

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Service Appeal No. 1128/2022

Engr. Fazli Raziq, Deputy Chief Inspector of Mines
Peshawar..... (Appellant)

VERSUS

1. The Chief Secretary,
Government of Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa.
Finance Department, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa.
Establishment Department, Peshawar.
4. The Secretary to Government of Khyber Pakhtunkhwa.
Minerals Development Department, Peshawar.
5. The Chief Inspector of Mines,
Inspectorate of Mines, Peshawar.

.... (Respondent)

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BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

Service Appeal No. 1128/2022

Engr. Fazli Raziq, Deputy Chief Inspector of Mines
Peshawar..... (Appellant)

VERSUS

The Chief Secretary Khyber Pakhtunkhwa & others.

.... (Respondent)

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2, 3, 4 & 5.

respectfully Shewith:

reliminary Objections:

1. That the appellant has neither come to this court with clean hands nor the appeal is based on factual grounds, legal footing and is, therefore, liable to be dismissed.
2. That the appellant has no cause of action/locus standi to file the instant appeal, hence, the appeal is not maintainable in its present form.
3. That the appellant is stopped by his own conduct to file the instant appeal.
4. That the appeal in its present form is defective, bad and is liable to be dismissed.
5. That the appellant is bound to abide by law and regulations of the respondents issued from time to time.
6. That the appeal is barred by law.



FACT:

1. Correct to the extent that the appellant was the employee of Pakistan Mineral Development Corporation (PMDC) w.e.f 03.11.1990 to 31.01.1995 (**Annex-A**).
2. Correct to the extent that the appellant submitted the Last Pay Certificate (LPC) of PMDC to this department (**Annex-B**).
3. Admitted.
4. Correct to the extent that the appellant was appointed as Inspector of Mines (BPS-17) vide Notification No. SOI/I&D/6-1/90/379, dated 04.01.1995 (**Annex-C**).
5. Correct to the extent that the appellant was relieved from his duty by PMDC vide relieving order No. Ap-Pr-Tr/Officer-Supervisor/Jatta/480, dated 24.01.1995 (**Annex-D**).
6. Correct to the extent that the appellant assumed the charge of post of Inspector of Mines w.e.f. 01.02.1995 vide Notification No. SOI (IND) 6-1/90/2680, dated 26.02.1995 (**Annex-E**).
7. Correct to the extent that Finance Division Govt: of Pakistan has issued Office Memorandum vide No. F.4(2) R-2/96, dated 12.08.2002 on the subject fixation/protection of pay on appointment from one post to another thereby allowing pay protection/fixation of employees of the autonomous organizations which are established through a resolution may have extended the benefit of pay in a manner set out in F.R-22 and 22(A) on their subsequent appointment in the Government service if they have adopted Government pay scales/schemes in toto. However, this benefit cannot be extended to the employees of such autonomous organizations which are created under an Act/Ordinance or an Executive Order under the authority of an Act/Ordinance (**Annex-F**).
8. Pertains to Federal Tribunal record.
9. Correct to the extent that the memorandum mentioned in Para 7 was reconsidered by Finance Division Government of Pakistan in light of direction of Federal Service Tribunal and updated vide office Memorandum No. FNo. 4(2) R-2/1996-235/2010 dated 08.06.2010 (**Annex-G**).
10. Correct to the extent that the Government of Khyber Pakhtunkhwa vide Notification No. FD(SR-1)12-1/2011, dated 04.06.2011 has decided that henceforth the benefit for protection of pay to the employees of autonomous bodies on their subsequent appointment in Government service is not admissible as employees of autonomous

bodies are not civil servants within the meaning of Civil Servant Act, 1973. Therefore, there is an express bar in this notification for such autonomous bodies. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of Basic Pay Scale in toto on their appointment in Government offices provided they have applied for the post through proper channel **(Annex-H)**.

11. Incorrect. The Notification was viewed in light of judgement of Federal Service Tribunal, Islamabad dated 01.08.2009 in accordance with rules and regulation wherein no malafidy has been construed against any civil servant.
12. Correct to the extent that the benefit of pay protection was extended to Mian Farooq Iqbal by Service Tribunal vide Service Tribunal Khyber Pakhtunkhwa Judgement dated 07.03.2017 in Service Appeal No. 476/2014 **(Annex-I)**
13. Correct to the extent that Supreme Court of Pakistan upheld the decision of Service Tribunal Khyber Pakhtunkhwa mentioned in Para 12 vide Appeal No. 1308/2019, dated 27.11.2019 **(Annex-J)**.
14. Incorrect. The Appellant has joined the service prior to issuance of the Government of Khyber Pakhtunkhwa, Finance Department Circular mentioned in Para 10 due to which he is not entitled to the protection of pay.
15. Subject to proof.
16. Needs no comments. (Pertains to record).

GROUND:


1. Needs No comments (Pertains to Record).
2. Needs No comments (Pertains to Record).
3. Correct to the extent that both the posts are of same Pay scale, however, the appellant joined the service prior to the issuance of Finance Department KP circular mentioned in Para 10, therefore, he is not entitled to protection of pay.
4. Same as Para 3.
5. Subject to proof.
6. Pertains to record.
7. Pertains to record.
8. Pertains to record.
9. Pertains to the Judicial record of Apex Court.
10. Pertains to record of this Honorable Service Tribunal.

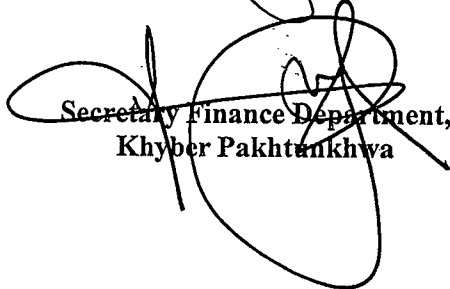
11. Incorrect. The Said circular of Finance Department KP clearly states that the protection of pay will be granted to the civil servants who have joined the service after the issuance of the said circular.
12. Correct to the extent that the Appellant applied through proper channel. The rest is subject to proof.
13. No discrimination was carried out by Finance Department.
14. Needs no comments (Pertain to record).

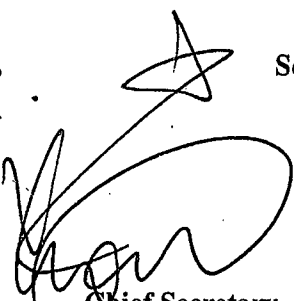
PRAYERS:

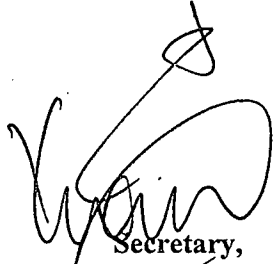
It is therefore, humbly prayed that, the appeal of Appellant does not hold a firm ground which may kindly be dismissed.

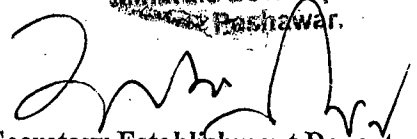
Respondents:


Chief Inspector of Mines
Khyber Pakhtunkhwa
Peshawar.


Secretary Finance Department,
Khyber Pakhtunkhwa


Chief Secretary
Government of Khyber Pakhtunkhwa


Secretary,
Minerals Development Department,
Khyber Pakhtunkhwa
Govt. of Khyber Pakhtunkhwa
Minerals Dev. Department,
Peshawar.

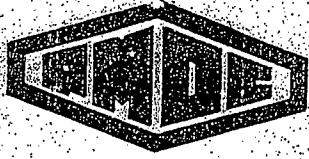

Secretary Establishment Department,
Khyber Pakhtunkhwa

Annexure - A

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Tele : 250928 - 250929 - 250930
Fax : 051- 855374
Telex : 54064 PMDC PK



PAKISTAN MINERAL DEVELOPMENT CORPORATION (PVT) LTD.

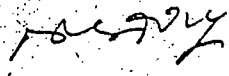
Head Office
13, H-9
Islamabad: 44790

Ref. No. PMDC/ADM-594

Date 21.10.1996

TO WHOM IT MAY CONCERN

It is certified that Mr. Fazli Raziq s/o Abdul Aziz served in PMDC as Assistant Mining Engineer w.e.f. 3.11.1990 to 31.1.1995 when he resigned from the service of this Corporation on his appointment as Inspector of Mines in the Government of NWFP.


(R. D. Choudhry)
Acting Secretary

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LAST PAY CERTIFICATE

Last Pay Certificate of Mr. Fazal Raziq
Ex-Asstt. Mining Enger: PMDC Salt Quarries Jatta, transferred
to Mineral Development vide PMDC H.O. letter No. PMDC/ADM-594
dated 18.01.1995.

He has been paid upto 31.01.1995 at following
rates:-

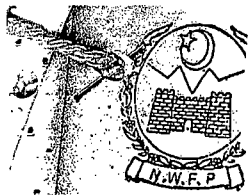
Pay Scale	4050-244-7710
B. Pay	4538.00
10% pay	453.80
Conveyance allow:	403.50
	<u>5395.30</u>
	=====

Relieved of his duties at Jatta on 31.01.95(AM).
~~Advance against of TA/DA Nil.~~

Muhammad Ismail
(Muhammad Ismail)
Project Accountant

PMDC SALT QUARRIES JATTA(KARAK)

* Mr. Fazal Raziq Ex- A.M.E.



GOVERNMENT OF N.-W.F.P.
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,
LABOUR AND TRANSPORT DEPARTMENT.

Dated Peshawar the... 4/1/1995.....

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To

Annexure-D

Mr. Fazli Raziq, S/O Abdul Aziz,
Village Zoorbandar (Lakhti),
Tehsil and P.O. Khar,
Bajaur Agency.

SUBJECT:- APPOINTMENT AS INSPECTOR OF MINES (BPS-17)
IN INSPECTORATE OF MINES LABOUR WELFARE, NWFP.

On the basis of recommendations of the NWFP Public Service Commission, you are offered a temporary post (likely to continue) of Inspector of Mines (BPS-17) in the Inspectorate of Mines, Labour Welfare, NWFP on the following terms and conditions:-

- a. You will be allowed a minimum of BPS-17 (Rs. 3880-290-7360) plus other allowances as admissible under the Rules.
- b. You will be governed by such rules and orders relating to leave, T.A. and Medical Attendance as may be prescribed by the Government for the category of Government Servants of your status from time to time.
- c. You will be on probation initially for a period of two years extendable upto three years.
- d. You will be liable for continuous and eventual confirmation as Inspector of Mines on satisfactory completion of probation including the extendable period of probation.
- e. Your services will be liable to termination at any time without assigning any reason before the expiry of probation if you work is not found satisfactory. In such an event you will be given a month's notice for termination of service or one month's pay in lieu thereof. In case you wish to resign a month's notice shall be necessary or in lieu thereof month's pay shall be forfeited.
- f. You will be governed by the NWFP Government servants (Efficiency and Discipline) Rules, 1973 and Government Servants (Conduct) Rules, 1987 and any other instructions which may be issued by the Government from time to time.



GOVERNMENT OF N.-W.F.P.,
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,
LABOUR AND TRANSPORT DEPARTMENT.

Dated Peshawar the

15
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- g. You will join duty on your own expenses.
- h. You will be liable to serve anywhere in NWFP including FATA.
- i. You will have to produce Medical Fitness Certificate before joining your duties.

If the above terms and conditions of appointment are acceptable to you, you should report to the Chief Inspector of Mines, Labour Welfare, NWFP, Peshawar/This Department within 30 days of the issuance of this letter, failing which the offer of appointment shall be deemed to have been cancelled.


(AHMED HASSAN)
SECTION OFFICER.(ADMN)

(13) Annexure E 10
PAKISTAN MINERAL DEVELOPMENT CORPORATION
SALT QUARRIES JATTAOKARAK.

Ref No. Ap-Pr-Tr/Officer-Supervisor/Jatta/483 Dated 24-1-1995.

RELIEVING ADVICE.

In compliance to the Secretary PMDC,
Head Office Letter No. PMDC/ADM-594/ dated 18.1.1995,
Mr. Fazal Raziq Assistant Mining Engineer, PMDC, Salt
Quarries Jatta is hereby relieved off his duties w.e.f.
31.01.1995 (A.N).


(Mushtaq Ahmed Akhtar)
Project Manager

~~To:~~

Mr. Fazal Raziq,
Asstt. Mining Engineer
PMDC Jatta.

Copy to:-

1. The Secretary, PMDC, H.O. Islamabad.
2. The General Manager(Salt), PMDC, H.O. Islamabad.
3. The Project Accountant PMDC Jatta.
4. Admn. Section.
5. P.File.

1995

7/2

INSPECTOR GENERAL OF MINES
DEPARTMENT OF MINES
(MINE SAFETY)

[Handwritten signature]

- (1) The Secretary to Govt of M.P., Industries, Commerce, Mineral Development, Labour and Transport Department, Bhopal.
- (2) The Secretary to Govt of M.P., Transport Department, Bhopal.
- (3) The Government General M.P., Bhopal.
- (4) The Chief Inspector of Mines, M.P., Bhopal.

Copy to:-

Dated Bhopal, the 1-2-1995

Reference: 6171-74

INSPECTOR GENERAL OF MINES
DEPARTMENT OF MINES
(MINE SAFETY)

[Handwritten signature]

7/2

In pursuance of Government of M.P. Transport Department, Bhopal, Notification No. (IND) 5-1/90/579 dated 4.1.1995, I Mr. Fazal Fazl assumed the charge of duties as Inspector of Mines in the Inspectorate of Mines M.P. Bhopal. Bhopal to-day the 1-2-1995 (P.R.).

CHIEF INSPECTOR GENERAL

SECRETARY

Dated: 01-02-1995

NO.

INSPECTOR GENERAL OF MINES
DEPARTMENT OF MINES
(MINE SAFETY)

[Handwritten mark]

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Ammanur-F

BETTER COPY

Government of Pakistan
Finance Division
(Regulation Wing)

Islamabad, the 12th August, 2002.

F. 4 (2) R-2/96

OFFICE MEMORANDUM

Subject: - FIXATION/PROTECTION OF PAY ON APPOINTMENT
FROM ONE POST TO ANOTHER.

The undersigned is directed to say that initial substantive pay of a government servant on appointment from one post to another is regulated under the provisions of FR-22 and FR-22 (A). These rules provide for protection of substantive pay of the old post held by him provided the conditions prescribed therein are fulfilled.

The benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service is not admissible as the employees of autonomous bodies are not civil servant within the meaning of Civil Servant Act, 1973.

3. The superior courts have however, held that the autonomous bodies created through resolutions stand at a different footing as compared to the autonomous bodies incorporated either by a Statute/Act/Ordinance or by an Executive Order under the authority delegated by an Act/Ordinance.

4. With a view to formulate a uniform policy to regulate the cases of fixation of pay, it has been decided that henceforth, the employees of such autonomous organization which are established through a resolution may be extended the benefit of fixation of pay in the manner set out in FR-22 and 22 (A) on their subsequent appointment in the government service if they have adopted government pay scales/schemes in totality. This benefit cannot be extended to the employees of such autonomous organizations which are created under an Act/Ordinance or an Executive Order under the authority of an Act/Ordinance.

5. Since the powers of fixation of initial pay of Government Servants have been delegated to concern Ministries/Divisions/Departments, no formal approval of Finance Division is required for initial fixation/protection of pay if covered under the relevant rules/government instructions. The concerned Ministries/Divisions are empowered for fixation/protection of pay under the relevant rules and government instructions in consultation with the concerned Accounts/Audit Office.

6. The cases settled earlier may be treated as final and may not be reopened or cited as precedent.

Sd/-

(MALIK HAMID NAWAZ)
SECTION OFFICER (R-2)

ALL MINISTRIES/DIVISIONS/DEPARTMENTS.

(20)

BETTER COPY

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Government of Pakistan
Finance Division
(Regulation Wing)

F.No. 4(2)R-2/1996-235/2010

Islamabad, the 08th June, 2010.

OFFICE MEMORANDUM

Subject:- Fixation/Protection Of Pay on Appointment From One Post to Another.

The undersigned is directed to refer to Finance Division's O.M No. 4(2)R-2/96 dated 12th August, 2002 on the subject noted above and to say that in terms of the provisions in para-2 of aforesaid O.M, the benefit of pay protection on their subsequent appointment in Government service is not admissible to the employees of autonomous organizations which are established under the Act/Ordinance or an executive order under the authority delegated by the Act/Ordinance.

2. The mater has now been re-considered in light of judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R)CS/2005 in respect of Mr. Sajjad Rashid and other. It has been decided that henceforth the benefit of pay protection will be extended to the employees of such Autonomous Organizations who have adopted Basic Pay Scales scheme in toto and who are appointed in Government Departments through proper channel. In view of the aforesaid position, para-2 of the Finance Division's O.M No. F. 4(2)R-2/96 Dated 12th August, 2002 may be substituted as under:-

"2. The benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service is not admissible as the employees of autonomous bodies are not civil servant within the meaning of civil Servant Act, 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organization who have adopted scheme of basic pay scale in toto on their appointment in government offices provided they have applied for the post through proper channel".

Sd/-

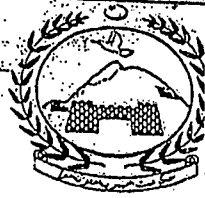
(M. UZAIR SOOMRO)
SECTION OFFICER (R-2)
Ph.9263179

All Ministries/Divisions/Departments.

use K

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD (SR-1) 12-1/2011
Dated Peshawar the: 4th June, 2011

TO:

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad, letter No.FNo.4(2)R-II/1996-235/2010, dated 08-06-2010, and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad. In appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

Yours Faithfully,

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: of even No. & date:

Copy forwarded for Information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl. Secretary Finance.

(SHAUKAT ULLAH)
Section Officer (SR-I)

23 Annexure L

15

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 476/2014

Date of Institution ... 02.04.2014

Date of Judgment ... 07.03.2017



Mian Farooq Iqbal, Officer on Special Duty,
Establishment Department, government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

(Appellant)

VERSUS

1. The Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Mineral Development Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. The Director General, Directorate General Mines and Mineral, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE FINANCE DEPARTMENT GOVERNMENT OF KHYBER PAKHTUNKHWA LETTER NO. FD(SOSR-1)12-4/2014 DATED 10.02.2014 WHEREBY THE APPLICATION OF THE PETITIONER FOR PROTECTION OF PAY AND COUNTING OF SERVICE RENDERED IN AUTONOMOUS BODY IN TOTAL SERVICE PERFORMED IN PROVINCIAL GOVERNMENT DEPARTMENT AS CIVIL SERVANT WAS DECLARED NOT ADMISSIBLE.

7.03.17

Mr. Muhammad Asif Yousfzai, Advocate.

For appellant.

Mr. Muhammad Adeel Butt, Additional Advocate General

For respondents.

MR. MUHAMMAD AAMIR NAZIR

MEMBER (JUDICIAL)

MR. ASIFAQUE TAJ

MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Mian Farooq Iqbal, Officer on Special Duty Establishment Department, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, has impugned order dated 10.02.2014 vide which the application of the appellant for protection of pay and counting of service rendering by him in autonomous body was turned down by the respondents.

ATTESTED

MEMBER
Khyber Pakhtunkhwa

2. Brief facts of the case giving rise to the instant appeal are that initially the appellant was employed as Lecturer (BPS-17) in NWFP University of Engineering and Technology Peshawar in the year 1986. Subsequently, the appellant applied through proper channel for the post of Inspector of Mines (BPS-17). That after qualifying the competitive exam, the appellant was relieved and he assumed the charge of the post of Inspector of Mines in the Inspector of Mines Labour Welfare NWFP Peshawar on 10.07.1989. That the appellant was drawing salary @ Rs. 3460/- P.M while after joining the post of Inspector of Mines, the salary was fixed @ Rs. 2065/- Per month. That vide letter dated 04.06.2011, the Finance Department allowed the benefits of protection of pay to the employees of autonomous bodies on subsequent appointment in Government Service. The appellant filed an appeal before respondent No.1 for protection of pay and counting of service rendered as Lecturer University of Engineering and Technology in the light of Finance Department letter referred above. The appeal of the appellant was rejected by respondent No.2 vide letter dated 10.02.2014 with no justification, hence the instant appeal.

03.17

3. Learned counsel for the appellant argued before the court that before joining Government Service, the appellant was serving as Lecturer in University of Engineering and Technology and after obtaining NOC, the appellant applied through proper channel for the post of Inspector Mines. That the appellant was appointed to the post of Inspector Mines (BPS-17) through proper channel, there-after he was relieved by the University to join his new assignment. That as per Finance Department notification dated 04.06.2011 the appellant is entitled for benefits of pay and protection even then his appeal was rejected which is illegal, hence the appeal of the appellant be accepted as prayed for.

4. In rebuttal, learned Additional Advocate General argued before the court that the appellant is not entitled for pay protection and his appeal to this respect was rightly turned down by the competent authority. Though the Finance Department vide letter dated 04.06.2011 has allowed the benefits of pay protection to the employees of autonomous bodies on the subsequent appointment in government service, but the pay protection to the appellant is not admissible on the ground that he has joined provincial government service prior to the issuance of the Finance Department letter.

EXAMINED
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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of the above referred notification. That the appeal in hand is without any substance, hence be dismissed.

5. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General for the respondents and have gone through the record available on file.

6. Perusal of the case file reveals that the appellant was initially appointed as Lecturer in BPS-17 in NWFP University of Engineering and Technology in the year 1986. Later on, the appellant applied for the post of Inspector of Mines (BPS-17) in the Inspectorate of Mines Labour Welfare NWFP Peshawar through proper channel. The appellant after qualifying the Public Service Commission exam was appointed as Inspector of Mine in BPS-17 vide order dated 21.06.1989. Afterwards, the Finance Department issued a notification dated 04.06.2011 in which benefits of pay protection was allowed to the employees of the autonomous body on their subsequent appointment in Government Service who have adopted scheme of basic pay scale in to-to, provided that they have applied for the post through proper channel. The above referred notification was based on the judgment of Federal Service Tribunal Islamabad in appeal No. 1921(R) CS/2005 in case titled Sajjad Rashid and others. It is evident that the appellant was employee of University of Engineering and Technology Peshawar which was an autonomous body and has adopted scheme of basic pay scale in to-to in their appointment. The appellant applied through proper channel and after qualifying Public Service Commission was appointed as Inspector of Mines (BPS-17), therefore he is entitled for fixation/protection of pay of appointment of one post to another in light of notification of the finance department dated 04.06.2011. The appeal in hand is accepted in the light of the above discussion. Parties are however left to bear their own costs. File be consigned to the record room.

Sd/- M. Amis Nazki, Member
Sd/- Ashfaqul Taj, Member

IR

ANNOUNCED
07-03-2017

Certified true copy

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(2) Annexure M 7
18 - 1

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

Civil Appeal No. 1308/2019

(Against the judgment dated
07.03.2017 of the Khyber
Pakhtunkhwa Service Tribunal
Peshawar passed in Appeal No.
476/2014)

Chief Secretary Govt. of KP Civil Appellant(s)
Secretariat, Peshawar & others

Versus

Mian Farooq Iqbal Respondent(s)

For the Appellant(s) Mr. Zahid Yousaf Qureshi, Addl AG, KP

For the Respondent(s) In person

Date of Hearing 27.11.2019

ORDER

Gulzar Ahmed, J. We have heard the learned
Additional Advocate General, KP. In support of his submission that
the benefit of pay protection and counting of service was not
available to the respondent, he has relied upon the letter dated
04.06.2014 (available at page 21 of the paper book) issued by the
Regulation Wing of the Finance Department, Government of
Khyber Pakhtunkhwa. Such letter is scanned below:

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

1308/2019

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TO BE SUBMITTED WITH THE SAME NUMBER AND DATE
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD (SR-1) 12-12011
Dated Peshawar the 31st June, 2011

- 1. All Administrative Secretaries in Govt. of Khyber Pakhtunkhwa.
- 2. The Senior Members Board of Revenue, Khyber Pakhtunkhwa.
- 3. The Secretary to Government, Khyber Pakhtunkhwa.
- 4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 5. The Secretary Provincial Assembly, Khyber Pakhtunkhwa.
- 6. The Secretary Finance, FATA, FATA Secretariat, Peshawar.
- 7. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
- 8. The Secretary to Government, Khyber Pakhtunkhwa.
- 9. All Heads of Attached Departments in Khyber Pakhtunkhwa.
- 10. All District Coordination Officers, District Sessions Judges in Khyber Pakhtunkhwa.
- 11. The Registrar, Peshawar High Court, Peshawar.
- 12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
- 13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir, I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No. FN.4(2) (11) 1986-235/2010, dated 08-08-2010 and Judgment dated 01.08.2009 of Federal Service Tribunal, Islamabad in appeal No. 1421 (R) CS/2005 in respect of Mr. Sajid Rafiq and others on the subject cited above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth, the benefit of protection of appointment of employees of autonomous bodies on their subsequent appointment in Government Services will be admissible to employees of such autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to to on their appointment in government services, provided they have applied for the post through proper channel.

Yours Faithfully

 MASOOD KHAN
 Deputy Secretary (Reg-III)

- Ends of even No. 2 (in)
 Copy forwarded for information to:
- 1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
 - 2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
 - 3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
 - 4. All District Comptrollers of Accounts, Senior District Accounts Officers and District Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
 - 5. Director, FMO, Finance Department.
 - 6. P.S. to Secretary Finance, Khyber Pakhtunkhwa.
 - 7. P.S. to Secretary Finance, Peshawar.
 - 8. P.S. to Secretary Finance, Peshawar.

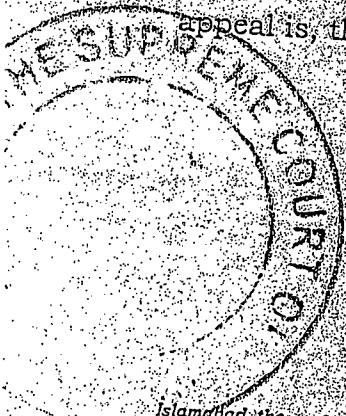
2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to

ATTEST

Senior Court A
Supreme Court of
Islamabad

discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied.

3. After considering all aspects of the matter, we are of the firm view that no illegality has been committed in the impugned judgment of the Tribunal. The same is maintained. The appeal is, therefore, dismissed with no order as to costs.



Islamabad, the
27th November, 2019
Rizwan

2/12/19

Sd/-J
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Civil, Islamabad

R No. S/18/P/19
Date of D. 29/11/19
No of P. 1
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