

ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP

Case No. WP. 3241- 2011.

- Titled Ch. Mohammad Shafiq Vs Secretary, Ministry of Interior.

- (a) Judgment approved for reporting Yes/No
- (b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made. Yes/No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

Initial of the Judge.

## NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

**FORM NO.HCJD/C**

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**CASE NO. : W.P. NO.3241 OF 2011**

**Ch. Muhammad Shafiq Vs. Secretary, Ministry of  
Interior, Islamabad etc.**

**Date of hearing : 09.01.2012**

**Petitioner by : Raja Saif-ur-Rehman, Advocate**

**Respondent by : Respondent No.3 in person.**

**NOOR-UL-HAQ N. QURESHI J.-** Through the present Writ Petition, the petitioner seeks relief of declaration of minutes of D.P.C. recommending respondent No.3 for promotion to the post of Superintendent of Police, which are based upon fraud and concealment of facts as such, the same are illegal, unlawful and of no legal effect. Therefore, respondent Nos.1 & 2 may be directed to hold fresh D.P.C. for the consideration of promotion of the petitioner to the post of Superintendent of Police. Meantime, the order, if any, passed in favour of respondent No.3, may be ordered to be set aside.

2. The petitioner has contended that he has not been considered fit for promotion to the post of Superintendent of Police, although he was senior to respondent No.3. The background was that on 25.06.1996, the petitioner was confirmed Sub-Inspector and was officiating as Inspector. As per the undertaking of respondent No.3, he cannot be considered as senior to the petitioner and his name was wrongly shown as

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senior in the seniority list of D.S.Ps on the basis of his erroneous entry, ignoring the earlier position, as in view of his undertaking, he has no preferential right to be promoted to the rank of S.P. as compared to the petitioner. It is further the case of the petitioner that he was admitted in list 'F' w.e.f. 10.09.1990 and was promoted as Inspector w.e.f. 29.08.1991 and was confirmed w.e.f. 01.01.1995. As such, Mr. Khalid Rasheed-respondent No.3 could not be treated senior to the petitioner nor could be recommended by the D.P.C. for the post of Superintendent of Police. As such, respondent No.3 played fraud by mis-stating and concealing the real facts and got favour from the court of law wherein the petitioner was not a party. As such, the same is not binding on him. Further, it is contended that the petitioner, being senior to respondent No.3, is confirmed Sub-Inspector and Inspector as well as in view of earlier date of appointment under Rule 12 (2) of Police Rules, which according to him, is to be reckoned from the date of first appointment, as such, he has wrongly been ignored from right of promotion and instead whereof, respondent No.3 has been erroneously and maliciously recommended for promotion by the D.P.C., holding the petitioner not fit for promotion.

3. The petitioner further attacks upon absorption of respondent No.3 in Islamabad Police as Sub-Inspector w.e.f. 26.06.1996, whereas the petitioner was confirmed Sub-Inspector as well as Inspector, when entry of Mr. Khalid Rasheed in B-5 took place on 25.09.1982, whereas the petitioner's entry is on 31.03.1975. Therefore, the recommendation made by D.P.C. deserves to be struck off.

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4. It is also the case of the petitioner that he was given seniority by the Inspector General of Police, Islamabad in pursuance of judgment of Federal Service Tribunal as such, respondent No.3 could not be recommended for promotion to the rank of Superintendent of Police.

5. Learned counsel for the petitioner, after submission of para-wise comments by respondent Nos.1 to 3, also filed an application thereby making a request for maintaining status quo on the basis of documents appended thereto, which provides that vide Notification dated 03.06.2009, competent authority re-fixed seniority of the petitioner as D.S.P. (BS-17) w.e.f. 15.09.2005, while giving advantage under Rule 3 (c) of Civil Servant Seniority Rules, 1973, which is reproduced hereunder: -

*"The competent authority has been pleased to re-fix the seniority of Mr. Muhammad Shafiq, DSP (BS-17) w.e.f. 15.09.2005 under rule 3 (C) of Civil Servants Seniority Rules, 1973.*

*2. After re-fixation of seniority, he is placed at Sr. No.18 instead of S.No.25 i.e. after Mr. Taj Muhammad DSP and before Mr. Jamil Ahmed, DSP in the seniority list of DSP, maintained by CIT Police, Islamabad".*

Simultaneously, another document submitted with the said application is Office Order dated 27.12.2011, whereby responding the application moved by the petitioner, Section Officer, Ministry of Interior has exhibited entitlement of the petitioner with all benefits w.e.f. 15.09.2005 as DSP i.e. the date on which, his juniors were promoted. For the convenience, the said Office Order is also reproduced herein below: -

*"As per Rules 3 (C) of the Civil Servants Seniority Rules, 1973, you are entitled to all benefits w.e.f 15.09.2005 as DSP i.e. the date on which your juniors were promoted. Your seniority has already been re-fixed w.e.f. 15.09.2005 vide Ministry of*

*Jm*

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*Interior Notification No.3/22/2007-ICT-I, dated 03.06.2009".*

Learned counsel for the petitioner also argued that the petitioner was promoted to the rank of Inspector w.e.f. 27.08.1991 instead of 07.06.1999 as apparent in the order dated 09.06.2006 passed by the then Inspector General of Police, Islamabad under No.2245-49E-I.

6. On technical aspect of the case, learned counsel for the petitioner argued that while taking into consideration proviso (b) of Section 4(1) of Service Tribunal's Act, 1973, which provides bar on jurisdiction of the Service Tribunal in the matters of promotion. Proviso (b) is reproduced herein under: -

*"No appeal shall lie to a Tribunal against the order or decision of a departmental authority determining the fitness or otherwise, of a person to be appointed to or hold to a particular post or to be promoted to a higher post or grade".*

However, he contended that fitness for promotion provides ouster of jurisdiction of the Service Tribunal as observed by the Apex Court in reported cases PLD 1994 SC 593 & 1991 SCMR 1129, with quite such glaring view that question of fitness of a civil servant is barred from jurisdiction of the Tribunal. Similar is the view drawn in a reported case 2007 PLC (CS) 811 whereby it is held that constitutional jurisdiction of the High Court is barred under Article 212 of the Constitution by holding the same under Section 4 (1) (b) of Servant Tribunal's Act, 1973 excludes from the Tribunal's scrutiny matter about the fitness of a government servant to be promoted to a higher grade. Bar under Article 212 of the Constitution does not apply to promotion matters falling under section 4 (1) (b) of Service Tribunals Act.

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7. In support of his arguments, he also relied upon case law reported as 1996 SCMR 1185 (Hameed Akhtar Niazi Vs. The Secretary, Establishment Division, Government of Pakistan & Others), 2009 SCMR 1 (Government of Punjab Vs. Sameena Parveen & Others) & 2011 SCMR 265 (Miss Zubaida Khatoon Vs. Mrs. Tehmina Sajid Sheikh & Others).

8. On the other side, respondent Nos.1 & 2 through their comments agitated the claim of the petitioner by referring seniority list wherein name of respondent No.3 appeared at Sr. No.1, and the name of petitioner stands at Sr. No.7, therefore, his case was forwarded to the Ministry of Interior for considering his name for promotion to the rank of SP against a existing vacancy. It is further contended that promotion of the petitioner was never withheld. He was considered for promotion up to the rank of DSP according to seniority-cum-fitness under the rules nor his name has been superceded. Since his name appears at Sr. No.7 in the list of D.S.Ps and whenever a post of S.P. becomes vacant, the case of the petitioner to the promotion for the rank of S.P. shall be referred to the competent authority. They denied to have exercised their discretionary powers in the matter. They also asserted the absorption of respondent No.3 in Islamabad Police w.e.f. 17.07.1996 as Sub-Inspector and after his absorption on permanent basis, he filed an appeal to the Hon'ble Supreme Court of Pakistan in 1998, when the Hon'ble Supreme Court vide judgment dated 16.10.2002, directed the Inspector General of Police, Islamabad to give him seniority w.e.f 25.09.1982 in the Police Department in line with the recommendations contained in Establishment Division's Letter dated 02.10.1996, therefore, his

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name was admitted into promotion list 'F' and to the promotion for the rank of Inspector w.e.f. 25.09.1982 and was confirmed as such from the same date in the light of judgment of Hon'ble Supreme Court of Pakistan. It is further contended that against the said decision of Hon'ble Supreme Court, none has preferred appeal nor challenged the same hence, attains finality. Also through a comparative chart explained in para-11 of the comments, respondent Nos.1 & 2 have clarified the position that name of respondent No.3 was admitted to the list 'F' and promoted to the rank of Inspector w.e.f. 25.09.1982 and was confirmed as Inspector w.e.f. from the same date in pursuance of the judgment of Hon'ble Supreme Court, whereas the name of the petitioner was admitted into promotion list 'F' w.e.f. 09.10.1990 and was promoted as Inspector on 29.08.1991, was confirmed w.e.f. 01.01.1995 as such, respondent No.3 is senior in all respects to the petitioner, hence the claim of the petitioner is baseless. Against the anti-dated seniority allegedly granted to respondent No.3, it is contended that an inquiry was marked to S.P. Investigations by the then I.G. Police, Islamabad, who responding the same, submitted a detailed inquiry report vide letter dated 24.08.2004. He submitted that the case has already been considered and decided by the highest judicial forum i.e. Supreme Court of Pakistan, it is the only forum for any further decision in the matter.

9. Respondent No.3 initially submitted para-wise comments in person and subsequently, on his behalf, Mr. Habib Wahab-ul-Khairi, Advocate filed power on his behalf, but today, he chosen to remain absent.

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10. However, respondent No.3 in his para-wise comments has taken the same plea in line with the comments submitted on behalf of respondent Nos.1 & 2. He further submitted judgment of Hon'ble Supreme Court of Pakistan, which confirms the contentions raised by all respondents. He also submitted a letter dated 22.11.2011, which provides that appeals preferred by present petitioner and other police officials of the same rank i.e. D.S.P. against re-fixation of seniority of respondent No.3 i.e. Khalid Rasheed, D.S.P. were rejected by the competent authority in the Ministry of Interior. Therefore, the case of respondent No.3 was referred to the Ministry for holding D.P.C. to consider cases for promotion to S.P. (BS-18).

11. Amongst the authorities referred above, the case law reported as 1996 SCMR 1185 & 2009 SCMR 1 are on the same point, which provides a principle that if a Service Tribunal or Supreme Court decides the point of law relating to the terms of service of a civil servant, which not only covers the case of the said civil servant litigated, but also of other civil servants, who may have not taken any legal proceedings or may not be the parties to such litigation and benefit of the said decision is to be extended to them instead of compelling to approach the Tribunal or any other legal forum. In the instant matter, referred decision of Hon'ble Supreme Court as argued by the learned counsel for the petitioner that it decides the question of law and in favour of respondent No.3, therefore, the petitioner may also be benefited by the same. Referring the judgment delivered by the Hon'ble Supreme Court, it appears that it is a judgment in persona not rhyme and only directions have been issued to the Inspector



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General of Police, Islamabad for giving seniority to respondent No.3 from the date of his original appointment w.e.f 25.09.1982 in BPS-11 in the Police Department. Therefore, it has no relevancy with the case of the present petitioner.

12. So far the concern of reported case law 2011 SCMR 265 relating to a question decided for preferring the appeal to the Tribunal indicating that no right of appeal is provided to a civil servant against the order of departmental authority determining the fitness or otherwise of a person to be appointed or hold a particular post to be promoted to the higher post or grade.

The case of the petitioner is totally out of boundaries sketched in Section 4(1)(b), which is a remedy provided by law to challenge the promotion of a civil servant awarded by determining his fitness and not for the relief to seek promotion.

13. The matter was partly heard on 08.12.2011 & 09.12.2011, when on 14.12.2011, at the request of both the counsel, the matter was adjourned to further assist the Court. On 09.12.2011, the question of jurisdiction arose, when the learned counsel for the petitioner was asked, as to how the case of the petitioner comes within the definition of fitness of a civil servant, when the other side has taken the plea that only six posts were lying vacant against which, D.P.C. was held and from Sr. No.1 to 6, the Officers/DSPs were considered. Since the name of the petitioner appeared at Sr. No.7, therefore, he was not recommended to D.P.C. for the purpose of promotion, as it relates to the question of eligibility against the post, if lying vacant.

14. While referring the seniority list, which was submitted by both the respondents, it transpires that Officers appearing at

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Sr.No.1 to 6 were promoted as D.S.P. after considering their case by DPC in the following manner: -

1.	Mr. Khalid Rasheed	15.09.2005
2.	Mst. Zahida Parveen	30.12.2003
3.	Mr. Sadaqat Ali	30.12.2003
4.	Mr. Hafeez Ahmed	15.09.2005
5.	Mr. Rafaqat Hussain	15.09.2005
6.	Mr. Muhammad Yar	15.09.2005
7.	Muhammad Shafique	29.08.2007

Whereas the name of the petitioner placed at Sr. No.7 though showing the date of promotion as D.S.P. on 29.08.2007, but in the last column of remarks, specifically the following remarks appear: -

*"Seniority fixed as DSP w.e.f. 15.09.2005 vide Ministry of Interior's Notification No.3/22/2007-ICT-I dated 03.06.2009".*

The above position infers that such Notification, which was referred subsequently by the petitioner and in continuation whereof, the letter dated 27.12.2011 issued to the petitioner confirming his re-fixation of the seniority as such, proforma promotion was awarded to him, but yet, it is a question to be determined, as to whether the petitioner is considered to be senior to those respondents shown at Sr. No.1 to 6, particularly in view of the Notification, which specifies that name of the petitioner is placed at Sr. No.18 instead of Sr. No.25 after Mr. Taj Muhammad, DSP and before Mr. Jamil Ahmed, DSP, which position has not been disputed by the learned counsel for the petitioner. On the contrary, he relied upon the said document and sought favour on the basis whereof.

15. While referring the seniority list, it appears that name of the petitioner reflects before Mr. Jamil Ahmed, DSP, but after Taj Muhammad, DSP. The parties admitted that Mr. Taj Muhammad

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has retired and because of reason of so many Officers either retired or promoted, the order of seniority in the existing list is maintained with such changes, which has not been disputed by the petitioner at any stage, nor he claimed to be same as biased or otherwise in any manner.

16. From perusal of record, it appears that the case of the petitioner was not forwarded to the D.P.C. for the reason that only six posts were lying vacant, which were to be filled in by constituting D.P.C. As such, the names of candidates from Sr. No.1 to 6 were referred to D.P.C.

17. From the general complexion of the entire case, following questions raise in the mind: -

1. *Whether the vacancies more than 06 were available to accommodate the petitioner with other contestants referred to DPC.*
2. *Whether the case of the petitioner was mature to be placed before DPC.*
3. *Whether in view of above, the case of the petitioner comes within the definition of determining his fitness.*

18. From the perusal of record, it transpired that parties have not disputed during the arguments that more than 06 vacancies were lying vacant as such, there was no scope to include the name of the petitioner in working paper for the purpose of referring to DPC for promotion, as the name of the petitioner stood at Sr. No.7 and rest six persons before him were the actual contestants of the Department were required to communicate only those eligible contestants against the vacancies available.

19. The case of the petitioner neither comes within the parameters of eligibility not the fitness, as his case has not been yet matured for onward communication to DPC in view of hard

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fact that only six vacancies were available as such, no discrimination can be attributed to the respondents.

20. Another aspect could be legally evaluated respecting matching the case of the petitioner with respondent No.3, which in view of decision of Hon'ble Supreme Court, was accommodated. As such, no allegation of biasness or discrimination could be established against the Department. As such, the case of the petitioner is not in same line as urged.

21. In view of above observations, the petition merits no consideration and the same is, therefore, dismissed with all other enlisted applications.

(NOOR-UL-HAQ N. QURESHI)  
JUDGE

Announced in Open Court on 11.01.201

*approved for reporting.*  
*Blue Slip Added.*  
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JUDGE

*W. W.*

Zawar

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