

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1771/2023

Tayyab Jan..... (Appellant)

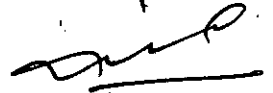
VERSUS

Government of Khyber Pakhtunkhwa etc.....(Respondents)

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DEPONENT



DSP/ Legal,
CPO, Peshawar

*one copy handed over
to Appellant -*

15-4-24

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

Service Appeal No. 1771/2023

Tayyab Jan..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa etc..... (Respondents)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12190

Dated 15.04.2024

PARA-WISE COMMENTS BY RESPONDENTS NO. 1 TO 4

RESPECTFULLY SHEWETH:

That the respondents are submitted as under:-

PRELIMINARY OBJECTIONS:-

- a) That the appeal is not based on facts.
- b) That the appeal is barred by law and limitation.
- c) That the appeal is not maintainable in the present form.
- d) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- e) That the appellant is estopped to file the instant appeal by his own conduct.
- f) That the appellant has not come to this Honorable Tribunal with clean hands.
- g) That the appellant has got no cause of action and locus standi to file the instant Service Appeal.
- h) That the appellant's case pertains to out of turn promotion of Police officials deprecated by the hon'ble Supreme Court of Pakistan in its judgments in Cr.Org.P. No. 89/2011 etc 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 and the petition, therefore, is not maintainable in its present form.

FACTS

1. Correct to the extent of Home and TAs department Memo: dated 16.01.1988 regarding creation of separate establishment i.e. Reserve Police of KP Police Force to be governed, however, by the Police Rules as highlighted vide its Para-5. Overall scheme of the Police Rules, 1934 envisage the Police Force as one indivisible body possessing various establishments performing the assigned functions such as District Police, Police Training Center, Crime Branch, Special Branch, Reserve Police and so on. Each of these establishments is in fact integral part of the police force, and under no rules of construction, they can be construed as separate or independent Cadres. Moreover, all the establishments, other than the executive police

establishment, i.e., in-charge District police and Range DIG, are barred from making direct or indirect recruitment or promotion.

2. Pertains to the extent of then Standing Order No. 2 of 1988.
3. Pertains to the then Recruitment Policy. However, the same was issued in conflict with the Police Rules, 1934 which provide that all the establishments, other than the executive police establishment, i.e., in-charge District police and Range DIG, are barred from making direct or indirect recruitment or promotion. This fact has been further clarified in the august apex court judgment reported in 2016 SCMR 1254, relevant para of which is reproduced below;

62. We are disturbed in the manner the powers were being exercised by the DIGs heading different establishments under the nose of the government, which was not only against the Police Rules but such practice has actually divided the Police Force. The establishments were created to facilitate the smooth working of the Police. There is no concept of cadre within the Police, which is one indivisible force. However, as referred to hereinabove the Police Rules prescribe three modes in recruiting the Police personnel. The first recruitment mode is appointment of the Executive Police, the second recruitment mode, which has a different set of Rules refers to appointment of technical District Police and the third mode brings the recruitment of the Inspectors / Sub-Inspectors Prosecution (Legal). There can be employees in the Police Department, which are non-uniformed like ministerial staff and / or I.T. Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed there-under.

4. Pertains to the Standing Orders No. 1 & 2 of 1994 which, however, were issued inconsistent with Police Rules, 1934 wherein Rule 1.3, under which different establishments were made in the Police Force to facilitate the smooth working, was misconstrued. By flawed assumption of the powers under the Standing Orders or otherwise, the DIGs, who were heading the establishments construed the establishment as Ranges. Additionally, all the administrative powers conferred on the Range DIG, i.e who heads the Executive Police Range, were encroached on by the heads of these establishments created under the Rule 1.4. The said DIGs of the establishments also started maintaining seniority and making recruitments to these establishments, in negation of the clear language of the Police Rules.
5. Incorrect, the letter dated 19.06.1996 was issued devoid of Police Rules, 1934 which do not provide regarding allotment of such seats. As per the rules *ibid*, all the establishments, other than the executive police establishment, i.e., in-charge District police and Range DIG, are barred from making direct or indirect recruitment or promotion or selection to promotional courses.
6. Pertains to initial recruitment of the appellant on 25.06.1989. However, later on, he was promoted to the rank of Head Constable on 25.10.1992 without qualifying A1 and B1 exams besides Lower

Course, a promotional course mandatory for HC promotion as per Police Rules, 1934. Thus, by remaining part of Frontier Reserve Police, he obtained benefits of accelerated promotions without qualifying pre-requisite courses. Therefore, his case falls in the definition of out of turn promotion declared illegal and unconstitutional by the august apex court in its landmark 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. The record in respect of the appellant is as under;

Tayyab Jan DSP

District of recruitment: Frontier Arms Reserve, Peshawar

Date of birth: 01.05.1970

Date of enlistment: 25.06.1989

| S. NO | NAME OF COURSE | DATED |
|--------------|-----------------------------------|--------------|
| 1. | Basic Recruit Course at PTC Hangu | 22.12.1989 |
| 2. | List A | 28.06.1994 |
| 3. | List B | |
| 4. | Lower College Course | 20.04.1998 |
| 5. | List C | 20.04.1998 |
| 6. | Promotion as Selection Grade HC | 17.02.2000 |
| 7. | Confirmation as HC | - |
| 8. | List D | - |
| 9. | Intermediate College Course | 21.10.1998 |
| 10. | Promotion as ASI | 25.05.2005 |
| 11. | Confirmation as ASI | 05.04.2008 |
| 12. | List E | 05.04.2008 |
| 13. | Upper College Course | 20.09.2009 |
| 14. | Promotion as SI | 21.04.2008 |
| 15. | Confirmation as SI | 14.03.2012 |
| 16. | List F | 30.01.2013 |
| 17. | Promotion as Inspector | 30.01.2013 |
| 18. | Confirmation as Inspector | 19.10.2015 |
| 19. | Promotion as DSP | 30.01.2018 |

7. Pertains to record of passing Lower School Course of the appellant in the year 1998 however, before this, his promotion to the rank of Head Constable on 25.10.1992 without pre-requisite promotional exams and courses amounted to out of turn promotion deprecated by the august apex in its landmark judgments pertaining to out of turn issues highlighted above. It is pertinent to mention here that the appellant service record is no traced of B-I exam in-fact his service record is fully tainted with flagrant violations of Police Rules.
8. Incorrect, every Police Officer for purpose of promotion and seniority shall be attached with his parent district i.e. the district of his domicile as per rule

12.15 of Police Rules, 1934 amended 2017 and Standing Order No. 02/2016(copy attached as Annexure-A). Recently, CPO Peshawar has issued clear instructions in this regard vide its letter (copy attached as Annexure-B). The appellant was selected to promotional Intermediate Course by the Commandant FRP which is an establishment barred from making recruitment, promotion or selection to promotional courses as highlighted above and that too ahead of his original colleagues with whom he was initially appointed, thus amounting to out of turn promotion deprecated by the august apex court in its judgments highlighted above.

9. Incorrect, all the establishments, other than the executive police establishment, i.e., in-charge District police and Range DIGs, are barred from making direct or indirect recruitments or promotions. This fact has been further clarified in the august apex court judgment reported in 2016 SCMR 1254, relevant Para of which is reproduced below;

62. We are disturbed in the manner the powers were being exercised by the DIGs heading different establishments under the nose of the government, which was not only against the Police Rules but such practice has actually divided the Police Force. The establishments were created to facilitate the smooth working of the Police. There is no concept of cadre within the Police, which is one indivisible force. However, as referred to hereinabove the Police Rules prescribe three modes in recruiting the Police personnel. The first recruitment mode is appointment of the Executive Police, the second recruitment mode, which has a different set of Rules refers to appointment of technical District Police and the third mode brings the recruitment of the Inspectors / Sub-Inspectors Prosecution (Legal). There can be employees in the Police Department, which are non-uniformed like ministerial staff and / or I.T. Department but they are recruited and regulated by the Sindh Civil Servants Act, 1973 and the Rules framed thereunder.

Furthermore, it is worth mentioning here that all previous Standing Orders issued with regard to FRP have been repealed through Standing Order No. 02/2014 which is in field. The appellant belonged to Khyber Pakhtunkhwa Frontier Reserve Police (FRP) which is a separate establishment of KP Police Force. Previously, DIGs of such establishments started exercising the administrative powers of the Range DIGs. However, all the establishments, other than the executive police establishment, i.e. in-charge District Police and Range DIG, are barred from making direct or indirect recruitment or promotion. It has been clearly provided in the Chapter XIII of Police Rules, 1934 that there should be common seniority of Police Personnel serving in all establishments to be maintained by the District Police, the Range DIG and Central Police Office. Being the custodian of the service record etc. of the Police personnel, the District Police/Range DIG, shall make selection of Police personnel for police trainings and practical trainings, and no other establishment shall be authorized to make such selection.

10. Pertains to record. The letter dated 16.02.2007 was issued as per spirit of Police Rules vide which seniority of a Police Officer shall be attached with his parent district.
11. Pertains to record and as already explained above.
12. Pertains to record, needs no comments.
13. Pertains to the judgment of the Hon'ble High Court dated 20.03.2008. However, the august apex court in its judgment reported in 2016 SCMR 1254

has addressed the issue of Police establishments i.e. FRP, already explained vide para-3 above.

14. Pertains to recommendations of the committee dated 07.05.2009.
15. Pertains to record, However, the august apex court in its judgment reported in 2016 SCMR 1254 has addressed the issue of Police establishments i.e. FRP, already explained vide para-3 above.
16. Pertains to record. However, the path under which all such promotions were gained have been declared illegal and void by the august apex court. Specifically, the Hon'ble Supreme Court of Pakistan in its judgment reported in 2018 SCMR 1218 highlighted it in the following terms;

"When the very concept of out of turn promotion was declared to be unconstitutional then the exception created in Para 111 could not be said to be extended to the in service employees whether they had any judicial verdict in their favour or not. They were not protected under the doctrine of past and closed transaction as observed above. Moreover, no such protection was provided in the cases of Contempt Proceedings against the Chief Secretary Sindh (Supra) and Ali Azhar Khan Baloch (Supra), which were required to be followed by all the provinces to streamline the civil service structure".

17. Pertains to record and as already explained above.
18. Pertains to record, however, the Hon'ble Supreme Court of Pakistan had started Suo Moto Contempt proceedings vide CrI.O. Petition No. 38/2021 and in compliance with its Order dated 26.01.2023 and pursuance of Judgments passed by the 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 CPO, Peshawar Letter No. CPO/CPB/75, dated 14.02.2023(copy attached as Annexure-C), to ensure compliance of above mentioned Orders in letter and spirit. Accordingly, CCPO Peshawar vide its letter bearing No. 4649/EC-1 dated 12.03.2023 provided that the appellant's career progression is full of gross and flagrant violation of Police Rules as he was promoted and confirmed without the prescribed path under Police Rules, 1934. Detail of his career progression is already explained vide his Speaking Order No. 597/ Legal/ E-1 dated 16.03.2023 (copy attached as Annexure-D).
19. Incorrect as already explained vide above Para.
20. Pertains to CPO Peshawar letter dated 11.03.2023 wherein opportunity of personal hearing was offered to all the Police Officers of KP Police who earlier availed benefits of out of turn under different categories.
21. Incorrect, proper opportunity of personal hearing was afforded to the appellant. Rest of the Para pertains to CPO Peshawar instructions to all

regions/units vide letter dated 12.03.2023 in compliance with Order dated 26.01.2023 in Suo Moto Contempt proceedings vide CrI.O. Petition No. 38/2021 and pursuance of Judgments passed by the Hon'ble Supreme Court of Pakistan.

22. Incorrect. The appellant is beneficiary of out of turn promotions and has been proceeded in compliance with Order dated 26.01.2023 of the Hon'ble Supreme Court of Pakistan in Suo Moto Contempt proceedings vide CrI.O. Petition No. 38/2021 and in pursuance of Judgments passed by Hon'ble Supreme Court of Pakistan mentioned above. 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. Therefore, the appellant vide the order dated 16.03.2023 also has been proceeded in accordance with law/ rules as well as in the spirit of judgments of Hon'ble Supreme Court of Pakistan pertaining to Out of Turn Promotions and to avoid contempt proceedings initiated in CrI.O.P No. 38/2021.
23. Incorrect, available record is silent regarding any departmental appeal filed by the appellant.
24. Pertains to the Hon'ble High Court Judgment dated 29.08.2023 vide which the appellant's writ was transmitted to this Hon'ble Tribunal.
25. Therefore, the instant Service Appeal is not maintainable in law and is liable to be dismissed on following Grounds;

GROUND:

- A. Incorrect, misleading and misconceived. The respondent department has complied with the judgments of the august apex court. Therefore, the order passed by the respondent department in legal and according to law.
- B. Incorrect, the respondent department has issued withdrawal orders of all the Khyber Pakhtunkhwa Police officials across the province who erstwhile have availed out of turn promotions in compliance with the directions of the august apex court. Therefore, act of the respondents is in accordance with principle of justice
- C. Incorrect, the respondent has issued withdrawal orders of out of turn promotions of Khyber Pakhtunkhwa Police in compliance with Order of the Hon'ble Supreme Court of Pakistan dated 26.01.2023 in Suo Moto Contempt proceedings vide CrI.O. Petition No. 38/2021 and in pursuance of Judgments

passed by Hon'ble Supreme Court of Pakistan and to avoid imposition of Contempt of Court by the Hon'ble Supreme Court of Pakistan on Khyber Pakhtunkhwa Police. Therefore, no illegality and malafide on part of respondents is involved

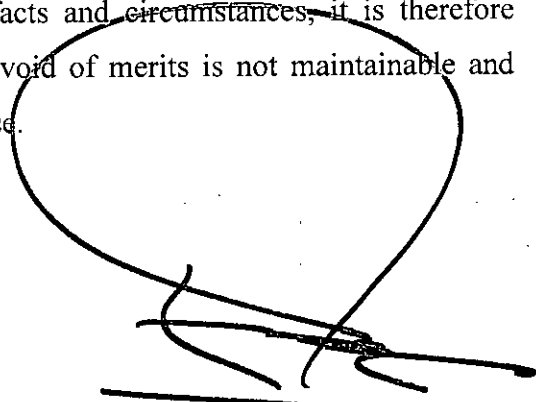
- D. Pertains to the Hon'ble Tribunal.
- E. Incorrect, the appellant's case is hit by the judgments of the august apex court pertaining to out of turn promotions reported in 2016 SCMR 1254.
- F. Incorrect, as already explained in preceding Paras .
- G. The respondent department may also be allowed to adduce additional grounds at time of hearing of instant Service Appeal.

PRAYER:-

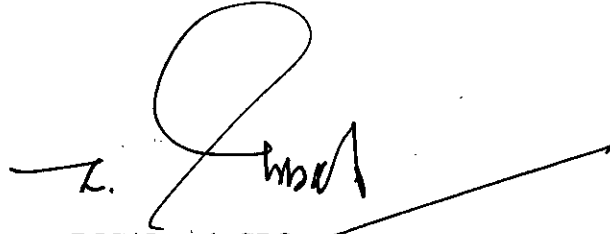
Keeping in view the above stated facts and circumstances, it is therefore humbly prayed that the appeal being devoid of merits is not maintainable and may kindly be dismissed with costs, please.



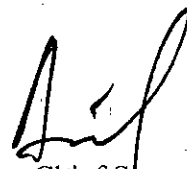
Commandant
FRP, Khyber Pakhtunkhwa
(Respondent No. 4)
(TAHIR AYUB KHAN) PSP
Incumbent



Capital City Police Officer
Peshawar
(Respondent No. 3)
(SYED ASHFAQ ANWAR) PSP
Incumbent



DIG/ Legal, CPO
For Inspector General of Police
Khyber Pakhtunkhwa
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**

Amended Service Appeal No. 1771/2023

Tayyab Jan..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa etc.....(Respondents)

AFFIDAVIT

I, Tahir Ayub Khan, Commandant, FRP, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents No. 1 to 4 are correct to the best of my knowledge/ belief. Nothing has been concealed from this Hon'ble Service Tribunal.

The respondent has neither been placed on probation nor their defense struck off.



Commandant
FRP, Khyber Pakhtunkhwa
(Respondent No. 4)
(TAHIR AYUB KHAN) PSP
Incumbent



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

Amended Service Appeal No. 1771/2023

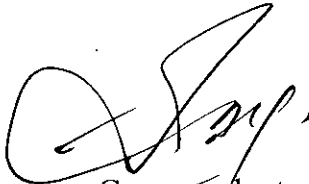
Tayyab Jan..... (Appellant)

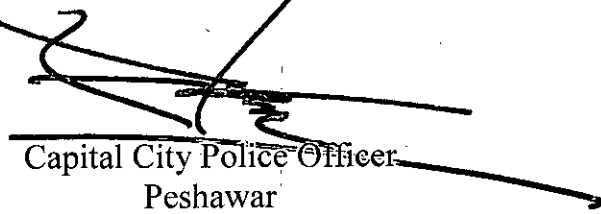
VERSUS


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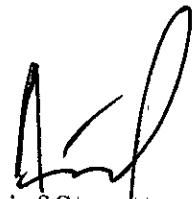
AUTHORITY LETTER

Mr. Faheem Khan DSP/ Legal, CPO, Peshawar is authorized to submit Para-wise comments/ reply in the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar in the above mentioned Service Appeal and also to defend Service Appeals on behalf of respondents No. 1 to 4.


Commandant
FRP, Khyber Pakhtunkhwa
(Respondent No. 4)
(TAHIR AYUB KHAN) PSP
Incumbent


Capital City Police Officer
Peshawar
(Respondent No. 3)
(SYED ASHFAQ ANWAR) PSP
Incumbent


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


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



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

STANDING ORDER NO. 02/2016
Quotas of Districts in Central Units

This Standing Order is issued under Article 10(3) of Police Order 2002 and in pursuance of the Police Policy Board decision taken in its 20th meeting held on 15th December 2015.

2. **Aim:** - This Standing Order aims at fixing the contributory quota of District and Regions in the executive strength of the Central Units.
3. **Existing Sanctioned Strength in Rank as determining Factor:** - (1) The executive strength from Constable to Sub-Inspector of all Central Units including Frontier Reserve Police, Elite force, Central Police Office, Special Branch, Traffic Khyber Pakhtunkhwa, CPO Investigation, Central Police Office, PQR and Training Schools and College will be provided by the Police Districts/Regions of the Province in accordance with the ratio of their existing sanctioned strength in overall sanctioned strength for each rank as detailed in attached Annexures.
(2) CTD Strength will be determined as per their requirement and deployment plan which has already been approved and issued vide CPO letter No. 3229-80/E-II dated 31.01.2014.
4. **Recruitment, Promotions in Central Units;**- Recruitment and promotion in the ranks from constable to Sub-Inspector will be carried out and be regulate in concerned Districts and Regions only. Central Units will neither recruit nor promote any officer unless it is specifically provided and allowed. All personnel serving in the central Units will be on deputation from concerned Districts and Regions and their lien will be in their parent District/Region. If in the past any recruitment has been carried out directly in the central units and lien of such recruits has not been fixed so far; it will be fixed in District of domicile of the concerned recruit. Furthermore for retirement purposes personnel will be posted back in their parent Districts.
5. **Tenure;**- The period in the central unit will be considered on deputation in the meaning of Police Rules and shall not exceed 03 years.
6. **Application;**- This Standing Order will come into force with immediate effect and transition to this scheme of things will not be at once but be in phased manner subject to occurrence of vacancies in central units and capacity of the contributing Districts to contribute as per quota in due course of time.
7. **Power to remove difficulties;**- If any difficulty arises in giving effect to this order, the Provincial Police Officer may by notification make such provisions as deemed appropriate.
8. **Amendment:** - All previous Standing Orders on the subject, to the extent of the provisions of this order, shall stand amended.

Attested

(NASIR KHAN DURRANI)
Provincial Police Officer
Khyber Pakhtunkhwa
Peshawar

No. 225-300/GB, dated Peshawar the 25th January 2016

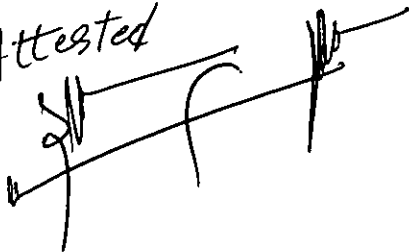
Copy of the above is forwarded for information and necessary action to:

1. All Heads of Police Offices in Khyber Pakhtunkhwa;
2. PRO to PPO;
3. Registrar CPO.



(Muhammad Alam Shinwari) PSP
DIG Headquarters
Khyber Pakhtunkhwa
Peshawar

Attested





OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR.

No. 310 / CPB dated, Peshawar the 13 / 12 / 2023.

To: The Capital city Police Officer,
Peshawar.

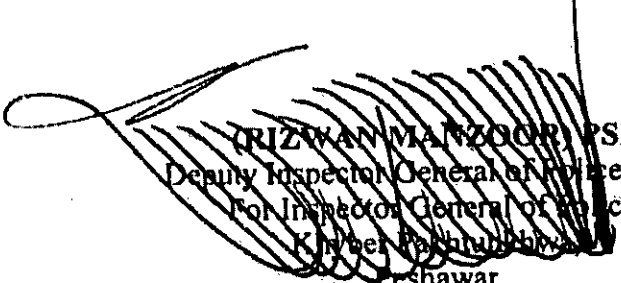
SUBJECT: **GUIDANCE IN THE LIGHT OF STANDING ORDER 02/2016.**

Memo:

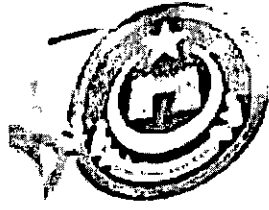
Please refer to your office letter No. 20743-44/CRC, dated 06/12/2023 and to state that para wise reply/guidance to para 6 of the letter ibid is as follow:

- (i) According to Standing Order No. 02/2016 recruitment and promotion from Constable to Sub Inspector rank shall be regulated in their parent districts/regions and their lien shall be in their parent districts, not in any other District/region.
- (ii) The officers recruited in centralized Unit or in other district Police, having domicile of other Districts, and serving in CCP Peshawar are not entitled to be promoted against CCP vacancy rather they shall be promoted against the vacancies of their parent districts/regions.
- (iii) One's parent district/region will be the one from which one got induction.

Furthermore, if police officers have qualified their various promotion courses and they have been enlisted on certain promotion lists, outside parent district than they would be granted their inter-se-seniority with their batchmates in their parent Districts/Regions.


RIZWAN MANZOOR PSP
Deputy Inspector General of Police, HQrs
For Inspector General of Police,
Khyber Pakhtunkhwa
Peshawar

Attested

OFFICE OF THE
INSPECTOR GENERAL OF POLICE,
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

No. CPO/CPIB/ 75

Dated Peshawar 14 February, 2023

COURT MATTER
MOST IMMEDIATE

To: All Heads of Unit Police,
Khyber Pakhtunkhwa.
The Regional Police Officers,
Malakand, Mardan, Hazara, Kohat and Banna.
The Capital City Police Officer,
Peshawar.

Subject: **COLLECTION OF DATA OF POLICE OFFICERS FALLING UNDER THE
DEFINITION OF OUT OF TURN PROMOTION.**

Memo: Please refer to this office letter No. CPO/CPIB/45, dated 27.1.2023 on the subject noted
above.

Perusal of record available with CPO and the reports coming from your range reveal
that there is an urgent need to personally examine case of each and every police officer who is deemed
to have been promoted out-of-turn.

2. You are, therefore requested to ensure that:-

i) Case of each police officer is examined afresh carefully with a view to ascertain as to
whether or not his/her promotion falls under the definition of out-of-turn promotion
provided in the following judgments of the Supreme Court of Pakistan:-

- i). 2013 SCMR 1752
- ii). 2015 SCMR 456
- iii). 2016 SCMR 1254
- iv). 2017 SCMR 206
- v). 2018 SCMR 1218


Note: copies of the judgments are being emailed to your Establishment Branch as a
ready reference and perusal.

ii) Those orders of promotion / confirmation are identified and recorded in your replies /
reports with a certified copy of the same attached therewith.

iii) A comprehensive reports on the line stated above may be submitted to this office by
20/02/2023.

Encl:


Sample Proforma of DIKhan Region.



14/02/23
(SHAUKAT ABBAS) PSP
DIG/HQrs,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar

Encls: No. and dated even

Copy of above is forwarded for information to the:-

1. Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police, Headquarters, Khyber Pakhtunkhwa.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa.
4. PSO to Inspector General of Police, Khyber Pakhtunkhwa.
5. PA to AIG/Establishment Khyber Pakhtunkhwa.

Attested



14/02/23
(SHAUKAT ABBAS) PSP
DIG/HQrs,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar



97
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

ANN-Q

No. 597 / Legal / E-1 dated the 16/03/2023. (73)

ORDER

In compliance with Order Sheet of Hon'ble Supreme Court of Pakistan dated 26.01.2023 in *Suo Moto Contempt proceedings* vide *CrI.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.

2. In view of the above, case regarding Out of Turn Promotion of Mr. Tayyab Jan DSP was examined. As per details provided by office of CCP Peshawar vide Letter bearing No.4649/EC-1 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 in FRP on 01.07.1989. He was transferred to CCP Peshawar along with his lien on 06.03.1991. On 31.08.1992 he was transferred back to FRP on deputation basis. He was promoted as Officiating HC in 1992 vide Order No. 8469-72/FRP/EC. He qualified his A-1 examination on 26.06.1994 and B-1 examination on 08.04.1997. He passed his Lower College Course on 20.04.1998. After Lower College Course, he was again transferred to FRP along with his lien. From FRP he was selected for Intermediate College Course and completed the same on 10.04.1999. He was promoted as Officiating ASI on 26.07.2000. He was promoted as Sub Inspector/PC on 22.07.2003 but later-on, 04.07.2006 he was promoted to Officiating Sub Inspector w.e.f 22.07.2003 in FRP. In 2007, he was transferred back to CCP Peshawar along with his lien again and promoted as Officiating Sub Inspector on 21.04.2008 from CCP Peshawar. He completed his Upper College Course in the term ending on 20.09.2009. He was confirmed as SI and admitted to list 'F' on 14.03.2012. He was promoted as Officiating Inspector on 30.01.2013. His career progression is full of gross and flagrant violations of Police Rules. He was promoted and confirmed without following the prescribed path for undergoing the requisite mandatory courses under Police Rules 1934. At present he stands at S. No. 163 in the DSsP Seniority list issued vide No. 1594/SE-I dated 05-08-2022. After withdrawal of his Out of Turn Promotions his name is placed above the name of his colleague confirmed SI Syed Abid Shah No. P/544 of CCP Peshawar.

3. In this regard, Para 122 of Judgment of Hon'ble Supreme Court of Pakistan 2015 SCMR 456 is reproduced as under;

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.

4. 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 Ashar Khan Baloch's case (supra) this Court observed that:

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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. Tayyab Jan 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, He was enlisted as Constable in FRP on 01.07.1989. He was transferred to CCP Peshawar along with his lien on 06.03.1991. On 31.08.1992 he was transferred back to FRP on deputation basis. He was promoted as Officiating HC in 1992 vide Order No. 8469-72/FRP/EC. He qualified his A-1 examination on 26.06.1994 and B-1 examination on 08.04.1997. He passed his Lower College Course on 20.04.1998. After Lower College Course, he was again transferred to FRP along with his lien. From FRP he was selected for Intermediate College Course and completed the same on 10.04.1999. He was promoted as Officiating ASI on 26.07.2000. He was promoted as Sub Inspector/PC on 22.07.2003 but later-on, 04.07.2006 he was promoted to Officiating Sub Inspector w.e.f 22.07.2003 in FRP. In 2007, he was transferred back to CCP Peshawar along with his lien again and promoted as Officiating Sub Inspector on 21.04.2008 from CCP Peshawar. He completed his Upper College Course in the term ending on 20.09.2009. He was confirmed as SI and admitted to list 'F' on 14.03.2012. He was promoted as Officiating Inspector on 30.01.2013. His career progression is full of gross and flagrant violations of Police Rules. He was promoted and confirmed without following the prescribed path for undergoing the requisite mandatory courses under Police Rules 1934. At present he stands at S. No. 163 in the DSsP Seniority list issued vide No. 1594/SE-I dated 05-08-2022. After withdrawal of his Out of Turn Promotions his name is placed above the name of his colleague confirmed SI Syed Abid Shah No. P/544 of CCP Peshawar.

7. Consequently, his Out of Turn Promotion/Confirmation Orders as mentioned in Para 6 of this Order are withdrawn through this Order and he is demoted from the rank of DSP to the rank of Confirmed Sub-Inspector with immediate effect. After withdrawal of his Out of Turn Promotion, his name is placed above the name of his colleague Confirmed SI Syed Abid Shah No. P/544 of CCP Peshawar.

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.

Attested

ATTESTED
ADVOCATE

(RIZWAN MANZOOR) PSP
Deputy Inspector General of Police, HQs
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar