

25.03.2021

Counsel for the petitioner and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Haneef Khan Assistant Account Officer for respondents present.

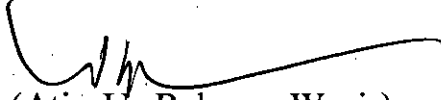
Learned counsel for the petitioner conceded that the payment has been paid to the petitioner.

On the other hand representative of respondent stated at the bar that monthly pension will be released from the 1st date of coming month.

In the circumstances, it will be appropriate to consigned instant proceedings to record with the permission to petitioner to apply for restoration as and when required under the law.

Announced

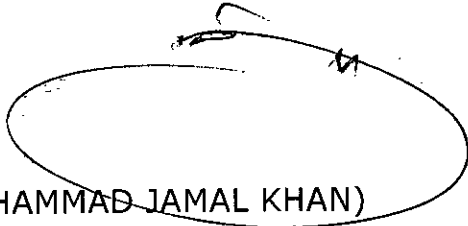
25.03.2021


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

26.01.2021

Petitioner is present alongwith his counsel Mr. Zafar Ali Khan, Advocate. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Irfan Ullah, Assistant Social Organizer, for the respondents are also present.

Learned Additional Advocate General alongwith representative of the department has submitted documents containing the statement regarding the calculation made, in the pension of petitioner but payment has not been made so far and the case has been submitted to the authority concerned for release of funds for the purpose of disbursement. Both the parties agree that a period of a month has to be given for making requisite payment. Accordingly, the execution petition is adjourned to 25.03.2021 on which date file to come up for implementation report before S.B.

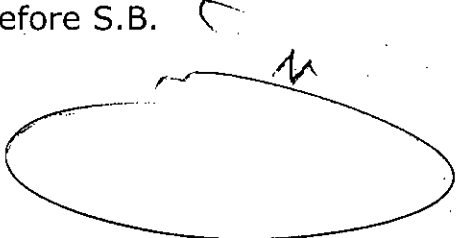


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

03.11.2020

Nemo for petitioner. Mr. Kabirullah Khattak, Additional Advocate General is present.

Neither implementation report on behalf of respondents submitted nor representative of the department is present, therefore, notice be issued to the respondents for submission of implementation report for 03.12.2020 before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

03.12.2020 Counsel for the petitioner and Addl. AG along with Nasib Khan, Section Officer for respondent No. 1, Irfan Anjum, Assistant for respondents No. 2 to 6 and Jamil Shah, Senior Auditor for respondents No. 7 and 8 present.

The representative of respondents No. 2 to 6 has submitted copies of certain documents including the correspondence between the Section Officer (Lit.) Government of Khyber Pakhtunkhwa Public Health Engineering Department and the Chief Engineer (North) PHE Peshawar dated 10.11.2020. It is, inter-alia, noted therein that Finance Department Government of Khyber Pakhtunkhwa notification No. FD(SOSR-II)4-36/2017 dated 22.05.2019 was not extendable to the contract employees.

Learned counsel for the petitioner, at present, is not able to deny the status of petitioner as contract employee ^{and} ~~but~~ requested for time to assist the Tribunal on the point.

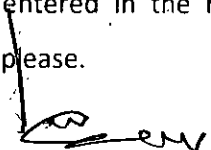
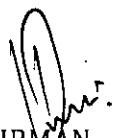

Instant proceedings are, therefore, adjourned to 26.01.2021 before S.B. The office shall make available complete record of Service Appeal No. 1390/2017 on the date fixed.

Chairman 

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 119 119/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24.08.2020	<p>The Execution Petition submitted by Mr. Shahroom Khan through Mr. Zafar Ali Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	18.09.2020	<p>This Execution Petition be put up before S. Bench on <u>18/09/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Counsel for the petitioner present.</p> <p>Notices be issued to the respondents for submission of implementation report on 03.11.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

In Re:

Service Appeal No. 1389/2017

EP no 119/20

Shahroon Khan.....Petitioner

V E R S U S


Govt of KPK & othersRespondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Application for implementation with affidavit		1- 2
2.	Copy of grounds of service appeal and judgment dated 29.05.2019.	A	3- 9
3.	Wakalatnama		10

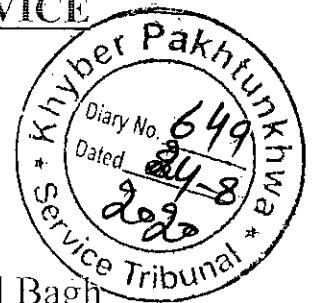
Petitioner

Through:


Zafar Ali Khan
Advocate High Court
Peshawar

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**



In Re:
Service Appeal No. 1389/2017

Shahroon Khan S/o Faqir Khan R/o Shah Khel Kotki Tehsil Bagh
District Dir Lower.....Petitioner

V E R S U S

1. Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary Public Health Civil Secretariat, Peshawar.
3. Chief Engineer Public Health Department, Peshawar Ford, Road, Peshawar Cantt.
4. Superintendent Engineer Public Health Dir Timergara.
5. Executive Engineer Public Health Dir Timergara.
6. Sub Divisional Engineer Public health Timergara.
7. District Account Officer, Timergara.
8. Accountant General Fort Road, Peshawar Cantt.

.....Respondents

**APPLICATION FOR IMPLEMENTATION OF
JUDGMENT DATED 29.05.2019 IN SERVICE
APPEAL NO. 1389 IN ACCORDANCE WITH LAW.**

Respectfully Sheweth:

1. That the judgment dated 29.05.2019 passed by this Hon'ble Tribunal. *(Copy of grounds of service appeal and judgment dated 29.05.2019 are attached as annexure A).*
2. That the respondents are not implementing the judgment above is against the law and facts hence, untenable in the eye of law.

3. That the respondents are bound to implement the judgment of this Hon'ble Tribunal.
4. That the petitioner was served in the department honestly and according to law, he is entitled pension and the respondents are not issuing pension are clearly violating this Hon'ble Tribunal judgment.
5. That the petitioner is poor man and no other source of income except the pension.
6. That any other ground would be raised at the time of arguments in this case.

It is therefore requested that on acceptance of this implementation, application the respondents may kindly be directed to implement the judgment dated 29.05.2019 and issued the petitioner pensionary benefit on accordance with law.

[Handwritten Signature]
Petitioner

Through:

[Handwritten Signature]
Zafar Ali Khan
Advocate High Court
Peshawar

AFFIDAVIT: -

It is stated that on oath that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honb'le Court.

[Handwritten Signature]
Deponent

[Notary Seal]
KHALID MAHMOOD
ATTESSED
NOTARY
PUBLIC
PESHAWAR HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa Service Tribunal

1427

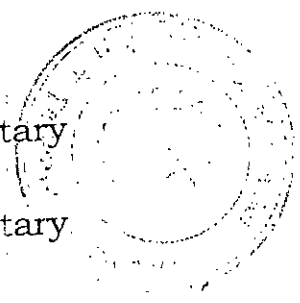
15-12-2017

S.A.No. 1389/2017

Shahroom Khan S/o Faqr Khan R/o Shah Khel Kotki Tehsil Bagh District Dir Lower.....**Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa, Through Secretary Finance Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Secretary Public Health Civil Secretariat Peshawar.
3. Chief Engineer, Public Health Department, Peshawar Ford Road, Peshawar Cantt.
4. Superintendent Engineer Public Health Department Ford Road, Peshawar.
5. Executive Engineer Public Health Dir Timergara.
6. Sub-Divisional Engineer Public Health Timergara
7. District Account Officer Timergara
8. Accountant General Fort Road, Peshawar Cantt, Peshawar**Respondents**



APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE RESPONDENTS WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS NOT BEEN DECIDED AND THE STIPULATED PERIOD HAS BEEN PASSED.

PRAYER:-

On acceptance of this appeal, the appellant may kindly be declared entitled for the pension, gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately.

Filed to-day
Registrar
15/12/17

Respectfully Sheweth:-

Appellant humbly submits as under:-

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[Signature]
Registrar
Peshawar

(4)

1. That appellant was appointed Operator on dated 03.10.1996 in the Health Department. **(Copy of the order is attached as Annexure "A")**.

2. That later on the services of the appellant was regularized, as BPS-01 on 30.08.2008. **(Copy of the Service book is Annexure "B")**.

3. That the appellant has been retired from service on 30.06.2011 already mentioned in the Service book.

4. That appellant moved Departmental Appeal to the respondent No.2 for the issuance of pension, gratuity and other benefits on dated 12.09.2017 but still has not been decided by the respondents and the stipulated period has been passed. **(Copy of Departmental Appeal is Annexure "C")**.

5. That aggrieved with, appellant has come before this Hon'ble Tribunal in this appeal on the following grounds amongst the others for a direction to the respondents to issue pension along with other benefits to the appellant.

GROUND:-

A. That the respondent is not issuing pension, gratuity and other benefits to the appellant is against the facts and untenable in law.

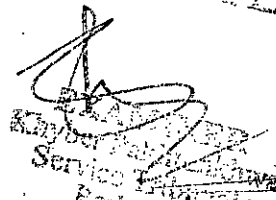
B. That the appellant has served in the public Health Department for period of almost 15/16 years, therefore, according to law and rules of services the appellant is entitled for the pension, gratuity and other benefits.

C. That the respondents failed to appreciate the real point involved in the case in its perspective. Hence has arrived at an incorrect conclusion.

D. That by not awarding/issuing the pension to the appellant, respondents are violating the terms and conditions of service as well as the service laws and rules.

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E. That by not issuing the pension benefits to the appellant, respondents are violating the fundamental rights of the appellant because there is no source of income of appellant except this pension etc.

F. That the respondents by not issuing the pension to the appellant are exercising the powers not vested to them under the law.

G. That the non-disposal of departmental appeal by the respondents is per-versant and against the settled principle of law and Justice.

It is, therefore, requested that on acceptance of this appeal, the appellant may kindly be declared entitled for the pension, gratuity and other benefits and direct the respondents to issue pension, gratuity and other benefits immediately.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of the case and not specifically asked for may kindly also be granted.

شاہین

Appellant

Through

Zafar Ali Khan
Advocate,
High Court
Peshawar

CERTIFICATE:-

Certified as per information furnished by my client that no such like appeal has earlier been filed before this Hon'ble Tribunal.

Certified to be true copy

[Signature]

ADVOCATE.

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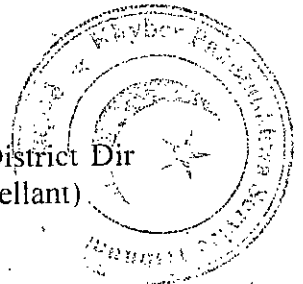
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1389/2017

Date of Institution ... 15.12.2017

Date of Decision ... 29.05.2019

Shahroom Khan, S/O Faqir Khan R/O Shah Khel Kotki, Tehsil Bagh District Dir Lower. ... (Appellant)



VERSUS

Government of Khyber Pakhtunkhwa, through Secretary Finance Civil Secretariat, Peshawar and seven others.

... (Respondents)

MR. ZAFAR ALI KHAN,
Advocate

--- For appellant.

MR. USMAN GHANI
District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 1390/2017 titled Abdul Zaiq, as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS

3. Learned counsel for the appellant argued that he was appointed as Operator on fixed pay vide order dated 03.10.1996. That his services were regularized by awarding BPS-1 vide notification dated 30.07.2008. On reaching the age of

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Khyber Pakhtunkhwa

superannuation, he stood retired from government service on 30.06.2011. As pensionary benefits were denied to the appellant, therefore, a departmental appeal on 13.09.2017 was filed, which remained unanswered, hence, the present service appeal. Having rendered more than fifteen years service, he was entitled for grant of pension/gratuity and other financial benefits. Reliance was placed on case law reported as 1999 SCMR 255 and judgments of this Tribunal dated 12.10.2017 and 11.03.2019 rendered in service appeal no. 1055/2014 and 1212/2017 respectively.

4. On the other hand learned District Attorney argued that though his services were regularized w.e.f 01.07.2008 vide notification dated 30.07.2008 but as he had not completed the required length of service, therefore, pensionary benefits and gratuity were not allowed/granted by the respondents. He was treated according to law and rules.

CONCLUSION

5. The appellant joined the respondent-department as Operator on fixed pay vide order dated 03.10.1996. Subsequently, vide notification dated 30.07.2008 his services were regularized by awarding BPS-1 w.e.f 01.07.2008. He stood retired from government service on reaching the age of superannuation on 30.06.2011. As he had not completed qualifying service for award of pensionary benefits, therefore, the same was not granted to the appellant by the respondents. Case of the appellant is covered under Rule-2.2 of West Pakistan Civil Service Pension Rules 1963. This issue has already been exhaustively dealt with by this Tribunal in service appeal no. 1212/2017 decided on 11.03.2019 and service appeal no. 1055/2014 decided on 12.10.2017 and numerous other judgments in various

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Khyber Pakhtunkhwa
Service Tribunal

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service appeals. It would not be out of place to mention here that appeal no. 1212/2017 pertained to an employee of the Khyber Pakhtunkhwa Public Health Engineering Department. The present appellant also served in the same department. His case is also covered according to a well settled principle that if a court decides a matter/point of law its benefits be extended to the similar placed persons. even, if they were not part of the litigation. On the strength of aforementioned judgments there is hardly any ambiguity about the entitlement of the appellant for grant of pension/gratuity and connected financial benefits.

6. As a sequel to above, the appeals are accepted and the respondents are directed to finalize the pension case of the appellants and grant pensionary benefits to them from the due date. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMAMD HAMID MUGHAL)
MEMBER

(AHMAD HASSAN)
MEMBER

ANNOUNCED
29.05.2019

Certified to be true copy
Secretary
Peshawar

Date of Presentation of		03-06-19
Number of Pages	24.00	
Copying Fee	14.00	
Urgent		
Total	14.00	
Name of Clerk		
Date of Disposal of		14-6-19
Date of Delivery of Copy		14-6-19

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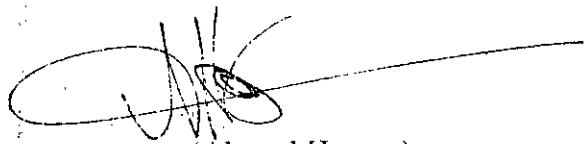
Order

29.05.2019

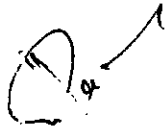
Appellant with counsel and Mr. Usman Ghani, District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeals are accepted and the respondents are directed to finalize the pension case of the appellants and grant pensionary benefits to them from the due date. Parties are left to bear their own cost. File be consigned to the record room.

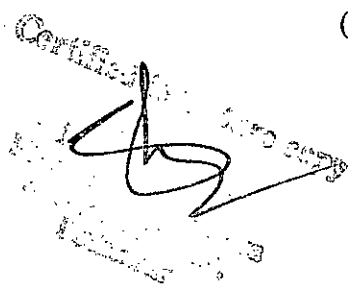
Announced:
29.05.2019



(Ahmad Hassan)
Member



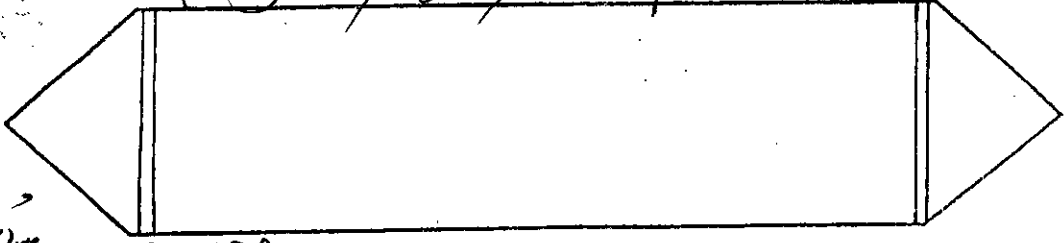
(Muhammad Hamid Mughal)
Member



Date of transcription of	03.6.19
Number of copies	800
Copies	6-00
Urgent	6-00
Total	
Remarks	
Date of completion	14.6.19
Date of return	14.6.19

ATTACHED

بعدالت جفا - سرروس فریبنول KP صہا



مسائل

2020ء پنجاب

موضوع

بنام

شاہ روم

مقدمہ *Implementation - petition*

موضوع
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام جسٹس کیلئے طریقہ کار و دروغ یا تقصیر سے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار 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
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائہ 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 لکھد یا کہ سندر ہے۔

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ماہ

المرقوم

واہ العب

بمقام

کے لئے منظور ہے۔

شاہ روم