

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 06/2024

Abdur Rasheed ..... (Appellant)

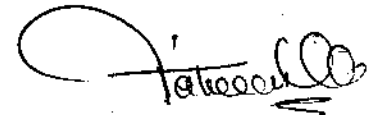
VERSUS

Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

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DEPONENT



DSP/ Legal,  
CPO, Peshawar

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S-13  
Peshawar

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 06/2024

Abdur Rasheed ..... (Appellant)

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 13181

VERSUS

Dated 05-06-24

Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

**PARAWISE COMMENTS BY RESPONDENTS NO. 1 to 3**

**PRELIMINARY OBJECTIONS:-**

- a) That the appeal is not maintainable in its present form.
- b) That the appellant has got no locus standi.
- c) That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- d) That the appellant is estopped by his own conduct to file the petition.
- e) That the appellant has not come to this Hon'ble Tribunal with clean hands.
- f) That the appellant has got no cause of action to file the present petition.
- g) That the appellant is concealing real facts from this Hon'ble Tribunal.

**FACTS:-**

1. Para to the extent of peaceful and law abiding citizen is not plausible because the appellant being member of disciplined force is/was under obligation to be a peaceful and law abiding because in this department no room lies for those who either involve in any anti-social activities or violation of any law of the land. However, rest of the para is correct because every citizen irrespective of member of police force or general public is entitle for all the rights guaranteed by the Grund Norm.
2. Correct to the extent that the appellant was posted as Acting Superintendent of Police Investigation, Buner while rest of the para is not plausible because every police officer is under obligation to perform his duties with zeal & zest because in this department no room lies for lethargy.
3. Para to the extent of initial appointment as Constable & subsequent completion of promotion courses and declaring best al-round cadet in Intermediate College Course pertains to record needs no comments. However, the plea of appellant regarding his posting as Cadet Law Instructor and on the basis of completion of mandatory tenure and subsequent confirmation in the rank of ASI also pertains to record but it is pertinent to mention here that the Apex Court of Pakistan vide its series of judgments reported in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions and so on categorically declared such promotion as out of turn promotions. The relevant portions of judgments are reproduced as under:-

*The Operating Para No. 8 and 9 of 1998 SCMR 2013 titled Siddiq Akbar ASI of same Judgment are being reproduced as under;*

*8. We are, therefore of the considered opinion that word 'approval' occurring in section 12 of the Act implied the act of passing judgment, the use of discretion, and a determination as a deduction therefrom, to confirm, ratify, sanction or to consent to some act or thing done by the Inspector General of Police. The word 'approval' implies exercise of sound judgment, practical sagacity, wise discretion and final direct affirmative action. Merely because the impugned Standing Order has held the ground for a number of years is not sufficient to assume the grant of 'approval' of the issuance of Standing Order by the Provincial Government.*

9. We have, therefore, no hesitation to hold that the Standing Order No. 11 issued by the Inspector General of Police having not been approved by the Provincial Government is devoid of its legal status and is, therefore, of no legal authority. We are, therefore, inclined to uphold the findings of the Tribunal that the impugned Standing Order is without any lawful authority and of no legal effect.

Similarly, as per Para No. 73 of Judgment of Hon'ble Supreme Court of Pakistan 2018 SCMR 1218 (Intra Court Appeals No.4 of 2017 etc) when any legislative instrument is declared unconstitutional, it is declared void ab initio. The Para No. 73 is being reproduced as under;

73. The contention of Khawaja Haris Ahmad, learned Sr. ASC that in Para No. 123 of Shahid Pervaiz's case (supra) this Court had wrongly observed that "we have already declared void ab initio the legislative instruments that provided for out of turn promotions." because nowhere in the earlier judgment was such a declaration made, is also without force. Suffice it to say that in Para 104 of Shahid Pervaiz' Case (Supra), it was observed that: "104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion." Moreover, in Para 129 of the judgment of Ali Azhar Khan Baloch's case (supra), this Court was pleased to observe that when any legislative instrument is declared unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio. The relevant part of Para 129 is being reproduced hereunder:

Similarly the Apex Court has deprecated in another consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 , Operating Paras of which are reproduced as under:-

9. The learned Additional Advocate General, Punjab on the other hand has vehemently argued that Rule 13.6 (2) of Police Rules, 1934 is non existent in the statute books and reliance on the same by the petitioners counsel is totally misconceived. He maintains that the rules in question have already been held to be non existent as the same are not available in the official record/ books/ libraries or with the department. He further maintains that position being taken by the petitioner is incomplete violation of the principles of law settled by this Court in a number of judgments including Syed Shabbar Raza Rizvi and other VS Federation of Pakistan, Ministry of Law and Justice Division through Secretary, Islamabad and others (2018 SCMR 514) Khalid Mehmood Afzal VS Mushtaq Sukhera, IG Police and others (2017 SCMR 8611), Shahid Pervez VS Ijaz Ahmed and others (2017 SCMR 206) Ali Azhar Khan Baloch and others VS Province of Sindh and others (2015 SCMR 456), contempt proceeding against Chief Secretary, Sindh and others (2013 SCMR 1752), Muhammad Nadeem Arif and others VS IG of Police Punjab, Lahore and others (2011 SCMR 408) and Ghulam Shabbir VS Muhammad Muneer Abbasi (PLD 2011 SC 516).

11. We have heard the learned Counsel for the parties and have gone through the record. The common question involved in this petition is whether or not the petitioner was granted accelerated promotion and if so whether such accelerated promotions enjoys sanctity of law and whether the case of petitioner is not covered by the law laid down by this Court in Contempt Proceedings against Chief Secretary, Sindh and others and Ali Azhar Khan Baloch and others VS Province of Sindh and others (supra).

12. It was argued on behalf of the petitioner and his promotion was not accelerated/ out of turn promotion or on the basis of gallantry awards etc. it was further argued that the petitioner was promoted in accordance with the procedure provided in Rule 13.6 (1) and (2) of the Police Rules, 1934 as he qualified his course/ training with distinction and such distinction was rewarded through accelerated promotion. The learned ASC has submitted before us a photocopy of Rule 13.6 (1) and (2) which according to him is printed in a book titled Police Laws in Pakistan with Police Rules (Volume-I,II and III) by Nazir Ahmed Ghazi Assistant Advocate General, Punjab. Foreword by CH. Chaudhry Sardar Muhammad, Inspector General of Police, Punjab. The said book appears to have been printed by Civil and Criminal law publication I-Turner Road (Opp. AG office near High Court Lahore). The text of rule 13.6, (1) and (2) has been

heavily relied upon by the learned Counsel for the petitioner. We have however, pointed out to the learned Counsel that the latest book available in Courts wherein, Police laws and Police rules have been published do not contained the text that the learned Counsel is relying upon. We have also seen the official publication of Punjab Police Rules, 1934 in which the text of rule 13.6 is totally different and is of no help to the case of petitioner. Further, the record indicates that through a gazette notification published on 12.12.2012, which appears in PLD 2013 (Supplement to Statute) at page 454, and amendment in the original rule has been introduced, the text whereof is as follows:-

(a) For rule 13.6, the following shall be implemented:

13.6 List A Promotion to the selection grade of Constables. List A (in form 13.6) shall be maintained by each Superintendent of Police, under his personal supervision, of constables who are not above than 37 years of age and eligible under rules 13.5 for promotion to the selection grade of constables. The number of names in the list shall not exceed twenty percent of the establishment of the grade in the district" and

(b) In rule 13.7, at the end, following Explanation shall be inserted:

I. List B-I shall be maintained in each district under this rule for those constables who have qualified List 'A' and are not more than thirty nine years of age.

II. The number of constables in List 'B' (in the Form 13.7) shall not exceed five per cent of the establishment of the grade in the district."

It is clear and obvious to us from a simple reading of the said Rule that the same does not support the argument advanced by learned Counsel for the petitioner.

13. This Court, in a series of judgments has declared out of turn promotions as unconstitutional, violative of the law and void ab initio. Reference in this regard may be made to Muhammad Nadeem Arif and others VS IG Police, Punjab, Lahore and others (2011 SCMR 408) and Ghulam Shabbir VS Muhammad Muneer Abbassi and others (PLD 2011 SC 516). The said was affirmed and reiterated in Contempt proceedings against Chief Secretary Sindh and others and Ali Azhar Khan Baloch and others VS Province of Sindh and others (supra). The policy of accelerated/ out of turn promotion was held by this Court is not sustainable being violative of the provision of the Constitution and the Service Laws.

14. In a large number of cases dealing with the identical question, this Court has repeatedly held that an out of turn/ accelerated promotion in violation of the provisions of the Constitution irrespective of the fact whether it was granted in exercise of powers under Section 8-A of the Punjab Civil Servants Act, 1974 or Police Rules, 1934. We have been consistent in our view that if a person is given out of turn promotion, the same leads to heartburn and professional rivalry for no valid reason. Further, it was noticed that the tool of out of turn/ accelerated promotion was misused and abused to grant personal/ political favours which did not auger well for internal working and discipline of the Police Force.

16. As far as the question of applicability of Rule 13.6 (1) and (2) of the Police Rules, 1934 is concerned, the learned Law Officer has taken the position that the said Rules do not exist in the Statute Books. However despite this fact the same had been referred to the various judgments and internal correspondence of the Punjab Police. In this connection, the Tribunal sought clarification from the Inspector General of Police, Punjab Lahore on whose behalf Additional Inspector General of Police, (Legal) submitted report in which it was categorically stated that Law Books unavailable with their office did not contain the said provisions. The Tribunal also sought report regarding existence of the rule or lack thereof from Deputy Secretary (Regulation Wing), Services and General Administration Department, Lahore but the reply received from the Department was also no help to the petitioner. However, irrespective of whether or not Rule 13.6 (1) and (2) exist in the statute book regarding which Secretary, law, Department, Government of the Punjab needs to clarify the position to all concerned, we are of the view that the principle of the law laid down by this court in afore noted judgments are clearly attracted to the facts and circumstances of the present case.

17. In view of a broad principle laid down and repeatedly affirmed and reiterated by this Court that accelerated/ out of turn promotions are violative of the law as well as the Constitution having no valid rational or legal basis or justification, we find no valid reason to take a different view. In compliance with the judgments of this Court the Competent Authorities had already withdrawn all out of turn promotions given to Police officials including the petitioner and depending on the passage of time and number of courses cleared, he has been placed in the seniority list/ post where he rightfully and lawfully belongs on the basis of promotions/ seniority as provided in the law and the rules. We also noticed that the petitioner has not impleaded them who would be affected in case the petitioner succeed and this fact alone is sufficient for dismissal of the present petition on account of non-joinder of necessary parties.

18. We have also carefully gone through the judgments of this Court and find no ambiguity or uncertainty in the principles of law laid down in the same. These have repeatedly been reaffirmed and were complied with by the relevant functionaries in the departments as well as the learned Tribunal. The learned Counsel for the petitioner has not been able to convince us that there is any illegality, perversity, miss interpretation of law or failure on the part of the Tribunal to exercise jurisdiction. Therefore, we do not consider it a fit case for grant of leave to appeal. Even otherwise, we are not convinced that any question of law of public importance within the contemplation of Article 212(3) of the Constitution of Islamic Republic of Pakistan 1973 has been raised in these petitions. Consequently, no basis for grant of leave to appeal is made out.

"129. .... Now, it is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability."

Similarly, Hon'ble Supreme Court of Pakistan Judgment reported as 2017 SCMR 456 vide Para No. 98 declared Out of Turn Promotions as null and void in the following terms which is reproduced as under;

98. In a series of judgments, this Court has declared out-of-turn promotions as being unconstitutional, un-Islamic, and void ab initio. The principle of unconstitutionality attached to the instrument providing for out of turn promotion was laid down first in the case of Muhammad Nadeem Arif vs. I.G of Police (2011 SCMR 408). The view taken in this judgment was followed in another case reported as Ghulam Shabbir vs. Muhammad Munir Abbasi (PLD 2011 SC 516); wherein it was held that out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam; and that reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

It is also worth mentioning here that concept of cadetship and its legal instrument i.e. Standing Orders 11/87, 3/2006, 2/2014 and validation of Standing Orders Act, 2005, have been struck down by the Apex Court in the following Judgments.

- 1998 SCMR 2013.
- Muhammad Nadeem Arif vs. Inspector General of Police, Punjab Lahore (PLC 2010 CS 924).
- Ghulam Shabbir vs. Muhammad Munir Abbasi and others (2011 PLC (C.S) 763.
- 2013 SCMR 1752.
- 2015 SCMR 456.
- 2016 SCMR 1254.
- 2017 SCMR 206.
- 2018 SCMR 1218.
- Consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019.

**2016 SCMR 1254**

46. Before we could travel into the scheme of the Police Act and the Rules framed there-under, it has been conceded by the learned Advocate General, Sindh, that the Standing Orders issued at times by the different I.G Police were without the approval of the Provincial Government and, therefore, did not have any legal status. In view of this conceding statement of the Advocate General, no argument was advanced by either party to the validity or otherwise of the Standing Orders issued by the I.Gs Police at times.

**2013 SCMR 1752**

158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9A would affect the performance of hundreds of thousands of the civil Crl.Org.P.No.89/11 etc. 120 servants serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter-se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities were and are superseded by the powers granted to the Chief Minister through Section 9A.

162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self respect and dignity of Crl.Org.P.No.89/11 etc. 122 the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.

164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sind Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9A, the Sindh Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word 'Gallantry' in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated

hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.

172. The contention of the learned Advocate General that the Provincial Assembly has absolute powers to promulgate law which may nullify the effect of a judgment is misconceived, as a general rule the legislature cannot destroy, annul, set aside, vacate, reverse, modify or impair a final judgment of a court of competent jurisdiction, nor fundamental rights guaranteed under the Constitution can be abridged by the legislature. The legislature is not only prohibited from reopening cases previously decided by the courts, but is also forbidden to affect the inherent attributes of a judgment through a piece of legislation as has been done in the case in hand. In ultimate analysis, therefore, the primary test for examining the vires of an instrument (validating) is whether the new provision removes the defect, which the court had found in the existing law and whether adequate provisions in the validating law have been introduced to the terms 'absorption', 'out of turn promotion', 're-employment and 'deputation'. We have already discussed hereinabove, the aforesaid terms, used in the impugned legislative instruments and have been interpreted by the courts prior to coming into field the impugned legislations. After examining the impugned legislations, we are of the considered view that these instruments cannot be construed to have nullified the effect of the judgments discussed hereinabove, as the instruments sought to be challenged, in fact, encourages nepotism and discourages transparent process of appointments of civil servants by recruitment and or by transfer in all the three modes provided by the Act of 1973 and the rules framed there-under. This court in fiscal matters has applied restraints from interfering in the legislative domain while examining the vires of a statute, but in the case in hand, the impugned Crl.Org.P.No.89/11 etc. 131 legislations through amendments and validation/regularization have hampered the fundamental rights of the civil servants with the sole object to extend favours to few blue-eyed of the government.

173. We, therefore, are clear in our mind that amendments brought in the Act of 1973 by the impugned validating instruments do not meet the standards of jurisprudence which mandate safeguard provided to the civil servants under the Constitution. The impugned legislative instruments, therefore, do not have the effect to neutralize or nullify the judgments of the Courts referred to hereinabove.

175. For the aforesaid reasons we allow Constitution Petitions.No.71/2011, 23-K/2012, 21/2013 and 24 of 2013, and dispose of all the Misc. Applications and hold that the impugned legislations mentioned in para 115 are violative of the provisions of the Constitution discussed hereinabove. We further hold and declare that benefit of 'absorptions' extended by the Sindh Government since 1994, with or without backdated seniority, are declared ultra vires of the Constitution, as the learned Additional Advocate General has made a statement during hearing that the impugned validation instruments have granted legal cover to the employees/civil servants, who were absorbed since 1994. Likewise, we further hold and declare that all out of turn promotions made under section 9-A of the Sindh Civil Servants Act, 1973, by the Sindh Government to an employee or civil servant with or without backdated seniority since 22.1.2002, when section 9-A was inserted through Ordinance IV of 2002, are ultra vires of the Constitution. All Misc. Applications made by the absorbees in which interim orders were passed by this Court restraining the Government from complying with the orders of this Court dated 02.05.2012 stand vacated. We also hold that all the re-employment/rehiring of the retired Civil/Government Servants under the impugned instruments being violative of the constitution are declared nullity. We further direct that the nominations made by the Chief Minister in excess of the quota given by Rule 5(4) (b) of the West Pakistan Civil Service (Executive Branch) Rules, 1964, are without lawful

authority and all the 15 nominees (Assistant Commissioners) are reverted to their original positions.

**2015 SCMR 456**

122. The issue of out of turn promotions has been dealt with by us in detail in the judgment sought to be reviewed and we reached the conclusion that it was violative of Articles 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, learned Advocate Supreme Court has contended that section 9- A of the Act has not been struck down by this Court, while declaring the out of turn promotions as unconstitutional. We are mindful of this fact as we have held that the Competent Authority can grant awards or rewards to the Police Officers, if they show act of gallantry beyond the call of duty. However, we had struck down the very concept of 'out of turn promotion' being violative of Constitution for the reasons incorporated in paras 158 to 164 of the judgment under review.

**2017 SCMR 206**

98. In a series of judgments, this Court has declared out-of-turn promotions as being unconstitutional, un-Islamic, and void ab initio. The principle of unconstitutionality attached to the instrument providing for out of turn promotion was laid down first in the case of Muhammad Nadeem Arif vs. I.G of Police (2011 SCMR 408). The view taken in this judgment was followed in another case reported as Ghulam Shabbir vs. Muhammad Munir Abbasi (PLD 2011 SC 516); wherein it was held that out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam; and that reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion. CRP.49/2016 etc 53 99. In another case, Suo Moto case No.16/2011, this Court again deprecated the practice of conferring out of turn promotions in the following terms:- "It is also a hard fact that the police has been politicized by out of turn promotions and inductions from other departments time and again, through lateral entries which has brought unrest amongst the deserving police officers waiting their promotions on merits. The posting and transfers of the police officers also lack merits. The complete service record of a police personnel which could reflect posting and transfer is not maintained by the relevant wing. Even many police officers posted within the Karachi on senior positions lack qualifications and competence both.....If this is the state of affairs, how can there be peace in Karachi. It seems instead of depoliticizing police force further damage has been caused by the government by introducing their blue eyed persons in police force through lateral entries and then granting them retrospective seniority and out of turn promotions."

100. Subsequently, this Court reiterated, inter alia, the principle of declaring the law of out of turn promotion unconstitutional and void ab initio in the Contempt proceedings against Chief Secretary, Sindh (2013 SCMR 1752). The relevant para is reproduced as under:- "158. On the issue of out of turn promotions, the impugned enactments are discriminatory persons/class specific and pre-judicial to public interest, as it would be instrumental in causing heart burning amongst the police officers whose inter-se seniority and legitimate expectation of attaining upper ladder of career would be affected. The out of turn promotions to the police officers and other civil servants by virtue of Section 9-A would affect the performance of hundreds of thousands of the civil servants CRP.49/2016 etc 54 serving in the Sindh Government. The impugned instruments on out of turn promotions are neither based on intelligible differentia nor relatable to lawful objects and by the impugned instruments the entire service structure has been distorted, affecting the inter-se seniority between the persons, who are serving on cadre posts after acquiring job through competitive process and their seniorities



were and are superseded by the powers granted to the Chief Minister through Section 9-A.”

101. This Court also highlighted the pernicious effects of the conferment of out of turn promotions, at paras 161 and 162 (ibid):- “161.....The ultimate casualty of the impugned instruments would not only be the establishment of meritocratic public service but more ominously the certainty of law which undermines both legitimate expectancy individually among the civil servants as regards the smooth progression of their career, but also the overall administrative environment. Article 143 of the Constitution has been promulgated to harmonize and regulate the service of the civil servants from federal government and provincial governments on their opting for All Pakistan Unified Group/PSP. The impugned legislation would distort interse seniority of the civil servants not only within the province but also the federal civil servants. 162. The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the selfrespect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have CRP.49/2016 etc 55 prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the Constitution. The laws are made to achieve lawful object. The impugned legislative instruments do not advance this concept while conferring powers on the Chief Minister to grant out of turn promotions, on the contrary the unstructured discretion vested in him has infringed the valuable rights of the meritorious civil servants of legitimate expectancy of attaining climax of careers.”

102. The Court then determined the unconstitutionality of the out of turn promotion and provided a direction for boosting the morale of police personnel at Paragraph 164 of the said judgment:- “164. We support that morale of police personnel be boosted, as intended in the aforesaid impugned legislations, and on their exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits. In order to confer award or reward on the police officer for his act of gallantry the Sindh Government will constitute a committee under Rule 8-B, to evaluate the performance of the police officer upon whom the proposed award or reward has to be bestowed. However, out of turn promotion in police force would not boost the morale of the police force, on the contrary by impugned legislative instruments granting out of turn promotion to police officers, has demoralized the force. This Court in the case of Watan Party reported in (PLD 2011 SC 997) has already directed the Sindh Government to depoliticize the police force. The out of turn promotions have engendered inequalities and rancor among the batch mates/course mates, rendering many of them junior/subordinate to their junior colleagues. Under section 9-A, the Sindh CRP.49/2016 etc 56 Government, has granted out of turn promotions to the civil servants, who do not belong to police force. By using the word ‘Gallantry’ in section 9-A of the Act of 1973, the legislature never intended to grant out of turn promotion to civil servants other than police force, but the Sindh Government has extended this benefit to civil servants. We for the aforesaid reasons stated hereinabove, are clear in our mind that the impugned legislations on the issue of out of turn promotion and grant of backdated seniority are violative of Articles of the Constitution referred to hereinabove and are liable to be struck down.”

103. The Review Petitions were filed against the aforementioned judgment by the Sindh Government besides those who were aggrieved on their de-notification in terms of the directives contained therein. These Review Petitions were dismissed on 05.01.2015, by a three Member Bench of this Court, maintaining the findings recorded in the judgment reported in 2013 SCMR 1752. The judgment passed in

Review Petitions is reported in 2015 SCMR 456. The learned Counsel for Petitioners raised a number of grounds challenging various findings of this Court, including the issue of out of turn promotion. Upholding the unconstitutionality and nullity of the legislative instrument pertaining to out of turn promotions, this Court recorded the following findings which are reproduced hereunder:- **OUT OF TURN PROMOTIONS.** 122. The issue of out of turn promotions has been dealt with by us in detail in the judgment sought to be reviewed and we reached the conclusion that it was violative of Article 240, 242, 4, 8, 9 and 25 of the Constitution. Mr. Adnan Iqbal Chaudhry, CRP.49/2016 etc 57 learned Advocate Supreme Court has contended that section 9-A of the Act has not been struck down by this Court, while declaring the out of turn promotions as un-constitutional. We are mindful of this fact as we have held that the Competent Authority can grant awards or rewards to the Police Officers, if they show act of gallantry beyond the call of duty. However, we had struck down the very concept of 'out of turn promotion' being violative of Constitution for the reasons incorporated in paras 158 to 164 of the judgment under review. "126. The contention of the learned ASC that the judgment of the High Court of Sindh relating to the out of turn promotion is still in field, therefore, he prayed for formulation of a Committee to scrutinize the cases of the Police Officers, who were given out of turn promotion, is without substance. We have already declared "out of turn promotion" as unconstitutional, therefore, after recording such findings, the need of forming a Committee under Rule 8-B for scrutinizing the cases of Police Personnel is of no significance. However, they could be awarded or rewarded compensation for their exceptional acts of gallantry."

104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion.

#### 2018 SCMR 1218

69. Similarly, other argument advanced by the learned counsel for the parties was that the out of turn promotions were earned when section 8-A ibid was a valid law, and the rights created under the said law are protected in light of Article 264(c) of the Constitution, moreover, it was not the fault of the appellants/petitioners that they were promoted out of turn, so they have vested rights which need to be protected. This argument was also considered in *Shahid Pervaiz's case (supra)*, and it was observed that:- "118. The contention of the learned Counsel that the effect of the aforesaid judgments which declares the concept of out of turn promotion unconstitutional cannot be extended to apply retrospectively on the cases where law granting out of turn promotions was omitted, is without force. Insofar as the issue of examining the Intra Court Appeals No.4 of 2017 etc. :- 48 :- provisions of a repealed statute is concerned, such an exercise is carried out by Courts in routine in the context of section 6 of the General Clauses Act, as well as Article 264 of the Constitution of Pakistan. Whenever any right, obligation, privilege or liability acquired, accrued or incurred under the repealed law is raised, the Courts are necessarily required to examine the provisions of the repealed statute. Thus, there is neither any reason in principle nor any precedent which bars the Courts from examining the provisions of a repealed statute in a case pending before it on the touchstone of its inconsistency with the provisions of the Constitution or the Fundamental Rights, as enumerated in the Constitution. Any other conclusion would lead to the absurd consequences that while the statute remains on the statute book, the Courts can examine its vires but once it was repealed by a subsequent statute, its effect, even if ex facie inconsistent with the Constitution or Fundamental Rights goes beyond the realm of judicial review. If such were the effect of repeal, then all that would be required to create a protected class of legislation is promulgation of patently unconstitutional statutes creating rights in favour of certain interested persons which though completely destructive of the Fundamental Rights of others, stood protected behind an impenetrable wall by the

*mere repeal of the statute through such unconstitutional Act. Such would not only be a fraud upon the statute but would be completely destructive of the rule of law and constitutional governance. Thus, there is no reason which compels the Court to sustain such an absurd proposition. As and when a repealed statute is invoked or raised in support of any claim, right, office or act, before the Court, the Court would always be entitled to examine its validity on the touchstone of the Constitution and Fundamental Rights. We have not been able to discover any instance from our own history as well as that of other legal systems with entrenched judicial review on the Intra Court Appeals No.4 of 2017 etc. - : 49 :- touchstone of the Constitution, where the Courts have refrained from examining the vires of the statute on the mere ground that at the time of review such law stood repealed by a subsequent statute."*

*72. The acts of gallantry in no way justify out of turn promotions. However, in order to increase the morale of the police personnel, we support the proposition that on exhibiting exceptional acts of gallantry, they should be given awards and rewards on merits and this concept is in line with the spirit of Article 259 (2) of the Constitution.*

*76. Keeping in view the above we hold as under:- i. The exception, created in para No.111 of the Shahid Pervaiz's Case (Supra) read with para No.143 thereof, wherein the protection was extended to the category of cases "wherein 'out of turn promotion' was granted to individuals, pursuant to the judgments of the High Court, Service Tribunal and the Supreme Court", is hereby withdrawn by exercising Suo Moto Review Jurisdiction; ii. The Intra Court Appeals filed against judgment dated 29.03.2017 and the Criminal Original Petitions filed for violation of judgment dated 30.12.2016 are dismissed. Furthermore, the Review Petitions filed against judgment dated 29.03.2017 are also dismissed. As the main cases have been decided hereinabove, the applications for impleadment as party are dismissed; iii. The Criminal Original Petition No. 96/2017 filed for violation of order dated 08.12.2016 is disposed of with the direction that the Punjab Service Tribunal shall proceed to decide the cases of the petitioners pending before it expeditiously, preferably within a period of two months of the decision of this case; iv. It would be open to the government to frame rules providing a Sports Group within the police in order to encourage sports but it will not form part of the regular police force and the members of Sports Group shall not be assigned field posting, and will only be restricted to their specialized Group; as already observed in Shahid Pervaiz's case (supra); Intra Court Appeals No.4 of 2017 etc. - : 55 :- v. The I.G.P, Punjab, the Home Secretary, Punjab, and the Secretary, Establishment Division, are directed to comply with the judgment, by fixing the seniority of all the Police Officers/Officials who were given out of turn promotions along with their batch-mates, as if they were never given out of turn promotion; vi. For the purpose of compliance of this judgment, necessary D.P.C/Board, as the case may be, shall be immediately held and a compliance report be submitted to the Registrar of this Court for our perusal in Chambers within a period of one month. The Advocate General, Punjab, and the learned Attorney General for Pakistan shall communicate the directives of this Court to the relevant authorities.*

4. Para to the extent of promotion to the rank of DSP On 25.03.2013 pertains to record needs no comments. However, rest of the para regarding reversion of seniority list is correct because seniority list was revised for removing the anomalies so as to streamline the seniority issues. Hence, after fulfilling codal formalities final seniority list was issued on 05.08.2022.
5. Para to the extent of posting as Acting Superintendent of Police, Investigation (own pay scale) Buner is correct whereas after issuance of final seniority list the same was circulated.
6. First portion of this para is already explained above in Para No. 3 while to extent of filing of Writ Petition No. 4949/2020 in the Hon'ble Peshawar High Court, Peshawar by the petitioner along with others which was decided by the Hon'ble Court vide judgment dated 09.12.2021 announced on 24.03.2022 (**Annexure-A**) of Hon'ble wherein the petitioner along with others on the grounds that Provincial Government of Khyber Pakhtunkhwa through the Chief Secretary first to clarify its position whether it wants to continue with the matter of awarding accelerated positions to

members of its Police Force in line with the Khyber Pakhtunkhwa validation of Standing Order Act, 2005, prevailing Police Rules and Khyber Pakhtunkhwa Police Act, 2017 or not and then decide the issue raised in the petitions accordingly.

It is pertinent to mention here that the Honorable Supreme Court of Pakistan vide its judgments passed in 2013SCMR 1752, 2017 SCMR 206, Nadeem Arif Vs IGP (2011 SCMR) etc declared all the legislative instruments which amounts to out of turn promotions in shape of any kind of incentives, ab-initio null and void, un-constitutional and un-Islamic.

Hence, the CPO, Peshawar vide Letter No. 157/CPB dated 14.04.2022 (**Annexure-B**) sought withdrawal of following provisions of law/ rules which provided out of turn promotions and were against the above mentioned verdicts of Apex Court.

1. Standing Order No. 11/1987
2. Letter No. 20710-60/1995
3. Standing Order No. 07/2003
4. Khyber Pakhtunkhwa Validation of Standing Orders Act, 2005
5. Standing Order No. 17/2014
6. Standing Order No. 05/2016
7. PR 13.7B of Police Rules, 1934 amended 2017.

The Provincial Government accorded the approval of above provisions vide Letter dated 21.04.2022 (**Annexure-C**).

7. Incorrect, in compliance with Order Sheet of Hon'ble Supreme Court of Pakistan dated 26.01.2023 in Suo Moto Contempt proceedings vide Cr.L.O. Petition No. 38/2021 and in pursuance of Judgments passed by Hon'ble Supreme Court of Pakistan in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions, all Unit Heads, Regional Police Officers and District Police Officers of Khyber Pakhtunkhwa Police were directed vide this office Letter No. CPO/CPB/75, dated 14.02.2023, to ensure compliance of above mentioned Orders in letter and spirit. Accordingly, all Out of Turn Promotions granted to Police personnel either on gallantry or otherwise belonging to different Units, Regions & Districts have been withdrawn by the concerned authorities and consequently their seniority has been re-fixed along with their Batchmates who were promoted during their intervening period by maintaining original inter-se-seniority. The petitioner's case falls under Cadetship scheme deprecated by the Hon'ble Supreme Court of Pakistan in its landmark judgments mentioned above. Therefore, the respondent department complied with judgments of Hon'ble Supreme Court of Pakistan. Consequently, the appellant's out of turn promotion order No. 11769/EC dated 13.11.1997 was withdrawn with immediate effect and after his withdrawal of out of turn promotion order, his name was placed above the name of DSP Hukam Khan vide Speaking Order No. 598/Legal/E-I dated 16.03.2023 (**Annexure-D**) and his name was placed above the name of DSP Hukam Khan present at Serial No. 153 in the seniority list of DSsP issued vide CPO No. 1594/E-I dated 05.08.2022. The beneficiaries of out of turn promotions challenged orders of respondent department in Hon'ble Peshawar High Court, Peshawar by filing of different Writ Petitions which have been decided vide judgment dated 29.08.2023 upon which the Police department filed respective CPLAs in the Apex Court which have been allowed on 29.04.2024. Copy will be produced during course of final arguments.
8. Incorrect and misleading. The petitioner was not considered for promotion in DSB meeting on the grounds that the case of petitioner was falling in the definition of out of turn promotion deprecated by the august apex court. Therefore, he could not be promoted as his case was hit by the judgments of the Hon'ble Supreme Court of Pakistan as mentioned above.
9. Pertains to record, needs no comments. However, no DSB meeting was held till September, 2023 wherein promotion to the rank of Superintendents of Police is made through the same.
10. As already explained above in Para No. 8.
11. Correct to the extent that Hon'ble Peshawar High Court, Peshawar vide consolidated judgment dated 29.08.2023 disposed of all the pending Writ Petitions.

12. Para to the extent of retirement on superannuation pension pertains to record needs no comments while rest of the para is not plausible because as discussed earlier the case of appellant was hit by the out of turn promotion as discussed above in light of judgments passed in a series by the Apex Court of Pakistan.
13. Incorrect. The ante-dated promotions/ confirmations has been laid down by the Apex Court in *Raza Safdar Kazmi*" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters). Moreover, in a recent Judgment (dated 2<sup>nd</sup> November 2022 in Civil Appeal No. 1172 to 1178 of 2020 and Civil Petition No. 3789 to 3896, 2260-L to 2262-L and CP 3137-L) the Apex Court, has held that "**reliance on Qayyum Nawaz** [a judgment of the Apex Court, reported as 1999 SCMR 1594] **that there is no difference between the date of appointment and date of confirmation under the Police Rules is absolutely misconceived and strongly dispelled**". The Apex Court has further explained that Police Rule 12.2(3) of Police Rules, 1934 stipulates that the final seniority of officers will be reckoned from the date of confirmation of the officer and not from the date of appointment. The Hon'ble Court further held that "**the practice of ante-dated confirmation and promotions have been put down in Raza Safdar Kazmi**" (a judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006 and upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters). The claim of petitioner for promotion after his retirement is not covered under law/ rules.
14. Incorrect, the appellant is not entitled for promotion on the basis of past and closed transaction which has also been discussed in detail vide para *ibid*.
15. As already explained above that appellant is not entitled for promotion on the basis of past and closed transaction.
16. The instant Service Appeal is not maintainable under law/ rules, the respondent department complied with judgments of Hon'ble Apex Court, hence the instant Service Appeal is liable to be dismissed on the following Grounds.

#### GROUNDS

- A. Para to the extent of peaceful and law abiding citizen is not plausible because the appellant being member of disciplined force is/was under obligation to be a peaceful and law abiding because in this department no room lies for those who either involve in any anti-social activities or violation of any law of the land. However, rest of the para is correct because every citizen irrespective of member of police force or general public is entitle for all the rights guaranteed by the Grund Norm.
- B. As already explained in detail in preceding paras.
- C. Incorrect. As already explained above that the appellant was not considered for promotion in DSB meeting on the grounds that the case of appellant was falling in the definition of out of turn promotion deprecated by the august apex court. Therefore, he could not be promoted as his case was hit by the judgments of the Hon'ble Supreme Court of Pakistan as mentioned above.
- D. Incorrect, para is for the appellant to prove his stance.
- E. Incorrect, the acts of the answering respondents are quite in accordance with law/ rules and Apex Court judgments.
- F. Incorrect, the appellant was not entitled for promotion as his case falls under out of turn promotions deprecated by the Hon'ble Apex Court in its landmarks judgments mentioned above.
- G. Incorrect, no fundamental right of the appellant has been violated by the respondent department.
- H. Incorrect, the appellant has been treated in accordance with law/ rules and Apex Court judgments.
- I. As already explained above that the appellant is not entitled for promotion as he has been retired on attaining age of superannuation.
- J. The respondents may also be allowed to adduce additional Grounds at time of hearing of instant Service Appeal.

13

PRAYERS

Keeping in view the above submissions, the instant appeal, being devoid of merits, not maintainable and barred by law, may kindly be dismissed with costs, please.

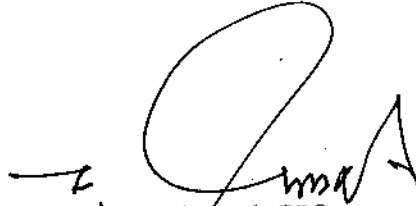


Assistant Inspector General of Police,  
Establishment, Khyber Pakhtunkhwa,  
Peshawar.

(Respondent No. 3)

**(SONIA SHAMROZ KHAN) PSP**

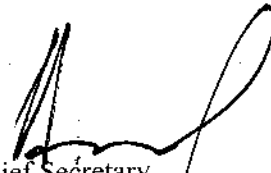
Incumbent



DIG/ Legal, CPO  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar  
Respondent No. 2

**(DR. MUHAMMAD AKHTAR ABBAS) PSP**

Incumbent



Chief Secretary  
Government of Khyber Pakhtunkhwa  
(Respondent No. 1)

**(NADEEM ASLAM CHAUDHRY)**

Incumbent

15

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 06/2024

Abdur Rashced ..... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

**AUTHORITY LETTER**

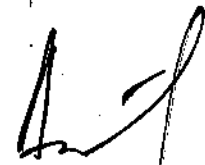
Mr. Faheem Khan DSP/ Legal, CPO, Peshawar is authorized to submit Para-wise comments/ reply in the instant Service Appeal in the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend instant case on behalf of respondents No. 1 to 3.



Assistant Inspector General of Police,  
Establishment, Khyber Pakhtunkhwa,  
Peshawar.  
(Respondent No. 3)  
**(SONIA SHAMROZ KHAN) PSP**  
Incumbent



DIG/ Legal, CPO  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar  
Respondent No. 2  
**(DR. MUHAMMAD AKHTAR ABBAS) PSP**  
Incumbent



Chief Secretary  
Government of Khyber Pakhtunkhwa  
(Respondent No. 1)  
**(NADEEM ASLAM CHAUDHRY)**  
Incumbent

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Service Appeal No. 06/2024

Abdur Rasheed ..... (Appellant)

VERSUS

Govt: of Khyber Pakhtunkhwa etc..... (Respondents)

**AFFIDAVIT**

I, Sonia Shamroz Khan, Assistant Inspector General of Police, Establishment, Khyber Pakhtunkhwa do hereby solemnly affirm on oath that the contents of accompanying Reply to the instant Service Appeal are correct to the best of my knowledge and belief. Nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in this Service Appeal, the answering respondents have neither been placed ex-parte nor their defense is struck off.

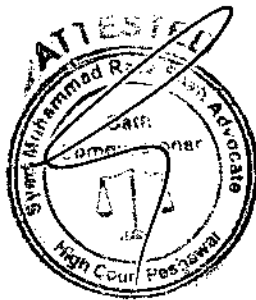
*Sonia Shamroz Khan*

Assistant Inspector General of Police,  
Establishment, Khyber Pakhtunkhwa,  
Peshawar.

(Respondent No. 3)

**(SONIA SHAMROZ KHAN) PSP**

Incumbent



05 JUN 2024



**PESHAWAR HIGH COURT, PESHAWAR.**

**FORM 'A'**  
**FORM OF ORDER SHEET**

Date of order.	Order or other proceedings with the order of the Judge
09.12.2021	<p><b><u>W.P.No.684-A of 2021 with Interim relief.</u></b></p> <p><b>Present:</b> M/s Barrister Adnan Khan, Imtiaz Ali, Malik Muhammad Siddique Awan and Junaid Anwar Khan, advocates for the petitioners.</p> <p>M/s Shumail Ahmad Butt, Advocate General and Muhammad Sohail, AAG for the respondents.</p> <p>---</p> <p><b><u>LAL JAN KHATTAK, J.-</u></b> Through this judgment, we shall decide the connected W.P.No.587-M of 2020 titled "Badshah Hazrat &amp; others Vs. Government of Khyber Pakhtunkhwa &amp; others" and W.P.No.4949-P of 2020 titled "Raham Hussain &amp; others Vs. Government of Khyber Pakhtunkhwa &amp; others" as common question of law and fact is involved in all the three petitions wherein the petitioners have questioned the legality of decisions/orders dated 15.04.2021, 21.04.2020 and 06.10.2020 as well as minutes of the 56th Police Policy Board meeting held on 08.10.2020, whereby office of the Inspector General of Police Khyber Pakhtunkhwa has directed all the Regional Police Officers of the Province to implement the judgments of the Supreme Court of Pakistan reported in <b>2013 SCMR 1752, 2017 SCMR 206</b> and other judgments in letter and spirit pertaining to the out of turn promotions given to the police officials/officers performing their duties in the Province.</p> <p>2. In a nutshell, it is the petitioners' case that the</p>

*Gain*

accelerated positions held by them in the police department on no canon of law could be equated with the out of turn promotions subject matter of the judgments of the Hon'ble Supreme Court cited above and as such the impugned orders and decisions of the respondents intended to deprive them of their such positions in the Police Force are unwarranted and sans any lawful authority.

3. While presenting the petitioners' case, their learned counsel argued before the court that the fast track positions held by the petitioners in the Police Department of Khyber Pakhtunkhwa have come to them due to their hard work, getting top positions in the recruitment centers, successful teaching in the training institutions, securing "A" grade reports from their seniors in line with their duties, pursuant to the provisions of Standing Order No.11 of 1987, No.7 of 2003, relevant Police Rules, the Khyber Pakhtunkhwa Validation of Standing Order Act, 2005 (Act No.IV of 2005) and per provisions of The Khyber Pakhtunkhwa Police Act, 2017; therefore, they cannot be deprived of their such gains on the ground of giving effect to the ibid judgments of the apex court which, per learned counsel for the petitioners, were delivered in some different background and circumstances.

4. As against the above, the learned Advocate General argued that the positions earned by the petitioners are analogous to the out of turn promotions given to the police officials and officers posted in the

*Gain*

Police Departments of the Provinces of Sindh or Punjab which have been declared illegal and unconstitutional by the apex court in its numerous judgments with directions to the concerned Provincial Governments to re-fix their seniority positions with initial batch mates in line with the principles laid down in the judgments, therefore, per Article 89 of the Constitution of Pakistan, 1973, the impugned orders passed and decisions taken are well within the competence of the respondents in order to implement the judgments of the apex court.

5. We have heard learned counsel for the petitioners, the learned Advocate General and also gone through the available record with their valuable assistance.

6. In the elaborated judgments of the Hon'ble Supreme Court of Pakistan reported in **2013 SCMR 1752, 2017 SCMR 206** and others, no doubt the apex court has declared the out of turn promotions as illegal and unconstitutional but admittedly the issue raised and dealt with in the referred judgments pertains to the out of turn promotions of the police officials/officers of the Provinces of Sindh and Punjab which were given to the promotees in their individual capacity under Section 9-A of the Sindh Civil Servants Act, 1973 and Section 8-A of Punjab Civil Servants Act, 1974 which are reproduced hereinbelow:-

**"9-A of Sindh Civil Servants Act, 1973.**

Notwithstanding anything contained in this Act or any other law for the time being in force or any judgment of any Court, a civil servant who provenly exhibits, the act of gallantry while performing his duties or very exceptional

*Gain*

performance beyond the call of duty, may be granted out of turn promotion or award or reward in such manner as may be prescribed.

**8-A of Punjab Civil Servants Act, 1974.**

Notwithstanding anything contained in this Act or any other law for the time being in force or in any contract, or rights claimed or acquired under any judgment of any Court or Tribunal, a civil servant who provenly exhibits exemplary intellectual, moral and financial integrity and high standard of honesty and gives extraordinary performance in the discharge of his duties, may be granted out of turn promotion or award or reward in such manner as may be prescribed".

7. In exercise of the powers under the ibid laws, out of turn promotions were given by the relevant authorities to the police officials/officers of the two Provinces mentioned above on the basis of their individual gallantry performance and bravery through separate orders whereas the accelerated positions got by the petitioners herein are because of their getting top positions in the Training Institutions of the Province, their successfully performing instructional duties in the police recruitment centers for prescribed period, their getting "A" reports from their superiors pursuant to the Standing Order 11 of 1987, Standing Order 7 of 2003, Khyber Pakhtunkhwa Validation of Standing Order Act, 2005, rule 13.6(1) of the Police Rules, 1934 and in accordance with the provisions of the Khyber Pakhtunkhwa Police Act, 2017. For better understanding of the issue, Standing Order No.11, which was later on validated through Khyber Pakhtunkhwa Standing Order Act, 2005, is reproduced

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hereinbelow:-

**BACKGROUND** Personnel posted as Instructors at Police Training Schools serve with extreme reluctance.

The time an officer is posted to an instructional assignment, he makes very conceivable effort, political, administrative, medical, compassionate etc. to have his posting orders cancelled.

The state of mind of such a person, who arrives at a Police Training Institution as an Instructor, can be clearly visualized. He feels that he has been discriminated against, he is disgruntled and in a pathetic frame of mind with this state of mind, those Instructors create an atmosphere of a panel institution in the Training Centre.

For many years, this Department has been cognizant of this problem. Some efforts have been made to find a solution. Various incentives have been offered to Instructors but none of them has had any impact. Posting at Police Training Centre still continues to be considered as a punishment posting.

Ideally Instructors in Training Schools would not only be willing to serve but must be amongst the finest officers in the Department. To believe this and personnel posted to Police Training Institutions as staff members, as being offered the following incentives, Instructors selected in pursuance of those incentives, will be categorized as CADET INSTRUCTORS:

#### **INCENTIVES**

##### **1. H.C. INSTRUCTORS**

Constables undergoing the Lower School Course, who pass amongst the first 5 in the Class, will be qualified to serve as H.C. Instructors provided they volunteer to serve in the Training Institute for 3 years.

Immediately at the end of 3 years, if they have earned "A" reports, they would be admitted to

*John*

Intermediate School Course and their names would be placed on Promotion List 'D' as soon as they qualify the Intermediate School Course.

**2. A.S.I. INSTRUCTORS.**

Head Constables undergoing the Intermediate School Course, who qualify amongst the first 5 in the class, will be qualified to serve as Instructors provided they volunteer to work there for 3 years and earned category "A" reports. They would be confirmed in the rank of Assistant and Sub Inspector and their names would be brought on Promotion List 'E'.

**3. S.I. INSTRUCTORS**

Sub Inspectors undergoing Upper Class Course, who qualify the first 5 in the Class, will be qualified to serve as Instructors SI(s) provided they volunteer to work there for 3 years and earn category "A" reports.

At the end of that period, they would be confirmed in the rank of S.I. and their names will be brought on Promotion List 'F'.

3.A. Alternatively if volunteers are not available to the offer contained in Para 3 above, Sub-Inspectors who volunteer to serve as Instructors and are selected by the Principal, PTS, Hangu, will be offered the same incentives, i.e. after a tenure of 3 years at P.T.S. Hangu with "A" reports, they will be confirmed as Sub-Inspectors and their names brought on List 'F'.

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**NOTE:-**

- 1. These incentives will not apply to directly recruited A.S.I(s).
- 2. These incentives can be availed of only once in a person's career.
- 3. Officers who are selected as Instructors on the basis of Promotion Examinations passed before 1984, will have to serve in the Training Institution for 2 years instead of 3 years.
- 4. The instructional tenure at PTS Hangu will be

reduced to half for those officers who have secured first five positions in the promotion examinations but have already served in the Training Institution for two years.

8. Perusal of the impugned decisions/orders would show that the respondents intend to implement the judgments of the Hon'ble Supreme Court without peeping into the background and without analyzing the situations in which the out of turn promotions were given to the police personnel of the two Provinces and the accelerated positions secured by the police officials/officers performing their duties in the Province of Khyber Pakhtunkhwa. Proceeding against the petitioners by the respondents through the impugned decisions and orders by looking at the case issue superficially instead of resolving the same with deep thoughts and in a probing manner and without having a look at the history and background of both the situations will not be a fair step as they are holding the accelerated positions since long which had come to them through a merit based laid down criteria and in a structured manner and not for any braveness. It would not be out of place to mention here that since 2013, the Hon'ble Supreme Court has repeatedly declared the out of turn promotions as illegal by directing the Provincial Governments to streamline policy relating to the grant of out of turn promotions but uptill now the Government of Khyber Pakhtunkhwa has not taken any step in that direction. Whether the Provincial Government wants to withdraw the incentives given to its police personnel through the Khyber

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Pakhtunkhwa Validation of Standing Order Act, 2005, Police Rules, 1934 and the Khyber Pakhtunkhwa Police Act, 2017 or it is eager to keep the same intact is a question which needs resolution in a befitting and probing manner. Indecisiveness and the lethargic conduct of the Government to the ibid effect is very lamentable which has created chaos and caused unrest in the entire Police Force of the Province which situation cannot be countenanced.

9. For what has been discussed above, we dispose of these petitions in terms that the impugned decisions/orders are set aside and the petitioners' cases are sent to the Provincial Government of Khyber Pakhtunkhwa through the Chief Secretary first to clarify its position whether it wants to continue with the matter of awarding accelerated positions to members of its Police Force in line with the Khyber Pakhtunkhwa Validation of Standing Order Act, 2005, prevailing Police Rules and Khyber Pakhtunkhwa Police Act, 2017 or not and then decide the issue raised in the petitions accordingly but till such policy is streamlined, no adverse action shall be taken against the petitioners.

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

Announced on:

24.03.2022



24



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

No. 157 / CPB

dated the 14 / 04 / 2022.

To: The Secretary,  
Government of Khyber Pakhtunkhwa,  
Home & TAs Department, Peshawar.

Attention: SO (Courts)

Subject:

JUDGMENT DATED 09.12.2021 IN WRIT PETITIONS NO. 684-A/ 2021 UBAID KHAN ETC, 597-M/ 2020 BADSHAH HAZRAT ETC, 1260/ 2020 REHMAT ALI ETC, 3949-P/2020 RAHAM HUSSAIN, 2218-P/ 2021 ZIA UR REHMAN ETC VS GOVT OF KP ETC.

Memo:

In the subject cited judgment the August Peshawar High Court directed that Provincial Government of Khyber Pakhtunkhwa through the Chief Secretary first to clarify its position whether it wants to continue with the matter of awarding accelerated positions to members of its Police Force in line with the Khyber Pakhtunkhwa validation of Standing Order Act, 2005, prevailing Police Rules and Khyber Pakhtunkhwa Police Act, 2017 or not and then decide the issue raised in the petitions accordingly. (Copy of judgment dated 09.12.2021 is annexed as Annexure "A").

It is pertinent to mention here that the Honorable Supreme Court of Pakistan vide its judgments passed in 2013SCMR 1752, 2017 SCMR 206, Nadeem Arif Vs IGP (2011 SCMR) etc declared all the legislative instruments which amounts to out of turn promotions in shape of any kind of incentives, ab-initio null and void, un-constitutional and un-Islamic. The following provisions of law/ rules which provide out of turn promotions are against the above mentioned verdict of Apex Court and the Khyber Pakhtunkhwa Police is not going to continue these provisions being violative of the judgments of the Apex Court.

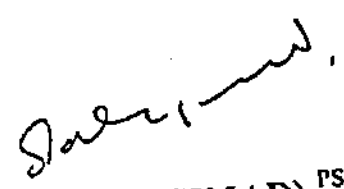
1. Standing Order No. 11/1987
2. Letter No. 20710-60/1995
3. Standing Order No. 07/2003
4. Khyber Pakhtunkhwa Validation of Standing Orders Act, 2005
5. Standing Order No. 17/2014
6. Standing Order No. 05/2016

Attended  
Su

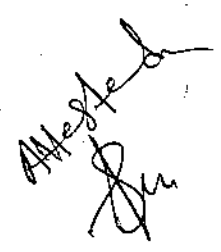
7. PR 13.7B of Police Rules, 1934 amended 2017.

It is further pertinent to mention here that the Apex Court vide order dated 25.03.2022 passed in Criminal Original Petition No. 38/2021 in CP No. 381-P/ 2020 Suo Moto Contempt proceedings directed to submit a reply with regard to the question of contempt of Court proceedings along with the relevant documents before this Court within three weeks. Copies of orders dated 15.11.2021 & 25.03.2022 are annexed as Annexure "B" & "C"

Keeping in view the above it is requested that necessary approval may be granted for withdrawal of these provisions of law/ rules, so that compliance report may be submitted to the Apex Court within time, please.



(SABIR AHMAD) <sup>PSP</sup>  
Additional Inspector General of Police,  
Headquarters, Khyber Pakhtunkhwa,  
Peshawar.





GOVERNMENT OF KHYBER PAKHTUNKHWA  
HOME & TRIBAL AFFAIRS DEPARTMENT

No. SO (Lit-I)/HD/1-589/2022  
Dated Peshawar the 21<sup>st</sup> April, 2019

To

The Provincial Police Officer,  
Central Police Office, Peshawar

Subject:

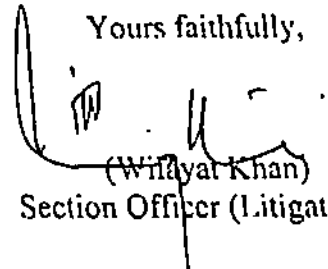
JUDGEMENT DATED 09.12.2021 IN WRIT PETITION NO 684-A/2021  
UBAIDULLAH KHAN ETC 587-M,2020 BADSHAH HAZRAT ETC, 4949-  
P/2020 RAHAM HUSSAIN, 2218-P/2021 ZIAUR REHMAN ETC VS  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Dear Sir,

I am directed to refer to the Additional Inspector General of Police (Headquarter) letter No 157/CPB, dated 14.4.2022 on the above cited subject and to state the matter was submitted for perusal of the Chief Secretary, Khyber Pakhtunkhwa and he was kind enough to approve the proposal put forth in the above referred letter. It is, therefore, requested that further necessary action in the matter may kindly be taken immediately please to implement the Supreme Court order in letter and spirit.

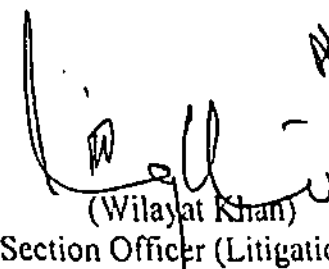
2. I am further directed to request that detailed implementation report as directed by the Supreme Court of Pakistan in para 2 of its short order dated 15.11.2022 and again on 25.3.2022 read with the landmark Judgement of the Supreme Court of Pakistan reported in the year 2013 SCMR 1752 and 2017 SCMR 206 may be provided to this department by today positively please so that compliance report could be submitted to the Supreme Court immediately. It is pertinent to mention that the time granted by the Court for submission of report has already been lapsed.

Yours faithfully,


  
(Wilayat Khan)  
Section Officer (Litigation-I)

Copy of the above is forwarded for information to the: -

1. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. CSO to the Chief Secretary, Khyber Pakhtunkhwa.
3. PS to Secretary, Home & Tribal Affairs Department.

  
(Wilayat Khan)  
Section Officer (Litigation-I)

Addl. IG Head  
Quarters

Attested  




No. 598

/ Legal/E-I

(27)  
OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
Central Police Office, Peshawar.  
dated the 16 / 03 / 2023.

ORDER

In compliance with Order Sheet of Hon'ble Supreme Court of Pakistan dated 26.01.2023 in Suo Moto Contempt proceedings vide Crl.O. Petition No. 38/2021 and in pursuance of Judgments passed by Hon'ble Supreme Court of Pakistan in 2013 SCMR 1752, Civil Review Petition No. 193/2003 reported in 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019 on issues of Out of Turn Promotions, all Unit Heads, Regional Police Officers and District Police Officers of Khyber Pakhtunkhwa Police were directed vide this office Letter No. CPO/CPB/75, dated 14.02.2023, to ensure compliance of above mentioned Orders in letter and spirit. Accordingly, all Out of Turn Promotions granted to Police personnel either on gallantry or otherwise belonging to different Units, Regions & Districts have been withdrawn by the concerned authorities and consequently their seniority has been re-fixed along with their batch mates/ among immediate seniors and juniors who were promoted during their intervening period by maintaining original inter-se-seniority.

2. In view of the above, case regarding Out of Turn Promotion of DSP Abdur Rasheed Marwat was examined. As per details provided by office of the CCPO Peshawar vide Letter bearing No.4649/EC-I dated 12.03.2023 on subject "collection of data of police officers falling under the definition of out of turn promotion". He was enlisted as Constable on 15.02.1982. He qualified Lower College Course in 1988. He got position in Intermediate College Course in the term ending 11.10.1997 and served as Cadet Instructor at PTC Hangu on the basis of which he got out of turn promotion. He was selected for Intermediate College Course from District Nowshera (Peshawar Range) and his name was also brought on promotion list 'D' by DIG Peshawar Range vide Order No. 11769/EC, dated 13.11.1997. At present, he stands at S.No. 34 in the seniority list of DSsP issued vide CPO Peshawar No. 1594/SE-I, dated 05.08.2022. After withdrawal of this Out of Turn Promotion Order, his name will be placed above the name of DSP Hukam Khan present at S. No. 153 in the DSsP seniority list issued vide CPO No. 1594/SE-I, dated 05.08.2022.

3. In a Judgment of Hon'ble Supreme Court of Pakistan 1998 SCMR 2013 titled Siddiq Akbar ASI & others Vs Sanobar Khan ASI, Supreme Court of Pakistan declared Standing Order bearing No. 11/1987 issued on 17<sup>th</sup> January, 1987 by the then IGP, NWFP as without any lawful authority and of no legal effect. Same Standing Order was issued for grant of incentive based accelerated promotions to Police Officials/ Officers serving as Cadet Instructors with Police Training Institutes.

The Operating Para No. 8 and 9 of same Judgment are being reproduced as under;

8. *We are, therefore of the considered opinion that word 'approval' occurring in section 12 of the Act implied the act of passing judgment, the use of discretion, and a determination as a deduction therefrom, to confirm, ratify, sanction or to consent to some act or thing done by the Inspector General of Police. The word 'approval' implies exercise of sound judgment, practical sagacity, wise discretion and final direct affirmative action. Merely because the impugned Standing Order has held the ground for a number of years is not sufficient to assume the grant of 'approval' of the issuance of Standing Order by the Provincial Government.*

9. *We have, therefore, no hesitation to hold that the Standing Order No. 11 issued by the Inspector General of Police having not been approved by the Provincial Government is devoid of its legal status and is, therefore, of no legal authority. We are, therefore, inclined to uphold the findings of the Tribunal that the impugned Standing Order is without any lawful authority and of no legal effect.*

4. Similarly, as per Para No. 73 of Judgment of Hon'ble Supreme Court of Pakistan 2018 SCMR 1218 (Intra Court Appeals No.4 of 2017 etc) when any legislative instrument is declared unconstitutional, it is declared void ab initio. The Para No. 73 is being reproduced as under;

73. *The contention of Khawaja Haris Ahmad, learned Sr. ASC that in Para No. 123 of Shahid Pervaiz's case (supra) this Court had wrongly observed that "we have already declared void ab initio the legislative instruments that provided for out of turn promotions." because nowhere in the earlier judgment was such a declaration made, is also without force. Suffice it to say that in Para 104 of Shahid Pervaiz' Case (Supra), it was observed that: "104. Through the successions of its orders, this Court has consistently maintained the unconstitutionality, and the consequential nullity of the instruments providing for the out of turn promotion." Moreover, in Para 129 of the judgment of Ali Azhar Khan Buloch's case*

Attested  
*[Signature]*

(supra), this Court was pleased to observe that when any legislative instrument is declared unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio. The relevant part of Para 129 is being reproduced hereunder: "129. .... Now, it is a settled law of this Court that no right or obligation can accrue under an unconstitutional law. Once this Court has declared a legislative instrument as being unconstitutional, the effect of such declaration is that such legislative instrument becomes void ab initio, devoid of any force of law, neither can it impose any obligation, nor can it expose anyone to any liability."

5. Similarly, Hon'ble Supreme Court of Pakistan Judgment reported as 2017 SCMR 456 vide Para No. 98 declared Out of Turn Promotions as null and void in the following terms which is reproduced as under;

98. In a series of judgments, this Court has declared out-of-turn promotions as being unconstitutional, un-Islamic, and void ab initio. The principle of unconstitutionality attached to the instrument providing for out of turn promotion was laid down first in the case of Muhammad Nadeem Arif vs. I.G of Police (2011 SCMR 408). The view taken in this judgment was followed in another case reported as Ghulam Shabbir vs. Muhammad Munir Abbasi (PLD 2011 SC 516); wherein it was held that out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam; and that reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion.

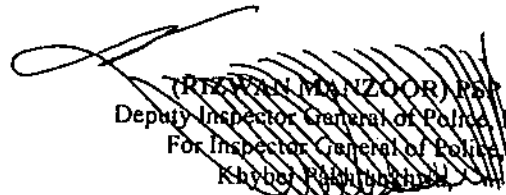
6. Mr. Abdur Rasheed Marwat DSP was given chance of personal hearing on 12.03.2023. He was informed about his personal hearing through Wireless Police Control besides other possible means. However, he did not attend hearing despite being informed. Perusal of his record reveals that as mentioned in Para No. 2 of this Order that he was enlisted as Constable on 15.02.1982. He qualified Lower College Course in 1988. He got position in Intermediate College Course in the term ending 11.10.1997 and served as Cadet Instructor at PTC Hangu on the basis of which he got out of turn promotion. He was selected for Intermediate College Course from District Nowshera (Peshawar Range) and his name was also brought on promotion list 'D' by DIG Peshawar Range vide Order No. 11769/EC, dated 13.11.1997. At present, he stands at S.No. 34 in the seniority list of DSsP issued vide CPO Peshawar No. 1594/SE-I, dated 05.08.2022. After withdrawal of this Out of Turn Promotion Order, his name will be placed above the name of DSP Hukam Khan present at S. No. 153 in the DSsP seniority list issued vide CPO No. 1594/SE-I, dated 05.08.2022.

7. Consequently, his Out of Turn Promotion Order vide No. 11769/EC, dated 13.11.1997 is withdrawn through this Order with immediate effect. After withdrawal of his Out of Turn Promotion Order, his name is placed above the name of DSP Hukam Khan present at S. No. 153 in the DSsP seniority list issued vide CPO No. 1594/SE-I, dated 05.08.2022.

Sd-  
Akhtar Hayat Khan, PSP  
PROVINCIAL POLICE OFFICER  
KHYBER PAKHTUNKHWA

C.C

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Home & TAs Department, Government of Khyber Pakhtunkhwa, Peshawar.
4. Additional Inspector General of Police, HQs: Khyber Pakhtunkhwa, Peshawar.
5. Additional Inspector General of Police, Operations Khyber Pakhtunkhwa, Peshawar.
6. All Regional Heads, Khyber Pakhtunkhwa, Peshawar.
7. All Heads of Police Units, Khyber Pakhtunkhwa.
8. PSO to W/ Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
9. AIG/ Legal, CPO, Peshawar.
10. Registrar, CPO, Peshawar.

  
Tahir Manzoor, PSP  
Deputy Inspector General of Police, HQs  
For Inspector General of Police  
Khyber Pakhtunkhwa  
Peshawar

