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

**EP. No.315/2022**  
**IN**  
**S.A. NO. 5965-A/2021**

Muntazir Khan ..... **Appellant**

**Versus**

Govt. of Khyber Pakhtunkhwa & Others ..... **Respondents**

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**Deponent**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

C.M. No. .... /2024

In

Service Appeal No. 5965-A/2021

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 14654

Dated 02-08-2024

Muntazir Khan, (Retired) PMS Officer.

..... Petitioner

**VERSUS**

The Government of Khyber Pakhtunkhwa  
through Chief Secretary & Others.

..... Respondents

**APPLICATION UNDER SECTION 151, ORDER XXI RULE 26, ORDER XLI  
RULE 5 SUB RULE (2) AND ALL ENABLING PROVISIONS OF THE CIVIL  
PROCEDURE CODE, 1908 FOR SUSPENSION/STAY OF OPERATION OF  
THE IMPUGNED JUDGMENT/ORDER DATED 02/02/2022 RENDERED IN  
SERVICE APPEAL NO.5965-A/2021.**

**RESPECTFULLY SHEWETH:-**


**Facts:-**

1. That the titled case is pending for adjudication before this Hon'ble Tribunal which is fixed for execution proceeding on 06/08/2024.
2. That this Hon'ble Tribunal has accepted the service appeal by setting aside decision of PSB dated 30/12/2020 and opinion of the Advocate General, Khyber Pakhtunkhwa dated 23/11/2020 vide impugned Judgment/Decree and Order dated 02/02/2022 and Subsequently, after obtaining Decree in his favour the appellant filed Execution Petition before this Hon'ble Tribunal. **(Copy of impugned Judgment/Decree & Order dated 02/02/2022 is annexed as annexure-A)**
3. That since the present applicants / respondents are aggrieved/dissatisfied with the impugned Judgment/Order dated 02/02/2022, therefore, approached to the Supreme Court of Pakistan by way of filing CPLA No.313-P /2022, in which next date of hearing has not yet been fixed, **(Copy of the CPLA No. 313-P/2022 is attached as Annexure-B).**

4. That the matter is subjudice before the Supreme Court of Pakistan and during pendency of CPLA if any adverse order against the applicants/respondents is passed then it will not only affect the constitutional rights of applicants but will also lead to other round of litigation.
5. That Execution/Implementation of the Judgment of Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.5965-A/2021 at this stage shall also make the CPLA infructuous before the Apex Court.
6. That the basic ingredients for grant of stay exist in favour of the applicants/respondents as the applicants/respondents have got a good prima facie case in their favour and are very much hopeful about its success at Honorable Supreme Court of Pakistan. Similarly, balance of convenience are also lies in favour of applicants/respondents and if operation of the impugned Judgment/Order 02/02/2022 is not suspended/stayed, the applicants/respondents would suffer extreme irreparable loss, hence the instant application.
7. That the instant application is proper/genuine and there is no legal impediment on acceptance of the instant application.
8. That apart from the above mention submission; Counsel for applicants may kindly be allowed to raise additional grounds during course of arguments with the permission of this Service Tribunal.


**It is therefore humbly prayed that on acceptance of this application operation of the impugned Judgment/Decree & Order dated 02/02/2024 and further execution proceedings in this Hon'ble Tribunal may please be suspended/stayed till final decision of the CPLA No.313-P/2022.**

**Any other remedy which is not specifically asked for, may also be awarded in favour of the applicants/respondents**

  
Advocate General  
Khyber Pakhtunkhwa  
Peshawar

**Certificate:-**

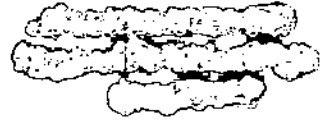
It is certified that no such like application same in facts and grounds has been filed before this Hon'able Tribunal.

  
Advocate General  
Khyber Pakhtunkhwa  
Peshawar

**Books**

- The Constitutions of Islamic Republic of Pakistan 1973
- The Civil Procedure Code, 1908
- The Khyber Pakhtunkhwa Service Tribunal Act, 1974.
- The Khyber Pakhtunkhwa Service Tribunal Rules, 1974.
- Any other Book / Case Law according to need.

Attest  

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 5965-A/2021

Date of Institution ... 06.08.2021

Date of Decision ... 02.02.2022



Muntazir Khan, (Retired) PMS Officer BPS-19, EX-Commissioner, Mardan.  
... (Appellant)

**VERSUS**

The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat  
Peshawar and three others. ... (Respondents)

Nasir Mehmood & Taimur Ali Khan,  
Advocates ... For Appellant

Muhammad Adeel Butt,  
Additional Advocate General ... For respondents

**AHMAD SULTAN TAREEN**  
**ATIQU-UR-REHMAN WAZIR** ...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

**JUDGMENT**

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-**

Brief facts of the

case are that the appellant being a PMS Officer in BPS-18 was conditionally promoted to BPS-19 vide order dated 03-10-2019 on the issue of pendency of a Suo Moto case No. 17/2016 against the appellant in the Supreme Court of Pakistan. Subsequently, the same issue again debarred him from promotion to BPS-20, when his promotion case came before Provincial Selection Board (PSB) on 30-12-2020. The board considered his case but promotion was not granted to him due to the reason that two consecutive conditional promotions could not be made, as the case is still pending against him. The appellant filed departmental appeal followed by Writ Petition No. 1408/2020 in Peshawar High Court against the reservations of PSB, which was decided vide judgment dated 08-06-2021 and

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**MEMBER**  
**Khyber Pakhtunkhwa**  
**Service Tribunal**  
**Peshawar**

the case was disposed of on the ground of jurisdiction as his issue being the terms and condition of his service does come under the ambit of service tribunal, hence his case was referred to this Tribunal for disposal under the law. Prayers of the appellant are that upon acceptance of the instant appeal, the impugned decision of PSB dated 30-12-2020 and opinion of Advocate General office dated 23-11-2020 may be set aside and the respondents may be directed to consider promotion of the appellant to BPS-20 without any conditionality.

02. Learned counsel for the appellant has contended that the impugned decision of PSB dated 30-12-2020 and opinion of Advocate General Khyber Pakhtunkhwa dated 23-11-2020 are against law, fact and norms of natural justice, hence not tenable and liable to be set aside; that the impugned decision of PSB and opinion of Advocate General is against the spirit of justice, fair play, law relating to promotions as well as against the spirit of Article 2A, 4, 9, 10-A and 25 of the Constitution; that the appellant though having been exonerated from the charges, despite he was deprived of his right of promotion merely due to his name available in the list submitted by the government in Suo Moto case No. 17/2016, thus the appellant has been made to suffer due to a case in which the appellant is not a party, hence the appellant has not been treated in accordance with law; that even the conditional promotion to BPS-18 is against the norms of justice as promotions cannot be made with conditions if otherwise a person is eligible and qualified to be promoted, thus denying the promotion to the appellant on the basis of consecutive conditional promotions is totally against the law; that the impugned decision of the PSB is Corum Non JUDGE as the PSB can either recommend promotion or recommend supersession from promotion or defer promotion, but in the instant case there is no such ground, which can be based to refuse the promotion of the appellant; that the august Supreme Court of Pakistan in case reported as 2010 SCMR 1301 has held that in matter of promotion, rules are to be followed and where discretion of the authority is involved, then that must be exercised with fairness; that the august Supreme Court of Pakistan in

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case reported as 2013 SCMR 1752 has held that the term "life" also includes reputation, status and all other ancillary privileges conferred on a citizen by law, thus the decision of not promoting the appellant without any just and fair reason is violative of the Article-9 of the Constitution, as the same affected the status and reputation of the appellant amongst the batch-mates and other service fellows; that in the latest judgment of august Supreme Court of Pakistan reported as PLD 2013 (CS) 195 (Anita Turab case), it has been held that the statutory provisions, rules, regulations, which govern the matter of appointment of civil servants must be followed honestly and scrupulously, but the respondents have violated the rules in case of the appellant, which is liable to be set aside; that the conduct and attitude of the respondents as well as not promoting the appellant despite availability of post and senior most with good record is against the spirit of Article-2A, 4, 9 and 25 of the Constitution; that even High Court in case reported as 2016 PLC (CS) 569 has held that pending inquiries of NAB cannot be made a base to refuse promotions; that recently in WP No 4970/2018 decided on 19-03-2019, WP No 1475/2018 decided on 19-03-2019 and 349/2018 similar cases have been allowed wherein promotion were refused on the basis of pending inquires of NAB; that one of the Police Officer (Mazhar-ul-haq Kaka Khel) have been given promotion to BPS-20 despite the fact that he made VR of more than million rupees, but in the instant case, the appellant has been discriminated throughout; that the august Supreme Court of Pakistan has already deprecated the orders of promotion with conditionality and held it against the law and norms of justice.

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03. Learned counsel for respondents has contended that in Suo Moto case No. 17/2016 vide judgment dated 24-10-2016, the Supreme Court of Pakistan had directed that voluntary return (VR) falls within the definition of misconduct, therefore all chief secretaries of the provinces were directed to ensure initiation of departmental proceedings against its employees, who have made VR in terms of section 25(a) without further loss of time; that meanwhile the Supreme Court of

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Khyber Pakhtunkhwa  
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Peshawar

Pakistan vide judgment dated 17-11-2016 has further directed that no final adverse/removal order shall be passed against them till final order/decision of the august Supreme Court of Pakistan; that the appellant availed VR facility of Rs. 36000/ and Establishment Department initiated disciplinary proceedings against him and as a result of inquiry conducted against him, the appellant was exonerated of the charges subject to final decision of the august Supreme Court of Pakistan; that the PSB in its meeting recommended him for promotion from BPS-18 to BPS-19 subject to final decision of Supreme Court case in Suo Moto case No. 17/2016 and his promotion notification after finalization of his inquiry was finally issued on 03-10-2019; that case of the appellant for promotion to BPS-20 was placed before PSB on 30-12-2020 and PSB deferred his promotion in consultation with Advocate General office as there is neither any ground nor justification for two consecutive conditional promotions.

04. We have heard learned counsel for the parties and have perused the record.

05. The august Supreme Court of Pakistan in Suo Moto Case No. 17/2016 had noticed that in terms of Section-25(a) of the NAB Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amount that have allegedly been acquired or earned illegally by them. Section-25(a) ibid empowers the Chairman NAB to accept such voluntary returns made by the accused persons; the amount is deposited with NAB in installment at the discretion of the Chairman NAB. The august Supreme Court of Pakistan also noticed that on payment of certain portion of the amount, such person is given clean chit by NAB to re-join his job. In view of the position, petition was instituted to examine the vires of Section-25(a) ibid vis a vis the un-bridled power of the Chairman NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion, which falls within the domain of the judiciary, hence the matter was placed before the chief justice of Pakistan who

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 NAB  
 Islamabad



directed to fix the matter in court, treating it as a petition under Article 184(3) of the Constitution.

06. Keeping in view the position mentioned above, in the first place, such Suo Moto was targeted against Section 25(a) of the NAB Ordinance and not against any individual including the appellant, rather in the same case; NAB authorities were made a party with direction to submit details of the VR made so far by the civil servants as the VR also comes under the definition of misconduct. On submission of details, the court ordered vide order sheet dated 06-12-2016 to conclude departmental proceedings against officials who have entered into voluntary return, however no final order of removal from service shall be passed against any of the officials, who have entered into voluntary return, if the amount of voluntary return paid by him is less than 25 lacs. Keeping in view the above order sheet, Secretary Law, vide his letter dated 29-12-2016 addressed to secretary establishment had construed in last Para of such letter that no final order of removal from service shall be passed against officers till further order/decision of the Supreme Court, in the mentioned case SMC No 17/2016, however the words till further order is not mentioned in the said judgment. To make it more clear, Till further order, as mentioned in the letter dated 29-12-2016 of Law Department would mean till decision on the issue of section 25(a) of the NAB Ordinance and till that time, respondents were restrained from any adverse action against the defaulting officials inspite of conclusion of departmental proceedings against them, as the issue of section 25(a) could be decided either way and in case it was decided in favor of section 25(a), the adverse action taken would be bad in such a situation, hence adverse action was restrained till final decision of the case, but the respondent took it otherwise, as departmental proceedings were concluded against the appellant and the appellant was exonerated of the charges vide order dated 13-05-2019, but such exoneration was kept pending till final decision on section 25(a) of the NAB Ordinance, which is still pending in the august Supreme Court of Pakistan. The right course would

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 DEPARTMENTAL  
 Nhyber Pachtunkhwa  
 Services Tribunal  
 Peshawar

have been that if the appellant was held guilty in the VR case by the inquiry officer, then in that situation, the penalty or the adverse action so proposed was required to be kept pending till final decision in that case, but in case of exoneration, the story ended up there and then.

07. In order to clarify his own status, the appellant filed CMA No 339/2017 for his impleadment in Suo Moto Case No. 17/2016. Not only the appellant but many other similarly placed persons filed CMAs in this case, which were clubbed together and the Supreme Court noted that this matter is pending since 2016 and with it some other cases, are also listed of the persons who have entered the benefit under section-25(a) of the ordinance and their cases are un-necessarily being not decided just because of pendency of this issue. The august Supreme Court of Pakistan in this particular case advised all the relevant functionaries to make serious efforts in resolving the issue (of section 25(a)) through an Act of parliament instead of this court deciding the issue and those who had submitted CMA for impleadment in the case No. 17/2016, were advised that since they had made such CMA in their personal cause for which they have appropriate legal remedy available to them, hence all those applications including the application of the appellant for his impleadment were dismissed, which means that they were excluded from Suo Moto Case No. 17/2016.

08. In pursuance of dismissal of his CMA, the appropriate legal remedy available to the appellant was his parent department, which was already mandated by the Supreme Court of Pakistan to conclude departmental proceedings against the defaulting officials, hence the appellant made himself available for disciplinary proceedings, thus he was proceeded against for the same very charge of voluntary return but was found innocent and was exonerated of the charges. In a situation, when he was exonerated of the charges of VR, no further case was pending against the appellant in the august Supreme Court of Pakistan, but the respondents misinterpreted the last wordings of the order sheet dated 06-12-2016 of the Supreme Court of Pakistan in Suo Moto Case no 17-

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2016, which had stated to conclude departmental proceedings against officials who have entered into voluntary return and the departments were also restrained from any adverse action against the defaulting officials till further orders of the august Supreme Court in the above mentioned case No 17/2016, but the respondents in the instant case had taken adverse action twice and are waiting for final decision of the august Supreme Court of Pakistan in a case, which is not related to the appellant, rather it relates to the vires of section 25(a) of the NAB Ordinance and the appellant had already been excluded by dismissal of his CMA.

09. Keeping in view the above situation, his first conditional promotion to BPS-19 was not required to be made conditional as the appellant had been exonerated of the charges and no case was left in the august Supreme Court of Pakistan against the appellant to the extent of Suo Moto No 17/2016. Again refusal of promotion to BPS-20 on the ground of pendency of case against him is also illegal, as no case is pending against him to the extent of Suo Moto Case No 17-2016 as such case was against vires of section 25(a) of the NAB Ordinance and not against any individual, rather the Supreme Court in his last Para of the judgment in respect of disposal of CMAs had noted that the matter of vires of section 25(a) will be resolved through parliament and in case it is not done then this court will proceed to decide the same.

10. It was noted with concern that nobody sitting at the helm of affairs bothers to study and examine the relevant judgments and understands the essence of the judgment. Even the Office of Advocate General could not deliver an advice based on the guidelines delivered by judgments of the august Supreme Court of Pakistan due to the reason that they also did not bother to study the relevant judgments. In view of the situation and in order to sensitize the respondents about the issue, it is held that the case of the appellant as well as all such case, where the civil servants are exonerated of the VR case, must not be un-necessarily delayed or deferred due to the plea of pendency of case in Suo Moto No 17-2016, as VR case was pending against the appellant which was

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**EXAMINER**  
Service Examination  
[Signature]

decided by exonerating the appellant by the respondents themselves and now nothing is left pending against him in the case No 17-2016. What is pending in that case is the fate of section 25(a) of the NAB Ordinance and nothing else.

11. It is un-disputed that the appellant was otherwise fit for promotion and the PSB had deferred his promotion only for want of pendency of case against him in the august Supreme Court of Pakistan in SMC No 17-2016, the fact however remains that no case was pending against the appellant to the extent of Suo Moto case. In view of the foregoing discussion, the instant appeal is accepted. The impugned decision of PSB dated 30-12-2020 and opinion of Advocate General Office dated 23-11-2020 are set aside. Since the appellant stands retired from service on attaining the age of superannuation on 07-05-2021 without his promotion to BPS-20, hence he is held entitled for proforma promotion to BPS-20 without any condition from the date, when his other colleagues/juniors were promoted with all consequential benefits. Moreover, condition in his promotion to BPS-19 is also set aside and he is treated as normally promoted to BPS-19. This judgment is equally applicable in all similar cases, where the civil servants are exonerated of the charges of VR. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
02.02.2022

(AHMAD SULTAN TAREEN)  
CHAIRMAN

(ATIQU-UR-REHMAN WAZIR)  
MEMBER (E)

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar.

CPC

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**POWER OF ATTORNEY  
IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)**

CPLA. No. \_\_\_\_\_ /2022

Govt. of Khyber Pakhtunkhwa and  
others

PETITIONER(S)

VERSUS

Muntazir Khan

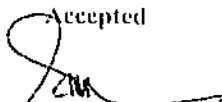
RESPONDENT(S)

I (we) Petitioner/Govt. of KPK in the above suit/Appeal/Petition/Reference, do hereby appoint and constitute Mr. \_\_\_\_\_, Advocate-on-Record, Supreme Court, for Govt. of Khyber Pakhtunkhwa the Attorney for the aforesaid appellant [ or plaintiff(s) or Petitioner(s) or Respondent (s) or defendant (s) or opposite party] to commence and prosecute (or to appear and defend this action/appeal/suit/petition/reference on my/our behalf and all proceeding that may be taken in respect on any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take back documents, to accept the process of the Court, to appoint and instruct counsel, to represent the aforesaid appellant [ or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] in the above matter and to do all things incidental to such acting for the aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party]. The aforesaid appellant [or plaintiff (s) or petitioner(s) or respondent (s) or defendant (s) or opposite party] agree (s) to ratify all acts done by the aforesaid Advocate-on-Record in pursuance of this authority

In witness whereof I/we do hereunto set my/our hand (s) this day of \_\_\_\_\_


Signed with Official seal stamp

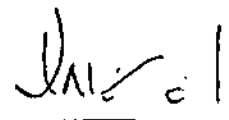
Accepted



Advocate-on-Record  
Supreme Court of Pakistan  
(for KPK) Advocate-General's  
Office KPK, High Court Building, Peshawar.  
Office Tel. # 091-9210312, 9210119

Advocate-on-Record  
Supreme Court of Pakistan  
Govt. of Khyber Pakhtunkhwa  
Peshawar

for:   
1-2 Chief Secretary, Govt. of Khyber  
Pakhtunkhwa, Peshawar.  
Chief Secretary  
Govt. of Khyber Pakhtunkhwa

  
3- Secretary Establishment Department,  
Govt. of Khyber Pakhtunkhwa,  
Peshawar

SECRETARY ESTABLISHMENT  
Establishment & Administration  
Department.

  
4- Secretary Parliamentary Affairs &  
Human Rights Department, Govt. of  
Khyber Pakhtunkhwa, Peshawar.


Power of attorney issued on 15-03-2022

(5)

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ESTABLISHMENT & ADMINISTRATION DEPARTMENT**

**AUTHORITY LETTER**

Mr. Sardar Daud, Assistant BPS-16, Litigation-I, Establishment Department, Government of Khyber Pakhtunkhwa is hereby authorized to submit Civil Miscellaneous before the Hon'ble Service Tribunal, Peshawar in connection E.P.No. 315/2022 in SA No. 5965-A/2021 titled Muntazir Khan VS Govt. of Khyber Pakhtunkhwa on behalf of Respondent.

  
*Secretary*  
Secretary  
Establishment Department  
through Kaleem Ullah,  
Special Secretary Establishment  
(Respondent No.03)