

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2432/2023.


Sikandar Shah (Acting DSP) of CCP, Peshawar.....Appellant.

VERSUS.

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

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DSP/Legal,
CCP, Peshawar.

2-04-2024
S-B
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2432/2023.

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VERSUS.

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

REPLY BY RESPONDENTS NO. 1, 2, &3, 4

Respectfully Sheweth:-

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11919

Dated 26-03-2024

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'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
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 Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Para pertains to record. However, the appellant have a blemish service record as he did not ever perform his service according to the satisfaction of superior officers.
2. Incorrect. The appellant was deferred from promotion due to pending departmental proceedings on the charges of his involvement in two criminal cases vide FIR No.645 dated 27.09.1999 u/ 506 PPC PS Daudzai and vide FIR No.793 dated 30.10.2000 u/s 302 PPC PS daudzai. Later on, after completion of all codal formalities he was dismissed from service vide order dated 08.10.2003.
3. Pertains to Hon'ble Service Tribunal, however, the appellant was subsequently reinstated into service by this Hon'ble Service Tribunal vide judgment 02.11.2004 treated his dismissal period as extra ordinary leave without pay.
4. Incorrect. The appellant has himself admitted the fact that he was given promotion/confirmation in list "E" rightly in accordance with law/rules. The appellant after completion of the requisite laid down criteria has been confirmed in the rank of ASI. The appellant after completion of the laid down criteria was promoted to the next higher rank as per law/rules in vogue.
5. Correct to the extent of issuance of seniority list dated 02.09.2022 while the rest of the Para is incorrect, misconceived and misleading as follows:-
 - i. That promotions and confirmations of Police officials on the basis of out of turn promotion, adhoc basis or acting charge base promotions in the past created serious anomalies among the various seniority lists of Police ranks. Promotions and confirmations of Police personnel in violation of rules and regulations were

termed as “out of turn promotions” by the apex Court of Pakistan firstly in case reported as Malik Nadeem Arif Vs Govt of Sindh etc in 2010/11. The term out of turn promotions, its vires and components were discussed in details and the issue was laid to rest by the following apex Court judgments:

- a) 1998 SCMR 2013
- b) 2013 SCMR 1752
- c) 2015 SCMR 456
- d) 2016 SCMR 1254
- e) 2017 SCMR 206
- f) 2018 SCMR 1218
- g) Consolidated judgment of the apex Court dated 30.06.2020 in CP No. 1996,2026,2431,2437,2450,2501, 2502 of 2019.
- h) Judgment dated 02.09.2020 of Hon’ble Peshawar High Court in Writ Petition No. 2513-P/ 2020.
- i) Judgment dated 31.01.2019 of Hon’ble Peshawar High Court in Writ Petition No. 538-P/ 2019.
- j) Judgment dated 26.11.2020 of Hon’ble Peshawar High Court in Writ Petition No. 5192-P/ 2020.

ii. That similarly in many cases the police personnel had completed their statutory period of probation, in compliance to Rule 13.18 of Police Rules, 1934 (amended 2017) but were not confirmed for want of notification, in violation of rule ibid. This serious issue was addressed and discussed in the apex Court of Pakistan, 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.

As a result of out of turn promotions and delayed confirmations, a number of police personnel were affected in terms of promotions and seniority which created serious anomalies in the seniority lists of Police personnel and resulted in endless litigation as well as demoralization of the Police force.

iii. In order to streamline the seniority issues in accordance with the apex Court judgments quoted above, the competent authority through Letter No. CPO/CPB/68, dated 28.02.2022 (Annexure “A”) directed that all Regional Police Officers/ Capital City

Police Officer should strictly follow Rule 13:18 ibid for confirmation in the substantive rank of SI and revise it accordingly, if there exists any anomaly.

iv. Consequent upon the directions of competent authority, all RPOs/ CCPO revised the seniority of their regions by applying rule ibid and lists of revised seniorities were sent to CPO for revision of list 'F'. Thus, list 'F' was revised and issued on 02.09.2022.

v. Now, in light of apex Court judgment applying rule 13:18 of Police Rules, 1934, certain police officials got their right of due seniority and become senior than others. Therefore, seniority list was modified in accordance with new seniority list 'F' issued dated 02.09.2022. The new seniority list is in accordance with Law/ Rules.

6. Incorrect, misleading and misconceived. Infact, the respondents department not only applied rule 13.18 uniformly but also revised list "E" in accordance with relevant rules vide CPO letter No. CPO/CPB/63 dated 13.02.2023. Relevant portion of the said policy is reproduced for ready reference.

"2. ASIs promoted from ranks (Ranker ASIs) may be confirmed in their ranks "on the conclusion of the probationary period" of two years. They shall NOT be confirmed from the date of their promotion as ASIs from the lower rank of HC. PR 13.18 of Police Rules 1934 is hereby reproduced as a ready reference.

Rule 13.18. Probationary Period of Promotion" all Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether the officer should be confirmed or reverted."

This rule shall not apply to Constables and Sub Inspectors promoted to the selection grade, whose case is governed by rulea, 13.5 and 13.4."

3. 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. 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 12.3(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).

5. It is, therefore, made clear that ASIs promoted from lower rank shall be brought on promotion list “E” after successful completion of two years probation period NOT from the date officiating promotion. Their names may be 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 promotion but from the date of confirmation which essentially, is a date different from their dates of promotion and compulsorily falls on the termination of the period of their probation of two years under PR 13.8 of the Police rules, 1934.

6. Mode of bringing names of Assistant Sub-Inspector (ASIs Both PASIs and Ranker ASIs) on the promotion list “E”, confirm in the manner provided above, is given in PR. 13.10 and 13.11 of Police Rules, 1934. Therefore, their names may be brought on the promotion list E in the manner provided in the said two rules.”

The stance of appellant is devoid of law/rules while respondent department acted in accordance with Police rules 1934. Each Police officer has been rightly positioned in seniority lists uniformly and in accordance with law/rules and policy without discrimination or malafide.

7. Incorrect. The appellant filed time barred departmental appeal about 21 years, which was thoroughly processed by the DPC held on 01.08.2023, wherein his appeal were filed/rejected on the ground that this Hon’ble Service Tribunal in its Judgment dated 02.11.2004 decided his appeal and reinstated him in service while the period of termination was treated as extra ordinary leave without pay and no back benefit were granted for the intervening period. Hence his appeal was rejected/filed on facts and limitation. It is pertinent to mention here that the appellant brought his plea of seeking seniority after a prolong time whereas, he was supposed to agitate it at the relevant time of his colleagues promotion. The issue is much clear from the judgment of Supreme Court in Civil Appeal vide 2020PLC (C.S) 936, titled as Tabasam Ashraf vs AJ&K Govt: which is reproduced below:-

“According to the celebrated principle of law laid down by this Court in a number of cases, it is the duty of the party to explain delay of each and every day to the satisfaction of the court but in this case the appellant failed to justify the delay of six months occurred in filing of appeal. In this state of affairs, the learned Service Tribunal has committed no illegality while passing the impugned judgment”.

8. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

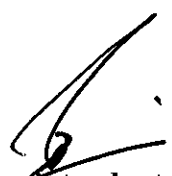
REPLY ON GROUNDS:-

A. Incorrect. The order issued by the respondent department is just legal and has been passed in accordance with law/rules and liable to be upheld.

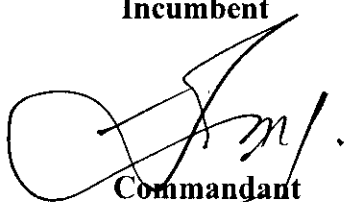
- B. Incorrect. The Seniority list issued as per Rule 13:18 were strictly followed and everyone given his due place/seniority, so, the appellant also got his due place. Appellant has never been deprived of his due right nor condemned unheard.
- C. Incorrect. The point raised by the appellant having no legal footage. However it is worth to clarify that the appellant serving in CCP Peshawar and was given rightly promotion and confirmation in accordance with law/rules and no pick and choose formula is followed. Appellant has never been deprived of his due right nor treated with discrimination.
- D. Incorrect as explained in the proceeding paras. Further, the seniority list was issued in accordance with Police Rules, 1934, Rule 13:18 and Apex Court judgment hence, the appellant got no cause of action while he is tending to disturb the seniority list.
- E. Incorrect. Appellant has been treated strictly in accordance with law/ rules and no legal right has ever been violated. The appellant was rightly given seniority on his due place in accordance with law/rules.
- F. Incorrect. Para already explained in the proceeding paras. The appellant was rightly got his seniority with others colleagues in accordance with Police Rules, 1934, Rule 13:18 and Apex Court judgment, no article of constitution of Pakistan 1973 has been violated by the respondents department.
- G. Incorrect. As explained in the preceding paras.
- H. Incorrect. The appellant was dealt as per the constitution of Islamic Republic of Pakistan 1973 and no violation of the Articles 2A, 4, 9 25 has been done by replying respondents.
- I. Incorrect. The appellant was treated as per law/rules. Therefore, the seniority is liable to be upheld.
- J. The answering respondents may be allowed to advance other grounds at time of hearing of instant service Appeal.

PRAYERS:-

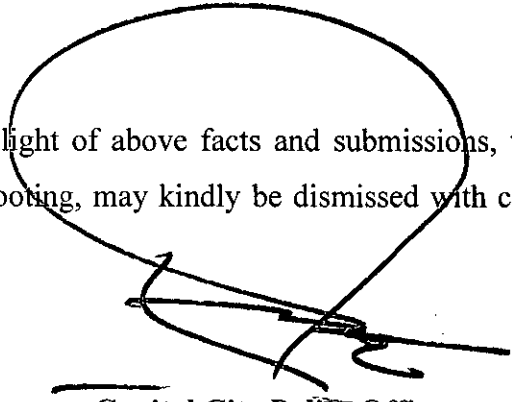
It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with cost please.



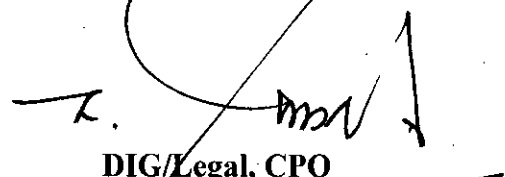
**Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)
(Raham Hussain)
Incumbent**



**Commandant
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.4)
Tahir Ayub(PSP)
Incumbent**



**Capital City Police Officer,
Peshawar.
(Respondent No.2)
(Syed Ashfaq Anwar)PSP
Incumbent**



**DIG/Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
Dr. Muhammad Akhtar Abbas(PSP)
Incumbent**

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

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.

**Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)
(Raham Hussain)
Incumbent**

**Capital City Police Officer,
Peshawar.
(Respondent No.2)
(Syed Ashfaq Anwar)PSP
Incumbent**

**Commandant
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
Tahir Ayub(PSP)
Incumbent**

**DIG Legal, CMO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
Dr. Muhammad Akhtar Abbas(PSP)
Incumbent**

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.2432/2023.

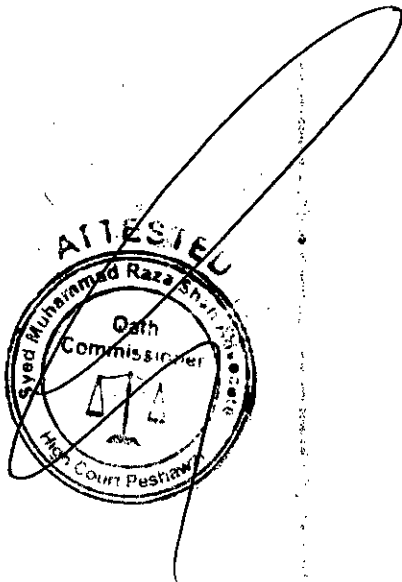
Sikandar Shah (Acting DSP) of CCP, Peshawar.....**Appellant.**


VERSUS.

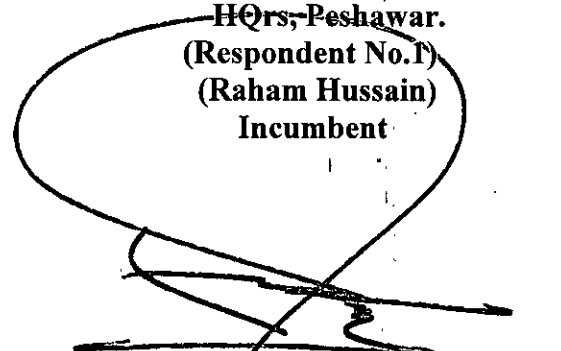
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... **Respondents.**

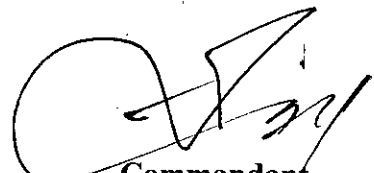
AFFIDAVIT.

We respondents are 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.




**Superintendent of Police,
HQrs, Peshawar.
(Respondent No.1)
(Raham Hussain)
Incumbent**


**Capital City Police Officer,
Peshawar.
(Respondent No.2)
(Syed Ashfaq Anwar)PSP
Incumbent**


**Commandant
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)
Tahir Ayub(PSP)
Incumbent**

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

No. CPO/CPBI/ 68 Dated Peshawar 28 Feb: 2022

To : The Capital City Police Officer,
Peshawar.

All Regional Police Officers,
Khyber Pakhtunkhwa.

Subject: ANOMALIES RELATED TO CONFIRMATION STATUS AWARDED TO SUB
INSPECTORS.

Memo:-

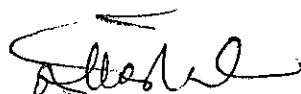

The Competent Authority has directed to streamline the seniority issues of DSsP, Inspectors and confirmed Sub Inspectors already on List "F". It has been observed that due to following reasons the problems arise in the seniority lists.

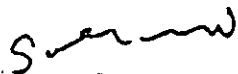
- i. In majority of the cases received to CPO for admission to the centralized seniority list, it has been observed that the confirmation in the rank of Sub Inspectors is considered from the date of DPC instead of completion of mandatory period of two years for confirmation as per Police Rules 13.18.
- ii. Similarly, Police Rules 13.10(2) provides for two years mandatory period as SHO/other Units.

In order to streamline the seniority issues, the Competent Authority has directed that all RPOs/CCPO should strictly follow Police Rules 13.18 for confirmation in the substantive rank and revise it accordingly, if there exists any anomaly. The requisite rules are quoted below for ready reference:-

- a. Police Rules 13.18. All Police Officers promoted in rank shall be on probation for two years, provided that the appointing authority may, by a special order in each case, permit periods of officiating service to count towards the period of probation. On the conclusion of the probationary period a report shall be rendered to the authority empowered to confirm the promotion who shall either confirm the officer or revert him. In no case shall the period of probation be extended beyond two years and the confirming authority must arrive at a definite decision within that period whether officer should be confirmed or reverted.
- b. Police Rules 13.10(2) No Sub Inspector shall be confirmed in a substantive vacancy unless he has been tested for at least a year as an officiating Sub Inspector in independent charge of a Police Station, a notified Police Post or as in-charge investigation of a Police Station or in Counter Terrorism Department. According amendment Police Rules 2017, provided further that he shall also have to spend one year in any other Unit excluding the period spent on long leave, deputation or promotional training courses i.e. Upper College Course'.

The report may be communicated to this office within one week i.e. 08.03.2022 positively.


Sd/-
(SABIR AHMED) PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa,
Peshawar.