

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 7371/2021

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MIAN MUHAMMAD --- MEMBER(E)

**Mr. Mumtaz Khan, (Rtd) Special Secretary (BS-20), Industries
Department, Peshawar.**

.....(Appellant)

VERSUS

1. The **Chief Secretary** Khyber Pakhtunkhwa, Peshawar.
2. The **Secretary** Mineral Development , Department Khyber
Pakhtunkhwa Peshawar.
3. The **Secretary Finance** Department Khyber Pakhtunkhwa, Peshawar.

..... (Respondents)

Present:

TAIMUR ALI KHAN,
Advocate --- For Appellant.

M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General --- For respondents.

Date of Institution.....01.09.2021

Date of Hearing.....20.04.2022

Date of Decision21.04.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal in hand has been instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 24.08.2021 whereby his departmental appeal for pay protection alongwith arrears of previous service as Assistant Mining Engineer (BS-17) in Pakistan Mineral Development Corporation (PMDC) w.e.f 26.12.1979 to 02.10.1983, was rejected.

02. Brief facts, as per memorandum of appeal, are that the appellant was initially appointed in Pakistan Mineral Development

Corporation (PMDC) as apprentice/ Assistant Mining Engineer (BS-17) on 08.03.1979 and then appointed Assistant Mining Engineer (PMDC) vide order dated 26.12.1979. The appellant applied through proper channel for the post of Mines Safety Engineer (BS-18) in Directorate of Labour Welfare, Khyber Pakhtunkhwa advertized by the Khyber Pakhtunkhwa Public Service Commission in 1982. On selection by the Public Service Commission, he was appointed as Mines Safety Engineer (BS-18) vide notification dated 24.09.1983 and was relieved by the PMDC on 02.10.1983 who assumed the charge of the post of Mines Safety Engineer (BS-18) on 03.10.1983. The appellant during his service in Directorate of Labour Welfare Mineral Development Department got elevation in cadre up to BS-20 as Director General and retired when posted as Special Secretary (BS-20), on attaining the age of superannuation on 07.05.2012. Taking a precedented case of Mian Farooq Iqbal of the same department, the appellant requested for pay protection of the previous service and claimed it under the Finance Department notification dated 04.06.2011. After inter-departmental correspondence between the administrative department, Finance and Law Department, the request of appellant was finally regretted vide impugned order dated 24.08.2021 where-after he approached the Service Tribunal for redressal of his grievances, on 01.09.2021.

03. Respondents were put on notice who submitted written replies/comments on contents of the appeal. We have heard learned counsel for the appellant as well Assistant Advocate General and

perused the case file with connected documents minutely and thoroughly.

04. Learned counsel for the appellant argued that the appellant had served PMDC as Assistant Mining Engineer (BS-17) from 26.12.1979 to 02.10.1983 who applied to the post of Mines Safety Engineer (BS-18) in Directorate of Labour Welfare Peshawar through proper channel. On selection through Khyber Pakhtunkhwa Public Service Commission, he was properly relieved by PMDC. Since then the appellant rendered regular service of more than 33 years till he stood retired as DG (BS-20) on attaining the age of superannuation on 07.05.2012. However, his previous service rendered in PMDC was not counted for the purpose of pay protection despite the fact that his case was covered under the Finance department circular No. FD (SR-I) 12-1/2011 dated 04.06.2011. He quoted the case of one Mian Farooq Iqbal of the same department having the same facts and circumstances whose previous service as Lecturer (BS-17) in University of Engineering and Technology Peshawar had been protected on the basis of Service Tribunal Judgement dated 07.03.2017 in service appeal No. 476/2014 duly maintained by the Apex Court vide its judgement dated 27.11.2019. He also referred to another judgement of this Service Tribunal dated 27.12.2019 delivered in service appeal No. 980/2016 of Muhammad Ismail where the same question of law was decided following the principle of consistency, laid down in service appeal No. 476/2014. Moreover, the recent judgement of this Service Tribunal dated 07.12.2021 delivered in service appeal No. 463/2017 titled Syed Shenshah, Accounts officer LG & RDD versus

Government of Khyber Pakhtunkhwa was relied on as precedent being a case of similarly placed official of the provincial government. He contested that how could a similarly placed person like the present appellant be denied the benefits of pay protection, availed by others duly granted by the respondents; particularly when a point of law relating to the terms of service of a civil servant, had been decided. He relied on 1996 SCMR 1185 and 2009 SCMR 1, while concluding his arguments.

05. Learned Assistant Advocate General while referring to para-5 of written defense of the respondents did not deny facts and circumstances of the service appeal. He also contended that the question of retrospectivity and prospectivity relating to Finance Department circular dated 04.06.2011 had been decided by the Apex Court in civil Appeal No: 1308/2019 dated 27.11.2019 of Mian Farooq Iqbal. He therefore did not press his arguments and conceded facts of the case to have been of similarly placed person.

07. Perusal of record revealed that the appellant had applied for the post of Mines Safety Engineer (BS-18) in 1982 through proper channel and on appointment he was properly relieved by PMDC on 02.10.1983. So, there was no gap or break between his previous service and new appointment through Khyber Pakhtunkhwa Public Service Commission. The question of law arising out of the Finance department circular dated 04.06.2011 with regard to its retrospectivity or prospectivity had been decided by the Apex Court in the Civil Appeal No. 1308/2019 of Mian Farooq Iqbal. Astonishingly, the respondents had implemented it vide notification No. FD (SOSR-

I/12-4/2020 dated 15.06.2020 but in the case of present appellant unnecessary and protracted inter departmental correspondence were resorted to for unknown reasons, driven the appellant from pillar to post. The laid down principle of consistency enunciated in 1996 SCMR is relevant and quite apt to be reproduced:

If the Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum.

08. It is observed that despite the above clear verdict of Apex Court and the respondent-departments had precedented case of Mian Farooq Iqbal to whom benefits of pay protection of previous service were granted vide Notification dated 15.06.2020, the case of similarly placed appellant was treated as a shuttle cock. It is pathetic and deplorable to note that despite legal opinion of Advocate General office dated 05.04.2021 communicated to respondent No.3 through Law department, respondent No.3 shifted responsibility when advised respondent No.2 "to grant proper sanction for pay protection being administrative department of the present appellant" ignoring the fact that being a financial matter falling in its ambit of functions under the Rules of Business (1985) and it had already exercised that authority when issued Notification dated 15.06.2020 in respect of Mian Farooq Iqbal. It is therefore, imperative to advise the Chief Secretary, Khyber Pakhtunkhwa to issue elaborate instructions to all departments in

general and regulatory departments in particular to adhere to the distribution of functions assigned to these departments under the Khyber Pakhtunkhwa Government Rules of Business (1985) framed under Article 139 of the Constitution; especially in litigation cases when there are clear directions and elaborate judgements in unequivocal terms by the hon'ble superior judiciary.

09. As a sequel to the preceding paras, we have arrived at the conclusion that the prayer of appellant for pay protection is covered under the existing scheme of things duly upheld by the Apex Court. He was therefore entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f 26.12.1979 to 02.10.1983. The service appeal is therefore, allowed as prayed for and the impugned order dated 24.08.2021 is set aside. Copy of this judgement be also issued to respondent No.1 for compliance. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of April, 2022.*




(KALIM ARSHAD KHAN)
CHAIRMAN


(MIAN MUHAMMAD)
MEMBER(E)

ORDER

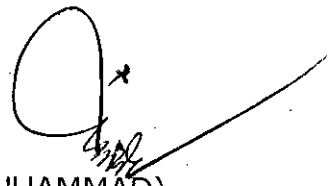
21.04.2022 Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

Vide our detailed judgement of today placed on file (containing 06pages), we have arrived at the conclusion that the prayer of appellant for pay protection is covered under the existing scheme of things duly upheld by the Apex Court. He was therefore entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f 26.12.1979 to 02.10.1983. The service appeal is therefore, allowed as prayed for and the impugned order dated 24.08.2021 is set aside. Copy of this judgement be also issued to respondent No.1 for compliance. Costs shall follow the event. Consign.

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of April, 2022.



(KALIM ARSHAD KHAN)
CHAIRMAN



(MIAN MUHAMMAD)
MEMBER(E)

28.03.2022


Appellant alongwith his counsel present. Mr. Kabirullah Khattak Addl: AG alongwith Mr. Sajid Anwar, Assistant for respondent present.

Written Reply/comments on behalf of respondents submitted which is placed on file. A copy of the same is also handed over to the learned counsel for the appellant. Adjourned. To come up for rejoinder as well as arguments on 20.04.2022 before D.B.

20.04.2022

Counsel for the appellant present (Mr. Muhammad Arif Khan Paindakhel, Assistant Advocate General for respondents present.

Arguments of both the parties heard. To come up for order before the D.B on 21.04.2022.


(Mian Muhammad)
Member(E)

(Kalim Arshad Khan)
Chairman

25.10.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. Subject to all legal and factual objections, this appeal is admitted for full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 26.01.2022 before the D.B.


Appellant Deposited
Security & Process Fee


Chairman

26.01.2022

Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Granted. To come up for reply/comments before the S.B on 28.03.2022.

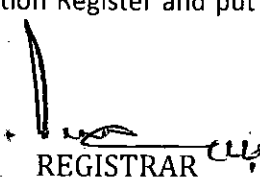


(Atiq-Ur-Rehman Wazir)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7371 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/09/2021	<p>The appeal of Mr. Mumtaz Khan resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>25/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST

Case Title: Mumtaz Khan vs Chief Secretary & others


S.#	Contents	Yes	No
1.	This appeal has been presented by: _____		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	/	
3.	Whether Appeal is within time?	/	
4.	Whether the enactment under which the appeal is filed mentioned?	/	
5.	Whether the enactment under which the appeal is filed is correct?	/	
6.	Whether affidavit is appended?	/	
7.	Whether affidavit is duly attested by competent oath commissioner?	/	
8.	Whether appeal/annexures are properly paged?	/	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	/	
10.	Whether annexures are legible?	/	
11.	Whether annexures are attested?	/	
12.	Whether copies of annexures are readable/clear?	/	
13.	Whether copy of appeal is delivered to A.G/D.A.G?		
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	/	
15.	Whether numbers of referred cases given are correct?	/	
16.	Whether appeal contains cuttings/overwriting?	/	
17.	Whether list of books has been provided at the end of the appeal?	/	
18.	Whether case relate to this Court?	/	
19.	Whether requisite number of spare copies attached?	/	
20.	Whether complete spare copy is filed in separate file cover?	/	
21.	Whether addresses of parties given are complete?	/	
22.	Whether index filed?		
23.	Whether index is correct?		
24.	Whether Security and Process Fee deposited? on _____		/
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on _____		
26.	Whether copies of comments/reply/rejoinder submitted? on _____	/	
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on _____	/	/

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Taimur Ali Khan

Signature:




Dated:

The appeal of Mr. Mumtaz Khan, Rtd: Special Secretary (BPS-20), Industries Dptt, District Peshawar presented today i.e. on 01.09.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Annexures A, E, G, J, Q and S of the appeal are illegible which may be replaced by legible/better one.

No. 1717 /S.T,

Dt. 01/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan AHC.

Respected Sir

1- Removed

2- Removed

Resubmitted after compliance



6/9/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mumtaz Khan

V/S

Chief Secretary & others

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3.	Copies of appointment order dated 08.03.1979, charge report dated 15.03.1979 and order dated 26.12.1979	A,B&C	08-11
4.	Copies of letter dated 10.01.1982, notification dated 24.09.1983, relieving report dated 02.10.1983 and notification dated 08.10.1983	D,E,F&G	12-15
5.	Copy of notification dated 28.09.2012	H	16
6.	Copy of notification dated 04.06.2011	I	17
7.	Copies of letter dated 11.01.2021, Service Tribunal judgment dated 07.03.2017, Apex Court judgment dated 27.11.2019, notification dated 15.06.2020 and departmental appeal	J,K,L,M&N	18-27
8.	Copies of letter dated 18.08.2020, letter dated 27.01.2021 and opinion dated 05.04.2021	O,P&Q	28-32
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APPELLANT

THROUGH:


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

Room # Fr 8, 4th Floor,
Bilour Plaza Saddar Cannt:
Cell# 03339390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 7371/2021

Khyber Pakhtukhwa
Service Tribunal

Diary No. 7522

Dated 01/09/2021

Mr. Mumtaz Khan, (Rtd:) Special Secretary (BPS-20),
Industries Department, Peshawar.

(APPELLANT)

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

Filed to-day
[Signature]
Registrar

Re-submitted to -day
and filed.

[Signature]
Registrar
6/9/2021

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 24.08.2021, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR PAY PROTECTION ALONG WITH ARREARS OF HIS PREVIOUS SERVICE AS ASSISTANT MINES ENGINEER (BPS-17) IN PMDC W.E.F 26.12.1979 TO 02.08.1983 FROM THE DATE OF HIS APPOINTMENT AS MINES SAFETY ENGINEER (BPS-18) IN DIRECTORATE OF LABOUR WELFARE KHYBER PAKHTUNKHWA HAS BEEN REJECTED WITHOUT GIVING ANY REASON.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 24.08.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENT MAY FURTHER BE DIRECTED TO GRANT PAY PROTECTION

ALONGWITH ARREARS TO THE APPELLANT OF HIS PREVIOUS SERVICE AS ASSISTANT MINES ENGINEER (BPS-17) IN PMDC W.E.F 26.12.1979 TO 02.10.1983 FROM THE DATE OF HIS APPOINTMENT AS MINES SAFETY ENGINEER (BPS-18) IN DIRECTORATE OF LABOUR WELFARE KHYBER PAKHTUNKHWA AS ALREADY GRANTED BY THIS HONOURABLE TRIBUNAL IN SAME NATURE APPEAL NO. 476/2014 TITLED MAIN FAROOQ IQBAL VS CHIEF SECRETARY OF KHYBER PAKHTUNKHWA & OTHERS UNDER THE RULE OF CONSISTENCY. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant was initially appointed in Pakistan Mineral Development Corporation (PMDC) as apprentice Assistant Mine Engineer (BPS-17) vide order dated 08.03.1979 and in pursuance of that order the appellant joined the post on 15.03.1979 and then after appointed as Assistant Mines Engineer PMDC through an order dated 26.12.1979 in continuation of earlier appointed order dated 08.03.1979. **(Copies of appointment order dated 08.03.1979 charge report dated 15.03.1979 and order dated 26.12.1979 are attached as Annexure-A,B&C)**
2. That the post of Mining Safety Engineer (BPS-18) in the Directorate of Labour welfare Khyber Pakhtunkhwa was advertised through KP Public Service Commission and the appellant through proper channel applied for the said post which is evident from letter dated 10.01.1982 and was appointed on the said post through a notification dated 24.09.1983 and was relieved from his duties at the PMDC on 02.10.1983 and assumed the charge of the post of Mine Safety Engineer (BPS-18) in the Directorate of Labour Welfare, Peshawar on 03.10.1983 vide notification dated 08.10.1983. **(Copies of letter dated 10.01.1982, notification dated 24.09.1983, relieving report dated 02.10.1983 and notification dated 08.10.1983 are attached as Annexure- D,E,F&G).**
3. That the appellant after appointment as Mine Safety Engineer (BPS-18) has performed his duty with great devotion and honesty, whatsoever,

assigned to him and no complaint has been filed against him regarding his performance by his superiors and due to excellent performance he was promoted to (BPS-20) and was retired from service on 07.05.2012 as Special secretary (BPS-20) on attaining the age of superannuation vide notification dated 28.09.2011. **(Copy of notification dated 28.09.2012 is attached as annexure-H)**

4. That the Finance department issued a notification dated 04.06.2011, wherein the benefits of pay protection has been granted to the employees of autonomous bodies who have adopted scheme of basic scales in to-to on their appointment in government offices provided they have applied for the post through proper channel. **(Copy of notification dated 04.06.2011 is attached as Annexure-I)**
5. That as the appellant was initially appointed in PMDC as Assistant Mine Engineer being an autonomous bodies (evident from letter dated 11.01.2021) and then applied through proper channel to the post of Mine Safety Engineer in Directorate of Labour Welfare Khyber Pakhtunkhwa and appointed on the said post, therefore, the appellant is entitle for pay protection along with arrears as per notification dated 04.06.2011 and on analogy of the case of Mian Farooq Iqbal of the same department who filed appeal No.476/2014 for his pay protection in this Honourable Service Tribunal which was accepted on dated 07.03.2017 and that judgment was also maintained by the Apex Court in C.A No.1308/2019 and basis of that that judgments pay protection along with arrears was granted to him of his previous service by the department trough notification 15.06.2020, but the department did not granted the same benefits to the appellant being similarly placed person, therefore, he filed departmental appeal to respondent No.2 for pay protection on 09.07.2020. **(Copies of letter dated 11.01.2021, Service Tribunal judgment dated 07.03.2017, Apex Court judgment dated 27.11.2019, notification dated 15.06.2020 and departmental appeal are attached as Annexure- J,K,L,M&N)**
6. That the departmental appeal of the appellant was forwarded to respondent No.3 through latter dated 18.08.2020 which was further forwarded to Law, Parliamentary & Human Rights Department through letter dated 27.01.2021 on which opine was sought from the office of Advocate General, Khyber Pakhtunkhwa on which Assistant Advocate General gave opinion on 05.04.2021 that as the case of Mian Farooq Iqbal is applicable to the case in hand (case of the appellant). As similar relief should be granted to civil servants on a point of law relating to the

terms and conditions and benefits of decision should be given to such civil servants, which is reiterated in 2009 SCMR 1 subject to the condition, that he has applied through proper channel. **(Copies of letter dated 18.08.2020, letter dated 27.01.2021 and opinion dated 05.04.2021 are attached as Annexure-O,P&Q)**

7. That the appellant filed application to respondent No.3 on 19.05.2021 to decide his case in the light of Advocate General Office opinion dated 05.04.2021, which was further forwarded by respondent No.3 to law, Parliamentary Affairs & Human Right Department through letter dated 15.06.2021 on which law department gave its view that the Finance Department may consider the request of the appellant in line with the facts of the case and in terms of notification dated 04.06.2011 read with relevant judgment of the Hon'ble apex court through letter dated 28.06.2021. **(Copies of application dated 19.05.2021, letter dated 15.06.2021 and letter dated 28.06.2021 are attached as Annexure-R,S&T)**
8. That respondent No.3 wrote a letter dated 09.07.2021 to respondent No.2 in which he mentioned that the instant case has been re-examined in consultation with Law Department and found fit for pay protection under notification dated 04.06.2011, therefore, the appellant may please be granted proper sanction for pay protection of his previous service as Assistant Mines Engineer (BPS-17) in PMDC w.e.f 26.12.1979 to 02.08.1983 from the date of his appointment as Mines Safety Engineer (BPS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa, if he applied through proper channel, but despite that respondent No.3 rejected the departmental appeal of the appellant on 24.08.2021. **(Copies of letter dated 09.07.2021 and rejection order dated 24.08.2021 are attached as Annexure- U&V)**
9. That the appellant has no other remedy except to file the instant appeal in this august Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:

- A) That rejection order dated 24.08.2021 and not granting pay protection along with arrears of previous service to the appellant are against the judgment dated 07.03.2017 in appeal No.476/2014 of this Honourable Tribunal maintained by the apex court, law, facts, norms of justice and material on record, therefore, not tenable and the order dated

24.08.2021 is liable to set aside and the appellant is entitled for pay protection along with arrears of his previous service as Assistant Mines Engineer (BPS-17) in PMDC w.e.f 26.12.1979 to 02.08.1983 from the date of his appointment as Mines Safety Engineer (BPS-18) in Directorate of Labour Welfare Khyber Pakhtunkhwa.

- B) That the appellant has applied through proper channel from PMDC to Directorate of Labour Welfare Khyber Pakhtunkhwa and is entitled for pay protection along with arrears on the basis of notification dated 06.04.2011 and numerous judgments of this Honourable Tribunal.
- C) That the Advocate General Office Khyber Pakhtunkhwa also gave opinion on 05.04.2021 that as the case of Mian Farooq Iqbal is applicable to the case in hand (case of the appellant). As similar relief should be granted to civil servants on a point of law relating to the terms and conditions and benefits of decision should be given to such civil servants, which is reiterated in 2009 SCMR 1 subject to the condition, that he has applied through proper channel, but despite that the benefits of pay protection along with arrears has not been granted to the appellant.
- D) That Finance Department mentioned in its letter dated 09.07.2021 to Secretary Mineral Development Department that the case of the appellant has been re-examined in consultation with law department and found fit for pay protection under notification dated 04.06.2011, therefore, the appellant may please be granted proper sanction for pay protection of his previous service as Assistant Mines Engineer (BPS-17) in PMDC w.e.f 26.12.1979 to 02.08.1983 from the date of his appointment as Mines Safety Engineer (BPS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa if he applied through proper channel, which means that the Finance Department has admitted the stance of the appellant, but despite that departmental appeal of the appellant was rejected by the Finance department without giving any reason, which is against the norms of justice and fair play.
- E) That in the letter dated 09.07.2021, the stance of pay protection was admitted, however it was mentioned in that letter that arrears will not be admissible to the appellant prior to 04.06.2011, because Finance department's policy dated 04.06.2011 is applicable from the date of its issuance, but the Apex Court clarified this point in its judgment dated 27.11.2019 by dismissing the Civil Appeal No.1308/2019 of the

department, which shows that the entitlement of the appellant for pay protection along arrears cannot be denied on this ground.

- F) That the similar nature appeal No.476/2014 title Main Farooq Iqbal V/S Chief Secretary of KP & Others has been accepted by this Honourable Tribunal on 07.03.2017, which was also upheld by the Apex Court in C.P No.1308/2019 in its judgment dated 27.11.2019 and the basis of that judgments the pay of Mian Farooq Iqbal was protected and also granted arrears vide notification dated 15.06.2020 and the being similarly placed person is also entitled the same relief under the rule of consistency as the appellant also based his case in his departmental appeal on analogy of Main Farooq Iqbal.
- G) That the other similar nature appeal No. 980/2016 was also accepted on 27.12.2019 by this august Tribunal, which was maintained by the Apex Court in its judgment dated 27.04.2021 IN Civil Appeal No.39/2021 and the appellant is also entitled the same relief on the basis of reported judgment 2009-SCMR-1. **(Copies of judgment dated 27.12.2019 and 27.04.2021 are attached as Annexure-W&X)**
- H) That the appellant has not been treated in accordance with law and rules and has been deprived from legal right of pay protection along with arrears by the arbitrary manner of the respondents.
- I) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.


APPELLANT
Mumtaz Khan

THROUGH:


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

CERTIFICATE:

It is certified that no other similar service appeal between the parties has been filed earlier.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

Mumtaz Khan

V/S

Chief Secretary & others

.....

AFFIDAVIT

I, Mumtaz Khan, (Rtd:) Special Secretary (BPS-20), Industries Department, Peshawar, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honourable Tribunal.

DEPONENT

Mumtaz Khan
Mumtaz Khan
(APPELLANT)



Phone Nos: 511081-511091



PAKISTAN MINERAL DEVELOPMENT CORPORATION

Head Office:
P.M.D.C. House,
Dr. Ziauddin Ahmad Road,
Karachi-4 (Pakistan)

Ref. No. PMDC/ADMN/325

Date 8.3.1979

Mr. Mumtaz Khan,
Hassan Villa, Near Politechnical College,
Kohat Road,
Peshavar.

Dear Sir,

With reference to your application dated 5.3.1979 and subsequent interview with us on 7.3.1979, we are pleased to appoint you as an Apprentice Assistant Mining Engineer, at PMDC Salt Quarries Bahadurkhal on a fixed monthly basic salary of Rs. 800/- and Rs. 105/- as CLA. You will be on probation for one year and your appointment as Assistant Mining Engineer would be considered after expiry of one year provided your performance is found to be satisfactory, and there is an availability of clear vacancy.

You will not be entitled to any other allowance during apprenticeship period. During the apprenticeship period you will be entitled only to casual leave and medical facilities for self.

You are advised to report for duty to Project Manager, PMDC Salt Quarries, Bahadurkhal not later than 31.3.1979.

Yours faithfully,
Pakistan Mineral Development Corporation,
(Signature)
(A. Ratin Kazi)
Secretary

c.c. to:-

1. General Manager (Production) PMDC Karachi.
2. General Manager, PMDC Branch Office, Lahore.
3. Project Manager, PMDC Salt Quarries, Bahadurkhal.
4. Project Accountant, PMDC Salt Quarries, Bahadurkhal.
5. General Manager (Finance) PMDC Karachi.

ATTESTED

Section Officer (C.A.V.)
Govt. Of Khyber Pakhtunkhwa
Higher Education,
Archives & Libraries Department

of Pakistan on the analogy of Mian Farooq Iqbal, Deputy
mines, Khewra Project with
of the above decisions of Service Tribunals Khyber
(Annex-XI)

Better copy of page - 8
Annexure A
Better Copy - 8

PAKISTAN MINERAL DEVELOPMENT CORPORATION

Head office:
P.I.D.C. House,
Dr. Ziauddin Ahmad Road,
Karachi-4 (Pakistan)

Ref. No. PMDC/ADMN/325

Date. 08.03.1979

Mr. Mumtaz Khan,
Hassan Villa, Near Polytechnic College,
Kohat Road,
Peshawar.

Dear Sir,

With reference to your application dated 5.3.1979 and subsequent interview with us on 7.3.1979, we are pleased to appoint you as an Apprentice Assistant Mining Engineer, at PMDC Salt Quarries Bahadurkhel at a fixed monthly basic salary of Rs. 800/- and Rs. 105/- as CLA. You will be on probation for one year and your appointment as Assistant Mining Engineer would be considered after expiry of one year provided your performance is found to be satisfactory, and there is an availability of clear vacancy.

You will not be entitled to any other allowance during apprenticeship period. During the apprenticeship period you will be entitled only to casual leave and medical facilities for self.

You are advised to report for duty to Project Manager, PMDC Salt Quarries, Bahadurkhel not later than 31.3.1979.

Yours faithfully,
Pakistan Mineral Development Corporation,

Sd/-
(A. Batin Kazi)
Secretary

Copy to:-

1. General Manager (Production) PMDC Karachi.
2. General Manger, PMDC Branch Office, Lahore.
3. Project Manager, PMDC Salt Quarries, Bahadurkhel.
4. Project Accountant, PMDC Salt Quarries, Bahadurkhel.
5. General Manager (Finance) PMDC Karachi.

RECEIVED

Director of Mines (Annex-XI) Court of Pakistan on the analogy of Mian Farooq Iqbal, Deputy Chief

B. 9

57

Annex

Better Copy

The Project Manager,
PMDC Salt Quarries,
Bahadar khel (Kohat).

Subject:- JOINING REPORT

R/Sir,

With reference to Secretary's PMDC letter No. PMDC/ADMN/ 325 dated 8.3.1979, I have joined my duty as a Apprentice Assistant Mining Engineer in PMDC Salt Quarries Bahadar Khel on 15.03.79 dated

This is for your information please.

Yours obediently,

Sd/-
(Mumtaz Khan)
Apprentice Assistant Mining Engineer,
PMDC Salt Quarries Bahadar Khel
Dist: Kohat.

C.C.to:-

1. The Project Accountant PMDC Salt Quarries Bahadar Khel.
2. Secretary, PMDC, PIDC, House, Karachi.

Sd/-
(Mumtaz Khan).



(Annex-XI)

... on the analogy of Mian Farooq Iqbal, Deputy Chief
... of Service Tribunals Khyber

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Annex

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PAKISTAN MINERAL DEVELOPMENT CORPORATION
PMDC HOUSE, DR. ZIAUDDIN AHMED ROAD, KARACHI.

Reference No. PMDC/Adm/325

Dated: 26-12-1979

Mr. Mumtaz Khan,
Apprentice Assistant Mining Engineer,
PMDC Salt Quarries,
Bahadur Khel

And in continuation of our letter
of even number dated 8.3.1979.

Dear Sir,

With reference to your application dated..... we have the pleasure to appoint/ you as Assistant Mining Engineer at PMDC Salt Quarries Bahadurkhel under the following terms and conditions:

Commencement of Appointment/Promotion:

1. Your appointment/promotion will commence from.....24-12-1979.....
2. Your appointment will be subject to your being found medically fit to the satisfaction of the Corporation or the Company and your antecedents being verified and found to be satisfactory by it.

Liabilities of Service:

3. You may be required, as the Corporation may decided from time to time, to serve the Corporation or any Company of which the Corporation may be the Managing Agents or Shareholders (hereinafter called the Company) anywhere in Pakistan.
4. The Corporation or the Company may change your designation, responsibilities or duties from time to time as it may think fit

Probation:

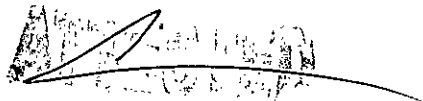
5. You will be on probation for one year after the expiry of which you shall stand confirmed unless your probation period is extended by the Corporation in its sole discretion in writing.
6. On successful completion of your probation, your appointment will be placed on regular basis with effect from the date you complete probationary period.

Salary:

- 7 (i) You will be allowed a monthly basic salary of Rs. 1000/- in the grade of Rs. 1000-75-1525 plus admissible allowances at the place of posting.
(ii) You will earn annual increment on 1st July, each year, starting from 1980 which will be subject to your work during the year being found satisfactory by Corporation/Company in its sole discretion.

Leave:

8. You will earn leave at the rate of 1/11 of duty period, which will be allowed to be accumulated upto a maximum of 8 months. The grant of leave by the Corporation or Company will be subject to the exigencies of the Corporation or Company's business and can be taken on retirement, or on termination of your services by the Corporation for reasons other than those specified in Clauses 9(ii) and 10(ii). In case you resign from service or your services are terminated under services, as the case may be, shall automatically lapse and you will not be entitled to any payment in lieu thereof nor you will be entitled to get such leave or part thereof adjusted against the requisite notice period for resignation. At any one time during the service, however, the leave due may be availed of only upto a maximum of four months at a time.



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tion of Appointment:

9. During the period of probation, your appointment will be terminable:
 - (i) by 30 days notice on either side without any reason being assigned: or
 - (ii) by the Corporation or the Company only without any previous notice and without observing any formality if you should be guilty of any insubordination, intemperance or misconduct of which the Corporation or the Company will be the sole judge.
10. During your services on regular basis your appointment will be terminate at any time:
 - (i) by 30 days previous notice if the Corporation or Company is satisfied from the report of a Medical Officer appointed by it that you have become or are likely, for a considerable period, to remain unfit by reason of ill health or physical debility, for the proper and efficient discharge of the duties entrusted to you by the Corporation or Company from time to time or
 - (ii) by the Corporation only without previous notice and without observing any formality if you should be guilty of any subordination, intemperance or misconduct of which the Corporation or Company will be the sole of judge: or
 - (iii) by one year notice on either side without assigning any reason or by payment of one year's salary in lieu thereof or proportionate payment for the unexpired period of notice.

Medical facilities:

11. You will be entitled to medical facilities for self, wife and your dependent children as determined from time to time, by the Corporation/Company.
12. Subject to your being eligible under the Rules of the PMDC Employees Provident Fund or those of the Company concerned, as the case may be you shall become a member of and subscribe to that fund.

Gratuity:

13. You will be entitled to gratuity at the rate of one month's salary for each completed year of service which will be payable only on retirement or earlier termination of your services by the Corporation provided your services have been placed on regular basis and you have completed 3 year's service. In case you resign from service, gratuity shall be payable to you as per rules. You will not be entitled to gratuity if your services are terminated under clause 110(ii) above.

Other Rules and Regulations:

14. In all other respects your services will be governed by the Rules and Regulations of the Corporation or Company in force from time to time.
15. You will not divulge either directly or indirectly to any person or body any knowledge or information which you may acquire concerning the affairs, property, enterprise and undertaking of the Corporation or the Company, including its business and trade matters and secrets.
16. Please acknowledge the letter by way of formal acceptance within a week of receipt of this letter and report for duty to as early as possible but not later than..... No TA/DA will be admissible for this purpose.
17. We are also enclosing Personal Record Form which may please be filled in by you and returned to us.

Yours faithfully,
Pakistan Mineral Development Corporation.

Sd/-
(A. Batin Kazi)
Secretary

Copy to:-

1. Chief Accountant, PMDC, Karachi.
2. General Manager (Production) PMDC Karachi.
3. General Manger, PMDC Branch Office, Lahore.
4. Project Manager, PMDC Salt Quarries, Bahadurkhel.
5. Project Accountant, PMDC Salt Quarries, Bahadurkhel.
6. General Manager (Finance) PMDC Karachi.

ATTACHED

D (12)

Annexure D

PMDC/Adm-325

January 10, 1982

Better Copy

The Secretary,
NWFP Public Service,
Commission,
Peshawar.

Subject: Appointment as Mine Safety Engineer in Labour Department.

Dear Sir,

In response to your advertisement No. 10/81, we are forwarding herewith an application form of Mr. Mumtaz Khan Khalid, Assistant Mining Engineer, in Labour Department for consideration. In case Mr. Mumtaz Khan is selected for the post applied for, he will have to resign from his post from PMDC as per terms and conditions of his appointment letter.

Yours faithfully,
Pakistan Mineral Development Corporation,

Sd/-
(A. Q. Baluchi)
Secretary

Copy to:-

1. Acting General Manager (Prod), PMDC Head Office, Karachi.
2. Chief Mining Engineer, PMDC Salt Mines, Khewra.
3. Mr. Mumtaz Khan, Assistant Mining Engineer, PMDC Salt Mines, Khewra, with the remarks that he will have to resign from his post in PMDC as per clause 10(iii) of his appointment letter of even number dated 26.12.1979, in case he is selected for the post applied for.

ATTESTED

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14

GOVERNMENT OF N.W.F.P.
INDUSTRIES, COMMERCE, MINERAL DEV: LABOUR AND
TRANSPORT DEPARTMENT.

Dated Peshawar, the 24.9.1985.

NOTIFICATION.

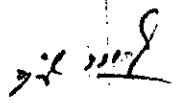
No. SOI/2-18/80-Vol:II. The Governor, NWFP in consultation with the NWFP Public Service Commission is pleased to appoint Mr. Mumtaz Khan Khalid s/o Mr. Habibur Rehman as Area Safety Engineer in the Directorate of Labour Welfare, NWFP, Peshawar in Basic Scale No.18 on the terms and condition as specified in this Department letter of even number dated 17.8.1985 with effect from the date he assumed the charge of the post and until further order.

Zabeer Sajja
Secretary to Government of NWFP
Industries, Commerce, Mineral Dev: Labour and
Transport Department.

Enclst: No. SOI/2-18/80-Vol:II dated Peshawar, the 24.9.1985.

A copy is forwarded to:

1. The Director of Labour Welfare, NWFP, Peshawar.
2. The Accountant General, NWFP, Peshawar. A copy of the medical fitness certificate issued by the Standing Medical Board in respect of Mr. Mumtaz Khan Khalid is enclosed.
3. Mr. Mumtaz Khan Khalid s/o Mr. Habibur Rehman, Assistant Mining Engineer, NWFP Well Mines, Khacca, District Jhelum.
4. The Manager, Printing Press, Peshawar for publication in the next government gazette.


(Habibullah Khan)
Section Officer-I.

Khalid.

ATTESTED

Better copy page NO. (13)

GOVERNMENT OF N.W.F.P
INDUSTRIES COMMERCE MINERAL DEV: LABOUR
AND TRANSPORT DEPARTMENT.

Dated Peshawar, the 24-9-1983

NOTIFICATION.

No.SOI/2-18/80-Vol-II. The Governor NWFP in consultation with the NWFP Public Service Commission is pleased to appoint Mr. Muntaz Khan Khalil S/O Habib Ur Rehman as Mines Safety Engineer in the Directorate of Labour welfare, NWFP, Peshawar in Basic scale No.18 on the terms and conditions as specified in the Department letter of even dated 17.8.1983 with effect from the date of assume of the charge of the post and until further order.

Zaheer Sajjad
Secretary to Government of NWFP
INDUSTRIES COMMERCE MINERAL DEV: LABOUR AND
TRANSPORT DEPARTMENT.

Endst No. SUI/2-18/80Vol:II dated Peshawar, the 24.09.1983

A copy is forwarded:-

1. The Director of Labour Welfare, NWFP, Peshawar.
2. The Accountant General, NWFP, Peshawar. A copy of the medical fitness certificate issued by the standing medical Board in request of Mr. Mumtaz Khan Khalil is enclosed.
3. Mr. Mumtaz Khan Khalil S/O Habibur Rehman , Assistant Mining Engineer, PMDC, District Jhelum.
4. The Manger, Printing Press, Peshawar for publication in the next Government Gazette.

(Mohub Ullah Khan)
Section Officer-I

Armer - F

F 14
Better Copy

PAKISTAN MINERAL DEVELOPMENT CORPORATION
SALT MINES KHEWRA.

Reference No. 15-BT/74/11293

Dated: 2-10-1983

OFFICE ORDER

Consequent upon the acceptance of the resignation tendered by Mr. Mumtaz Khan Khalil, Assistant Mining Engineer, dated 26.9.1983, vide Secretary PMDC, Karachi's letter No. PMDC/ADMN/325 dated 26.9.1983, Mr. Mumtaz Khan Khalil, Assistant Mining Engineer, PMDC Salt Mines, Khewra is hereby relieved of his duties at the PMDC Salt Mines, Khewra with effect from the afternoon of 2.10.1983.

Sd/-
Chief Mining Engineer
PMDC Salt Mines Khewra

Mr. Mumtaz Khan Khalil,
Assistant Mining Engineer,
PMDC Salt Mines, Khewra.

Copy to:-

1. The Secretary, PMDC, Karachi-4.
2. The Acting General Manager, PMDC Regional Office, Lahore.
3. The Deputy Chief Mining Engineer (Mine), PMDC Salt Mines, Khewra.
4. The Deputy Chief Accountant, PMDC, Salt Mines, Khewra.
5. Copy for p1-filo.

APPROVED
[Signature]

Secretary of Mian Farooq Iqbal, Deputy Chief
Minerals Khyber

G 15

GOVERNMENT OF NWFP.
INDUSTRIES COMMERCE MINERAL DEV: LABOUR
AND TRANSPORT DEPARTMENT.

Dated Peshawar, the 8th October, 1983

NOTIFICATION.

No. SCI/2-18/80-Vol:II. In pursuance of this Department letter of even number dated 24.9.1983 Mr. Mumtaz Khan Khalil has assumed the charge of the post of Mine Safety Engineer (BPS-18) in the Directorate of Labour Welfare, NWFP, Peshawar with effect from 3-10-1983 (Fore-noon).

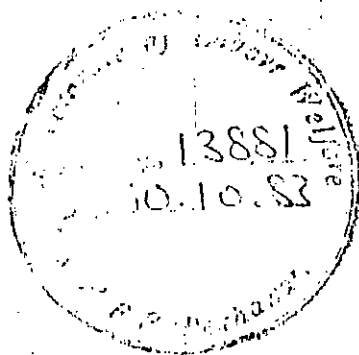
Zahoor Sajjad
Secretary to Government of NWFP
Industries Commerce Mineral Dev:
Labour and Transport Department.

Endut: No. SCI/2-28/80-Vol:II. Dated Peshawar, the 8.10.1983.

A copy is forwarded to:-

- 1) The Director of Labour Welfare, NWFP, Peshawar.
- 2) The Accountant General, NWFP, Peshawar.
- 3) Mr. Mumtaz Khan Khalil, Mine Safety Engineer, Directorate of Labour Welfare, NWFP, Peshawar.
- 4) The Manager, Govt. Press for publication in the next issue.

(Mohibullah Khan)
Section Officer-I.



Annexes 67- Better Copy Page 15

~~Annexes 67-3~~

65

Better Copy-15

July 9

Government of NWFP
Industries Commerce Mineral Dev: Labour
and Transport Department

Dated Peshawar, the 8th October, 1983

Notification:

has

No. SOI/3-18/30-Vol-II. In response of this Department letter of even number dated 25.09.1983 Mr. Mumtaz Kha Khalil assumed the charge of the post of Mine Safety Engineer (BPS-16) in the Directorate of Labour Welfare, NWFP, Peshawar with effect from 3-10-1983 (Forenoon).

^{ee}
Zahoor Sajjad
Secretary to Government of NWFP
Industries Commerce, Mineral Dev: -
Labour and Transport Department.

Endst: No. 901/2-38/30-Vol-II.

Dated Peshawar the, 8.10.1983

A Copy is forwarded to:-

1. The Director of Labour Welfare, NWFP, Peshawar.
2. The Accountant General, NWFP, Peshawar.
3. Mr. Mumtaz Khan Khalil, Mines Safety Engineer, Directorate of Labour Welfare, NWFP, Peshawar.
4. The Manager, Govt. Press for publication in the next issue.

Press

Sd/-
(Mohibullah Khan)
Section Officer-I.

~~APPROVED~~
~~AT PESHAWAR~~

Parooq Iqbal, Deputy Chief



GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

H (69)
3573
29/9/11

Dated Peshawar the, 28th September, 2011.

NOTIFICATION

No.SO-Admn(MD)1-6/94.- Mr. Mumtaz Khan Khalil, the then Director General (BPS-20), Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar (presently posted as Special Secretary to Govt: of Khyber Pakhtunkhwa, Industries Department) shall stand retired from service on 07.05.2012 (Afternoon) on attaining the age of superannuation.

Secretary to Govt: of Khyber
Pakhtunkhwa,
Minerals Development Department.

Ends:No.SO-Admn(MD)1-6/94

Dated Peshawar, the 28th September, 2011

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa, Establishment Department.
3. Secretary to Govt: of Khyber Pakhtunkhwa, Industries Department.
4. The PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. The Section Officer (Estt:-I), Govt: of Khyber Pakhtunkhwa, Establishment & Administration Department with reference to his letter No.SO(E-I)E&AD/9-365/2011 dated 23.09.2011.
6. The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar w.r.t his letter No.Com/CIM/PF/1/17/10894 dated 06.09.2011.
7. Officer concerned.

(SYED WALI KHAN)
Section Officer (Establishment)

~~ATTESTED~~

Handwritten signature and initials over the attested stamp

(Annex-XI) ... Pakistan on the analogy of Mian Farooq Iqbal, Deputy Chief ... above decisions of Service Tribunals Khyber ... mines, Khewra Project with ... engineer

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION BRANCH)

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

17

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. F.No.4(2)R-II/1996-235/2010, dated 06-06-2010 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 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.

(MAJID KHAN)
Deputy Secretary (Reg-II)

Ends: 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, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

4226
11/6/11

ALL EDOS/DOR/CO/A-O

(KHURSHID ALAM)
Section Officer (SR-I)

TESTED

J 18

GOVERNMENT OF
Khyber Pakhtunkhwa
Minerals Development Department



The Secy. Office (S/D)

MINERAL PRODUCTION, FIXATION BENEFIT SERVED BY
GRADE SERVICE

...

...

...

SECTION OFFICER (S/D)

...

Better Copy page 18

**Government of
Khyber Pakhtunkhwa
Minerals Development Department.**

No.SO (E) MDDEF/1 M.Khan Khalil
Dated Peshawar 11th January, 2021

To

The secretary,
Government of Khyber Pakhtunkhwa,
Finance Department, Peshawar..

Attention The Section Officer (SR-I)

Subject GRANT OF PAY PROTECTION/FIXATION BENEFITS SERVED, PMDC
PROJECT SERVICE

Dear sir,

I am directed to refer to your office letter No. FD/SOSR1/12-42020 (34296) dated 10.03.2020 on the subject noted above and to state to enclose herewith a copy of Inspectorate of Mines letter No.CM /Mine ?Vol.2020/6612 dated 07/12/2020, which clarifies that the officer worked as Assistant Mining Engineer in Pakistan Mineral Development Corporation (PMDC) which is an Autonomous Corporation under Executive Financial & Administrative Authority of Federal Government (Copy Enclosed)

Yours faithfully

Hafiz Abdul Jalil
Section officer (Establishment)

Ends as above

Ends No & date even

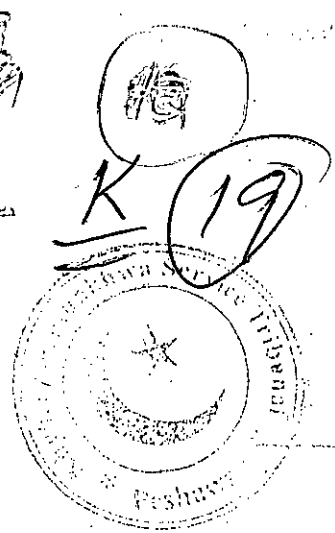
Copy for information is forwarded PS to Secretary to Give: of Khyber Pakhtunkhwa, Minerals Development Department.

SECTION OFFICER (ESTT:)

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.

5
27.03.17

Mr. Muhammad Asif Yousfzai, Advocate.
Mr. Muhammad Adeel Butt, Additional Advocate General

For appellant.
For respondents.

MR. MUHAMMAD AAMIR NAZIR
MR. ASHFAQUE TAJ

MEMBER (JUDICIAL)
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

EXAMINER
Khyber Pakhtunkhwa



20

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 Inspectorate of Mines Labour Welfare NWFP Peshawar on 10.07.1989. That the appellant was drawing basic 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 their 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. That appeal of the appellant was rejected by respondent No.2 vide letter dated 10.02.2014 without any justification, hence the instant appeal.

03.17

3. Learned counsel for the appellant argued before the court that before joining the 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 was entitled for benefits of pay and protection even then his appeal was rejected which illegal, hence the appeal of the appellant be accepted as prayed for.

ATTESTED

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 their 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 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 appointments. 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.

Self M. Amin, Member, IIR

Self Ashfaq Taj, Member

ANNOUNCED
07.03.2017

Certified to be true copy

SECRETARY
Kashmir
Service Tribunal
Peshawar

SECRETARY
KASHMIR
SERVICE TRIBUNAL
PESHAWAR

22

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 04.06.2011 (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

Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

2
23

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

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

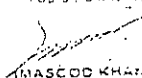
- TO:
1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
 2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa
 3. The Secretary to Governor, Khyber Pakhtunkhwa.
 4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
 5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
 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.F.No.4(2)R-IV/1896-235/2010, 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 line with their appointment in government services, provided they have applied for the post through proper channel.

attested

Yours Faithfully,

 (MASOOD KHAN)
 Deputy Secretary (Reg-III)

Ends 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 Secy. Secretary Finance.

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

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ATTESTED

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 Court Associate
 Supreme Court of Pakistan
 Islamabad

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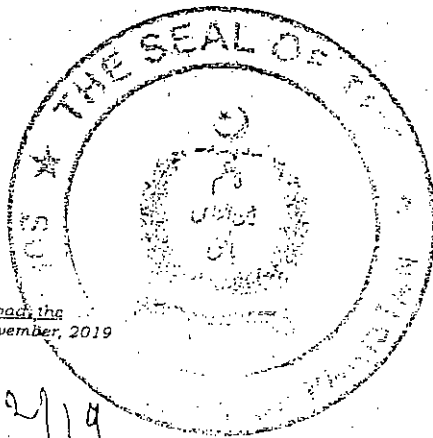
discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in *toto* on their appointment in Government Offices. In the 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.

Sd/-J
Sd/-J

Certified to be True Copy

Wd
Court Associate
Supreme Court of Pakistan
Islamabad



Islamabad, the
27th November, 2019
Rizwan

AWJ
27/11/19

~~APPROVED~~



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 15.06.2020

NOTIFICATION

No.FD(SOSR-I)/12-4/2020. In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgement in Service Appeal No.476/2014 announced on 07.03.2017 and Supreme Court of Pakistan Judgement in CP No.1308/2019 dated 27.11.2019, the Finance Department with the approval of the competent authority (Chief Minister Khyber Pakhtunkhwa) is pleased to accord sanction to continuation of service and protection of basic pay of Rs.3460/- (Three Thousand Four Hundred and Sixty Only) last drawn by Mian Farooq Iqbal as Lecturer (BPS-17), Department of Mining Engineering University of Engineering and Technology, Peshawar on his appointment as Inspector of Mines (BPS-17) in Inspectorate of Mines, in the pay scale of Rs.2065-155-3925 w.e.f 10.07.1989.

2- The earlier notification of even No. dated 07.12.2018 of this Department stands withdrawn.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy for information and necessary action is forwarded to the:-

1. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.


(Musharraf Khan Marwat)
Addl: Secretary (Regulation)
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy of the above is forwarded for information and necessary action to the:-

1. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
2. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
3. PS to Secretary, Minerals Development Department, Peshawar with reference to the letter No.SO Appeal(MDD)/1-1175/2020 dated 18-05-2020.
4. Section Officer (Lit-II) Finance Department, Peshawar via his file No.SO(Lit-II)/FD/2-1474/2014.
5. PA to DS (Reg-I), Finance Department, Peshawar.
6. Officer concerned.


SECTION OFFICER (SR-I)
FINANCE DEPARTMENT

ATTESTED

To

The Secretary to Govt. of Khyber Pakhtunkhwa
Mines & Minerals Department.

N 26

Subject: APPEAL FOR PROTECTION OF BASIC PAY.

2443
09.07.2012

Dear Sir,

I have the honour to refer to the subject noted above and to submit few lines for your sympathetic and favourable consideration please.

I) That I was initially appointed as Apprentice Assistant Mines Engineer in (B-17) in Pakistan Mineral Development Corporation (PMDC) (Annex-A) and assumed thereupon on 15.3.1979 (Annex-B), and then after as Assistant Mines Engineer PMDC dated 26-12-1979 in continuation of the earlier appointment (Annex-C).

II) That I applied for the post of Mines Safety Engineer B-18 through proper channel to the then NWPF Public Service commission (Annex-D) and was selected for a post of Mines Safety Engineer BPS-18 in the then Directorate of Labour (Mines & Mineral Wing) wherein I joined as Mines Safety Engineer in (B-18) (Annex-E).

III) That there is no service break through out my service career as I was releieved from PMDC on 2.10.1983 (Afternoon) (Annex-F) and joined the post of Mines Safety Engineer in Labour Department on 3rd October, 1983 (Fornoon) without any break, already reflected at (Annex-E).

IV) That I stand retired from Govt. Service attaining the age of superannuation on 7.05-2012 as Special Secretary, Industries Department in BS-20 ((Annex-H).

11/11/2011
15/11/2011
PU en lin
17/11/11
Relates to 2011
15-02-12
A.S.

Handwritten signature and stamp at the bottom of the page.

- V) That my another colleague named Mian Farooq Iqbal, an employee of University of Engineer & Technology KPK as lecturer B-17 also applied for the post of Inspector of Mines BPS-17 through Public Service Commission joined Inspectorate of Mines & Mineral on 10.07.1989 fight his case in the Service Tribunal for pay protection and recently the Service Tribunal Khyber Pakhtunkhwa as well as Supreme Court of Pakistan have decided the case in his favour safeguarding his pay (Annex-I).
- VI) That as per true spirit of judgement both of Service Tribunal & Supreme Court of Pakistan, the Finance Department after full fining all formalities principally notified / sanction the continuation of service and protection of Basic pay of the above named officer vide Notification No. FD(SOSR-I)/12-4/2020 dated 15.06.2020 (Annex-J).
- VII) That as it was an old case under litigation from court to court while the judgment arrived recently and I have just learnt about the favour decision of the honorable courts for pay protection.
- VIII) That on the analogy of my above colleague, I am also having the right of pay protection.
- IX) That last pay drawn of Rs.2475/ PM at PMDC Islamabad, copy (Annex-K).

It is therefore, humbly requested that my appeal may favourable be considered, and issue necessary notification for my pay protection and obliged.

Yours faithfully,

Muntaz Khan Khalil
9/7/2020

(Muntaz Khan Khalil)

Special Secretary (Retd)

The then Industries Deptt

Encis: Attached as above

ATTACHED



Government of
Khyber Pakhtunkhwa
Minerals Development Department

No. SO(E)/MDD/P.F/1-M.Khan.Khalil
Peshawar, the August 18, 2020

2

7952

28

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department.

Subject:

**GRANT OF PAY PROTECTION / FIXATION BENEFIT SERVED, PMDC
PROJECT SERVICE.**

Dear Sir,

I am directed to refer to the subject noted above and to state that one Mr. Mumtaz Khan Khalil, Ex-Director General (BS-20), Mines & Minerals, Khyber Pakhtunkhwa who was retired from service on 07-05-2012 as Special Secretary, the then Industries Department on attaining the age of superannuation vide Notification dated 28.09.2011 (**Annex-I**). His pension claim also processed by Accountant General, Khyber Pakhtunkhwa in 2011.

2. The applicant previously served in Pakistan Minerals Development Corporation (PMDC) Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in continuation of the earlier appointment from 15-03-1979 vide his Appointment Order dated 08-03-1979 vide till 02-10-1983 (**Annex-II & III**). On his appointment as Mining Safety Engineer (BS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa through Public Service Commission, vide order of appointment dated 25.09.1983 vide (**Annex-IV & V**), the applicant tendered resignation from the said project service and the Chief Mining Engineer, PMDC Salt Mines, Khewra accepted his resignation and relieved him from his service with effect from 02.10.1983 vide (**Annex-VI**). He assumed the charge of the post of Mining Safety Engineer (BS-18) on 03.10.1983 (**Annex-VII**)

3. It is to mention there that the Service Tribunal, Khyber Pakhtunkhwa has decided the case of pay protection service as Lecturer (BS-17) in University of Engineer and Technology Peshawar (Through Public Service Commission) of one Mian Farooq Iqbal, Deputy Chief Inspector of Mines (BS-19) in his favour vide judgment dated 07.03.2017 in service appeal No.476/2014 (**Annex-VIII**). The Department had gone to the august court against the said judgment. However the Supreme Court of Pakistan dismissed the CPLA of the Administrative Department (**Annex-IX**) and Finance Department has already implemented the said judgment by issuance of pay protection notification of the said officer vide notification (**Annex-X**).


4. Now, the said officer has submitted an appeal wherein he has requested for the grant of pay protection / fixation benefit for the period served as Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in Salt Mines, Khewra Project with effect from 15.03.1979 to 02.10.1983 in light of the above decisions of Service Tribunals Khyber Pakhtunkhwa / Supreme Court of Pakistan on the analogy of Mian Farooq Iqbal, Deputy Chief Inspector of Mines (**Annex-XI**).

ATTACHED

29

5. According to Rules of Business, 1985, financial matters come under Finance Department. Therefore, it is requested that advice in the subject matter may please be tendered to this Department to the effect as to whether the services of the applicant in Pakistan Minerals Development Corporation (PMDC) as Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in Salt Mines, Khewra, Project are countable / entitled for pay-protection and towards pension in light of above judgments of Service Tribunal and Supreme Court of Pakistan or otherwise.

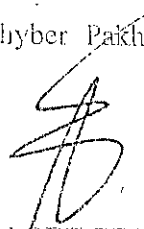
Yours faithfully,


(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT.)

Encls: as above.

Endst: No & Date even: 7953

Copy is forwarded to PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department for information.


SECTION OFFICER (ESTT.)

RECEIVED
14/11/2014

29

5. According to Rules of Business, 1983, financial matters come under Finance Department. Therefore, it is requested that advice in the subject matter may please be rendered to this Department to the effect as to whether the services of the applicant in Pakistan Minerals Development Corporation (PMDC) as Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in Salt Mines, Khewra, Project are countable / entitled for pay-protection and towards pension in light of above judgments of Service Tribunal and Supreme Court of Pakistan or otherwise.

Yours faithfully,

(Hafiz Abdul Jabir)
SECTION OFFICER (ESTT.)

Refs: as above.
Endst: No & Date even: 7953

Copy is forwarded to PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department for information.

SECTION OFFICER (ESTT.)



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

[facebook.com/GoKPFDF](https://www.facebook.com/GoKPFDF)

twitter.com/GoKPFDF

NO. FD (SOSR-1) 12-4/2020
Dated Peshawar the: 27-01-2021



P 30

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary & human Rights Deptt,
Peshawar.

Subject: - PAY PROTECTION.

Dear Sir,

I am directed to refer to the subject noted above and to state that one **Mr. Mumtaz Khan Khalil**, Ex-DG (BS-20) Mines & Minerals, Khyber Pakhtunkhwa has requested this Department through his Administrative Department for grant of pay protection of his previous service rendered in PMDC (which was an Autonomous Corporation of Federal Govt.). The officer concerned was retired from service on 07-05-2012 as Special Secretary, Industries Department on attaining the age of superannuation.

2. He was working in Pakistan Minerals Development Corporation (PMDC) as Apprentice Asstt. Mining Engineer (BPS-17) and then after as Assistant Mines Engineer PMDC in continuation of his earlier appointment from 15-03-1979 till 02-10-1983. On his appointment as Mining Safety Engineer (BS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa through PSC vide appointment order dated 25-09-1983, the officer concerned tendered resignation from the said service and the Chief Mining Engineer, PMDC Salt Mines, Khewara accepted his resignation and relieved him from his service w.e.f 02-10-1983. He assumed the charge of the post of Mining Safety Engineer (BS-18) on 03-10-1983.

3. The Service Tribunal, Khyber Pakhtunkhwa vide **Annex-I** had decided pay protection case in favour of one Mian Farooq Iqbal, Deputy Chief Inspector of Mines (BS-19) who was working as Lecturer (BS-17) in the University of Engineering and Technology Peshawar. The Administrative Department had gone to the august Court against the said judgment. However, the Supreme Court of Pakistan dismissed the CPLA of the Administrative Department and accordingly Finance Department implemented the said judgement by issuance of pay protection notification in respect of the said officer vide **Annex-II**.

4. Now, Mr. Mumtaz Khan Khalil has also submitted an appeal / request for the grant of pay protection of his previous service rendered in PMDC i.e. an Autonomous body of Federal Govt. on the analogy of Mian Farooq Iqbal, Deputy Chief Inspector of Mines.

5. In view of the above stated position, pay protection was granted to Mian Farooq Iqbal in light of the judgement of Supreme Court of Pakistan, but it is not clear whether the judgement issued in his favour is also applicable on the case of Mr. Mumtaz Khan Khalil or otherwise.

6. An early response will highly be appreciated.

Your's faithfully,

(REHMAT KHAN)
SECTION OFFICER (SR-1)

ATTESTED

BATTER COPY-31

OFFICE OF THE ADVOCATE GENERAL , KHYBER PAKHTUNKHWA, PESHAWAR

No. 4383/AG

Dated: 5/04/2021

Address: High Court Building, Peshawar

Exchange

No.9213833

Tel:No.091-9211013

Fax No.091-9210270

Subject: OPINION IN THE MATTER OF PAY PROTECTION

Sir,

Please refer to your letter No.SO(OP-II)/LD/5-7/2021-Vol-IV dated 15-02-2021, on the subject cited above,

I have thoroughly examined the whole case file alongwith judgment of learned Service Tribunal, Khyber Pakhtunkhwa and the Supreme Court of Pakistan in case of Main Farooq Iqbal, (annexed with file) regarding the matter in hand:-

1. In the instant matter Mr. Mumtaz Khan Khalil Ex-DG (BS-20) Mines and Mineral, Khyber Pakhtunkhwa was initially working in Pakistan Mineral Development Corporation (PMDC) as Apprentice Assistant Mining Engineer (BPS-17) and then after as Assistant Mines Engineer PDMS in continuation of earlier appointment from 15-03-1979 till 02-10-1983. He was appointed as Mining Safety Engineer (BPS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa through PSC vide appointment order dated 25-09-1983, He assumed the charge of the post of Mining Safety Engineer (BPS_18) on 03-10-1983.

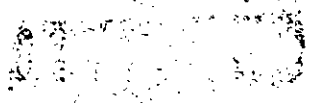
2. The case of Mian Farooq Iqbal is applicable to the case in hand. As similar relief should be granted to civil servants on a point of Law relating to the Terms and Conditions and benefit of decision should be given to such civil servants

which is reiterated in 2009 SCMR 1 subject to the condition that he has applied through proper channel

(Barrister Babar Shehzad Inran)
Assistant Advocate General,
Khyber Pakhtunkhwa, Peshawar

Advocate General

Secretary,
Government of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human
Rights Department, Peshawar.



BATTER COPY-32

which is related in 2009 SCMR 1, subject to the condition, that he has applied through proper channel.

(Barrister Babar Shehzad Imran)
Assistant Advocate General
Khyber Pakhtunkhwa, Peshawar.

Advocate General
Khyber Pakhtunkhwa
Peshawar

Secretary,
Government of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human
Rights Department, Peshawar

To

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33

The Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department.

Attention: Section Officer (SR-I) ✓

Subject: PAY PROTECTION

Dear Sir,

Your kind attention is invited to the appeal for Protection of Basic Pay to the undersigned addressed to Secretary to Government of Khyber Pakhtunkhwa, Mines and Mineral Department dated 9th July 2020. The Case was referred to Finance Department by the Mines and Mineral Department for approval. The Finance Department Vide its Letter No. FD (SOSR-I) 12-4-2020 dated 27-1-2021, solicited the Opinion of the Law Department. The Law Department Vide its Letter No. SO (OP-II)/LD/5-7/2012- VOL-IV dated 5-5-2021 conveyed that:

Law Department is of the view that each and every case has its own facts and circumstances and the notification date 4-06-2011, on the basis of which the judgment of Services Tribunal was upheld by Supreme Court of Pakistan in favor of Mr. Mian Farooq Iqbal has no Impact on the case of Mr. Mumtaz Khan Khalil due to its divergent facts. Furthermore the judgment delivered in Civil appeal No 1308/2019 is judgment in personum which only favors Mr. Mian Farooq Iqbal (The respondent) and the same is not applicable to the case of Mumtaz Khan Khalil.

2. The Law Department referred the matter to Advocate General Khyber Pakhtunkhwa, Peshawar Vide Letter No. SO (P-II)/ LD/5-7/2012-Vol-IV dated 15-02-2012, for expert opinion. The Advocate General Vide its Letter No. 4383/AG date 5-4-2021 Conformed that:

The Case of Mian Farooq Iqbal is applicable to the case in hand. As Similar relief Should be granted to Civil Servants on a point of law relating to the Terms and Conditions and benefit of decision should be given to such civil Servants Which is reiterated in 2009 SCMR 1, Subject to the condition, that he has applied through proper channel.

3. I hereby Confirm that my appointment in Government of Khyber Pakhtunkhwa was through proper channel (Annex - I)

4. I may also Point out that legal opinion of Advocate General obtained by the law Department, has not been forwarded to the Finance Department. A Copy of Advocate General Letter No. 4383/AG Date 5-4-2021 is enclosed (Annex-II)

5. It is requested that may case may kindly be decided in the light of Advocate General advice.

Thanking you

Yours sincerely
(Mumtaz Khan Khalil) 19-5-2021
Special secretary (Red)

ATTESTED

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34



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar <http://www.finance.gkp.pk> [facebook.com/GovtPFD](https://www.facebook.com/GovtPFD) twitter.com/GovtPFD

NO. FD (SOSR-1) 12-4/2020 (Mumtaz Khan Khalil)
Dated Peshawar the: 15-06-2021

To: The Secretary to Govt. of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human Rights Department,
Peshawar.

Subject: PAY PROTECTION.

Dear Sir,

I am directed to refer to your Department's letter No SO(OP-11)/LD/5-7/2012-Vol-IV/5410-12 dated 05-05-2021 on the subject noted above and to enclose herewith an application dated 19-05-2021 alongwith its enclosures received from Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) which are self-explanatory and further he stated that the Law Department has not considered the opinion of Advocate General, Khyber Pakhtunkhwa rendered vide letter No. 4383/AG dated 05-04-2021.

Since the above matter is internal to Law Department, therefore opinion is solicited in order to reach the factual position of case being a legal point, please.

Encl: As above

Your's faithfully

(REHMAT KHAN)
SECTION OFFICER (SR-1)

Batter copy-34

**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

FinanceDepartmentCivilSecretariatPeshawar <http://www.finance.gop.pk> facebook.GoPKFD twitter.goKpfd

**NO.FD(SOSR-1) 12-4/2021(Mumtaz Khan Khalil) Dated Peshawar the:
15-06-2021**

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Law, Parliamentary Affairs & Human Rights Department,

Subject: PAY PROTECTION

Dear Sir,

I am directed to refer to your Department letter No. No.SO(OP-II)/LD/5-7/2021-VoL-IV dated 15-02-2021 dated 05-05-2021 on the subject noted above and to enclose herewith an application dated 19-05-2021 alongwith its enclosure received from Mr. Mumtaz Khan Khalil Special Secretary (Rtd) which are self explanatory and further he stated that the Law Department has not considered the opinion of the Advocate General Khyber Pakhtunkhwa referred vide letter No. 4383/Ag dated 05-04-2021.

Since the above matter is internal to Law Department, Therefore opinion is solicited in order to reach the factual position of case being a legal point, please.

Your's faithful,

Encl: As above

(REHMAT KHAN)
SECTION OFFICER (SR-1)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

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NO.FD(SOSR-1)12-4/2021(Mumtaz Khan Khalil)

37



**GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT**

No. SO(OP-II)/LD/5-7/2021/1421

DATED: PESHAWAR THE 28TH JUNE, 2021

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department.

Subject: PAY PROTECTION.

Dear Sir,

I am directed to refer to your Department's letter No. FD/(SOSR-I)/12-4/2020(Mumtaz Khan Khalil) dated 15.06.2021 on the subject noted above and to state that the case has been re-examined in consultation with the learned Advocate General Khyber Pakhtunkhwa, and the learned Advocate General Khyber Pakhtunkhwa was of the view that the applicability of judgment may be taken into account in the instant case due to similarity of facts and grounds.

2. Hence, in view of the above this department is of the view that Finance Department may consider the request of Mr. Mumtaz Khan Khalil in line with the facts of the case and in terms of their Notification No. FD(SR-I)12-1/2011 dated 04-06-2021 read with relevant judgment of the Hon'ble apex court, please.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. PA to Law Officer, Law Department.

Section Officer (Opinion-II)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

[facebook.com/GoKPFD](https://www.facebook.com/GoKPFD)

twitter.com/GoKPFD

NO. FD (SOSR-1) 12-4/2020(Mumtaz Khan Khalil)

Dated Peshawar the: 09-07-2021

36

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department,
Peshawar.

Subject: - PAY PROTECTION.

Dear Sir,

I am directed to refer to your Department's letter No.SO(E)/MDD/P.F/1-M.Khan Khalil/489-90 dated 11-01-2020 and this Department's letter of even number dated 01-06-2021 on the subject noted above and to advise that the instant case has been re-examined in consultation with Law Department and found fit for pay protection under this Department's policy letter No.FD (SR-1)12-1/2011 dated 04-06-2011, therefore, Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) may please be granted proper sanction for pay protection (being Administrative Department of the officer concerned) of his previous service rendered as Apprentice Assistant Mines Engineer (BS-17) in Paksitan Minerals Development Corporation (PMDC) w.e.f 26-12-1979 to 02-10-1983 from the date of his appointment as Mines Safety Engineer (BS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa if he had applied through proper channel.

2. Furthermore, arrears in his case will not be admissible to him prior to 04-06-2011 because Finance Department's policy dated 04-06-2011 is applicable from the date of its issuance.

Your's faithfully,

sd
(REHMAT KHAN)

SECTION OFFICER (SR-1)

Ends. No. & Date Even.

Copy of the above is forwarded to Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) with reference to his application dated 19-05-2021 for information.

SECTION OFFICER (SR-1)

ATTESTED



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

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twitter.com/GoKPFDP

NO.FD(SOSR-1)12-4/2021(Mumtaz Khan Khalil)

Dated Peshawar the: 24-08-2021

37

To:

Mr. Mumtaz Khan Khalil,
(Retired Special Secretary),
Mineral Development Department,
Peshawar.

Subject: - **PAY PROTECTION.**

I am directed to refer to your application dated 14-07-2021 on the subject noted above and to state that Finance Department regrets its ability to accede to the request being not covered under the existing policy.

(Signature)
(REHMAT KHAN)
SECTION OFFICER(SR-1)

Ends. No. & Date Even.

Copy of the above is forwarded for information to PS to Secretary, Minerals Development Department, Peshawar.

SECTION OFFICER (SR-1)

ATTESTED

W 38

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 980/2016

Date of Institution ... 07.09.2016

Date of Decision ... 27.12.2019

Muhammad Ismail, Principal, Government High School, Mashogagar, Tehsil and District Peshawar. ... (Appellant)

VERSUS

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

MR. TAIMUR ALI KHAN,
Advocate

For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

For respondents

MR. AHMAD HASSAN
MR. MUHAMMAD HAMID MUGHAL

MEMBER (Executive)
MEMBER (Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he joined Cadet College Razmak, District North Waziristan as Lecturer/Master (BPS-17) in 2002. That on the recommendations of Khyber Pakhtunkhwa Public Service Commission, he was appointed as Subject Specialist (BPS-17) vide notification dated 19.09.2006. He was relieved by the Principal Cadet College Razmak on 25.08.2006. Needless to add, that he had applied for the above post through proper channel. The Finance Department through notification dated 04.06.2011 allowed pay protection to the

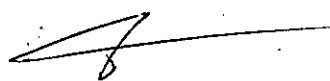
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employees of the autonomous bodies who had adopted pay scales of the Provincial Government. These instructions were issued on the strength of judgment of Federal Service Tribunal dated 01.08.2009. The appellant filed departmental appeal on 05.11.2015 for extension of benefits of pay protection but the same was rejected vide order dated 20.04.2016. His appeal was rejected through a non-speaking order in violation of Section-24-A of General Clauses Act 1897 and case law reported as 1991 SCMR 2323. Learned counsel for the appellant further argued that recently the Supreme Court of Pakistan vide order dated 27.11.2019 upheld the judgment passed by this Tribunal in service appeal no. 476/2014. The case of the appellant is similar to the one decided by the apex court and the principle of consistency demands equal treatment be given to the appellant.

03. Learned Deputy District Attorney argued that notification dated 04.06.2011 was not applicable in the case of the appellant being an employee of the autonomous body/organization. His departmental appeal was rejected on the ground that the appellant joined the Provincial Government prior to issuance of notification referred to above. Moreover, the present service appeal was also barred by time.

CONCLUSION:

04. It is not disputed that the appellant joined Cadet College Razmak, District North Waziristan as Lecturer/Master (BPS-17) in 2002. This college was financed out of funds initially provided by the SAFRON and now by the Provincial Government. Later on, he applied for the post of Subject Specialist (Pakistan Study) advertised by the Khyber Pakhtunkhwa Public Service Commission through proper channel and got selected vide notification dated 19.09.2006. He was relieved by the

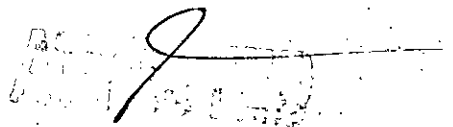


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Principal vide letter dated 25.08.2006. His request for grant of pay protection was regretted through order dated 20.04.2016 and that too through a non-speaking order.

The respondents regretted the plea of the appellant on the sole ground that he was appointed as Lecturer in Cadet College Razmak prior to the issuance of notification dated 04.06.2011, wherein employees of autonomous body who had adopted government pay scales were provided benefits of pay protection for the service rendered in autonomous bodies. The stance of the respondents appears to be illogical and irrational. It was quite unjust to deny benefits of pay protection, to a civil servant on the sole ground that no policy was invogue/ in field. He otherwise fulfilled all the ^{conditions} mentioned in letter dated 04.06.2011.

05. Now this point has been adequately elaborated/addressed by the august Supreme Court of Pakistan through order dated 27.11.2019 passed in civil appeal no. 1308/2019. The provincial government had challenged decision of Service Tribunal dated 07.03.2017 passed in service appeal no. 476/2014, wherein benefits of pay protection were allowed to Mian Farooq Iqbal, petitioner who had started his career in the University of Engineering and Technology Peshawar on 03.12.1986. Subsequently, he was appointed as Inspector of Mines in the Khyber Pakhtunkhwa Inspectorate of Mines vide notification dated 21.06.1989. In view of the above judgment the principle of consistency demands similar treatment be extended to the appellant in the service appeal in hand so as to meet the ends of justice. Being a financial matter limitation will not have any adverse implications on his claim.



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06 As a sequel to the above, the instant appeal is accepted, impugned order dated 20/04/2016 is set aside and the respondents are directed to allow pay protection to the appellant as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
Member

(MUHAMMAD HAMID MUGHAL)
Member

ANNOUNCED
27.12.2019

Pay protection

X 42

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 39 OF 2021

(On appeal against the judgment dated 27.12.2019
passed by the Khyber Pakhtunkhwa Service Tribunal,
Peshawar in Service Appeal No. 980/2016)

Government of KPK through Chief Secretary, KPK and others
...Appellant(s)

VERSUS

Muhammad Ismail and another
...Respondent(s)

For the Appellant(s): Mr. Atif Ali Khan, Addl. A.G.

For the Respondent: Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing: 27.04.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J. Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal whereby the Service Appeal filed by the respondent No. 1 was accepted and he was allowed pay protection.

2. Succinctly stated the facts of the matter are that on 25.03.2002, the respondent No. 1 was appointed as Master in Pak Studies/Lecturer (BPS-17) in Cadet College Razmak, North Waziristan. Later on, pursuant to the advertisement issued by the Khyber Pakhtunkhwa Public Service Commission for the posts of Subject Specialist (BPS-17), he applied through proper channel for the said post. The appellant passed through the selection criterion as such he was selected vide notification dated 19.09.2006, hence, posted at Government Higher Secondary School, Sheikhan, Peshawar. On 04.06.2011, the Finance Department, Government of KPK, issued a notification whereby it allowed pay protection to the employees of the autonomous bodies who had adopted pay scales of the Provincial Government. To get the benefit, the respondent filed departmental

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appeal but it was rejected vldo order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KPK Service Tribunal, which has been allowed vldo impugned judgment. Hence, this appeal by leave of the Court.

3. Learned Additional Advocate General, KPK, inter alia contended that the respondent was appointed as Subject Specialist (BPS-17) on 19.09.2006 whereas the notification on the basis of which the respondent claimed pay protection came on 04.06.2011 which was prospective in nature, therefore, the respondent was not entitled for the relief in question; that for the first time, the respondent claimed the relief of pay protection on 05.11.2015 through departmental appeal after more than four years of issuance of notification dated 04.06.2011 and the same was barred by laches; that the learned Tribunal did not take into consideration this aspect of the matter and passed the impugned judgment, which may be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has supported the impugned judgment. He mainly contended that the respondent applied through proper channel after proper departmental permission, therefore, under the law and rules, he is legally entitled to pay protection because the Cadet College Razmak had also adopted the Basic Pay Scale and that if the respondent is deprived of the benefit in question, it would be against the principles of justice and fair play.

5. We have heard learned Law Officer as well as learned counsel for the respondent No. 1 and have perused the record.

6. On our specific query, learned Additional Advocate General conceded that the Cadet College Razmak where the respondent was earlier working as Master in Pak Studies/Lecturer (BPS-17) had adopted the Basic Pay Scales and the respondent had applied through proper channel after getting permission from the department for the post of Subject Specialist. The only point on which he emphasized is that the notification dated 04.06.2011 on the basis of which the respondent claimed pay protection is prospective in nature and it does not allow retrospective claims. However, we do not tend to agree with the learned Law Officer. While passing the impugned judgment, the learned Service Tribunal has relied upon a judgment of this Court dated 27.1.2019 passed in Civil Appeal No. 1308/2019. In that case the respondent was appointed as Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. Later on he applied for the post of Inspector in

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the Mines Department through proper channel and was not selected vide order dated 21.06.1989. On the basis of the notification dated 04.06.2011 referred above, he claimed pay protection which was ultimately granted by the Service Tribunal and appeal against the order of the Tribunal was dismissed by this Court. It would be advantageous to refer to the relevant portion of the order dated 27.11.2019 passed by this Court, which reads as under:-

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 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."

7. In the above referred case, almost in similar circumstances as in the present case, the benefit of pay protection was given retrospectively, therefore, the respondent being standing on the same pedestal also deserves the same treatment to be meted out in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the issue of laches is concerned, this point was specifically taken by the appellants before the learned Service Tribunal and the same was rightly discarded by the Tribunal in paragraph No. 5 of the impugned judgment by holding that being a financial matter, limitation will not have any adverse implication on respondent's claim.

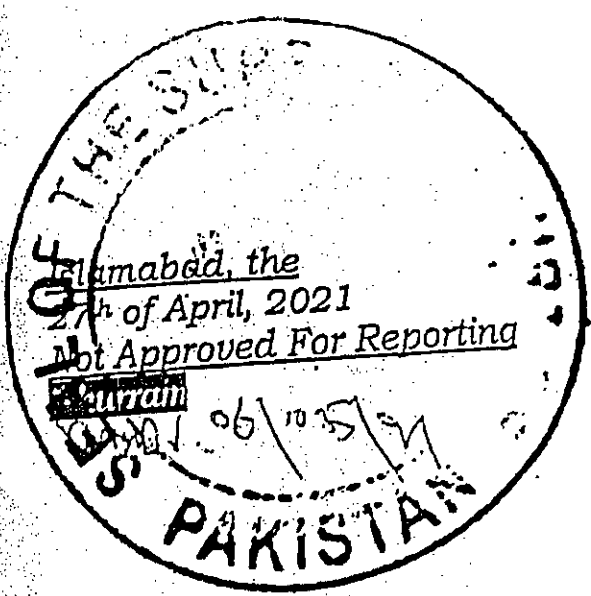
8. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned

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judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

Sd/CJ
Sd/J
Sd/J



Certified to be True Copy

Senior Counsel Associate
Supreme Court of Pakistan
Islamabad

GR no: 7790/21 Civil/Criminal

Date of Presentation: 27.04.21

No of Words: 1200

No of Pages: 12

Requisition: 5-06

Copy Fee: 7.44

Court: 12.64

Date of: 7/5/21

Date of Dec: 17.5.21

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بعد الت

سروس ٹریڈ سونل لمیٹڈ

محمد خان 2، پنجاب
محمد خان بنام گورنمنٹ آف پاکستان

موردہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لمیٹڈ کے لیے ریموٹر علی خان اور کوکین
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
اوکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

Accepted

&
Attest

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المقوم

BEFORE THE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR.

original

SERVICE APPEAL NO. 7371/ 2021

Mumtaz Khan Appellant

Versus

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa **Respondents**

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5.	Service Tribunal Judgement Dated 07.03.2017	C	06-08
6.	Judgement of Apex Court	D	09-11
7.	Letter Dated 07.08.2022	E	12-13
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Assistant Director (Admin)
H/Q Office, Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA

SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 7371/2021

Mumtaz Khan..... Appellant

Versus

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa..... **Respondents**

AFFIDAVIT

I Muhammad Iqbal Assistant Director (Admin), Directorate General Mines & Mineral do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from Honorable Court.

DEPONENT



Identified by

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BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Comments in

Service Appeal **NO. 7371/2021**

Mumtaz Khan, (Rtd:) Special Secretary (BPS-20), Industries Department,
Peshawar **Appellant**

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa

..... **Respondents**

Comments on behalf of Respondents

Respectfully Sheweth:-

Comments on behalf of Respondents are submitted as under: -

Preliminary Objections: -

1. That appellants has got no cause of action against the respondents.
2. That the appellants are not entitled to any relief and this appeal is filed just to waste the precious time of this Honorable Tribunal.
3. This Honorable Tribunal has got no jurisdiction to entertain this appeal.
4. That the Appellant conceal the facts from this Honorable Tribunal
5. *That the appeal of the appellant is badly time barred.*

Facts: -

1. Need no comments.
2. Need no comments.
3. Para-3 is correct to the extent that the appellant was promoted to (BPS-20) (F/A) and retired from service on 07.05.2012 as Special Secretary (BPS-20) (F/B) on attaining the age of superannuation.
4. Correct.
5. Para-5 is correct to the extent that the judgement dated: 07.03.2017 of Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar (F/C) is in favour of Mian Farooq Iqbal which was also maintained by the Apex Court in C.A No.1308/2019 (F/D) in favour of Mian Farooq Iqbal. While the case of the appellant was processed by Finance Department and sent to Law Department (F/E) for advice on the same grounds of above mentioned case but the Finance Department rejected the said request on the opinion of Law Department vide Letter No.SO(E)/MDD/1-Mumtaz Khan Khalil/9842-46 dated: 21.06.2021(F/F & G). However, the petitioner reiterated the subject issue with Finance Department on his personal level and the Finance Department again took up the case with Law Department and thereafter tendered advice that "*the instant case has been re-examined in consultation with Law Department and found fit for pay protection under this Department's policy letter No. FD(SR-I)12-1/2011 dated 04-06-2011, therefore, Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) may please be granted proper sanction for pay protection (being Administrative Department of the officer concerned) of his previous service rendered as Apprentice Assistant Mines*"

3. 80

Engineer (BS-17) in Pakistan Mineral Development Corporation w.e.f 26-12-1979 to 01-10-1983 from the date of his appointment as Mines Safety Engineer BS-18 in Directorate of Labour Welfare, Khyber Pakhtunkhwa if he had applied through proper channel" (F/H). It is further stated that the petitioner again requested to Finance Department (F/I) that his case may be intervened at par with the case of Mian Farooq Iqbal, Lecturer (BS-17) as per Service Tribunal/Supreme Court Judgments as notified by Finance Department vide No. FD/SOSR-I/12-4/2020 dated 15.06.2020 (F/I). However, the Finance Department rejected the request of the petitioner being not covered under the existing policy and informed him directly (F/K).


6. Details already explained in Para 5.
7. As explained in Para-5.
8. Incorrect. The request of Appellant was received and regretted on the ground that each and every case has its own facts and circumstances and the notification dated 04.06.2011, on the basis of which the judgment of Service Tribunal Khyber Pakhtunkhwa was upheld by Supreme Court of Pakistan in favor of Mian Farooq Iqbal has no impact on the case of Mr. Mumtaz Khan (Appellant) due to its divergent facts.
9. Needs no comments.
10. Needs no comments.

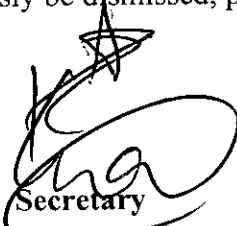
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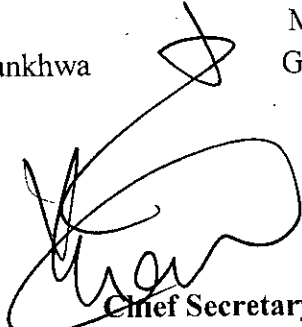
- A. Incorrect. The judgment 07.03.2017 in appeal No. 476/2014 of the Honorable Service Tribunal Judgment in Personum which is not applicable for the case of the Appellant.
- B. Pertains to records, hence no comments.
- C. Pertains to records, hence no comments.
- D. Incorrect. As Explained in Para-08 of the facts.
- E. Incorrect. The judgment in Civil Appeal No. 1308/2019 in judgment in personum which only favor Mr. Farooq Iqbal (respondent) and the same is not applicable to the case of the appellant.
- F. As explained in Para-5.
- G. No comments.
- H. Incorrect, the appellant has been treated in accordance with Law.
- I. No comments

PRAYER

Keeping in view the foregoing facts and circumstances, it is crystal clear, that the appeal in hand is without legal footings. Therefore, may very graciously be dismissed, please.


Secretary
Finance Department
Government of Khyber Pakhtunkhwa
(Respondent No.3)


Secretary
Minerals Development Department
Government of Khyber Pakhtunkhwa
(Respondent No.2)


Chief Secretary
Government of Khyber Pakhtunkhwa
(Respondent No.1)

~~Secretary to~~
~~Govt. of Khyber Pakhtunkhwa~~
~~Minerals Dev. Department,~~
~~Peshawar.~~

Dated Peshawar the 31st July, 2004

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NO.SO(E-I)E&AD/9-93/88. The Provincial Government in consultation with the Provincial Selection Board, NWFP, is pleased to promote Mr. Mumtaz Khan Khalil Chief Inspector of Mines, Directorate General, Mines & Minerals NWFP, from BS-19 to BS-20 on regular basis with immediate effect.

2. The officer will be on probation for a period of one year in terms of Section 6(2) of NWFP Civil Servants Act, 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon above, Mr. Mumtaz Khan Khalil (BS-20) is posted as Director General, Mines & Minerals NWFP against the vacant post henceforth.

CHIEF SECRETARY,
GOVERNMENT OF N.-W.F.P.

Ends: Ho. & date even

Copy is forwarded to the:-

1. Secretary to Governor, NWFP.
2. Secretary to Chief Minister, NWFP.
3. Secretary to Government of NWFP, Industries, Commerce, Mineral Dev: Labour & Technical Education Department.
4. Director General, Mines & Mineral, NWFP.
5. Accountant General, NWFP Peshawar.
6. Director Information, NWFP.
7. PS to Minister for Industries, NWFP.
8. PS to Chief Secretary, NWFP.
9. PS to Secretary Establishment, E&A Department.
10. PS to Secretary Administration E&A Department.
11. PA to A.S.(Reg.)/A.S.(Establishment)/Deputy Director (Protocol)/SO(Secret) & Librarian E&A Deptt.
12. Officer concerned.
13. Manager, Govt Printing Press, Peshawar.

(Signature)
31.7.2004

(ABDUL JALIL)
SECTION OFFICER(E-I)
PHONE & FAX # 091-9210529



5

A/B
GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

Dated Peshawar the, 28th September, 2011.

NOTIFICATION

No.SO-Admn(MD)1-6/94.- Mr. Mumtaz Khan Khalil, the then Director General (BPS-20), Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar (presently posted as Special Secretary to Govt: of Khyber Pakhtunkhwa, Industries Department) shall stand retired from service on 07.05.2012 (Afternoon) on attaining the age of superannuation.

Secretary to Govt: of Khyber
Pakhtunkhwa,
Minerals Development Department.

Ends:No.SO-Admn(MD)1-6/94

2980-86
Dated Peshawar, the 28th September, 2011

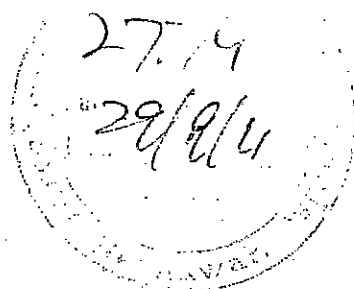
Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretary to Govt: of Khyber Pakhtunkhwa, Establishment Department.
3. Secretary to Govt: of Khyber Pakhtunkhwa, Industries Department.
4. The PSO to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
5. The Section Officer (Estt:-I), Govt: of Khyber Pakhtunkhwa, Establishment & Administration Department with reference to his letter No.SO(E-I)E&AD/9-365/2011 dated 23.09.2011.
6. The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar w.r.t his letter No.Com/CIM/PF/1/17/10894 dated 06.09.2011.
7. Officer concerned.

23/9 ✓
AOC(Admn)

P. 114

(SYED WALI KHAN)
Section Officer (Establishment)

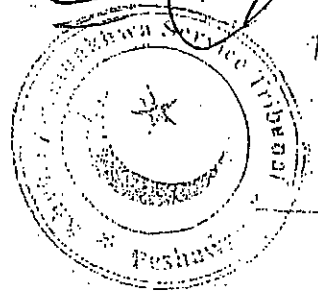


BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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.

5
07.03.17

Mr. Muhammad Asif Yousfzai, Advocate.

For appellant.

Mr. Muhammad Adcel Butt, Additional Advocate General

For respondents.

MR. MUHAMMAD AAMIR NAZIR

MEMBER (JUDICIAL)

MR. ASHFAQUE 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

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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 Inspectorate of Mines Labour Welfare NWFP Peshawar on 10.07.1989. That the appellant was drawing basic 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 their 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. That appeal of the appellant was rejected by respondent No.2 vide letter dated 10.02.2014 without any justification, hence the instant appeal.

03.17

3. Learned counsel for the appellant argued before the court that before joining the 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 was entitled for benefits of pay and protection even then his appeal was rejected which 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 their 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 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. A. Anwar, Member, IR

Sd/- H. S. Hashmi, Member

ANNOUNCED
07.03.2017

Certified to be true copy

[Signature]
Khadim
Service Tribunal
Peshawar

9 = 10/6
AID
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

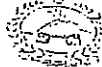
Date of Hearing : 27.11.2019

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 04.06.2011 (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

Court Associate
Supreme Court Pakistan
Islamabad



GOVERNMENT OF PUNJAB
FINANCE DEPARTMENT
(REGULATION WING)

NO. FO 152-11 12-10211
Dated Peshawar, P.W. 4th June, 2011

- To:-
1. All Administrative Secretaries in Govt. of Khyber Pakhtunkhwa
 2. The Senior Member, 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 Accountant General, Khyber Pakhtunkhwa, Peshawar
 8. All Heads of Allocated Departments in Khyber Pakhtunkhwa
 9. All District Coordination Officers in Khyber Pakhtunkhwa
 10. All District 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, Service 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. F.No. 4(2)RJV/1896-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No. 10211R/CS/2005 in regard 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 line to their appointment in government service, provided they have applied for the post through proper channel.

attested

Yours faithfully,

MASOOD KHAN
Deputy Secretary (Reg-III)

Ends of even No. 5 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, FMIU, Finance Department.
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. PS to Secretary Finance.
8. PS to Secy, Secretary Finance.

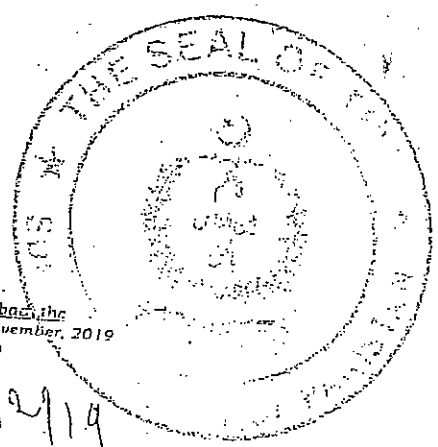
2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded 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

ATTESTED

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Court Associate
Supreme Court of Pakistan
Islamabad

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
21/2/19

SJ/J
SJ/J

Certified to be True Copy

W
Court Associate
Supreme Court of Pakistan
Islamabad



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Minerals Development Department

No. SO(E)/MDD/P.F/1-M.Khan.Khalil
Peshawar, the August 18, 2020

To

The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, *M.K.K.*

Subject:

GRANT OF PAY PROTECTION / FIXATION BENEFIT SERVED, PMDC PROJECT SERVICE.

Dear Sir,

I am directed to refer to the subject noted above and to state that one Mr. Mumtaz Khan Khalil, Ex-Director General (BS-20), Mines & Minerals, Khyber Pakhtunkhwa who was retired from service on 07-05-2012 as Special Secretary, the then Industries Department on attaining the age of superannuation vide Notification dated 28.09.2011 (Annex-I). His pension claim also processed by Accountant General, Khyber Pakhtunkhwa in 2011.

2. The applicant previously served in Pakistan Minerals Development Corporation (PMDC) Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in continuation of the earlier appointment from 15-03-1979 vide his Appointment Order dated 08-03-1979 vide till 02-10-1983 (Annex-II & III). On his appointment as Mining Safety Engineer (BS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa through Public Service Commission, vide order of appointment dated 25.09.1983 vide (Annex-IV & V), the applicant tendered resignation from the said project service and the Chief Mining Engineer, PMDC Salt Mines, Khewra accepted his resignation and relieved him from his service with effect from 02.10.1983 vide (Annex-VI). He assumed the charge of the post of Mining Safety Engineer (BS-18) on 03.10.1983 (Annex-VII)

3. It is to mention there that the Service Tribunal, Khyber Pakhtunkhwa has decided the case of pay protection service as Lecturer (BS-17) in University of Engineer and Technology Peshawar (Through Public Service Commission) of one Mian Farooq Iqbal, Deputy Chief Inspector of Mines (BS-19) in his favour vide judgment dated 07.03.2017 in service appeal No.476/2014 (Annex-VIII). The Department had gone to the august court against the said judgment. However the Supreme Court of Pakistan dismissed the CPLA of the Administrative Department (Annex-IX) and Finance Department has already implemented the said judgment by issuance of pay protection notification of the said officer vide notification (Annex-X).

4. Now, the said officer has submitted an appeal wherein he has requested for the grant of pay protection / fixation benefit for the period served as Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in Salt Mines, Khewra Project with effect from 15.03.1979 to 02.10.1983 in light of the above decisions of Service Tribunals Khyber Pakhtunkhwa / Supreme Court of Pakistan on the analogy of Mian Farooq Iqbal, Deputy Chief Inspector of Mines (Annex-XI).

Therefore, it is requested that advice in the subject matter may please be tendered to this Department to the effect as to whether the services of the applicant in Pakistan Minerals Development Corporation (PMDC) as Apprentice Assistant Mines Engineer (BS-17) and then after as Assistant Mines Engineer PMDC in Salt Mines, Khewra, Project are countable / entitled for pay-protection and towards pension in light of above judgments of Service Tribunal and Supreme Court of Pakistan or otherwise.

Yours faithfully,

(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT.)

Encls: as above.

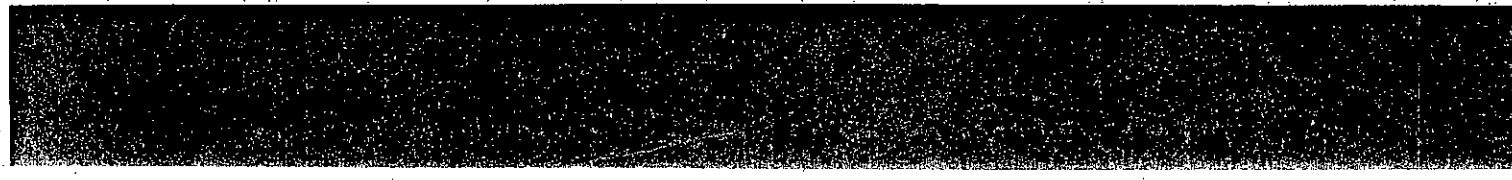
Endst: No & Date even: 7953

Copy is forwarded to PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department for information.

SECTION OFFICER (ESTT.)

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M

A/F

NO. FD (SOSR-1) 12-4/2020(Mumtaz Khan Khalil)
Dated Peshawar the: 01-06-2021

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department,
Peshawar.

Diary S.O.(E)

No: 192

Date: 4/06/21

Subject: - PAY PROTECTION.

Dear Sir,

I am directed to refer your Department's letter No.SO(E)/MDD/P.F/1-M.Khan Khalil/489-90 dated 11-01-2021 on the subject noted above and enclose herewith a copy of letter No.SO(OP-II)/LD/5-7/2012-VOL-IV/5410-12 dated 05-05-2021 received from Law, Parliamentary Affairs & Human Rights Department for information which is self-explanatory, please.

Your's faithfully,

(Signature)
(REHMAT KHAN)
SECTION OFFICER (SR-1)

Encl: (As above)

~~SO(E-110)
03.06.2021~~

Pl. Speed + Py.

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3-6-21*

*PP-102/c
PP-185/c*



E

Minerals Development Department

15
A/G

No. SO (E)/MDD/1-Mumtaz Khan Khalil
Dated Peshawar, June 21, 2021

9842-46

To

Mr. Mumtaz Khan Khalil,
Ex-Director General Mines & Minerals,
Minerals Development Department.

SUBJECT: PAY PROTECTION.

I am directed to refer to your Appeal No. Nil dated 09-07-2020 on the subject noted above and to state that your request for pay protection cannot be entertained by Finance Department Khyber Pakhtunkhwa, as per opinion of Law, Parliamentary Affairs & Human Rights Department Khyber Pakhtunkhwa (copies enclosed).

(Hafiz Abdul Jalil)
SECTION OFFICER (ESTT:)

Encls: as above.
Endst: No & Date even:

Copy is forwarded to for information to:-

1. The Chief Inspector of Mines, Inspectorate of Mines Khyber Pakhtunkhwa w/r to his letter No. CIM/Misc/Vol-IV/2020/6612 dated 07.12.2020.
2. The Director General, Mines & Minerals, Khyber Pakhtunkhwa
3. P.S to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department for information.
4. PA to Additional Secretary-I, Minerals Development Department.

2949
21-6-2021

SECTION OFFICER (ESTT:)

ADG (Mines)

2/HB
ASST (CA)

mb

ASST

20/6/21



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SO(OP-II)/LD/5-7/2012-VOL-IV
DATED: PESHAWAR THE 5TH MAY, 2021

16
G — 72
198

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Finance Department.

Attention: Section Officer (SR-I)

Subject: PAY PROTECTION.

Dear Sir,

I am directed to refer to the Finance Department letter No. FD/(SOSR-I)/12-4/2020 dated 27.01.2021 on the subject noted above and to state that Law Department is of the view that each and every case has its own facts and circumstances, and the notification dated 4-06-2011, on the basis of which the judgment of Services Tribunal was upheld by Supreme Court of Pakistan in favor of Mian Farooq Iqbal has no impact on the case of Mr. Mumtaz Khan Khalil due to its divergent facts. Furthermore the judgment delivered in civil appeal No.1308/2019 is judgment in personum which only favor Mr. Mian Farooq Iqbal (the respondent) and the same is not applicable to the case of Mumtaz Khan Khalil.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

A copy is forwarded to the:-

1. PS to Secretary Law Department.
2. PA to Law Officer, Law Department.

Section Officer (Opinion-II)

450
9207
Date 17/5/21

ASLR
D T)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

[facebook.com/GoKPFD](https://www.facebook.com/GoKPFD)

twitter.com/GoKPFD

NO. FD (SOSR-1) 12-4/2020 (Mumtaz Khan Khalil)

Dated Peshawar the: 09-07-2021

A/H. 17
16
Aver (F)
-IWA
36

To:

The Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department,
Peshawar.

Subject: - PAY PROTECTION.

Dear Sir,

I am directed to refer to your Department's letter No.SO(E)/MDD/P.F/1-M.Khan Khalil/489-90 dated 11-01-2020 and this Department's letter of even number dated 01-06-2021 on the subject noted above and to advise that the instant case has been re-examined in consultation with Law Department and found fit for pay protection under this Department's policy letter No.FD (SR-1)12-1/2011 dated 04-06-2011, therefore, Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) may please be granted proper sanction for pay protection (being Administrative Department of the officer concerned) of his previous service rendered as Apprentice Assistant Mines Engineer (BS-17) in Pakistan Minerals Development Corporation (PMDC) w.e.f 26-12-1979 to 02-10-1983 from the date of his appointment as Mines Safety Engineer (BS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa if he had applied through proper channel.

2. Furthermore, arrears in his case will not be admissible to him prior to 04-06-2011 because Finance Department's policy dated 04-06-2011 is applicable from the date of its issuance.

Your's faithfully,

501

(REHMAT KHAN)
SECTION OFFICER (SR-1)

Ends. No. & Date Even.

Copy of the above is forwarded to Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) with reference to his application dated 19-05-2021 for information.

SECTION OFFICER (SR-1)

To,

13972

14/7/21

The Secretary,
Govt. of Khyber of Pakhtunkhwa,
Finance Department.

Attention: SO SR-I

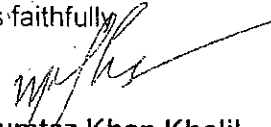
Subject: PAY PROTECTION

Dear Sir,

Reference to your letter No.FD(SOSR-1) 12-4/2020(Mumtaz Khan Khalil), dated. 09-07-2021, on the subject cited above and to request that the said case may kindly be entertained as case of Mian Farooq Iqbal, Lecturer (Bs-17) notified by this department as No.Fd(SOSR-I/12-4/2020, dated.15-06-2020 (copy enclosed) please.

I shall be obliged in this regards.

Yours faithfully



Mr Mumtaz Khan Khalil
Retired Specialy Secretary
Dated: 14-07-2021



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 15 08 2020

18/19
A/K

NOTIFICATION

No.FD(SOSR-II/12-4/2020. In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgement in Service Appeal No.476/2014 announced on 07 03 2017 and Supreme Court of Pakistan Judgement in CP No.1308/2019 dated 27 11.2019, the Finance Department with the approval of the competent authority (Chief Minister Khyber Pakhtunkhwa) is pleased to accord sanction to continuation of service and protection of basic pay of Rs 3460/- (Three Thousand Four Hundred and Sixty Only) last drawn by Mian Farooq Iqbal as Lecturer (BPS-17), Department of Mining Engineering University of Engineering and Technology, Peshawar on his appointment as Inspector of Mines (BPS-17) in Inspectorate of Mines, in the pay scale of Rs.2065-155-3925 w.e.f 10.07 1989.

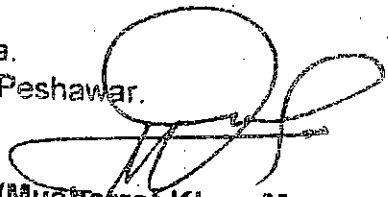
2- The earlier notification of even No. dated 07.12.2018 of this Department stands withdrawn.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy for information and necessary action is forwarded to the:-


1. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.


(Mustafraz Khan Marwat)
Addl: Secretary (Regulation)
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy of the above is forwarded for information and necessary action to the:-

1. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
2. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
3. PS to Secretary, Minerals Development Department, Peshawar with reference to the letter No.SO Appeal(MDD)/1-1175/2020 dated 18-05-2020.
4. Section Officer (Lit-II) Finance Department, Peshawar via his file No.SO(Lit-II)/FD/2-1474/2014.
5. PA to DS (Reg-I), Finance Department, Peshawar.
6. Officer concerned.


SECTION OFFICER (SR-I)
FINANCE DEPARTMENT



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

[facebook.com/GoKPFD](https://www.facebook.com/GoKPFD)

twitter.com/GoKPFD

NO.FD(SOSR-1)12-4/2021(Mumtaz Khan Khalil)

Dated Peshawar the: 24-08-2021

A/R

To:

Mr. Mumtaz Khan Khalil,
(Retired Special Secretary),
Mineral Development Department,
Peshawar.

Diary S.O (E)

No. 354

Date: 27-08-21

Subject: - PAY PROTECTION.

I am directed to refer to your application dated 14-07-2021 on the subject noted above and to state that Finance Department regrets its ability to accede to the request being not covered under the existing policy.

(REHMAT KHAN)
SECTION OFFICER(SR-1)

Ends. No. & Date Even.

Copy of the above is forwarded for information to PS to Secretary, Minerals Development Department, Peshawar.

SECTION OFFICER (SR-1)

SO (E-116)
26.08.21

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ASSN

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR

Comments in

Service Appeal **NO. 7371/2021**

Mumtaz Khan, (Rtd:) Special Secretary (BPS-20), Industries Department,
Peshawar.....

Appellant

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa **Respondents**

Comments on behalf of Respondents

Respectfully Sheweth:-

Comments on behalf of Respondents are submitted as under: -

Preliminary Objections: -

1. That appellants has got no cause of action against the respondents.
2. That the appellants ^{is} are not entitled to any relief and this appeal is filed just to waste the precious time of this Honorable Tribunal.
3. This Honorable Tribunal has got no jurisdiction to entertain this appeal.
4. That the Appellant conceal the facts from this Honorable Tribunal.
5. That the appeal of the appellant is badly fine based.
6. That the appeal is bad for misjoinder and non-joinder of necessary parties.

1. Need no comments. Pertains to record.
2. Need no comments. Pertains to record.
3. Para-3 is correct to the extent that the appellant was promoted to (BPS-20) (F/A) and retired from service on 07.05.2012 as Special Secretary (BPS-20) (F/B) on attaining the age of superannuation.
4. Correct. Pertains to record.
5. Para-5 is correct to the extent that the judgement dated: 07.03.2017 of Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar (F/C) is in favour of Mian Farooq Iqbal which was also maintained by the Apex Court in C.A No.1308/2019 (F/D) in favour of Mian Farooq Iqbal. While the case of the appellant was processed by Finance Department and sent to Law Department (F/E) for advice on the same grounds of above mentioned case but the Finance Department rejected the said request on the opinion of Law Department vide letter No. SO(E)/MDD/1-Mumtaz Khan Khalil/9842-46 dated: 21.06.2021 (F/F & G). However, the petitioner reiterated the subject issue with Finance Department on his personal level and the Finance Department again took up the case with Law Department and thereafter tendered advice that "the instant case has been re-examined in consultation with Law Department and found fit for pay protection

under this Department's policy letter No.FD(SR-I)12-1/2011 dated: 04-06-2011, therefore, Mr. Mumtaz Khan Khalil, Special Secretary (Rtd) may please be granted proper sanction for pay protection (being Administrative Department of the officer concerned) of his previous service rendered as Apprentice Assistant Mines Engineer (BS-17) in Pakistan Mineral Development Corporation w.e.f 26.12.1979 to 01-10-1983 from the date of his appointment as Mines Safety Engineer BS-18 in Directorate of Labour Welfare, Khyber Pakhtunkhwa if he had applied through proper channel" (F/II). It is further stated that the petitioner again requested to Finance Department (F/I) that his case may be intervened at par with the case of Mian Farooq Iqbal, Lecturer (BS-17) as Service Tribunal/Supreme Court Judgments as notified by Finance Department vide No.FD/SOSR-I/12-4/2020 dated: 15.06.2020 (F/J). However, the Finance Department rejected the request of the petitioner being not covered under the existing policy and informed him directly (F/K).

6. Details already explained in Para-5.
7. As explained in Para-5.
8. Incorrect. The request of appellant was received and regretted on the grounds that each and every case has its own facts circumstances and the notification dated: 04th June 2011, on the basis of which the judgement of Service Tribunal Khyber Pakhtunkhwa was upheld by Supreme Court of Pakistan in favor of Main Farooq Iqbal has no impact on the case of Mr. Mumtaz Khan (appellant) due to its divergent facts.
9. ~~Needs no comments~~ *incorrect*
10. ~~Needs no comments.~~

Grounds: -

- A. Incorrect. The judgement dated: 07.03.2017 in appeal No. 476/2014 of the Honorable Service Tribunal judgement in personum, which is not applicable for the case of the appellant.
- B. Pertains to records, ~~hence no comments~~.
- C. Pertains to records, ~~hence no comments~~.
- D. Incorrect. As explained in Para-8 of the facts.
- E. Incorrect. The judgement delivered in Civil Appeal No. 1308/2019 in judgement in personum, which only favor Mr. Farooq Iqbal (the respondent) and the same is not applicable to the case of the appellant.
- F. As explained in Para-5.
- G. ~~No comments~~ *No applicable on the appellant.*
- H. Incorrect, the appellant has been treated in accordance with Law.
- I. ~~No comments~~ *That the respondents also seek permission to raise further points at the time of argument.*

PRAYER

Keeping in view the foregoing facts and circumstances, it is crystal clear, that the appeal in hand is without legal footings. Therefore, may very graciously be dismissed, please.

Secretary
Finance Department
Government of Khyber Pakhtunkhwa
(Respondent No.3)

Secretary
Minerals Development Department
Government of Khyber Pakhtunkhwa
(Respondent No.2)

Chief Secretary
Government of Khyber Pakhtunkhwa
(Respondent No.1)

Asad ul Mulk
Barrister Asad ul Mulk
Legal Advisor
Directorate General
Mines & Minerals

Submitted for vetting please.

Adm
09.03.22
Assistant Director (Adm)
DGMM

Vetted
Subject to correction
enumerated all relevant
documents along with index.

Asad
9/3/22

Please vet
DAE
Adm
9/3/22



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 113-14/ST

Dated: 23/5 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

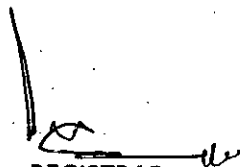
To

1. The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Secretary Finance Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 7371/2021 MR. MUMTAZ KHAN.

I am directed to forward herewith a certified copy of Judgement dated 21.04.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR