

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 682/2024.

MALIK HABIB KHAN

V/S

POLICE DEPTT

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Dated: 29/08/2024

RESPONDENT No 3 & 4

THROUGH:

NOOR MUHAMMAD KHATTAK

ADVOCATE SUPREME COURT

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 682/2024

Malik Habib Khan

.....Appellant

**Khyber Pakhtunkhwa
Service Tribunal**

VERSUS

Diary No. 15303

Dated 29.08.2024

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others
.....Respondents

**PARA-WISE COMMENTS/REPLY BY PRIVATE
RESPONDENTS NO. 3 and 4**

Respectfully Sheweth:-

Preliminary objections.

- 1- That the appeal is not maintainable u/s 4b (1) of KP Service Tribunal Act, 1974 before this forum.
- 2- The appeal is barred by rule 23 of the Khyber Pakhtunkhwa Services Tribunal, Rules 1974.
- 3- That the appeal is barred by law & limitation.
- 4- That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- 5- That the appellant has not come to this Hon'ble Tribunal with clean hands.
- 6- That the appellant has no cause of action.
- 7- That the appellant has no locus standi to file the instant Service Appeal.
- 8- That the appellant is estopped by his own conduct to file the instant appeal.
- 9- That the appellant has concealed the material facts from Honorable Tribunal.

②

10- That this Hon'ble tribunal has no jurisdiction to entertain the appeal.

11- That the seniority of appellant and his others colleagues have been revised in light of the Apex Court Judgment dated 02.02.2023 rendered in Civil Petition No. 6367 of 2021 (reported as 2023 SCMR 584).

FACTS:-

1. Pertains to personal information of the appellant, hence, needs no comments.

2. First portion of para No.2 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. Moreover 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 in-consisting 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;

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"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. Pertains 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 in-consisting 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 comments.

8. Pertain to record needs no comments.

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 at least 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

④

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:-

GROUND

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.

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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.

Apart from the above, under rule 23 of the Khyber Pakhtunkhwa Services Tribunal Rules, 1974 there is an absolute bar on entertaining of an appeal by the Service Tribunal in which the matter either directly or substantially in issue has already been finally decided by a court or a Tribunal of competent jurisdiction., hence the issue in hand was earlier adjudicated upon by the Services Tribunal and the august Supreme court has got finality and no 2nd round of ligation is permissible.

Prayer:-

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.

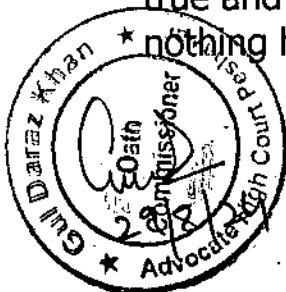

Private respondent No 3 & 4

Through:-


NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT

AFFIDAVIT

I, Syed Amir Abbas, Respondent No. 3 , do hereby solemnly affirm and declare on oath that the contents of this **Comments/reply** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.




DEPONENT

"A" (6)

"A" - 2 -

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Mirallah

Civil Petition No. 6367 of 2021
(Against the judgments dated 9.8.2021 of the
K.P. Service Tribunal, Peshawar passed in
Appeal No. 679 of 2017)

Muhammad Farooq Khan ... Petitioner(s)

Versus

The Provincial Police Officer, K.P.
Peshawar and others ... Respondent(s)

For the petitioner(s): Mr. Muhammad Shosib Shoheen, ASC
Mr. Ahmed Nawaz Chaudhry, AOR

For the respondent(s): Mian Shafaqat Jan, Addl. A.G.
Tariq Usman, DSP (Legal)

For respondents Nos. 6-7: Mr. Javed Gulbela, ASC

Respondents Nos. 5, 8-14: N.R.

Date of hearing: 02.02.2023

ORDER

Sayyed Mazahar Ali Akbar Naqvi, J. At the very outset, the learned counsel for the official respondents states that the matter pertains to the 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 Nos. 6 and 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.

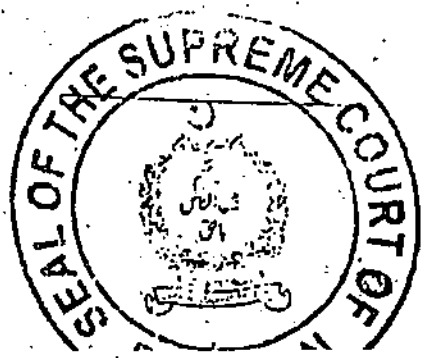
2. The petition is disposed of with the foregoing observations.

Sd/-J
Sd/-J
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad,
2nd February, 2023
Bench-VI
Not to be signed for reporting



3986/2023

GR No:	3986/2023	Civil	Criminal
Date of Presentation:	17-2-2023		
No of Words:	300		
No of Folios:	3		
Requisition Fee Rs.	5.00		
Copy Fee In:	1.00		
Court Fee Stamps:	6.00		
Date of Completion of Copy:	18/2/23		
Date of Delivery of Copy:	18/2/23		
Compared by/Prepared by:			
Reviewed by:			

ATTESTED



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

NOTIFICATION

No. 2975 /E-I/Revised Seniority of Police Officers (Legal). In compliance of the judgment dated 02.02.2023 of the Honorable Supreme Court of Pakistan in Civil Petition No. 6367/2021, this Office Notification issued vide No. 26/E-II, dated 02.01.2017, so far it relates to the seniority list of Police Officers (Legal) of Khyber Pakhtunkhwa is hereby withdrawn with immediate effect. Consequent upon above cancellation, the revised seniority list in accordance with Rules 12.2(3) of Police Rules, 1934 in respect of the following Police Officers (Legal) shall remain intact until further orders:-

S.No.	Name & No.	Date of Birth	Domicile	Date of Appointment as SI/Legal	Date of Confirmation as SI/Legal	List 'F'	DOP as Insp:	DOC as Insp:	DOP as DSP	DOP as SP	Remarks
1.	Muhammad Ibrahim Azhar	17.04.1965	Kohat	08.10.1992	08.10.1992	30.07.2008	30.07.2008	31.10.2013	07.03.2017	-	
2.	Mr. Kamal Hussain	15.04.1969	Kohat	25.03.1999	25.03.1999	21.05.2009	21.05.2009	31.10.2013	24.09.2018	-	
3.	Mr. Ishaq Gui	10.04.1965	Kohat	25.03.1999	25.03.1999	30.07.2008	30.07.2008	31.10.2013	24.09.2018	-	
4.	Mr. Ibrahim Ullah	20.10.1969	Kohat	26.03.1999	26.03.1999	30.07.2008	30.07.2008	31.10.2013	30.01.2018	-	
5.	Mr. Raza Muhammad	01.01.1969	Swabi	20.04.1999	20.04.1999	30.07.2008	30.07.2008	31.10.2013	30.01.2018	-	
6.	Mr. Rashid Ahmad	02.04.1980	Dir Upper	05.12.2009	05.12.2009	11.02.2014	11.02.2014	11.02.2016	07.02.2020	-	
7.	Syed Amir Abbas	15.06.1982	Kohat	05.12.2009	05.12.2009	11.02.2014	11.02.2014	11.02.2016	-	-	
8.	Muhammad Farooq Khan No. B/35	30.12.1978	Bannu	08.12.2009	08.12.2009	11.02.2014	11.02.2014	11.02.2016	-	-	
9.	Mr. Akhlaq Hussain Shah No. H/50	07.03.1982	Manshera	09.12.2009	09.12.2009	11.02.2014	11.02.2014	11.02.2016	-	-	
10.	Mr. Malik Habib Khan	10.01.1982	Peshawar	12.12.2009	12.12.2009	11.02.2014	11.02.2014	11.02.2016	07.02.2020	-	

ATTESTED

S.No.	Name & No.	Date of Birth	Domicile	Date of Appointment as SI/Legal	Date of Confirmation as SI/Legal	List 'F'	DOP as Insp:	DOC as Insp:			Remarks
11.	Mr. Wisal Ahmad	12.04.1982	Peshawar	12.12.2009	12.12.2009	11.02.2014	11.02.2014	11.02.2016	07.02.2020	-	
12.	Mr. Usman Ali Khan No. P/199	25.12.1983	Charsadda	12.12.2009	12.12.2009	11.02.2014	11.02.2014	11.02.2016	-	-	
13.	Muhammad Shafiq No. MR/49	15.03.1979	Mardan	15.12.2009	15.12.2009	11.02.2014	11.02.2014	11.02.2016	-	-	
14.	Muhammad Zahoor No. H/51	05.01.1980	Haripur	21.12.2009	21.12.2009	11.02.2014	11.02.2014	11.02.2016	-	-	
15.	Mr. Siraj Ud Din No. H/53	03.04.1982	Kohistan	21.12.2009	21.12.2009	11.02.2014	23.02.2015	23.02.2017	-	-	
16.	Mr. Naeem Hussain No. H/52	21.04.1984	Mardan	21.12.2009	21.12.2009	11.02.2014	23.02.2015	23.02.2017	-	-	
17.	Mr. Faheem Khan No. MR/13	02.08.1983	Swabi	12.01.2010	12.01.2010	11.02.2014	23.02.2015	23.02.2017	-	-	
18.	Sher Mohsin ul Mulk No. 449/M	06.05.1979	Chitral	09.01.2010	09.01.2010	19.01.2015	23.02.2017	23.02.2019	-	-	
19.	Mr. Ijaz Hussain No. MR/100	05.07.1971	Nowshera	03.12.2011	03.12.2011	13.03.2017	13.03.2017	13.03.2019	-	-	

(Signature)
 (PR. ZAHID ULLAH), PSP
 AIG/Establishment,
 For Inspector General of Police,
 Khyber Pakhtunkhwa,
 Peshawar.

No 2975 /E-I, dated Peshawar, the 17-/11/2023

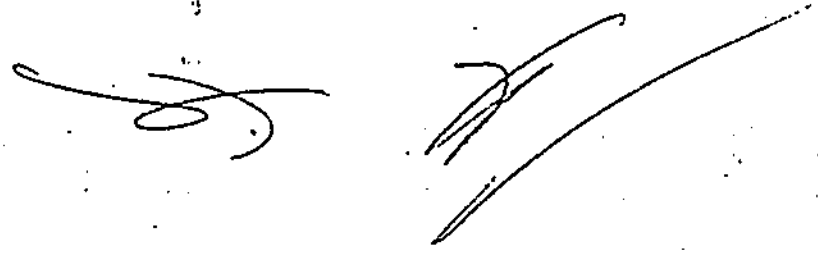
Copy of above is forwarded for information and necessary action to the:-

1. All Addl: IsGP in Khyber Pakhtunkhwa.
2. All DisG in Khyber Pakhtunkhwa.

3. All Regional Police Officers in Khyber Pakhtunkhwa.
4. Capital City Police Officer, Peshawar.
5. Commandants/ PTC Hanou and FRP.
6. AIG/Legal, Khyber Pakhtunkhwa.
7. Registrar CPO.
8. Office Supdt: Establishment-I, Secret and CPB CPO.

-10-

-5-

Two handwritten signatures in black ink, one above the other, located in the center of the page.

ATTESTED

A handwritten mark or signature in black ink, located below the word 'ATTESTED'.