**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No.2331/2023.**

SI Asif Ali Khan of CCP Peshawar.....**Appellant.**

**VERSUS**

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. . **Respondents.**

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**DSP/Legal,**
**CCP, Peshawar.**

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**

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**REPLY BY RESPONDENTS NO. 2 to 4.**



**Respectfully Sheweth:-**

**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 any merit.

**REPLY ON FACTS:-**

1. Correct to the extent of appointment of appellant, but confirmation of appellant w.e.f. date of appointment after probation period is misreading of Rule 12.8, 13.18 and 19.25 of Police Rules, 1934. The Apex Court of Pakistan declared that date of appointment and date of confirmation are two different and separate events which if conceived to be the same is strongly dispelled in the following terms:

   "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 (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 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 12.2(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 Court further held that "the practice of antedated confirmation and promotion 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 29.02.2008, passed in Civil Appeals No. 2017 to 2031 of 2006 and other connected matters).

2. Pertains to record.
3. Incorrect, each probationer officer appointment is subject to mandatory training for one year period who on return to the parent District further undergoes two years practical training under rule 19.25. Thus, his total probation period after appointment is three years and on

completion of that probation period, he is confirmed in that appointment under Rule 12.8 and 13.18 of Police Rules with immediate effect not from the date of appointment. The same issue has been addressed by the Apex Court and Esta Code in the following manner:-

The two 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 they may be confirmed in their appointments (appointment of being an ASI) on the termination of the prescribed period of probation for 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 Officers provided that 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 the Police Rules 1934.

Moreover, under paragraph VI of the promotion policy, provided in the ESTA 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).

4. Incorrect and misleading, In fact admission to List "E of the confirmed ASIs is governed by Rule 12.8 and 13.18 of Police Rules, wherein certain principles have been set for bringing the confirmed ASIs of probationer officers and promoted (Ranker ASIs) Officers and the difference has been clearly mentioned therein. The same is reproduced for clarification below:-

PR 12.8 Probationary nature of appointments. (1) Inspectors, sergeants, Sub-Inspector and Assistant Sub Inspectors who are directly appointed will be considered to be on probation for three years and are liable to discharged at any time during or on the expiry of the period of their probation if they fail to pass the prescribed examination including the riding test, or are guilty of grave misconduct or are deemed, for sufficient reason, to be unsuitable for service in the police. A upper Subordinates by Range Deputy Inspector General, Assistant Inspector General, Government Railway Police, Assistant Inspector General, Provincial Additional Police (designated as Commandant, Provincial Additional Police). No appeal lies against an order of discharge. (2) The pay admissible to a probationary Inspector, Sergeant, Sub-Inspector or Assistant Sub Inspector is shown in Appendix table 10.64, Table A.

PR 19.25 training of Upper Subordinates (1). "Inspector, Sub-Inspectors, and Assistant Sub Inspectors, who are directly appointed, shall be deputed to the police Training School to undergo the course of training laid down for such officers in the Police Training Schools Manual and are liable to discharge if they fail to pass the prescribed examination or are badly reported on."

(5) On the termination of the prescribed period of probation Superintendent shall submit to the Deputy Inspector General for final orders the full report required by form 19.25(5) on the probationer's working and general conduct, with a recommendation as to whether he should not be confirmed in his appointment. In the case of inspectors such reports shall be forwarded to the Inspector General.

Furthermore, the Apex Court of Pakistan set a principle of confirmation for Rule 13.18 in the case reported as 2016 SCMR 1254 case titled Gul Hassan Jatoi etc Vs Faqir Muhammad Jatoi etc. The relevant para of the judgment is reproduced as under:-

> 74. It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of competent authorities concerned. Hence, we are of the view that this practices must be brought to an effective end so that injustice may not be perpetrated against such officials. Therefore, in future those police personnel who have completed their statutory period of probation, whether it is three years or two years, they shall be confirmed whether or not a notification to that effect is issued.

The same principle has been applied by the department vide letter No. 63/CPO/CPB, dated 13.02.2023 uniformly to bring parity and eradicate anomalies in confirmation and seniorities of all upper subordinates. Due to this procedure certain officers (rankers as well as probationers) who were deprived of confirmation in compliance of Rule 13-18 and Apex Court judgment above, got their due confirmations and become senior than appellant and others which is pure application of the rules in compliance of Apex Court above order. Hence, appellant claim is denied of Rules and principles set by the Apex Court of Pakistan.(Copy of judgment is annexed as A)

5. Incorrect and misleading as explained in above para 4 in detail.
6. Incorrect. The committee report dated 31-08-2017 was misreading of Rules 12-8, 13-18 and against the spirit of Apex Court of Pakistan. Hence, was devoid of law and merits, created anomalies and deformed the seniority lists. That's why the same could not be implemented rather it needed correction and modification in light of Rules & Apex Court Principles.
7. First portion of the para is incorrect and misleading as explained in above paras while to the extent of filing Writ Petition No. 3720/2018, it is correct that some probationer officers insisted sticking to an illegal committee report.
8. Correct to the extent of implementation of the said illegal committee report through judicial push and pressure by the PASIs and the same was later on withdrawn/modified or corrected in light of Rules 12-8, 13-18, 19-25 and Apex Court directions which are explained in detailed in the above paras.
9. Correct to the extent of provisional seniority list dated 08.10.2020, but as explained in above paras, the same was issued under judicial compulsion which created serious anomalies and ranker ASIs were deprived of their due rights of seniorities and placement.
10. Correct to the extent of DPC minutes dated 27.06.2021 but the same was devoid of merits, rules and Apex Court principles, hence, required correction/modification for the sake of justice and rights of rankers/promoted ASIs.

11. Incorrect, misleading and misconceived. The impugned seniority list dated 02.11.2022 was issued in accordance with Rules and Apex Court judgments. Respondent department is under obligation to safeguard the rights of all Police Officers whether probationer or ranker in accordance with Rules and in light of principles set by the Apex Court of Pakistan. Any anomaly or deformity created by a wrong procedure or application of rule within the seniorities, disturbs the whole service structure of Police department which is void ab-initio and correctable.
12. Incorrect. No departmental appeal against the Rules and Apex Court Judgments is entertainable after surgery of the whole structure in light of Rules and Apex Court Judgments.
13. Incorrect. The appellant has no cause of action and locus standi to file the instant appeal being devoid of merits. As per rules and apex court principles his appeal may be dismissed inter alia on the following grounds.

**REPLY ON GROUNDS:-**

A. Incorrect and denied on the ground that appellant has been treated strictly in accordance with law/rules and no legal and fundamental right has ever been violated by the respondents.
B. Incorrect. The seniority list was prepared in the spirit of Police Rules 1934 and in the light of Hon'ble Supreme Court judgments.
C. Incorrect. As replied above.
D. Incorrect. The respondent department acted in accordance with law/rules and Apex court judgments.
E. Incorrect. Para already explained in the preceding paras. Furthermore, the appellant was treated as per law/rules and Apex court judgments.
F. Incorrect. The principle of confirmation from the date of initial appointment is put down by the august Apex court in case titled Mushtaq Waracich Vs IG Punjab (PLD 1985 SC 159) by underlining the difference between the date of appointment and date of confirmation. In a recent judgment dated 02.11.2022 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 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.
G. Para already explained in the above para.
H. Incorrect. The objections raised in the Para by the appellant are denied, having no legal footing and against the norms of law as the replying respondents have always followed the law/rules in its true letter & spirit.
I. Incorrect. Para already explained in the above paras.
J. Incorrect and already explained in the preceding paras. Furthermore, the seniority list E was prepared as per spirit of Police Rules 1934 and in the light of Apex Court judgments.
K. Incorrect. The appellant was treated as per law/rules and Apex court judgments.

L. Incorrect and misleading. As per Police Rules 1934, Apex Court Judgments & ESTA Code promotion will be reckoned from the date of confirmation not from the date of appointment. Drawing analogy from this rule & judgments, 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).

M. Incorrect. Appellant has never been deprived of his due right nor treated with discrimination. However it is worth to clarify that promotion and confirmation amongst employees of respondent department have been made in accordance with law/rules and no pick and choose formula is followed.

N. Incorrect. The replying respondents acted in accordance with law/rules.

O. Incorrect. The objections raised in the para by the appellant are denied, having no legal footing and against the norms of law as the replying respondents have well known always followed the law/rules in its true letter & spirit.

P. Incorrect. Para already explained in the above paras. However, the appellant has never been deprived of his due right.

Q. Incorrect. The appellant has been treated as per law/rules and no Article of Constitution of Pakistan has been violated by the replying respondents.

R. Incorrect. Replying respondents has acted in accordance with law/rules and as per the spirit of the judgment of the Apex court. Therefore, its acts are liable to be upheld.

**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.

**Capital City Police Officer,**
**Peshawar,**
**(Syed Ashfaq Anwar)PSP**
**(Respondent No.4)**
**Incumbent**

**Deputy Inspector General of Police,**
**HQrs:Khyber Pakhtunkhwa, Peshawar,**
**(IRFAN TARIQ) PSP**
**(Respondent No.5)**
**Incumbent**

**Additional Inspector General of Police,**
**HQrs: Khyber Pakhtunkhwa, Peshawar.**
**(Awal Khan) PSP**
**(Respondent No.3)**
**Incumbent**

**DIG/Legal, CPO**
**For Provincial Police Officer,**
**Khyber Pakhtunkhwa, Peshawar.**
**(Dr. Muhammad Akhtar Abbas) PSP**
**(Respondent No.2)**
**Incumbent**

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**AUTHORITY.**

We respondents are hereby authorize ***Mr.Inam Ullah*** DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

**Capital City Police Officer,**
**Peshawar,**
**(Syed Ashfaq Anwar)PSP**
**(Respondent No.4)**
**Incumbent**

**Deputy Inspector General of Police,**
**HQrs:Khyber Pakhtunkhwa, Peshawar,**
(IRFAN TARIQ) PSP
**(Respondent No.5)**
**Incumbent**

**Additional Inspector General of Police,**
**HQrs: Khyber Pakhtunkhwa, Peshawar.**
**(Awal Khan) PSP**
**(Respondent No.3)**
**Incumbent**

**DIG/Legal,CPO**
**For Provincial Police Officer,**
**Khyber Pakhtunkhwa, Peshawar.**
**(Dr. Muhammad Akhtar Abbas) PSP**
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**AFFIDAVIT.**

I respondent No. 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of my knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.

**(Syed Ashfaq Anwar)PSP**
**Capital City Police Officer,**
**Peshawar.**
**(Respondent No.4)**

ATTESTED
Syed Muhammad Shah
NOTARY PUBLIC
ADVOCATE HIGH COURT PESHAWAR

0 8 MAY 2024

# IN THE SUPREME COURT OF PAKISTAN
( Appellate Jurisdiction )

PRESENT:
MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ.
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE UMAR ATA BANDIAL

## CIVIL PETITIONS NO.493, 494, 505 TO 508, 529 TO 532, 533, 601, 906 AND 911 TO 917 OF 2015.

(On appeal against the judgment dated 13.3.2015 passed by the Sindh Service Tribunal, Karachi, in Appeals No.130-134/2014, 2, 237& 238/2015)

| | |
|---|---|
| Gul Hassan Jatoi | (CPs.493,494,505&506/15) |
| Abdul Razzak Bugti | (CPs.507&508/15) |
| Faqir Muhammad Jatoi | (CP.529/15) |
| Masroor Ahmed Jatoi | (CP.530/15) |
| Sohrab Ali Meo | (CP.531/15) |
| Yar Muhammad Rind | (CP.532/15) |
| Lal Bux Solangi | (CP.533/15) |
| Abdullah and another | (CP.601/15) |
| Province of Sindh thr. Chief Secy. Sindh | (CPs:906 & 911-917/15) |

... **Petitioner(s)**

VERSUS

| | |
|---|---|
| Faqir Muhammad Jatoi | (CPs.493,508,911/15) |
| Aijaz Ali Memon & others | (CP.494,916/15) |
| Sohrab Ali Meo & others | (CP.505, 913/15) |
| Ins. M. Azam Khan | (CP.506,601,917/15) |
| Yar Muhammad Rind etc | (CP.507,906/15) |
| Province of Sindh & others | (CPs.529-532/15) |
| Masroor Ahmed Jatoi etc | (CP.912/15) |
| Lal Bux Solongi etc | (CP.914/15) |
| Rafique Ahmed Abbasi | (CP.915/15) |

... **Respondent(s)**

| | | |
|---|---|---|
| For the Petitioners (in CPs.493, 494, 505-506, 906 & 911-917/15) | : | Mr. Shahid Anwar Bajwa, ASC<br>Mr. Zulfiqar Khalid Maluka, ASC<br>Mr. M. Munir Peracha, ASC<br>Syed Iftikhar Hussain Gillani, Sr. ASC<br>Syed Rafaqat Hussain Shah, AOR |
| For the Respondents (1-4) in CP.494/15 (1-22) in CP.506/15 | : | Mr. M. M. Aqil Awan, ASC |
| For Govt. of Sindh | : | Mr. Abdul Fateh Malik, AG Sindh,<br>Mr. Adnan Karim, Addl. AG Sindh<br>Ghulam Ali Barhman, Addl. Secy (Services) |

Attested

Dr. Amin Yousafzai, DIG
Naeem Ahmed Shaikh, AIG (Establishment)
Dr. Mazhar Ali Shah, AIG (Legal)
Aman Ullah Zardai, Focal Person, HD

Others Respondents (in all cases) : Not represented.

Date of hearing : 29-10-2015, 3-11-2015 & 4-11-2015

# JUDGMENT

AMIR HANI MUSLIM, J.- These Petitions for leave to Appeal are directed against judgment dated 13.3.2005, of the Sindh Service Tribunal, Karachi, whereby 08 Service Appeals filed by the Petitioners/Respondents were disposed of, vide impugned judgment in the following terms:-

i. Sindh Reserve Police and all other branches of Police Force such as Rapid Respondent Force (RRF), Sindh Reserve Police (SRP), Prosecution Branch, Telecommunication Branch, Female Police, Special Branch (Crime Branch) are separate cadres other than the District Police/Regular Police, although all of them are one Police Force which is an attached department of the Home Department under the Sindh Government Rules of Business, 1986 and Inspector General of Police is head of attached department.

ii. Since all branches of Police Force are assigned with different and separate functions they are different cadres, therefore, the Provincial Government shall frame recruitment rules and the terms and conditions of their service separately for each cadre, except for those cadres in respect of which separate rules are already there such as Women Police and Prosecution Branch etc.

iii. After framing of rules pertaining to recruitment and other terms and conditions of service as required

Attested

strictly as provided by the Rules in Chapter XIII, as discussed in Para 56 supra. Therefore, the Sindh Government and the competent authority under the Police Rules shall prepare the common seniority list of the Police Personnel serving in different establishments within three (03) months of the date of this judgment in terms of Police Rules and report compliance.

72. Likewise, we are clear in our mind 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.

73. Being the custodian of the service record etc. of the Police personnel, the District police/Range DIG, shall make selection for Police personnel for police training and practical training, and no other establishment shall be authorized to make such selection. By way of clarification it may be observed that the matters related to seniority, promotion or trainings in respect of Police Inspector, the competent authority is Inspector General of Police, as provided in the rules 1934.

74. It has been observed that in many cases the Police personnel have completed their statutory period of probation but they were not confirmed for want of notification, and as result of which such officials have suffered in terms of delayed promotion or loss of seniority, which is a sheer negligence and abuse of power on the part of the competent authorities concerned. Hence, we are of the view that this practice must be brought to an effective end so that injustice may

Attested

not be perpetrated against such officials. Therefore, in future those Police Personnel who have completed their statutory period of probation, whether it is three years or two years, they shall stand confirmed whether or not a notification to that effect is issued.

75. We have further observed that a cherry picking is made in the case of selection of Police personnel for police training or practical training despite the fact they have completed their required period to be eligible for such trainings, which amounts to denying them of timely promotion for the next scale; hence, we direct that in future, competent authority shall ensure that the Police personnel who have completed their required period to be eligible for trainings shall be forthwith sent for the training; and in case such police officials are bypassed for such trainings on account of default by the department, or to extend a favor to the junior, or negligence by the authority concerned, their inter-se seniority and the accompanying financial entitlements shall not be effected on account of their late joining or completion of training.

76. For the reason stated hereinabove, we allow all these appeals and set aside the judgment of the learned Sindh Service Tribunal. It is expected from the Sindh Government and the Inspector General of Police, Sindh that the directives contained in this judgment shall be implemented in its letter and spirit without any undue delay and the seniority list of all the Police personnel belonging to any of the establishment created in terms of Rule 1.4 of the Police Rules, 1934 shall be prepared within the time stipulated in the judgment.

Attested

77. Copies of this judgment be sent through fax and otherwise to the Sindh Chief Secretary, Home Secretary, Sindh, Inspector General of Police, Sindh and Advocate General, Sindh, for their information and compliance.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the

Approved for reporting

Attested