

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No.686/2024.


Abdullah JalalAppellant

Versus

Inspector General of Police, of KP ETC.....Respondent

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SP/Court & Litigation
CPO, Peshawar

22-11-24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.686/2024.

Abdullah Jalal.....Appellant.

VERSUS

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

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

Respectfully Sheweth:-

Khyber Pakhtunkhwa
Service Tribunal

Date No. 18036

Dated 19-11-24

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. Pertains to record, needs no comments.
2. Pertains to record, needs no comments.
3. Incorrect and misleading. In-fact, 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.

4. Incorrect and misleading as already explained above in preceding para. However, for rest of the para it is submitted that Rule 12.2(3) of Police Rules, 1934 clearly provides that in case of confirmation of PASIs and promotion of ranker Head Constables fall on the same date then rankers will be considered as seniors.
5. Incorrect and misleading. As already explained vide above paras.
6. Incorrect and misleading. The order passed by the Capital City Police Officer, Peshawar in light of Committee report dated 31.08.2017 was erroneous 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 be done for long time. After revision in the light of Police Rules, 1934 and judgments *ibid* of the august Apex Court.

It is worth mentioning here that 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, 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 clarified 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 above.

Pertinent to mention here that the petitioners of Writ Petition No. 3720/2018 filed COC No. 381-P/2022 and the same was dismissed on the grounds that policies of the Police department issued vide No. No. CPO/CPB/63 dated 13.02.2023 and No. CPO/CPB/64 dated 13.02.2023 and CPO/CPB/68 dated 28.02.2023, were produced in the COC hearing and the Hon'ble Peshawar High Court, Peshawar was gracious enough to dismiss the COC *ibid* vide order dated 12.10.2023.

7. Incorrect misleading and misconceived. As already explained above, however, the petitioners of Writ Petition No. 3720/2018 filed COC No. 381-P/2022 and the same was dismissed on the grounds that policies of the Police department issued vide No. No. CPO/CPB/63 dated 13.02.2023 and No. CPO/CPB/64 dated 13.02.2023 and CPO/CPB/68 dated 28.02.2023, were produced in the COC hearing and the Hon'ble Peshawar High Court, Peshawar was gracious enough to dismiss the COC *ibid* vide order dated 12.10.2023.
8. Pertains to record, however, as already explained above in details in Paras No. 3 & 6.
9. Incorrect and misleading. The stance taken by the appellant is totally bereft of merits and legal footing, he is concealing real facts from this Hon'ble Tribunal. CPO, Peshawar has issued policy Letters vide No. CPO/CPB/63 and No. CPO/CPB/64 dated 13.02.2023 in order to settle seniority issues, whereby CPO directed all RPOs to ensure ASIs appointed direct (PASIs) shall NOT be confirmed from the date of their appointment but might be so confirmed "on the termination of the prescribed period of probation" of three years, with immediate effect (the date on which order of their confirmation was issued) and Para No. 8 (c) to ensure that ASIs from ranks (Ranker ASIs) shall NOT be confirmed from the date of their promotion (from the rank of Head Constable to ASI) rather might be so confirmed "on the conclusion of the probationary period of two years, with immediate effect (the date on which order of their confirmation was issued).

In compliance of aforementioned directions all RPOS/CCPO revised their lists and sent to CPO Peshawar on the basis of which a consolidated seniority list "F" of Sub Inspectors were prepared and revised according to list "E" as per Police Rules 12.2 (3) of 1934 and were issued on 31.03.2023 after the approval of the Competent Authority.

Now, to prevail the parity, the batches of 2010/2011 also got confirmation in list "E" on the termination of the probation period i.e. after 03 years of appointment. Therefore, their seniority was fixed accordingly in the rank of Sub Inspector. Thereby, the name of applicant was also added to the revised seniority list as per directions issued vide letter No. CPO/CPB63 & CPO/CPB64 dated 13.02.2023 and hence placed at Sr. No. 716 in the seniority list of Sub Inspectors issued vide No. 230/E-II/CPO/2023/F List/Seniority, dated 18.04.2023.

The name of appellant is present at Sr. No. 447 in the seniority list of Sub Inspectors issued vide No. 32/E-II/CPO/2023/F List/Seniority, dated 24.01.2024.

10. Pertains to record, needs no comments.
11. Incorrect and misleading, as already explained above in Paras No. 3, 6 & 9.
12. Incorrect. The appellant is not aggrieved rather he has been treated in accordance with law/ rules/ policy and Apex Court judgments as mentioned above. Furthermore, any departmental appeal against lawful order is liable to be set at naught.
13. Incorrect. The appellant is in search of getting unnecessarily relief from this Hon'ble Tribunal which is devoid of law/ rules/ policy and Apex Court judgments. Hence, the appellant has got no locus standi to file the instant appeal and the same is liable to be dismissed on the following grounds amongst the others.

REPLY ON GROUNDS

- A. Incorrect and denied. The appellant has been treated in accordance with law/ rules and Apex Court above judgments mentioned above, hence, no right of appellant has been violated by the respondent department.
- B. Incorrect. As already explained above in paras No. 3, 6 & 9 of Facts.
- C. Incorrect and misleading. As already explained above that 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 be done for long time.

- D. As already explained in detail in preceding paras.
- E. Incorrect and misleading. As explained earlier the CPO Peshawar issued policy letters in shape of No. CPO/CPB/63 dated CPO/CPB/64 dated 13.02.2023 in order to resolve the issue of seniority once for all 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. In Police Department, 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. It is pertinent to mention here that Police Rule is a Special Law and Special Law always prevails over General law. Hence, plea taken by the appellant is totally bereft of merits and legal force.
- G. Incorrect and misleading. As explained above that order passed by the Capital City Police Officer, Peshawar in light of Committee report dated 31.08.2017 was erroneous 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 the 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 mentioned above.
- H. Para already explained in detail in the preceding paras.
- I. Incorrect. As explained earlier the CPO Peshawar issued policy letters in shape of No. CPO/CPB/63 dated CPO/CPB/64 dated 13.02.2023 in order to resolve the issue of seniority once for all 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.

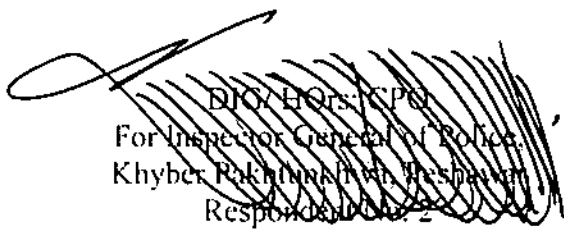
- J. Plea taken by the appellant is totally ill based in-fact law/ rules/ policy and Apex Court referred judgments have been followed by the respondent department in its true letter and spirit.
- K. Incorrect. No malafide has been committed by the answering respondents.
- L. Incorrect. As already explained above that 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 be done for long time.
- M. Incorrect and misleading. 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 be 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.
- N. Incorrect Plea taken by the appellant is totally ill based and unjustifiable. In fact, the Police Departmental 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

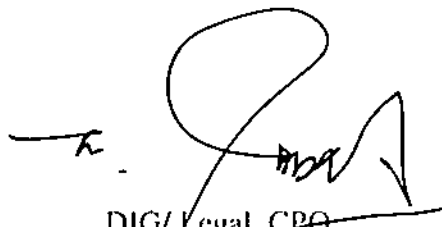
criteria/mandatory periods for the subject purpose. Furthermore, Incorrect and misleading as already explained above in preceding para. However, Rule 12.2(3) of Police Rules, 1934 clearly provides that in case of confirmation of PASIs and promotion of ranker Head Constables fall on the same date then rankers will be considered as seniors.

- O. Incorrect and misleading. As already explained in detail in preceding paras.
- P. 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 judgments mentioned above wherein, things have been made crystal clear and in light of judgments ibid the stance of the appellant is liable to be set at naught.
- Q. Incorrect and misleading. As already explained above in Paras No. 3, 6 & 9 of Facts.
- R. Incorrect and misleading. As already explained above that Police Rules, 1934 is a Special Law and Special Law always prevails over General law. Hence stance taken by the appellant is totally devoid of law/ rules.
- S. Incorrect. The appellant is not aggrieved rather he has been treated in accordance with law/ rules/ policy and Apex Court judgments hence, he has rightly been placed in revised seniority list.
- T. Incorrect. The respondents quite acted in accordance with law/ rules/ policy and Apex Court judgments.
- U. Incorrect. The appellant unnecessarily blaming the answering respondents. In-fact the answering respondents have issued Policy Letters vide No. CPO/CPB/63 & CPO/CPB/64 dated 13.02.2023 in accordance with law/ rules and Apex Court judgments.
- V. Incorrect. The appellant has been placed in seniority list issued in accordance with law/ rules and Apex Court judgments.
- W. Incorrect. The appellant has been treated in accordance with law/ rules/ policy and Apex Court judgments.
- X. As already explained above. Furthermore, the answering respondents may also be allowed to adduce additional grounds at time of hearing of instant 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.


DIG/ HQs: PSP
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 2
(RIZWAN MANZOOR) PSP
Incumbent


DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.686/2024.

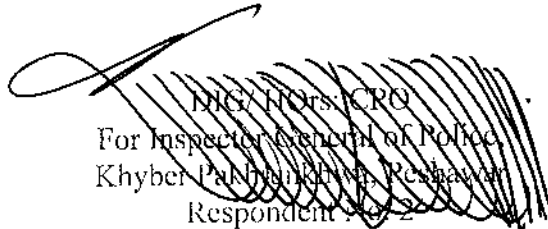
Abdullah Jalal.....**Appellant.**

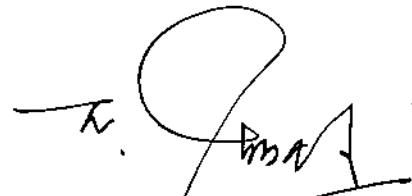
VERSUS

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

AUTHORITY LETTER

Mr. Wisal Ahmad SP/ Courts & Litigation, 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.


DIG/ H.O.s, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 2
(RIZWAN MANZOOR) PSP
Incumbent


DIG/ Legal, CPO
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
Respondent No. 1
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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

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.

Deputy Inspector General of Police
HQrs: Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)
(RIZWAN MANZOOR) PSP
Incumbent



19 NOV 2024