, 1934 SENIORITY OF D-LIST HEAD CONSTABLE IS TO BE MAINTAINED FROM THE



Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torghar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

DATE OF TO BE MAINTAINED FROM THE DATE OF PASSING OF INTERMEDIATE COURSE ON THE BASIS OF ORDER OF MERIT ISSUED BY PTC HANGU, WHEREAS RESPONDENTS, DEPARTMENT SPECIALLY IN DISTRICT TORGHAR, SENIORITY OF THE APPELLANT HAS BEEN MAINTAINED ON THE BASIS OF TRANSFER TO DISTRICT TORGHAR AND HAS BEEN PLACED AT THE BOTTOM OF SENIORITY LIST OF D-LIST OF RESPONDENT NO.5 TO 9 WHO COMPLETED THEIR INTERMEDIATE COURSE AFTER THE PASSING OF SAID COURSE BY THE APPELLANT VIDE LETTER NO.25349/E-IV DATED 09.10.2013 WHICH HAS BEEN UPHELD BY RESPONDENT NO.2 VIDE LETTER NO.7859/E-IV DATED 16.08.2016 WHICH IS ULTRA VIRES TO RULE 12(8) OF POLICE RULES 1934 AND THE SAID IMPUGNED LETTER OF RESPONDENTS DEPARTMENT IS LIABLE TO BE SET ASIDE.

Service Appeal No.1349/2017

Date of presentation of Appeal.....28.11.2017
Date of Hearing.....30.05.2024
Date of Decision.....30.05.2024

Head Constable Abdul Majeed No.38, posted at Police Station Khaki, District Mansehra.....(*Appellant*)

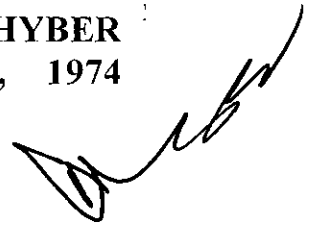
Versus

- 1. The Regional Police Officer, Hazara Region, Abbottabad/ DIG Abbottabad.**
- 2. ASI Abdul Qadeer Abbasi No.209, posted at Police Station Hattar District Haripur.**
- 3. ASI Alamzeb No.5, posted at PS Shinkiari, (CTD) Mansehra.**
- 4. ASI Waqas No.341, posted as a gunner with Kareem Khan DIG Training, Peshawar.....(*Respondents*)**

Present:

Mr. Sardar Muhammad Irshad, Advocate.....For the appellant
Mr. Mr. Asif Masood Ali Shah, Deputy District Attorney ...For official respondents
Mr. Zulfiqar Ahmad, AdvocateFor private respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974**



Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torghar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

AGAINST THE ORDER NO.22981 DATED 05.10.2017 PASSED BY RESPONDENT NO.1 VIDE WHICH THE DEPARTMENTAL REPRESENTATION OF THE APPELLANT FOR FIXATION OF HIS SENIORITY BY CORRECTION OF REVISED SENIORITY LIST DATED 22.09.2016.

Service Appeal No.11638/2020

Date of presentation of Appeal.....23.09.2020
Date of Hearing.....23.05.2024
Date of Decision.....23.05.2024

Wazir Muhammad Head Constable No.52 District Torghar presently posted in CTD No.1000 Hazara Division, Abbottabad(*Appellant*)

Versus

1. **District Police Officer, Torghar.**
2. **Regional Police Officer, Khyber Pakhtunkhwa, Peshawar.**
3. **Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.**
4. **Government of Khyber Pakhtunkhwa through Secretary to the Government Home & Tribal Affairs Department Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)**

Present:

Mr. Sardar Muhammad Irshad, Advocate.....For the appellant
Mr. Mr. Asif Masood Ali Shah, Deputy District Attorney ...For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST MEMORANDUM BEARING NO.12806/E, DATED 04.06.2020 COMMUNICATED TO THE APPELLANT ON 28.08.2020 WHEREBY APPELLANT'S OBJECTIONS REGARDING FIXATION OF "D" LIST SENIORITY WERE OVER RULED.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above four appeals, are jointly taken up, as all are similar



Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torghar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

in nature and almost with the same contentions, therefore, can be conveniently decided together.


2. Brief facts of the appeals are as under:

i. SA No.36/2017 Ayaz:

The appellant was serving as Head Constable in District Torghar; that according to Rule 13(8) of Police Rules, 1934 appellant was entitled to seniority w.e.f the date of passing departmental examination; that vide impugned order dated 16.08.2016, appellant was deprived of the said seniority and the private respondents, who had not passed the departmental examination prior to the date of passing of the same, were granted seniority; that feeling aggrieved, he filed departmental appeal on 01.09.2016, which was rejected on 16.11.2016, hence, the instant service appeal.

ii. SA No.37/2017 Muhammad Naveed:

The appellant was serving as Head Constable in District Torghar; that according to Rule 13(8) of Police Rules, 1934 appellant was entitled to seniority w.e.f the date of passing departmental examination; that vide impugned order dated 16.08.2016, appellant was deprived of the said seniority and the private respondents, who had not passed the departmental examination prior to the date of passing of the same, were granted seniority; that feeling aggrieved, he filed departmental appeal on 01.09.2016, which was rejected on 16.11.2016, hence, the instant service appeal.



Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torhar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

iii. SA No.1394/2017 Abdul Majeed:

The appellant, while serving in the Police Department, submitted an application for correction of his seniority, which was turned down on 05.10.2017, against he filed departmental appeal on 30.05.2017 which was rejected on 05.10.2017. Therefore, he filed the instant service appeal.

iv. SA No.11638/2020 Wazir Muhammad:

The appellant, while serving in the Police Department, submitted representation against the seniority list dated 24.01.2020; that the said representation was dismissed vide order dated 04.06.2020. Therefore, he filed the instant service appeal.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned, who put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants.

4. We have heard learned counsel for the appellants, learned counsel for private respondents and learned Deputy District Attorney for official respondents.

5. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned District Attorney assisted by the learned counsel for private respondents, controverted the same by supporting the impugned order(s).



Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others". Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torhar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

6. The issue involved in all the four cases is, the seniority lists of officiating ASIs and Head Constables, issued on different dates. The dispute is fixation of seniority amongst the private parties. It is the contention of the learned counsel for appellants that seniority list was not prepared in accordance with the merit order notified by the Department. The list is stated to be not in accordance with the law and rules. When asked about the fact from where the seniority was fixed on different criteria, we could not find any plausible reply from either side, nor could anyone refer to any law or rule on the basis of which, the seniority was prepared in the manner it was prepared. The record is silent as well as the arguments were also not assisting the Tribunal to reach a proper conclusion.

7. Therefore, we are constrained to remit the matter back to the departmental authorities to first decide, by a detailed order, with reasons, as to how different seniority lists should be prepared, by taking it into consideration all the laws, rules instructions, standing orders (but only those, having backing of law) and to decide in what manner seniority list should be prepared, also answering the questions as to how, why and which order of seniority should prevail, if need be, the authority may invite objections from all the concerned officials/officers and on passage of the detailed order in writing, seniority lists be issued accordingly. This exercise should be completed within three months from the passage of



Service Appeal No.36/2017 titled "Ayaz Vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal Bi.37/2017 titled "Muhammad Naveed vs Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others", Service Appeal No.1349/2017 titled "Abdul Majeed Vs. The Regional Police Officer, Hazara Region, Abbottabad and Service Appeal No.11638/2020 titled "Wazir Muhammad Vs. District Police Officer, Torhar and others" decided on 30.05.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar at Camp Court, Abbottabad.

this judgment. Costs shall follow the event. Copy of this judgment be placed on files of all the connected appeals. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30th day of May, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah



S.A No.36/2017

ORDER

30th May, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Shafi Ullah Khan Gandapur, District Police Officer, Mansehra present on behalf of RPO Hazara Region. Private respondent No.6 in person present. Remaining private respondents are present through counsel.

2. Vide our consolidated judgment of today placed on file, we are constrained to remit the matter back to the departmental authorities to first decide, by a detailed order, with reasons, as to how different seniority lists should be prepared, by taking it into consideration all the laws, rules instructions, standing orders (but only those, having backing of law) and to decide in what manner seniority list should be prepared, also answering the questions as to how, why and which order of seniority should prevail, if need be, the authority may invite objections from all the concerned officials/officers and on passage of the detailed order in writing, seniority lists be issued accordingly. This exercise should be completed within three months from the passage of this judgment. Costs shall follow the event. Copy of the judgment be placed on files of all the connected appeals. Consign.

3. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 30th day of May, 2024.*

(Muhammad Akbar Khan)
Member (E)
Camp Court, Abbottabad

(Kalim Arshad Khan)
Chairman
Camp Court, Abbottabad