BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 358/2024

Zahir Shah (Retired) Sub Inspector.....**Appellant**

VERSUS

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

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DEPONENT

DSP/ Legal,
CPO, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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Zahir Shah (Retired) Sub-Inspector.....**Appellant.**

VERSUS

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

PARA-WISE COMMENTS BY RESPONDENTS

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 merits.

REPLY ON FACTS:-

1. Para to the extent of initial enlistment as Constable in Police department and subsequent transfer to District Mardan pertains to record, 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 lethargy official.
2. Para to the extent of promotion as Head Constable, ASI, SI and subsequent confirmation as SI pertains to record needs no comments. As every police officer after fulfillment of requisite criteria gets promotion to the next higher rank subject to possessing the requisite qualification/ courses and availability of vacancy.
3. Correct to the extent that name of the appellant along with his colleagues was placed on promotion list 'F' vide Notification dated 11.01.2019.
4. Correct to the extent that the appellant preferred application for out of turn promotion to the rank of Inspector at the verge of his retirement. However, his application was examined and found bereft of any substance therefore, the same was rejected rightly as promotion is not a vested right and is always made as per seniority cum fitness.

   Moreover, the practice of out of turn promotion has already been declared as unconstitutional and Un-Islamic vide reported judgments by the Apex Court of Pakistan vide judgments 2013 SCMR 1752, 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019.

   The appellant was not eligible/ deficient for promotion criteria hence, was not promoted to the rank of Inspector. Service Record in respect of the appellant is as under;

Date of Birth	13.02.1962
date of Enlistment as Constable	19.02.1982
date of Confirmation as Sub Inspector	24.10.2017
entry to list 'F'	11.01.2019
Seniority position in combined seniority list of sub Inspector and Inspectors issued on 26.02.2019	959

Seniority position in combined seniority list of Sub Inspector and Inspectors issued on 20.07.2020	870
Seniority position in combined seniority list of Sub Inspector and Inspectors issued on 07.09.2021	816

Besides, the following DPCs meetings were convened regarding promotion of Sub Inspectors to the rank of Offg: Inspectors during the years as tabulated below;

Date of DPC	Total No. of Promotees	Seniority Position of Last Promotee
12.03.2020	42	The last promotee namely Ghulam Sarwar No. P/95 was promoted at Sr. No. 784 while the name of the applicant was present at Sr. No. 959 in the combined seniority list of Inspectors and Sub Inspectors issued on 26.02.2019.
17.12.2020	76	The last promotee namely Muhammad Khushal No. H/171 was promoted at Sr. No. 805 while the name of the applicant was present at Sr. No. 870 in the combined seniority list of Inspectors and Sub Inspectors issued on 20.07.2020.
19.04.2023	163	The DPC meeting was held after retirement of the appellant.

It is pertinent to mention here that promotion is not a vested right as held by the Apex Court in its judgment reported vide 2012 PLC (CS) at 61 that 'Promotion is not an absolute right'. Promotion is not a vested right of a civil servant (2002 SCMR 1056). PLD 2003 Supreme Court 110 states that 'Promotion to a retired Civil Servant cannot be granted' it was further held in 2006 SCMR 1465 'Promotion cannot be granted to a retired Civil Servant'.

5. Incorrect and misleading. The appellant attained the age of superannuation and stood retired from service w.e.f 12.02.2022 vide Notification No. 162/EC dated 25.01.2022. The 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 is no provision in rule which supports out of turn promotion/ ante-dated promotion/ confirmation. The appellant claims for ante-dated promotion which is quite illegal, unlawful against the law/rules and the judgments rendered by the Apex Court judgments. Hence, Appeal of the appellant is liable to be dismissed on the following Grounds amongst the others.

REPLY ON GROUNDS

A. Incorrect and denied on the ground that grant of ante-dated promotion is devoid of law/rules and Apex Court judgments. Hence, the order passed by the respondent department is quite in accordance with law/ rules.

B. Incorrect and misleading, no violation of provision of any law/rules and Article of Constitution exist on part of answering respondent.

C. 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 is no provision in any rule/ law which supports out of turn promotion/ ante-dated promotion. The appellant claims for ante-dated promotion which is quite illegal, unlawful against the law/rules and Apex Court judgments. Moreover, the original colleagues of the appellant who were confirmed as Sub-Inspector on same date and their names were brought on promotion list 'F', were considered for

promotion to the rank of Officiating Inspector in the DPC held on 19.04.2023 and were promoted as Officiating Inspectors vide Notification NO. 233/CPO/E-II dated 19.04.2023 right after the retirement on superannuation pension of the appellant. Hence, stance of the appellant is totally bereft of any substance, therefore, is liable to be set at naught.

D. Incorrect and misleading, as explained above in detail in preceding Paras.

E. Incorrect as already explained above that there is no provision in any rule/ law which supports out of turn promotion/ ante-dated promotion. The appellant claims for ante-dated promotion which is quite illegal, unlawful against the law/rules and Apex Court judgments. Moreover, the original colleagues of the appellant who were confirmed as Sub-Inspector on same date and their names were brought on promotion list 'F', were considered for promotion to the rank of Officiating Inspector in the DPC held on 19.04.2023 and were promoted as Officiating Inspectors vide Notification NO. 233/CPO/E-II dated 19.04.2023 right after the retirement on superannuation pension of the appellant. Hence, stance of the appellant is totally bereft of any substance, therefore, is liable to be set at naught.

F. Incorrect. The appellant preferred application for out of turn promotion to the rank of Inspector at the verge of his retirement. However, his application was examined and found bereft of any substance therefore, the same was rejected rightly as promotion is not a vested right and is always made as per seniority cum fitness. Moreover, the practice of out of turn promotion has already been declared as unconstitutional and Un-Islamic vide reported judgments by the Apex Court of Pakistan vide judgments 2013 SCMR 1752, 2015 SCMR 456, 2016 SCMR 1254, 2017 SCMR 206, 2018 SCMR 1218 and consolidated Judgment dated 30.06.2020 in Civil Petitions No. 1996, 2026, 2431, 2437 to 2450, 2501 and 2502 of 2019.

It is pertinent to mention here that promotion is not a vested right as held by the Apex Court in its judgment reported vide 2012 PLC (CS) at 61 that 'Promotion is not an absolute right'. Promotion is not a vested right of a civil servant (2002 SCMR 1056). PLD 2003 Supreme Court 110 states that 'Promotion to a retired Civil Servant cannot be granted' it was further held in 2006 SCMR 1465 'Promotion cannot be granted to a retired Civil Servant'

G. Plea taken by the appellant is totally devoid of merit because every Police officer/ official if reaches to the age of superannuation, stands retired from service because according to law on the subject, there is no service beyond the said superannuation period.

H. Plea taken by the appellant is totally ill based because every Police officer is under obligation to perform duty with full devotion and honesty anywhere he posted because besides other service benefits, he/ she is also granted remuneration for the same.

I. The respondent may also be allowed to adduce additional grounds at the 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.

Regional Police Officer,
Mardan
(Respondent No. 2)
(Najeeb-Ur-Rehman Bugvi) PSP
Incumbent

AIG/ Legal,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(MUHAMMAD ASIF)
Incumbent

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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 respondents No. 1 & 2.

Regional Police Officer,
Mardan
(Respondent No. 2)
(Najeeb-Ur-Rehman Bugvi) PSP
Incumbent

AIG/ Legal,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(MUHAMMAD ASIF)
Incumbent

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AFFIDAVIT

I, Najeeb-Ur-Rehman Bugvi, Regional Police Officer, Mardan do hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents 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.

Regional Police Officer,
Mardan
(Respondent No. 2)
(Najeeb-Ur-Rehman Bugvi) PSP
Incumbent

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar

20 SEP 2024