29.07.2024 1. Appellant present in person. Mr. Muhammad Jan learned District Attorney for the respondents present.

2. Former requested for adjournment on the ground that his counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 10.10.2024 before D.B. P.P given to parties.

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

Kaleemullah

S.A #.719/2023

ORDER

10th Oct. 2024 1. Learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present. Heard.

2. Vide our detailed judgment of today, placed on file, instant service appeal is also decided in terms of the judgment of august Supreme Court, relevant para of which has been reproduced in the judgment. Costs shall follow the event. Consign.

3. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of October, 2024.

(Farecha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

Mutazem Shah

9

MEMO OF COSTS
KHYBER PAKHTUNKHKWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.719/2023

Date of presentation of Appeal	22.03.2023
Date of hearing	10.10.2024
Date of Decision	10.10.2024

Inayat Khan Head Constable No.1049/1200 Police Department, Khyber Pakhtunkhwa presently serving at Police Station Saddar, District Mardan.....(Appellant)

Versus

1. AIG Establishment for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region, Mardan .....(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.2890-94 DATED 30.06.2021 AND LETTER DATED 0306.2021 (TO THE EXTENT OF APPELLANT) WHEREBY THE RESPONDENT SELECTED OTHER CANDIDATES FOR INTERMEDIATE COLLEGE COURSE IN PACE OF APPELLANT AS ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY AND OF NO LEGAL EFFECT.

PRESENT

1. Mr. Hidayat Ullah Khan, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General for official respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	**Rs. Nil**	**Total**	**Rs. Nil**

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 10th day of October 2024.

Fareeha Paul
Member (Executive)

Kalim Arshad Khan
Chairman

08. As learned counsel for the appellant says this is the same case, therefore, it is also decided as per the decision of the Supreme Court of Pakistan, detailed above. Consign.

09. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10th day of October, 2024.

KALIM ARSHAD KHAN
Chairman

FAREEHA PAUL
Member (Executive)

Mutazem Shah

2017 and the Rules of 1934. It has further been emphasized that disputes among the police officers must be resolved first by the inspector General of Police or his representatives and only in case of any legal interpretation or blatant abuse of the process provided under the statutory framework the courts should interfere in the working of the police force so as to enable the force to maintain its functioning, autonomy, independence and efficiency. The learned counsels for the respondents when confronted with the suggestion made by the amicus curie, taking a fair stance, have stated that as suggested, the matter may be remanded to the Inspector General of Police, Khyber Pakhtunkhwa for resolving the dispute in accordance with the statutory framework i.e. the Act of 2017, the Rules of 1934 and other relevant regulations. However, they have further stated that in order to protect the legitimate interests of the respondents, no adverse action be taken against them till the matter is resolved and a decision has been made by the Inspector General of Police, Khyber Pakhtunkhwa. The Additional Advocate General, Khyber Pakhtunkhwa has also supported the suggestion made by the amicus curie.

5. For the above reasons and with the consent of Additional Advocate General, Khyber Pakhtunkhwa and the counsels for the respondents, these petitions are converted into appeals and allowed. Consequently, the impugned judgment dated 01.2.2023 is hereby set-aside and the matter is remanded to the Inspector General of Police, Khyber Pakhtunkhwa for resolving the dispute in light of the provisions of the Act of 2017, the Rules of 1934 and other applicable rules/regulations. We are sanguine that the Inspector General of Police, Khyber Pakhtunkhwa will decide the matter expeditiously, preferable within thirty days from the date of receipt of a certified copy of this order. In the meanwhile, the respondents shall continue to serve in the District Mardan and they shall be dealt with in accordance with the resolution of the dispute by the Inspector General of Police, Khyber Pakhtunkhwa through a speaking order."

a transfer of the appellants made in 2016 and that transfer was either cancelled or the impugned order was in a way fresh transfer of the appellants, the department ought to have made a clear order in that respect. Construction of the impugned order in the manner it has been constructed in no way can be termed to be a transfer order.

10. Coming to the private respondents we find that they had never challenged the stay of the appellants at Mardan since 2016 till filing of these appeals. Besides they did not file any reply, therefore, it could not be ascertained how any of the terms and conditions of service would be affected by setting aside the impugned order.

11. Therefore, we allow these appeals and set aside the impugned order being not supported by any legal backing. Costs shall follow the event. Consign."

07. The said judgment has been challenged before the august Supreme Court of Pakistan which was set aside in the following manner:

"3. It appears from the impugned judgment of the Tribunal that the relevant provisions of the Khyber Pakhtunkhwa Police Act of 2017 ***(Act of 2017)*** *and the Police Rules, 1934* ***(Rules of 1934)*** *were not taken into consideration. This Court vide order dated 17.01.2024 had appointed Mr. Kamran Adil, Deputy Inspector General of Police (Operations) Punjab as amicus curie to assist us on the legal questions involved in theses petitions. The latter appeared before us today and highlighted the legal position regarding status of the respondents in the light of the Act of 2017 and the Rules of 1934. He, however, has drawn our attention to the principles enunciated by this Court in the case of Syed Hammad Nabi. He has emphasized that in the light of the said principles it would be appropriate if the dispute involved in the petitions in hand is remanded to the Inspector General of Police, Khyber Pakhtunkhwa for its resolution in the light of the provisions of the Act of 2017 and the Rules of 1934.*

4. this Court in the aforementioned judgment has emphasized that ordinarily the courts should allow the police force to regulate its affairs by its statutory framework, which in this case is the Act of

on any other permanent post held by him in a substantive capacity.

Retention of Lien: *- Substantive holder of a permanent post retains lien in the following cases: - * While performing the duties of that post. * While on Foreign Service, or holding a temporary post, or officiating in another post. * During joining time on transfer to another post. * During suspension. * During leave.*

Suspension of Lien: *- a (Compulsory) : A competent authority shall suspend the lien of a government servant holding a permanent post substantively when ever he is appointed in a substantive capacity to a tenure post or to a permanent post outside the cadre or if he is appointed provisionally against a post on which another Government servant holds a lien. b (Optional): The competent authority may also, at his option, suspend the lien of a Govt. servant holding a permanent post substantively if he is deputed out of Pakistan or goes on foreign service, or is transferred in a substantive or officiating capacity to a post in another cadre, provided that in all the above cases, the period is not less than 3 years.*

Revival of Lien: *- The Suspended lien will revive as soon as the Government servant ceases to hold a lien against any of the posts in (a) or (b).*

Termination of Lien: *- *A substantive holder of a permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post. *If appointed to a permanent post, his lien on tenure post must be tenanted. *On appointment to the posts of Chief Engineer or Governor, their lien on permanent posts must be tenanted. * When Chief Engineer takes leave immediately on vacating his office or post, he shall be left without lien on any other permanent post. *When appointed to a permanent post outside the cadre on which he is borne, his lien or suspended lien on his previous post can be tenanted on the written request of the Government servant concerned and not otherwise."*

9. None of the above situations appear to have been covered in these appeals. There is no explanation by the department whether the appellant was newly appointed at Mardan District so that his lien matter could be looked into that way or what was the reason or rule allowing the respondent to pass order for detachment of lien of the appellants. If the department intended that it was

titled "Hameed Ullah versus Police Department" which was decided in the following manner:

> *"7. The appellants are aggrieved of the order No.59-79/E-IV dated 04.01.2021 whereby the lien of the appellants, attached with District Mardan was transferred to their parent District. Their seniority was to' remain intact with their colleagues in their parent Districts of domicile. So the question involved in these appeals appears to be basically regarding lien. It appears that word lien is used in the initial order with some misconception because the lien is a right/title of the government servant to hold a permanent post in substantive capacity in the parent department. Here the appellants have not gone to any other department rather remained in the Police but in a way transferred from various Districts to Mardan, therefore, it cannot be said that they had gone to some other department from their parent department with lien at their parent department. Admittedly the appellants are in the Police department and have been deputed to Mardan, where not only their seniority was fixed amongst the colleagues serving at that district but were also promoted. Therefore, the usage of words transfer of lien was not appropriate either in the order of 2016 or in the impugned order nor the learned law officer could point out any provision in the civil servants laws or the police laws to justify usage of these words. On the other hand usage of these words has not only created anomalies but has led to filing of these appeals.*
>
> *8. The Rules of the Government of Khyber Pakhtunkhwa in this respect state as under:*
>
> ***Lien:** Means the title of a Government servant to hold a permanent post in a substantive capacity.*
>
> ***General Principles: -** * Two or more Government servants cannot be appointed substantively to the same permanent post at the same time. * A Government servant cannot be appointed substantively, except as a temporary measure, to two or more permanent posts at the same time. * If a Government servant holds a lien on a certain posts, no other Govt. servant can be appointed substantively to that post. * There is only one substantive holder of a given permanent post. * When a Government servant is going to be confirmed in a certain post, he should exercise option that he agrees to the termination of his lien*

04. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Assistant Advocate General controverted the same by supporting the impugned order(s).

05. In assessing the appellant's case, it is clear that he served as a Head Constable (BPS-07) in the Police Department and faced a series of administrative changes allegedly impacting his career. Initially transferred on lien to District Mardan, he was positioned at the bottom of the seniority list as per orders dated October 7 and 22, 2015. He received a promotion to Officiating Head Constable effective December 21, 2015. His professional development took a promising turn when he, along with his colleagues, was selected for an Intermediate College Course, as indicated in the department's letter dated June 1, 2021. However, after undergoing the necessary medical examination, his lien was unexpectedly detached from District Mardan and reattached to his parent district on June 3, 2021, which allegedly resulted in his disqualification from the course. In seeking redress, the appellant filed Writ Petition No. 2321-P of 2021 in the Peshawar High Court, which was resolved on February 16, 2023, directing the respondents to take appropriate action. Despite pursuing a departmental appeal following this ruling, the lack of response from the authorities compelled the appellant to file the current service appeal.

06. Reliance was placed on the consolidated judgment dated 01.02.2022 passed in Service Appeal No.4956/2021 and others,

by placing him at the bottom in the seniority vide orders dated 07.10.2015 and 22.10.2015; that consequently vide order dated 31.12.2015, he was promoted as Officiating Head Constable w.e.f 21.12.2015 and as also confirmed; that he alongwith other colleagues, was selected for Intermediate College Course by the respondent department vide letter dated 01.06.2021, directing him to appear on 02.06.2021 for completion of Nominal Roll and Medical Checkup before sending for course; that accordingly, he was medically examined by the relevant quarter; that vide order dated 03.06.2021 his lien was detached from District Mardan and attached to his parent district of domicile fixing his seniority in his parent district with his colleagues, thus, was allegedly deprived from the Inter College course; that he approached the Hon'ble Peshawar High Court by filing Writ Petition No.2321-P of 2021 which writ petition was disposed of vide order dated 16.02.2023 with direction to respondents to pass an appropriate order; that the appellant filed departmental appeal but the same was not responded, hence, the instant service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
FAREEHA PAUL ...MEMBER (Executive)

Service Appeal No.719/2023

Date of presentation of appeal.....22.03.2023
Dates of Hearing.....10.10.2024
Date of Decision.....10.10.2024

Inayat Khan Head Constable No.1049/1200 Police Department, Khyber Pakhtunkhwa presently serving at Police Station Saddar, District Mardan.....***(Appellant)***

Versus

1. **AIG Establishment** for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. **he Secretary,** Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.
2. **The Regional Police Officer,** Mardan Region, Mardan.....***(Respondents)***

Present:
Mr. Irfan Ali Yousafzai, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General...For respondents

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APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO.2890-94 DATED 30.06.2021 AND LETTER DATED 0306.2021 (TO THE EXTENT OF APPELLANT) WHEREBY THE RESPONDENT SELECTED OTHER CANDIDATES FOR INTERMEDIATE COLLEGE COURSE IN PACE OF APPELLANT AS ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY AND OF NO LEGAL EFFECT.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case in brief, as per averments of appeal, is that he was serving as Head Constable (BPS-07) in the Police Department at Police Station Saddar, Mardan; that he was transferred on lien to District Mardan