

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 773/2022

BEFORE:           MRS. ROZINA REHMAN           ...       MEMBER(J)  
                      MISS. FAREEHA PAUL           ...       MEMBER(E)

Irshad Muhammad, Ex. Deputy Secretary, Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar, R/o House No. 355/3, Gulshan Colony, G.T Road Peshawar.

.... (*Appellant*)

Versus

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.

... (*Respondents*)

Mr. Masood Khan  
Advocate

...

For appellant

Mr. Muhammad Riaz Khan Paindakhel  
Asstt. Advocate General

...

For respondents

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Date of Institution.....29.04.2022  
Date of Hearing.....14.09.2022  
Date of Decision.....14.09.2022

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the officer order No. SO(SR-I)12-4/2020 dated 29.04.2021 under which pay protection has been allowed to the appellant from the date of appointment on the analogy of apex court's judgment in CA No. 1308/2019 but with no arrears prior to 04.06.2011. The appellant has prayed that on acceptance of this service appeal, respondents may be directed to modify their office order



dated 29.04.2021 and allow arrears of pay from its due date i.e 20.02.1991 when first appointment of the appellant was made in the Civil Secretariat , Khyber Pakhtunkhwa, Peshawar.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Senior Clerk (BS-7) in the University of Engineering & Technology, Peshawar. He was appointed, through proper channel, as Assistant (BS-11) in the Civil Secretariat Peshawar vide order dated 04.02.1991. In pursuance of that order, he was relieved from the University of Engineering & Technology Peshawar on 19.02.1991(A.N) and joined the new assignment on 20.02.1991 (F.N). The Government of Khyber Pakhtunkhwa, Finance Department vide circular letter No. FD(SR-I)12-1/2011 dated 04.06.2011, allowed the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service. In the light of that circular, appellant applied for the said benefit from the date of his appointment in the Civil Secretariat vide application dated 31.12.2020. He was allowed pay protection from the date of appointment in Civil Secretariat Peshawar but with no arrears prior to 04.06.2011. Order of Finance Department dated 29.04.2021 was issued based on the analogy of one Mian Farooq Iqbal's case decided by the august Supreme Court of Pakistan vide its judgment dated 27.11.2019 in CP No. 1308/2019, who was allowed arrears from the date of his appointment in provincial government vide Finance Department notification dated 01.06.2020. In spite of allowing the benefit of pay protection on the analogy of Mian Farooq Iqbal, the appellant was denied the payment of arrears from 20.02.1991 to 03.06.2011. The appellant approached the Finance Department again vide application dated 21.10.2011 but his request was regretted vide letter dated 08.12.2021. Against that a departmental appeal dated 06.01.2022 was preferred

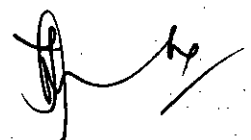


before the Chief Secretary, Khyber Pakhtunkhwa but it was not responded during the statutory period of 90 days; hence this service appeal

3. Respondents were put on notice who submitted written replies/ comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented brief facts of the case and contended that being a similarly placed person, benefits of pay allowed to Mian Farooq Iqbal from the date of his appointment in government service could not be denied to the appellant as it would be a discrimination and that after allowing the benefit of pay protection with the condition of non-payment of arrears prior to 04.06.2011 was violative of Finance Department's own order dated 29.04.2021 and judgment of the apex court. He further apprised the bench that allowing the benefit of payment of arrears from 20.02.1991 to 03.06.2011 would not have any other recurring effect on seniority, increments or pension etc. He referred to a Service Appeal No. 737/2021, titled Mumtaz Khan (Rtd) Special Secretary, Industries Department, Peshawar Vs. The Chief Secretary Khyber Pakhtunkhwa, Peshawar and others, of similar nature decided by the Khyber Pakhtunkhwa Service Tribunal vide its judgment dated 21.04.2022 wherein pay protection to the appellant was allowed for his previous service before joining the provincial government.

5. The learned Assistant Advocate General on the other hand argued that letter dated 04.06.2011 was applicable from the date it was issued. He further argued that letter of Finance Department dated 29.04.2021 was issued in the light of letter dated 04.06.2011 and hence no arrears were admissible prior to that date.



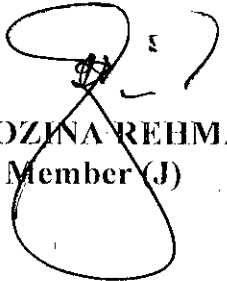
6. Perusal of record reveals that the appellant applied for the post of Assistant (BS-11) through proper channel in 1990 and on his appointment in the Civil Secretariat Peshawar, his resignation was accepted by the University of Engineering and Technology Peshawar on 19.02.1991(A.N). He joined the new position on 20.02.1991(F.N). So, there is no gap or break between his previous service and new appointment in the Civil Secretariat, Peshawar. A letter of Finance Department date 04.06.2011 is under reference here and it has been argued by the learned Assistant Advocate General that no arrears are allowed prior to that date. A case of similar nature has already been decided by this Tribunal in Service Appeal No. 737/2021, titled Mr. Mumtaz Khan (Retired) Special Secretary, Industries Department Vs. the Chief Secretary Khyber Pakhtunkhwa, vide its judgment dated 21.04.2022 and that has been referred by the learned counsel for appellant also. In another earlier judgement of this Tribunal dated 07.03.2017 in case titled Mian Farooq Iqbal Vs. Chief Secretary Khyber Pakhtunkhwa and others, previous service has been given protection and the same was maintained by the august Supreme Court of Pakistan in its judgment dated 27.11.2019.

7. In case of Mian Farooq Iqbal, the respondents allowed the pay protection from the date he was appointed in the University of Engineering and Technology Peshawar as Lecturer. It is strange to note that this benefit is being denied to a similarly placed employee by giving lame and unacceptable reasons that the order dated 04.06.2011 has no retrospective effect. It is to be noted here that the question of its applicability whether from retrospective or perspective effect has already been decided by the august Supreme Court of Pakistan and the Provincial Government could have treated the case of present appellant in the similar way. Instead they tried to create hurdles in his way by denying him his right that had already been determined in cases of similar nature.



8. In the light of above discussion, the present appeal is allowed as the prayer of appellant for pay protection is covered under the existing policy and that has been upheld by the apex court also. He is, therefore, entitled for pay protection as prayed for. Respondents are directed to modify the impugned order dated 29.04.2021 and allow him arrears of pay from the date he joined the Civil Secretariat i.e 20.02.1991. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of September, 2022.*

  
(ROZINA REHMAN)  
Member (J)

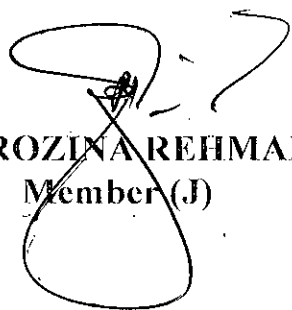
  
(FARZEHA PAUL)  
Member (E)

**Service Appeal No. 773/2022**

1. Mr. Masood Khan, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present. Arguments heard and record perused.

2. Vide our detailed judgement containing 05 pages, the appeal is allowed as the prayer of appellant for pay protection is covered under the existing policy and that has been upheld by the apex court also. He is, therefore, entitled for pay protection as prayed for. Respondents are directed to modify the impugned order dated 29.04.2021 and allow him arrears of pay from the date he joined the Civil Secretariat i.e 20.02.1991. Parties are left to bear their own costs. Consign.

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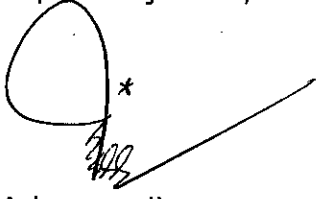
  
**(ROZINA REHMAN)**  
Member (J)

  
**(FAREEHA PAUL)**  
Member (E)

25.08.2022 ✓

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Sajid Saleem, S.O for the respondents present.

Reply/comments on behalf of respondents submitted which are placed on file. Copy of the same is placed on file as well as provided to the appellant. Adjourned. To come up for rejoinder, if any, and arguments on 14.09.2022 before D.B.

\*  
(Mian Muhammad)  
Member (E)