

Zafar Ali No.973.

9. For what has been discussed above, we are unison to accept the appeal as above mentioned terms. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13<sup>th</sup> day May, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

\*M.KHAN

order dated 11.03.2013. Ultimately after about passing of two years respondent/department issued revised seniority list to the rank of ASI and promoted to List E, wherein date of confirmation in the rank of ASI was shown as 27.09.2011 by placing his name below the name of SI Noor Rehman, No.972 and above the name of SI Zafar Ali, No.973/P vide order dated 10.12.2014 because SI Noor Rehman was enlisted as officiating ASI along with appellant on 16.06.2008 while SI Zafar Ali was enlisted in the next officiating ASI list as appellant was last in serial of the list order dated 16.06.2008, when name of the appellant was placed in the seniority at its due and proper place after getting innocence/clearance certificate from his high ups and setting aside of punishment.

7. Appellant was promoted to the rank of officiating SI vide order dated 03.03.2017 upon which he filed departmental appeal which was partially accepted and his date of officiating SI was revised from 03.03.2017 to 10.03.2012 vide order dated 05.07.2021. It is pertinent to mention here that colleagues of the appellant SI Noor Rehman, No.972 and Zafar Ali, No.973 junior to appellant was confirmed to the rank of SI on 13.07.2015.

8. Appellant was although considered in meeting held on 10.01.2022 but was not confirmed due to non-completion of mandatory period to other unit. Reason given is beyond the control of the appellant as to select, recommend, for mandatory training and to transfer and post police official for completion of mandatory period is prerogative and exclusive power of the authority, if appellant was not transferred and posted to another unit by the respondent, it is not his fault and is fault of the respondent/department for which appellant cannot be held responsible and penalized. Therefore, respondent are directed to confirm appellant as SI along with his batch mates Noor Rehman No.972 and



natural justice; that appellant has not been treated in accordance with law and rules and respondents violated Article 4, 25 & 38 of the Constitution of Islamic Republic of Pakistan, 1973; that appellant was penalized for the offence twice which is violation of Article 13 (a) of the Constitution of Islamic Republic of Pakistan. He requested that instant appeal might be accepted as prayed for.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules on the subject. He further contended that appellant has been given promotion/confirmation in list D” with his colleagues vide notification dated 16.06.2008; that seniority of confirmation to the rank of ASI and promotion to list E has been correctly ante-dated and there is no hard and fast rules that a police official will be placed with his batch mates because often promotion leads to earlier confirmation. Promotion of officiating S.I from list E is also made on the available vacancy. As the appellant was deferred from confirmation in the rank of ASI due to imposition of major penalty as well as non-availability of ACRs which were mandatory for confirmation/promotion. He requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was enlisted in respondent department on 26.03.1988 as constable. He was promoted as officiating ASI on 16.06.2008 along with others including IHC Noor Rehman. Due to false and baseless complaint he was awarded punishment of time scale for a period of three years under RSO 2000 by SSP(OPS), Peshawar vide order dated 24.02.2011 and resultantly was deprived from his due promotion. Appellant challenged the said penalty in a departmental appeal, which was accepted vide

**date along-with all the back benefits, arrears, and consequential relief etc.**

**It is further added that the appellant may also be granted anti dated seniority and directed the respondent to issue revise seniority list wherein the appellant was placed after Noor Rehman and above Zafar Ali/respondent No.03 in the interest of justice.”**

2. Brief facts of the case are that appellant was appointed as Constable in Police Department vide order dated 26.03.1988. Since then he performed his duty with devotion and to the entire satisfaction of his superiors. He was promoted to the rank of ASI 16.06.2008. He was further promoted to rank of S.I vide notification dated 17.02.2022. During service, he was departmentally proceeded on the charges of misusing his official authority. On the basis of which he was awarded major penalty of time scale for a period three years. Appellant filed department appeal, which was accepted vide order dated 11.03.2013. Thereafter, respondent department issued revised seniority list for confirmation to the rank of ASI and promotion to list E wherein colleagues and juniors to the appellant were promoted and appellant ignored. He filed departmental appeal, which was rejected, hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that by not including the name of the appellant in the seniority list at par with his colleagues is illegal, against the law and facts and norms of

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No.1100/2022**

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

**Muhammad Sher Khan P/1327 serving as SI (Sub Inspector) Office  
Incharge Investigation (OII), Police Station, Phandu.**

**.... (Appellant)**

**VERSUS**

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police, Officer, (CCPO), Peshawar.
3. Zafar Ali P/973, Inspector, Police Line, Peshawar.

**.... (Respondents)**

Mr. Amaad Nasir Kundi  
Advocate

... For appellant

Mr. Muhammad Jan  
District Attorney

... For respondents

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Date of Institution.....01.07.2022  
Date of Hearing.....13.05.2024  
Date of Decision.....13.05.2024

**JUDGMENT**

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

**“it is therefore, most humbly prayed that on acceptance of this appeal, the impugned office order dated 17.02.2022 may graciously be set aside declared illegal and without lawful authority and the appellant may kindly be granted promotion/confirmation in their ranks at par as was granted to the above said colleagues from the back and due**

