

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.682/2024.

Malik Habib KhanAppellant


VERSUS.

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

INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-wise Comments		1-3
2.	Affidavit		4
3.	Authority Letter		5

DEPONENT


DSP/ Legal,
CPO, Peshawar

06-08-24

Peshawar

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

PARA-WISE COMMENTS REPLY BY RESPONDENTS NO. 1 & 2

**Khyber Pakhtunkhwa
Service Tribunal**

Respectfully Sheweth:-

Diary No. 14423

PRELIMINARY OBJECTIONS.

Dated 23-07-24

1. That the appeal is not maintainable u/s 4b (1) KP Service Tribunal Act 1974 before this forum.
2. That the appeal is barred by law & limitation.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has not come to this Hon'ble Tribunal with clean hands.
5. That the appellant has no cause of action.
6. That the appellant has no locus standi to file the instant Service Appeal.
7. That the appellant is estopped by his own conduct to file the instant appeal.
8. That the appellant has concealed the material facts from Honorable Tribunal.
9. That this Hon'ble tribunal has no jurisdiction to entertain the appeal.
10. That the seniority of appellant and his others colleagues have been revised on the basis of Apex Court order dated 02.02.2023 rendered in Civil Petition No. 6367 of 2021

FACTS:-

1. Pertains to personal information of the appellant, needs no comments.
2. First portion of the para to the extent of appointment as SI Legal through Public Service Commission is admitted as correct, however, for the rest of the para, it is clarified that Police Department is a disciplined force governed under special laws (Reliance on Mushtaq Warich Vs IGP Punjab (PLD 1985 SC 159). It has its own laws i.e. Police Act, 2017, Police Rules, 1934 and the Apex Court of Pakistan has categorically declared that seniority of Police Officials (uniform officers) shall be governed under Rule 12(2) of Police Rules, 1934. Hence, the inter se merit list of the Public Service Commission has nothing to do with the seniority of police officers rather the same is determined and maintained under Rule 12(2) of Police Rules, 1934.
Besides above Apex Court Judgment, the Hon'ble Court in the case of Civil Appeal No. 1172 to 1178 of 2020 titled Syed Hammad Nabi Vs IGP, Punjab and recent judgment dated 02.02.2023 rendered in Civil Petition No. 6367 of 2021 titled Farooq Khan VS Government (Colleague of appellant) also declared that seniority of police officials may be strictly governed under Rule 12 (2) of Police Rules, 1934.
3. Pertain to record, however, a detailed reply to this para is already given in the above Para-2.
4. Pertain to record, however, seniority is always determined and maintained under Rule 12(2) of Police Rules, 1934.
5. Incorrect, misleading and misconception of Rule 12(2) of Police Rules, 1934. Revising the seniority of all legal officers in consequence of some representation was an erroneous decision and inconsistent with Police Rules. The same seniority issued vide No. 2742/E-II dated 02.01.2017 was all along challenged by some of appellants colleagues in case titled Muhammad Farooq Khan etc Vs Government etc (CP NO: 6367 of 2021) and the Apex

Court remitted the case to Police Department to revisit the matter strictly under Rule 12(2) of Police Rules, 1934. Relevant order dated 02.02.2023 is reproduced for ready reference;

"At the very outset, the learned counsel for the official respondents states that the matter pertains to seniority list which was issued on 2nd of January, 2017. He further contends that in view of the latest situation, they are prepared to revisit the seniority list in conformity with Section 12(2) of the Police Rules, 1934. The learned counsel appearing on behalf of respondents No. 6 & 7 has shown his anxiety that the said respondents would be affected if the seniority list is prepared afresh. We consider that in case the seniority list is changed, it would certainly create fresh cause of action for which all the remedies under the law would be available to the respondents for redressal of their grievances.

This petition is disposed of with the foregoing observations".

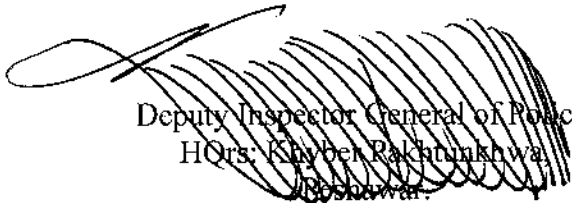
6. Pertain to Hon'ble Service Tribunal Judgment dated 09.08.2020 in Service Appeals No. 679, 702 and 703 of 2017. However, the same order was assailed by some of the appellant's colleague in case titled Muhammad Farooq in CP No. 6367 of 2021. Revising the seniority of all legal officers in consequence of some representation was an erroneous decision and inconsistent with Police Rules. The same seniority issued vide No. 2742/E-II dated 02.01.2017 was all along challenged by some of appellants colleagues in case titled Muhammad Farooq Khan etc Vs Government etc (CP NO. 6367 of 2021) and the Apex Court remitted the case to Police Department to revisit the matter strictly under Rule 12(2) of Police Rules
7. Pertain to Hon'ble Apex Curt order dated 02.02.2023 hence, no comment.
8. Pertain to record needs no comment.
9. Pertain to record, however, till that time the Apex court order dated 02.02.2023 was not implemented and the same seniority was issued in line with previous erroneous course of action. However, later on the Apex Court order above was implemented in true letter and spirit.
10. Incorrect and misleading. The impugned revised seniority list dated 17.11.2023 was issued in compliance of Apex Court order dated 02.02.2023 wherein the department reverted to Rule 12 (2) of Police Rules, 1934 and revised the seniority of legal police officers. There are atleast three different judgments of the Apex Court of Pakistan wherein determining and deciding the seniority cases of Police Officers, the Apex Court of Pakistan categorically declared that Police is a disciplined force and it would be better to let it be governed by its statutory Rules i.e. Police Act and Police Rules. Apex Court further held that Rule 12(2) of Police Rules, 1934 is the main provision which governs determination and maintenance of seniority of Police officers. Respondent department acted in accordance with Rule 12(2) of Police Rules, 1934 and Apex Court judgments rendered in cases titled Mushtaq Warich Vs IGP Punjab (PLD 1985 SC 159), Civil Appeal No. 1172 to 1178 of 2020 titled Syed Hammad Nabi Vs IGP, Punjab and recent judgment dated 02.02.2023 rendered in Civil Petition No. 6367 of 2021 titled Farooq Khan VS Government (Colleague of appellant).
11. Incorrect, appellant has no cause of action. Rule 12(2) has been correctly, uniformly applied for all police officers vide No. CPO/CPB/63 dated 13.02.2023 and No. CPO/CPB/64 dated 13.02.2023 in compliance of Apex Court order *ibid*.
Similarly, Rule 12(2) was also applied to all legal officers seniority issued vide No. 2975/E-II/Revised Seniority of Police Officers (Legal) dated 17.11.2023.
12. Incorrect, the appellant has no cause of action. The impugned seniority list issued dated 17.11.2023 is correct, legal, lawful, in accordance with Police Rules, 1934 and in accordance with the principles laid down by the Apex Court of Pakistan. Hence, the instant service appeal may be dismissed *inter alia* on the following grounds;

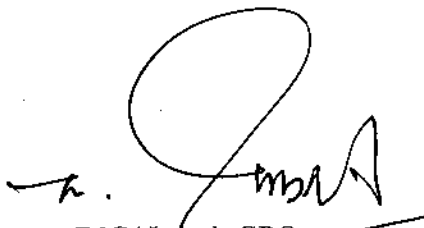
GROUNDS

- A. Incorrect, the process of revision of seniority of the appellant has been carried out in accordance with law/ rules and Apex Court order as mentioned above in detail.
- B. Incorrect, the answering respondents issued the revised seniority list in accordance with law/ rules and Apex Court order.
- C. Incorrect, the revised seniority list is in accordance with law/ rules and Apex Court order hence, is tenable in eyes of law.
- D. Incorrect, the process of revision of seniority of the appellant has been carried out in accordance with law/ rules and Apex Court order as mentioned above in detail.
- E. Incorrect, the seniority list is legal in accordance with law/rules and Apex Court order hence, no need to be revised the same.
- F. Incorrect and misleading, no individual relief has been granted by the answering respondents. As the same has been revised as per law/ rules and Apex Court order.
- G. Irrelevant. Seniority of officers of legal cadre and officers appointed through Fast Track Promotion are different in nature.
- H. As already explained in preceding paras.
- I. The answering respondents always acted in accordance with law/ rules/ Apex Court order and policy. The appellant has no right to blame respondent unnecessarily.
- J. The answering respondents seek additional permission of this Hon'ble Tribunal to advance other grounds at time of hearing of instant Service Appeal.

Prayers:-

It is, therefore, most humbly prayed that in light of above facts and submission, the appeal of the appellant being devoid of merits, legal footing in law/rules may kindly be dismissed with cost please.


Deputy Inspector General of Police,
HQrs. Khyber Pakhtunkhwa
Peshawar.
(Respondent No. 02)
(RIZWAN MANZOOR) PSP
Incumbent


DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(DR. MUHAMMAD AKHTAR ABBAS)
Incumbent

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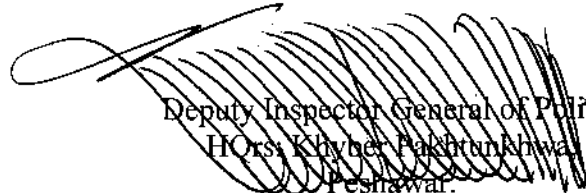
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AFFIDAVIT

I, Rizwan Manzoor, Deputy Inspector General of Police, HQrs: Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents No. 1 & 2 are correct to the best of my knowledge/ belief. Nothing has been concealed from this Hon'ble Service Tribunal.

It is further stated on oath that in this Para-wise comments, the answering respondents have neither been placed ex-parte nor their defense is struck off *cost*.


Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 02)
(RIZWAN MANZOOR) PSP
Incumbent



23 JUL 2024

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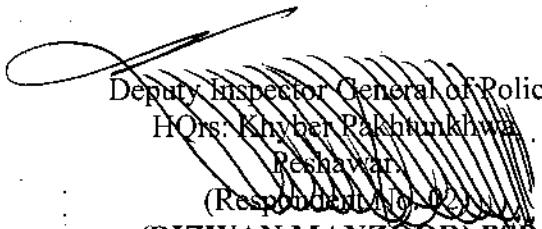
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AUTHORITY LETTER

Mr. Faheem Khan DSP/ Legal, CPO, Peshawar is authorized to submit Para-wise comments/ reply in the captioned Service Appeal in the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend instant case on behalf of respondent No. 1 & 2.


Deputy Inspector General of Police,
HOs: Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)
(RIZWAN MANZOOR) PSP
Incumbent


DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent