BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR

C.M. NO: 421/2024

Execution Petition No. 42/2023 in Service Appeal No. 840/2018

Zain Ullah .....(Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa etc.....(Respondents)

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Objection Petition		1-2
2.	Affidavit		3
3.	Authority Letter		4

DEPONENT

DSP/ Legal,
CPO, Peshawar

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CM No = 421 /2024

Execution Petition No. 42/2023 in Service Appeal No. 840/2018

Provincial Police Officer, Khyber Pakhtunkhwa etc.....(Appellant)

Versus

Zain Ullah .....(Appellant)

Subject: **OBJECTION PETITION ON JUDGMENT 05.07.2022**

The facts pertaining to objection petition are as under:-

1. That, the appellant had filed captioned Service Appeal with the following prayers:-

   "On acceptance of instant appeal, the respondents may please be directed to act in the matter in accordance to law and grant promotion to petitioner in the next rank i.e. Inspector by first confirming him as Sub-Inspector in the larger interest of justice with further request that all back benefits of the rank of Inspector may please be granted to him the date of his eligibility to the post".

2. That, this Hon'ble Tribunal vide Judgment dated 05.07.2022 decided the Service Appeal in the following terms:-

   "As a sequel to the above, we are constrained to allow the instant service appeal as prayed for, with the direction to the respondents to place the case of the appellant to the Departmental Promotion Committee to be considered for proforma confirmation as Sub Inspector and subsequently officiating Inspector from the due date of eligibility with consequential benefits".

3. That, the Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Warich Vs IGP Punjab (PLD 1985 SC 159). In a recent Judgment (dated 2nd 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).

   Moreover, under paragraph VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011, "***promotion***

will always be notified with immediate effect." Drawing analogy from this rule, all PASIs might be so confirmed on conclusion of probationary period of three years with immediate effect (the date on which order of their confirmation is issued).

5. The Apex Court of Pakistan in its Judgment Musthaq Ahmed Warraich Vs IGP reported as PLD 1985 SC 159 and Civil Appeal No. 1172 to 1178 of 2020 titled Syed Hammad Nabi Vs IGP, Punjab has declared that Rule 12.2 of Rules ibid is the basic criteria for determination of seniorities of Police Officers of subordinate ranks. Furthermore, Police law is a Special Law and Special Law always prevails over General Law.

6. That claim of ante dated/ proforma promotion and confirmation is baseless, illegal and against the Law/ Rules rather alien to Rules ibid, besides contrary to the principles laid down by the Apex Court of Pakistan in its Judgments. The Apex Court Judgments ibid have overruling effect over the Judgment of the Hon'ble Tribunal, complying with Tribunal Judgment, defies the above mentioned Judgments of Apex Court.

PRAYERS

Therefore, keeping in view the above facts and circumstances, Department is determined to comply with Hon'ble Tribunal orders in true letter and spirit. The seniority of appellant has been revised in accordance with law/ rules and Apex Court Judgments. The claim of appellant of ante dated promotion and confirmation is contrary to the Rules and against the Apex Court Judgments, therefore, Hon'ble Tribunal is requested to issue appropriate orders in this regard, please.

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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 42/2023 in Service Appeal No. 840/2018

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AFFIDAVIT

I, Faheem Khan, DSP, Legal CPO, Peshawar do hereby solemnly affirm on oath that the contents of Objection Petition on behalf of Inspector General of Police, Khyber Pakhtunkhwa, Peshawar are correct to the best of my knowledge/ belief. Nothing has been concealed from this Hon'ble Service Tribunal.

Respondent through

Faheem Khan
DSP/ Legal, CPO,
Peshawar

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

29 MAY 2024

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 42/2023 in Service Appeal No. 840/2018

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AUTHORITY LETTER

Mr. Faheem Khan DSP/ Legal, CPO, Peshawar is authorized to submit Objection petition against judgment dated 05.07.2022 passed in captioned Service Appeal by the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend instant case on behalf of undersigned.

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

(1)

BEFORE THE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1092
Dated 28/6/2018

Service Appeal No. 840 /2018

Zainullah Sub Inspector (r) CTD Kohat S/o Shah Miran R/o Zarki Nasrati Tehsil Tahti Nasrati District Kohat

.....**Appellant**

VERSUS

1. Govt of KPK, through Home secretary Peshawar
2. Inspector General of Police Khyber Pakhtunkhwa Peshawar
3. Regional Police Officer Kohat, Kohat Cantt
4. District Police officer Kohat, Near Police line Kohat City .....**RESPONDENTS**

Fixed to-day
Registrar
28/6/18

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST RESPONDENTS FOR NOT PROMOTING APPELLANT.

Khyber Pakhtunkhwa Service Tribunal Peshawar