

JUDGEMENT SHEET

Appeal No.2876/2024

Date of hearing: 20.12.2024.
Date of announcement: 20.12.2024.

JUDGMENT

Ghulam Abbas Sial, D&SJ/Member. Brief facts of the instant appeal are that the appellants being aggrieved of order dated 06.06.2024 whereby they were transferred/posted from Traffic Warden Service Cadre to District Police Cadre by respondent No.1/Addl: IGP/Head of Traffic Police Punjab, Lahore filed departmental appeal/representation before the higher authority, which is still pending. Hence, this appeal filed with the following prayer:-

In view of the above, it is therefore, respectfully prayed that the impugned order dated 06.06.2024 may kindly be set aside and the appellants may kindly be allowed to work District Traffic Police, Muzaffargarh, in the interest of justice and equity under the law.

As an ad-interim measure, operation of the impugned order dated 06.06.2024 may kindly be suspended on merits.



Learned counsel for the appellant argued that the respondent No.1 passed the order illegally, unlawfully and arbitrarily against the facts, rules and instruction on the subject, hence the same is not sustainable in the eyes of law being without any justification and unwarranted. Further argued that cardinal principle of law that once a vested right accrued in favour of a civil servant, the same could not be denied on the ground of fairness and propriety. It has been held by Supreme Court of Pakistan in a case reported as 1990 SCMR 1692 that since the case of a civil servant concerned was handled malafidely and perversely full benefits be allowed to him. With these submissions, learned counsel for the appellants has requested for acceptance of the instant appeal as per prayer.

3. The learned District Attorney opposed the merits of the case relying upon parawise comments submitted by the respondents and maintained that all the impugned orders are just and liable to be upheld.

4. I have heard the arguments of learned counsel for the appellant, learned District Attorney on behalf of the respondents and perused the record.

5. As per record, it is observed that the appellants belong to Traffic Sub-Cadre, which was established under IGP's Standing Order

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No.2 of 1995. The Traffic Warden Service Cadre was introduced, initially, in few District, however, in 2017, it was enforced throughout the Punjab and as a consequence the appellants were taken under the Traffic Warden Service Cadre. The grievance of the appellants is that till formulation of specific Rules, no such transfer/switching of cadres is permissible to the Competent Authority. By referring to Order dated 14.12.2022 passed by Hon'ble Lahore High Court in Writ Petition No.15655 of 2017 titled "Muhammad Nawaz etc, vs. Government of the Punjab etc." held as under:-

"4. In this Court's opinion, the dispute revolves around the question whether in 2017 the petitioners were permanently absorbed or not. Being confronted, Mr. Saleem Chughtai, AIG (Legal) Punjab has undertaken on behalf of DIG (Traffic) Punjab that all the petitioners shall be provided opportunity of being heard on the issue of sort out the details regarding absorption of the petitioners and petitioners shall be dealt with strictly in accordance with law. It needs to be noted that any confusion or inaction on the part of department should be construed for benefit of the petitioners, who are assuming that they had been permanently absorbed in Traffic Warden Service Cadre.

5. The respondents shall determine that status of petitioner and similarly placed persons, in 2017, when they were taken within the fold of Traffic ambiguity about their status, for absence of any administrative order or in law, be resolved in favour of the petitioners. If necessary, an appropriate notification or rules may also be made for resolving the controversy permanently.

6. Till decision, as undertaken and directed, the impugned orders, in this and connected petitions, shall not be implemented."

6. After perusal of order dated 06.06.2024 passed by respondent No.1/Addl: IGP/Head of Traffic Police, Punjab it revealed that while passing such order, the respondent No.1 has made reference to the judgment of the Punjab Service Tribunal dated 29.05.2024 but it is a matter of record that in the said judgment, the provisions available in para No.6(i)&(ii) of the Standing Order No.2/2015 were not discussed, wherein it has been made clear that the Police Staff from General Cadre was permanently absorbed in Traffic Sub Cadre and they could only be reverted to General Cadre, if they do not fulfill the requirements of sub para (ii) of the para No.6. As such even by any stretch of imagination, the appellant cannot be transferred to General Cadre of the Police Department after their permanent absorption in Traffic Police. Even as per Rule 10 of the Punjab Police Traffic Wardens Service Rules, 2017, the appellants cannot be reverted to General Cadre of Police Department for the reason that the provisions of Rule 10(c) & (d) are dealt with the transfer of the staff, who were inducted in Traffic Police from District and



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Regions to fill the vacancy posts under the Punjab Police Traffic Wardens Service Rules, 2017. As such, application of such sub rules in the case of appellants prima-facie is not only illegal but unjustified being wrong interpretation of the rules not covered under the law.

7. Further, the respondent No.1 while passing order dated 06.06.2024, have specifically taken a ground that absorption of the appellants in Traffic Sub Cadre of Police has been treated as out of turn promotion. It is true that the out of turn promotion has been declared as illegal but the case of the appellants is not of out of turn promotion rather the same is absorption by transfer within the department to fill the post of newly created sub cadre of Traffic Police as per recommendations of the meeting of provincial Cabinet by calling the options from the Police Staff of General Cadre. Hence, the same cannot be any stretch of imagination be taken as out of turn promotion.



The cases of officers of Punjab Police who were serving under NH&MP were different because they were serving on deputation but subsequently, were inducted in NH&MP, which induction was declared illegal but the present appellants were not posted in Traffic Police on deputation basis nor their any such order of clause is available in any of the order of the Department nor in the Standing Order no.2/1995. Hence, transfer after incomplete process is prima-facie illegal in the eyes of law. It is pertinent to mention here that the appellants have already completed their training and during the service also appeared in the concerned Traffic Orientation Courses, Traffic Lower Course, Traffic Intermediate Course, Traffic Upper Course and they are performing their duties in Traffic for last many years. Admittedly, the appellants have served in the Traffic Department for a considerable long time of their service and they have no field experience to serve in the District Police, which prima-facie create lot of issues for the service, while serving in the District Police. The absorption of the appellants in the Traffic Sub Cadre has created a legal right in favour of the appellants and in case, the said right is infringed on the wrong assumption of law and facts on record, then the appellants will suffer an irreparable loss and injury to their service career.

9. As per law laid down by Hon'ble Supreme Court of Pakistan reported as 2000 SCMR 645 that where a police employee was denied

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due rights due to omission, commission or error on the part of the departmental functionaries, the departmental authority is bound to rectify the wrong. As per Section 21 of General Clauses Act, 1987 vested right cannot be taken away which accrued 'by statute, which can be taken away only by legislative enactment and not by an Executive Authority in exercise of either rule making power. Reliance placed as 2002 SCMR 312 & 510. It is a cardinal principal of law that once a vested right accrued in favour of a civil servant the same could not be denied on the ground of fairness and propriety. It has been held by Supreme Court of Pakistan in a case reported as 1990 SCMR 1692 that since the case of a civil servant concerned was handled malafidely and perversely full benefits be allowed to him. Similar view has been taken by the Supreme Court of Pakistan in another case reported as 1982 SCMR 408. The permanent absorption of the appellants in the Traffic Cadre having treated them as an incumbent on their rolls, the matter of transfer/adjusted becomes a past and closed transaction and cannot be raked up by having recourse to a mode, which has become extinct. Reliance is placed as 2004 SCMR 67.



10. For what has been discussed above, the instant service appeal is allowed and the impugned order dated 06.06.2024 is set aside to the extent of appellants and the respondent department is directed to absorb the present appellants in traffic cadre permanently without any further delay.

[Handwritten signature]

Member-VI

ANNOUNCED
20.12.2024

Certified that this judgment consists of 05 pages and each page has been dictated, read and signed by me.

[Handwritten signature]

CERTIFIED TO BE A TRUE COPY
Registrar
Punjab Service Tribunal
Lahore

[Handwritten signature]
29-01

JUDGMENT SHEET

IN THE PUNJAB SERVICE TRIBUNAL, LAHORE

Appeal No 2876 of 2024

Muhammad Javed, S/o Sarfraz Hussain T/A No.7619 of City Traffic Police, Muzaffargarh.

Shoukat Hussain, S/o Abdul Majeed T/A No.7797 of City Traffic Police, Muzaffargarh.

Muhammad Javed, S/o Manzoor Hussain T/A No.7622 of City Traffic Police, Muzaffargarh.

Muhammad Hanif, S/o Ghulam Haider T/A No.7560 of City Traffic Police, Muzaffargarh.

Muhammad Abid Aleem, S/o Mian Bashir Ahmad T/A No.7584 of City Traffic Police, Muzaffargarh.

Madaha Hussain, S/o Khadim Hussain T/A No.7606 of City Traffic Police, Muzaffargarh.

Gull Muhammad, S/o Ghulam Rasool JTW No.772/DG of City Traffic Police, Muzaffargarh.

Muhammad Shahzad, S/o Ameer Bakhsh T/A No.7641 of City Traffic Police, Muzaffargarh.

Muhammad Amir Shahzad, S/o Ghous Baksh T/A No.7635 of City Traffic Police, Muzaffargarh.

Ghulam Yaseen, S/o Ghulam Nabi Khan T/A No.7578 of City Traffic Police, Muzaffargarh.

Muhammad Mumtaz Khan, S/o Khuda Baksh Khan T/A No.7033 of City Traffic Police, Muzaffargarh.

.....Appellant

VERSUS

1. Additional Inspector General of Police/Head of Traffic Police, Punjab, Lahore.
2. Inspector General of Police, Punjab, Lahore.
3. Secretary to Govt. of the Punjab, Home Department, Lahore.
4. District Police Officer, Muzaffargarh.

.....Respondents

Appellant by:

- Mr. Allah Nawaz Khosa, Advocate counsel for the appellant.

Respondents by:

- Mr. Atta Muhammad Khan, District Attorney.