

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.685/2024.

Saeed Jan.....Appellant.

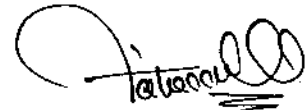
VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar..... Respondent.

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DEPONENT



DSP/ Legal,
CPO, Peshawar

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VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar..... Respondent.

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 2

Respectfully Sheweth:-

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 15372

Dated 03.09.24

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of merits.

REPLY ON FACTS:-

As per report received from Career Planning Branch, the factual position of the case is as under;

1. First portion of this para pertains to the appointment of the appellant hence, no comments while to the extent of remaining portion, the stance taken by the appellant is totally bereft of any substance as Rule 12.8 provides that the appellant appointed as Probationer ASI (directly appointed) had to undergo 03 years probationary period before being confirmed as ASI on the termination of such period. Furthermore, the rules (12-8 and 19-25(5) of the Police Rules, 1934) clearly state that PASIs (ASIs appointed direct) shall be on probation for a period of three years after their appointment as such and that they may be confirmed in their appointments (appointments of being as ASI) on the termination of the prescribed period of probation of three years with immediate effect not with retrospective effect i.e. from the date of their appointment by the Range Deputy Inspector General of Police on the report of their respective District Police Officer, provided they have completed the period of their probation of three years successfully in terms of the condition laid down in the PR-19-25(5) of Police Rules, 1934. Moreover, under paragraph IV 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). The Supreme Court of Pakistan underlined the difference between the date of appointment and date of confirmation in Mushtaq Waraich Vs IG Punjab (PLD 1985 SC 159) in a recent judgment reported vide SCMR 2023 Page 584, the Apex Court has held that "reliance on Qayyum Nawaz [a judgment of the Apex Court, report as 1999 SCMR 1594] that there is no difference between that date of appointment and date of confirmation under the police rules is absolutely

misconceived and strongly dispelled". The Apex Court has further explained PR-12-3(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officer not from the date of appointment. The honorable 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 Appeal No. 2017 to 2031 of 2006 and other connected matters). Therefore, PASIs on completion of three years probation period shall not brought on promotion list "E" from date of appointment. Their name is brought on the promotion list "E" in the manner provided in PR-13-10 and 13-11 of the Police Rules, 1934 not from the date of appointment but from the date of confirmation which, essentially, is a date different from their dates of appointment and compulsorily falls on the termination of the period of their probation for three years under PR-12-8 and 19-25(5) of Police Rules, 1934.

2. Para to the extent of initial appointment as probationer ASI is correct while rest of the para regarding performance of duty with full devotion and to the entire satisfaction of high ups is not plausible because every Police officer is under obligation to perform duty with full devotion and honesty anywhere he posted because in this department no room lies for any lethargy.
3. Incorrect and misleading. Police Rules 12.2(3) which provides that in the first instance the seniority of the upper subordinates shall be reckoned from date of first appointment, officers promoted from a lower Rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. The Sub-Rule further provides that seniority shall be finally settled by dates of confirmation, the seniority inter se of several officers confirmed on the same date being that allotted to them on first appointment. Rule 12.2(3) provides for two stages for determining the seniority one is prior to the probationary period and is to be reckoned from the first appointment and the final seniority is settled from the date of confirmation which is once the period of probation is successfully completed. Period of probation is important as the officers have to undergo various courses (A,B,C & D) and qualify the same. Once Police officer has successfully undergone the said courses, he stands confirmed at the end of the probationary period. The seniority is once again settled, confirmed at the end of the probationary period. The seniority is once again settled, this being the final seniority from the date of confirmation, the above Rule is therefore, very much clear on the issue that final seniority list of Upper subordinates will be reckoned from the date of confirmation of the officers and not from the date of appointment as enunciated in Police Rules, 1934 Chapter XIX Rule 25 Sub Rule 5 and the issue in question has clearly been dilated upon by the Apex Court of Pakistan in its judgment quoted vide preceding para.
4. As already explained above. Furthermore, the CPO Peshawar issued policy letters in shape of No. CPO/CPB/63 dated CPO/CPB/64 dated 13.02.2023 to resolve the issue once for all and to streamline the issue of seniority lists of DSsP, Inspectors and confirmed Sub Inspectors on list 'F'. In light of seniority list 'E' provided by all RPOs, a combine seniority list of

confirmed Sub-Inspectors on list 'F' issued vide No. 32/E-II/CPO/F List/Seniority dated 24.01.2024, whereby seniority has been maintained as per date of ASI confirmation/ List 'E'. Thus, the appellant has been placed on his due place in accordance with date of ASI confirmation. The appellant has got no locus standi because the issue in question has already been dealt in accordance with law/ rules on the subject and he wrongly challenged the legal orders of respondent department.

5. Incorrect and misleading, as already explained above regarding issuance of seniority list the same has been issued in accordance with policy letters as well as in accordance with law/ rules governing the subject.
6. Incorrect and misleading. The order passed by the Capital City Police Officer, Peshawar in light of Committee report dated 31.08.2017 was made erroneously wherein some of the Probationer Assistant Sub-Inspectors of Capital City Police, Peshawar were granted revised confirmation in the rank of ASI, revised admission to List 'E' from their date of appointment (2010) & revised promotion as Offg: SI (2014) against the spirit of Police Rules, 1934 and in violation of the judgments of the Hon'ble Supreme Court of Pakistan. The principle of confirmation from the date of initial appointment is put down by the august Apex Court in case titled as Mushtaq Waraich Vs IG Punjab (PLD 1985 SC 159) by underlining the difference between the date of appointment and date of confirmation. In a recent judgment reported in SCMR 2023 Page 584, wherein the august 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 august Apex Court has further explained Rule 12.2(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honorable apex 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, paragraph-VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011 also highlights the fact that "*promotion will always be notified with immediate effect*". Such seniority revision against merits on the basis of the committee report ibid unduly surpassed many senior most Sub-Inspectors on List 'F', setting a very bad precedent. Therefore, anomalies already referred to were found in the seniority lists of Khyber Pakhtunkhwa Police due to which promotions could not been done for long time. After revision in the light of Police Rules, 1934 and judgments ibid of the august Apex Court.
7. Plea taken by the appellant is totally devoid of any merit. However, detailed reply regarding the issue in question has been given in the preceding para.
8. Para pertains to record, needs no comments.
9. Incorrect. plea taken by the appellant is ill based. In fact, in order to resolve the issue of seniority of DSsP, Inspectors and Sub-Inspector on promotion list 'F' all Regional Police

Officers were directed to revise the confirmation of all officers on promotion list 'E' strictly in accordance with Police Rules, 1934 Chapter-XIII Rule 18. In compliance with the directions conveyed vide Memo No. CPO/CPB/68 dated 28.02.2022, the seniority of all officers was revised accordingly.

10. Pertains to record, needs no comments.

11. Correct to the extent of issuance of revised seniority list dated 22.11.2022. It is worth mentioning here that in order to streamline the seniority issues, the Competent Authority directed all RPOs/ CCPO should strictly follow Police Rules 13.18 for confirmation in the substantive rank and revise it accordingly in accordance Rule *ibid*. Hence, on the basis of reports received from the Regions/ CCP, the revised list 'F' was prepared and issued accordingly.

12. The respondent department acted in accordance with law/ rules and Supreme Court orders, hence, any departmental appeal against the lawful orders of the respondent department is contrary to law/ rules.

13. The appellant has got no locus standi to file the instant appeal hence, the same is liable to be dismissed on the following grounds amongst others;

REPLY ON GROUNDS

A. Incorrect and denied. The appellant has been treated in accordance with law/ rules hence, no rights of appellant have been violated by the respondent department.

B. Incorrect. The appellant is concealing real facts from this Hon'ble Tribunal as already explained above that in order to streamline the seniority issues, the Competent Authority directed that all RPOs/ CCPO should strictly follow the Police Rules 13.18 read with 19.25(5) for confirmation in the substantive rank and revise it accordingly. Hence, on the basis of reports received from the Regions/ CCP, the revised list 'F' was prepared and issued accordingly in accordance with Rules *ibid*.

C. Incorrect and misleading. The principle of confirmation from the date of initial appointment is put down by the august Apex Court in case titled *Mushtaq Waraich Vs IG Punjab* (PLD 1985 SC 159) by underlining the difference between the date of appointment and date of confirmation. In a recent judgment reported as 2023 SCMR Page 584 the august 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 august Apex Court has further explained Rule 12.2(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honorable apex 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, paragraph-VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa

(Revised Edition) 2011 also highlights the fact that "promotion will always be notified with immediate effect". Such seniority revision against merits on the basis of the committee report ibid unduly surpassed many senior most Sub-Inspectors on List 'F', setting a very bad precedent. Therefore, the anomalies already referred to were found in the seniority lists of Khyber Pakhtunkhwa Police due to which promotions could not been done for long time.

- D. As already explained above in detail.
- E. As discussed earlier the CPO Peshawar issued policy letters in shape of No. CPO/CPB/63 dated CPO/CPB/64 dated 13.02.2023 to resolve the issue once for all and to streamline the issue of seniority lists of DSsP, Inspectors and confirmed Sub Inspectors on list 'F'. In light of seniority list 'E' provided by all RPOs, a combine seniority list of confirmed Sub-Inspectors on list 'F' issued vide No. 32/E-II/CPO/F List/Seniority dated 24.01.2024, whereby seniority has been maintained as per date of ASI confirmation/ List 'E'. Thus, the appellant has been placed on his due place in accordance with date of ASI confirmation. The appellant has got no locus standi because the issue in question has already been dealt in accordance with law/ rules on the subject and he wrongly challenged the legal orders of respondent department.
- F. As already explained above that promotion in Police department is always carried out on the basis of seniority cum fitness and fulfillment of eligibility criteria coupled with availability of vacancy. There are special rules in shape of Police Rules, 1934, the Khyber Pakhtunkhwa Police Act, 2017 and Standing Orders which deal with promotion from one rank to the next higher rank and confirmation in the substantive rank after fulfilling requisite criteria/mandatory periods for the subject purpose.
- G. Incorrect and misleading, as explained The order passed by the Capital City Police Officer, Peshawar in light of Committee report dated 31.08.2017 was made erroneously wherein some of the Probationer Assistant Sub-Inspectors of Capital City Police, Peshawar were granted revised confirmation in the rank of ASI, revised admission to List 'E' from their date of appointment (2010) & revised promotion as Offg: SI (2014) against the spirit of Police Rules, 1934 and in violation of the judgments of the Hon'ble Supreme Court of Pakistan. The principle of confirmation from the date of initial appointment is put down by the august Apex Court in case titled as Mushtaq Waraich Vs IG Punjab (PLD 1985 SC 159) by underlining the difference between the date of appointment and date of confirmation. In a recent judgment reported in SCMR 2023 Page 584, wherein the august 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 august Apex Court has further explained Rule 12.2(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honorable apex 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, paragraph-VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011 also highlights the fact that "*promotion will always be notified with immediate effect*". Such seniority revision against merits on the basis of the committee report ibid unduly surpassed many senior most Sub-Inspectors on List 'F', setting a very bad precedent. Therefore, the anomalies already referred to were found in the seniority lists of Khyber Pakhtunkhwa Police due to which promotions could not been done for long time.

H. Para already explained in detail in the preceding paras.

I. Incorrect. Plea taken by the appellant is totally ill based because Police Rules 1934 have duly been followed regarding the subject issue and detailed reply has also been made in the preceding paras.

J. Para explained in detail in preceding paras.

K. Para explained in detail in preceding paras.

L. Incorrect. The Police is governed by special law/ rules in shape of Police Rules, 1934, the Khyber Pakhtunkhwa Police Act, 2017 and Standing Orders which deal with promotion from one rank to the next higher rank and confirmation in the substantive rank after fulfilling requisite criteria/mandatory periods for the subject purpose.

M. Incorrect. Stance taken by the appellant is ill based rather a whimsical one. As in a recent judgment reported as 2023 SCMR Page 584 the august 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 august Apex Court has further explained Rule 12.2(3) of Police Rules, 1934 and declared that the final seniority of officers will be reckoned from the date of confirmation of the officers not from the date of appointment. The honorable apex 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, paragraph-VI of the Promotion Policy, provided in ESTA CODE Establishment Code Khyber Pakhtunkhwa (Revised Edition) 2011 also highlights the fact that "*promotion will always be notified with immediate effect*". Such seniority revision against merits on the basis of the committee report ibid unduly surpassed many senior most Sub-Inspectors on List 'F', setting a very bad precedent. Therefore, the anomalies already referred to were found in the seniority lists of Khyber Pakhtunkhwa Police due to which promotions could not been done for long time.

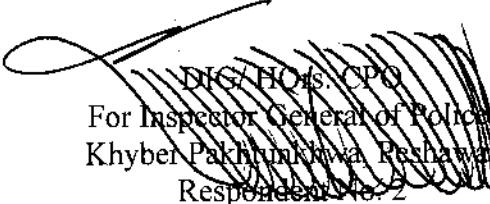
N. Incorrect. Plea taken by the appellant is totally devoid of any legal footing because the issue in question has already been settled down by the Apex Court of Pakistan in its judgment reported vide quoted above wherein, things have been made crystal clear and in light of judgment ibid the stance of the appellant is liable to be set at naught.


O. Para explained earlier in detail.

- P. Incorrect and misleading. The appellant is not entitled for revise confirmation as he has already been placed on his due place as per Police Rules 1934 as well as Apex Court judgment explained above.
- Q. Already explained in detail in preceding Paras.
- R. Incorrect. As explained above that Police is governed by special law/ rules in shape of Police Rules, 1934, the Khyber Pakhtunkhwa Police Act, 2017 and Standing Orders which deal with promotion from one rank to the next higher rank and confirmation in the substantive rank after fulfilling requisite criteria/mandatory periods for the subject purpose.
- S. Incorrect. The appellant has not been discriminated by the respondent department.
- T. Incorrect. The appellant has already been treated in accordance with law/ rules on the subject.
- U. Incorrect. The respondent department has strictly followed law/ rules as well as Apex Court judgment explained above.
- V. Incorrect. As already explained above that the appellant has been placed on his due seniority along with his batchmates. Hence, no deviation of law/ rules exists on part of the respondent department.
- W. Incorrect as already explained in preceding paras.
- X. The appellant has been placed on his due seniority in accordance with law/ rules and Apex court judgment explained above.

PRAYERS:-

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


DIG/ HOs, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 2
(Rizwan Manzoor) PSP
Incumbent


AIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(Muhammad Asif)
Incumbent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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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 to 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.



3/9/24

(Handwritten signature)
(RIZWAN MANZOOR) DSP
Deputy Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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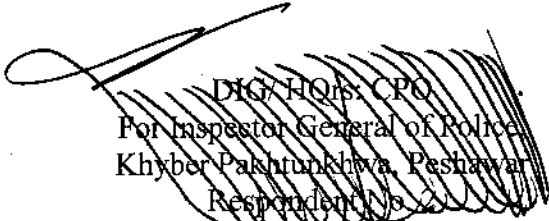
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AUTHORITY LETTER

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


DIG/ HQ's, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1 & 2
(Rizwan Manzoor) PSP
Incumbent


AIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(Muhammad Asif)
Incumbent
