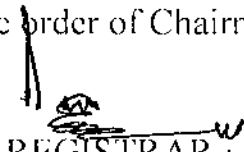


FORM OF ORDER SHEET

Court of _____

Case No.- 252/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	31/1/2023	<p>The appeal of Mr. Shaheen Khan presented today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 259 /2023

Shaheen Khan

V/S

Chief Secretary & others

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S.No.	Documents	Annexure	Page No.
1.	Memo of appeal	-----	01-05
2.	Affidavit	-----	06
3.	Copy of appointment order dated 24.07.1984	A	07-08
4.	Copies of letter dated 18.10.1993, notification dated 04.01.1995, relieving order dated 16.01.1995 and charge assumption report dated 18.01.1995	B,C,D&E	09-12
5.	Copy of notification dated 08.12.2014	F	13
6.	Copy of notification dated 04.06.2011	G	14
7.	Copies of service certificate dated 18.12.2020, Service Tribunal judgment dated 07.03.2017, Apex Court judgment dated 27.11.2019, notification dated 15.06.2020, departmental appeal and rejection order dated 17.01.2023	H,I,J,K,L&M	15-24
8.	Copies of judgment dated 21.04.2022 and opinion dated 05.04.2021	N&O	25-33
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THROUGH:

APPELLANT

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

PESHAWAR

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

APPEAL NO. _____/2023

**Mr. Shaheen Khan, (Retd) Senior Inspector of Mines (BPS-18),
Mineral Development Department, Peshawar.**

(APPELLANT)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Mineral Development Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 17.01.2023, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FOR PAY PROTECTION ALONG WITH ARREARS OF HIS PREVIOUS SERVICE RENDERED AS ASSISTANT MINING ENGINEER (BPS-17) IN PMDC W.E.F 24.07.1984 TO 17.01.1995 FROM THE DATE OF HIS APPOINTMENT AS INSPECTOR OF MINES (BPS-17) IN THE INSPECTORATE OF MINES, LABOUR WELFARE KHYBER PAKHTUNKHWA (THEN NWFP) HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 17.01.2023 MAY GRACIOUSLY BE SET-ASIDE BEING ILLEGAL AND PASSED IN VIOLATION OF THIS HONORABLE TRIBUNAL JUDGMENTS AS WELL AS SUPREME COURT

JUDGMENTS AND THE RESPONDENTS MAY FURTHER PLEASE BE DIRECTED TO GRANT PAY PROTECTION ALONG WITH ARREARS TO THE APPELLANT OF HIS PREVIOUS SERVICE RENDERED AS ASSISTANT MINING ENGINEER (BPS-17) IN PMDC W.E.F 24.07.1984 TO 17.01.1995 FROM THE DATE OF HIS APPOINTMENT AS INSPECTOR OF MINES (BPS-17) IN THE INSPECTORATE OF MINES, LABOUR WELFARE KHYBER PAKHTUNKHWA AS ALREADY GRANTED BY THIS HONORABLE TRIBUNAL IN ITS NUMEROUS JUDGMENTS UNDER THE RULE OF CONSISTENCY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was initially appointed in Pakistan Mineral Development Corporation (PMDC) as Assistant Mining Engineer (BPS-17) vide order dated 24.07.1984. (Copy of appointment order dated 24.07.1984 is attached as Annexure-A).
2. That the post of Inspector of Mines in Inspectorate of Mines, Labour Welfare KPK (then NWFP) was advertised through KPK (then NWFP) Public Service Commission and the appellant through proper channel applied for the said post which is evident from the letter dated 18.10.1993 and was appointed on the said post through the notification dated 04.01.1995 and relived from his duties at PMDC from 17.01.1995 through relieving order dated 16.01.1995 and assumed the charge on the post of Inspector of Mines in the Inspectorate of Mines Khyber Pakhtunkhwa, Peshawar on 18.01.1995 vide charge assumption report dated 18.01.1995. (Copies of letter dated 18.10.1993, notification dated 04.01.1995, relieving order dated 16.01.1995 and charge assumption report dated 18.01.1995 are attached as Annexure-B,C,D&E)
3. That the appellant after appointment as Inspector Mines (BPS-17) has performed his duty with devotion and honesty, whatsoever assigned to him and no complaint has been-filed regarding his performance and due excellent performance he was promoted as Senior Inspector of Mines (BPS-18) and was retired from the said post on 31.03.2015 on

attaining the age of superannuation vide notification, dated 08.12.2014. (Copy of notification dated 08.12.2014 is attached as Annexure-F)

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 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-G)
5. That as the appellant was initially appointed in PMDC as Assistant Mining Engineer (BPS-17) autonomous bodies (evident from the service certificate issued by the PMDC on 18.12.2020) and applied through proper channel to the post of Inspector of Mines (BPS-17) in Inspectorate of Mines, 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 Main Farooq Iqbal of the same department who filed appeal No.476/2014 for his pay protection in this Honorable 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 on the basis of that judgment pay protection along with arrears was granted to him of his previous service by the department through notification dated 15.06.2020, but the department did not granted same benefits to the appellant being similarly placed person, therefore he filed department appeal on 14.07.2020 to respondent No.2 for pay protection, which was rejected on 17.01.2023. (Copies of service certificate, Service Tribunal judgment dated 07.03.2017, Apex Court judgment dated 27.11.2019, notification dated 15.06.2020, departmental appeal and rejection order dated 17.01.2023 are attached as Annexure-H,I,J,K,L&M)
6. That the appellant has no remedy except to file the instant appeal in this Honorable Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:-

- A) That the impugned rejection order dated 17.01.2023 and not granting pay protection along with arrears of the previous service to the appellant are against the judgment dated 07.03.2017 in appeal

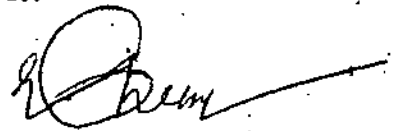
No.476/2014 of this Honorable Tribunal maintained by the Apex Court, law, facts, norms of justice and material on record, therefore not tenable and the order dated 17.01.2023 is liable to be set aside and the appellant is entitle for pay protection along with arrears of his previous service rendered as Assistant Mining Engineer (BPS-17) in PMDC w.e.f 24.07.1984 to 17.01.1995 from the date of his appointment as Inspector of Mines (BPS-17) in the Inspectorate of Mines, Labour welfare Khyber Pakhtunkhwa.

- B) That the appellant has applied through proper channel from PMDC to the Inspectorate of Mines, Labour Welfare Khyber Pakhtunkhwa and is entitle for pay protection along with arrears on the basis of notification dated 06.04.2021 and numerous judgments of this Honorable Tribunal maintain by the Apex Court.
- C) That similar nature appeal No.7371/2021 title Mumtaz Khan V/S Govt. of KP of the same department which was allowed by this Honorable Tribunal on 21.04.2022 and he has filed departmental for pay protection 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 the case of Mian Farooq Iqbal is applicable to the case in hand (case of Mumtaz Khan). As similar relief should be granted to civil servant on a point of law relating to 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. **(Copies of judgment dated 21.04.2022 and opinion dated 05.04.2021 are attached as Annexure-N&O)**
- D) That similar nature appeal No.476/2014 title Mian Farooq Iqbal V/S Chief Secretary of KP & others has been accepted by this Honorable Tribunal on 07.03.2017, which was also upheld by the Apex Court in C.P No. 1307/2019 In its judgment dated 27.11.2019 and on the basis of judgments the pay of Mian Farooq Iqbal was protected and also granted arrears vide notification dated 15.06.2020 and the appellant being similarly placed person is also entitle the same relief under the rule of consistency.
- E) That other similar nature appeal No.980/2016 was also accepted on 27.12.2019 by this Honorable Tribunal., which was also maintained by the Apex Court in its judgment dated 27.04.2021 in Civil Appeal No. 39/2021 and the appellant is also entitle to the same relief on the

basis of reported judgment dated 2009-SCMR-1. (Copies of judgment dated 27.12.2019 and judgment dated 27.04.2021 are attached as Annexure-P&Q)

- F) That the appellant has not been treated in accordance with rules and has been deprived from his legal rights of pay protection along with arrears in the arbitrary manner by the respondents.
- G) That the appellant seeks permission of this Honorable Tribunal to advance others 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
Shaheen Khan

THROUGH:



(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
PESHAWAR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____/2023

Shaheen Khan

V/S

Chief Secretary & others

AFFIDAVIT

I, Shaheen Khan, (Retd) Senior Inspector of Mines (BPS-18), Mineral Development 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 Honorable Tribunal.



DEPONENT

PAKISTAN MINERAL DEVELOPMENT CORPORATION

PIDC HOUSE, DR. ZIAUDDIN AHMED ROAD,
KARACHI

A 7

Reference No. PMDC/ADM/445/1983

Dated 24th July, 1984

REGISTERED

Mr. Shaheen Khan,
Village & Post Office,
Manglor,
SWAT

Dear Sir,

With reference to your application dated..... and subsequent interview with us, we have the pleasure to appoint/promote you as Assistant Mining Engineer at PMDC Collieries, Makerwal under the following terms and conditions:

Commencement of Appointment/Promotion

1. Your appointment/promotion will commence from the date you report for duty
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.

Liability of Service :

3. You may be required, as the Corporation may decide 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. 1200/- in the grade of Rs. 1200-75-2175 plus admissible allowances at the place of posting.
- (ii) You will earn annual increment on 1st July, each year, starting from 1985 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 1/11th 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 Clause 9(ii) and 10(ii). In case you resign from service or your services are terminated under clause 9(ii) and 10(ii) all leave accumulated till the time of your resignation or termination of 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.

attested
14-7-2004
1/2

PMDC Regional Office
Plot No. 45, Sector B-1, Phase-5,
Manglor, District Peshawar
Pak. 01 9218321-202759

8
 Tel: 253928-2400
 Fax: 051-65551
 Telex: 5508 PMDC PK
 Postal Code No. 44780

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 terminable 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 insubordination, intemperance or misconduct of which the Corporation or Company will be the sole judge : or
 - (iii) by ~~one-year~~ ^{180 days} notice on either side without assigning any reason or by ~~payment of one year's salary in lieu thereof~~ ^{180 days} 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 subscribed 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 years' 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 10(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 Chief Mining Engineer, PMDC Collieries, Mankerwal as early as possible but not later than 15-8-1984. 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

Anis A. Piracha
 24/7/84
 (Anis A. Piracha)
 (Secretary)

attested c.c.
[Signature]
 14-7-2000
 1/c

1. Chief Accountant, PMDC, Karachi.
2. ~~Exec General Manager (Finance), PMDC, Karachi~~
3. ~~Manager (Admin), PMDC, Karachi~~
- 2- Acting General Manager (Production), PMDC, Islamabad.
- 3- Chief Mining Engineer, PMDC Collieries, Mankerwal.
- 4- Deputy Chief Accountant, PMDC Collieries, Mankerwal.

PMDC Regional Office
 Plot No. 5, Sector B-4, Phase-2,
 H-8, Islamabad
 Tel: 051-253928-2400

115
B
9

PHDC/ADM-448/2043

18.10.1993

The Secretary,
MPP Public Service Commission,
Peshawar.

Subject:- APPLICATIONS FOR THE POSTS OF INSPECTOR OF MINES
OR PRINCIPAL OF VOCATIONAL INSTITUTE, MPP

Dear Sir,

Be forward herewith two certificates of departmental permission each in respect of M/s Shaheen Khan and Misryat Ullah, Assistant Mining Engineers, PHDC Collieries, Magerwal for the subject posts with the remarks that in case of their selection for the post applied for they shall have to resign from the posts held by them in PHDC.

Thanking you,

Yours faithfully,

(N.D. Chaudhry)
for Secretary

15/10/93

- cc: 1) Managing Director, MCL, Lahore with reference to his letters No. MCL-ADM-18 dated 12.10.1993.
2) Chief Mining Engineer, PHDC Collieries, Magerwal.
3) Mr. Shaheen Khan, Asstt. Mining Engineer, PHDC Collieries, Magerwal.
4) Mr. Misryatullah, AME, PHDC Collieries, Magerwal.

PMDC/ADM-445/2043

18.10.1993

The secretary,
NWFP Public Service commission,
Peshawar.

**Subject:- APPLICATION FOR THE POST OF INSPECTOR OF
MINES OR PRINCIPAL OF VOCATIONAL INSTITUTE,
NWFP.**

Dear sir,

We forwarded the certificates of departmental permission each in respect of M/S Shaheen Khan and Himayat Ullah,, Assistant Mining Engineer, PMDC collieries, Makerwal for the subject posts with the remarks that in case of their selection for the post applied for they shall have to resign from the posts by them in PMDC.

Thanking you,

Yours faithfully

(H.D Chaudhry)
For Secretary

- cc: 1) Managing Director, MCL, Lahiore with refrence to his letters No.NCL-Adm-18 dated:12.10.993.
2) Chief Mining Engineer, PMDC Collieries, Makerwal
3) Mr. Shaheen Khan, Asstt. Mining Engineer, PMDC Collieries, Makerwal.
4) Mr. Himayatullah, AME PMDC Collieries, Makerwal.

C 10



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

Dated Peshawar the

NOTIFICATION.

No. SOI(IND)6-1/90/ The Governor NWFP, on the recommendation of NWFP, Public Service Commission is pleased to appoint the following candidates as Inspector of Mines (BPS-17) in the Inspectorate of Mines, Labour Welfare, NWFP with immediate effect on the terms and conditions as offered vide this Department memorandum of even number and date:-

S.No.	Name of Candidate with Father's name.	Domicile.
1-	Mr. Shaheen Khan S/O Chandan.	Swat.
2-	Mr. Fazli Raziq S/O Abdul Aziz.	Bajaur Agency.

Sd/-
SECRETARY TO GOVERNMENT OF NWFP,
INDUSTRIES, COMMERCE, MINERAL DEV.,
LABOUR & TRANSPORT DEPARTMENT.

Endst: No. SOI(IND)6-1/90/387 dated 04/01/1995.

Copy forwarded to:-

- 1)-The Accountant General, NWFP, Peshawar.
- 2)-The Secretary to Government of NWFP, S&GAD, Peshawar.
- 3)-The Chief Inspector of Mines, NWFP, Peshawar.
- 4)-The P.S. to Minister for Labour NWFP.
- 5)-The P.S. to Chief Secretary, N.W.F.P.
- 6)-The Secretary, NWFP Public Service Commission, Peshawar, w/r to his letter No.20036, dated 29/8/1994.
- 7)-The Secretary, Pakistan Mineral Dev: Corporation, Head office 13/H-9, P.O. Shaigan, Islamabad, with the request to relieve the above Officers.
- 8)-The Officers concerned.
- 9)-The Manager, Government Printing Press, Peshawar.

Attest
[Signature]

[Signature]
(AHMED HASSAN),
SECTION OFFICER (ADMN).

PAKISTAN MINERAL DEVELOPMENT CORPORATION (PVT)
MAKERWAL COLLIERIES LIMITED MAKERWAL.

Ref. No. Adm-21/2343

Dated 16-1-1995

RELIEVING ADVICE:

The resignation dated 7-1-1995 tendered by Mr. Shaheen Khan Assistant Mining Engineer has been accepted vide the Secretary, PMDC Head Office Islamabad's letter No. PMDC/ADM-445/ dated 9-1-1995. He shall stand relieved off these Collieries from 17-1-1995 (AN).

His accounts shall finally be cleared on production of clearance certificate from all concerned.

L-2
(MAHMOOD AHMED)
PROJECT MANAGER:

To, ✓ Mr. Shaheen Khan
Assistant Mining Engineer
Makerwal.

Copy to:-

- 1- The Project Accountant Makerwal.
- 2- The Collieries Manager Makerwal.
- 3- The Section Manager (A) Makerwal.
- 4- The Accommodation Assistant (Admin) Makerwal.
- 5- P. File.

Copy for information to:-

The Managing Director, M.C.L. Head Office Lahore. This is being issued as per verbal approval/discussion at site on 13-1-1995 please.

attested
[Signature]
14-7-2000
1/c
PMDC Regional Office
Plot # 44, Sector D-1 Phase-5,
Islamabad
Tel: 37310000-37310001

ENT

E (12)

19

INSPECTORATE OF MINES LABOUR WELFARE,
NWFP; Peshawar.

No. Com/CIM/1-4

Dated 18, Jan, 1995.

Subject: CHARGE ASSUMPTION REPORT

In pursuance of Government of NWFP; Industries, Commerce, Mineral Dev: Labour and Transport Department, Notification No. SOI(IND)6-1/90/378 dated 4-1-1995, I Shaheen Khan assumed the charge of my duties as Inspector Mines in the Inspectorate of Mines, NWFP; Peshawar today the 18th Jan, 1995 (FN).


(SHAHEEN KHAN)

Inspector of Mines Labour Welfare,
Inspectorate of Mines Labour Welfare,
NWFP; Peshawar.

Enclst: No. Com/CIM/

Dated 18, Jan, 1995.

Copy to:

1. The Secretary to Government of NWFP; Industries, Commerce, Mineral Dev: Labour and Transport Department, Peshawar.
2. The Secretary to Government of NWFP; S&AD, Peshawar.
3. The Accountant General, NWFP; Peshawar.
4. The Chief Inspector of Mines, NWFP; Peshawar.

Attd
MS
Director Training
Inspectorate of Mines
Khyber Pakhtunkhwa


(SHAHEEN KHAN)

Inspector of Mines Labour Welfare,
Inspectorate of Mines Labour Welfare,
NWFP; Peshawar.

18/1/95



30

F (13)

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT**

Dated Peshawar, the 8th December 2014.

NOTIFICATION

No.SOE(MDD)1-41/Shaheen Khan.- On attaining the age of superannuation, Mr. Shaheen Khan, Senior Inspector of Mines (BS-18), Swat shall stand retired from service w.e.f 31.03.2015 (A.N).

2. The date of birth of the officer is 01.04.1955 as such he will retire from government service w.e.f 31.03.2015 (A.N).

Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department

Ends: No.SOE(MDD)1-41/Shaheen Khan ³⁷⁷⁴⁻⁷⁷ Dated Peshawar the, 8th December, 2014.

Copy is forwarded to: -

1. The Chief Inspector of Mines, Khyber Pakhtunkhwa, Peshawar w/r to his letter No.COM/CIM/PF/1/41/3508 dated 27.11.2014.
2. The District Accounts Officer, Swat.
3. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department.
- ✓ 4. The officer concerned.

Attest

Inspector of Mines
Khyber Pakhtunkhwa

(SAKHI UR REHMAN)
Section Officer (Estt.)

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION DIVISION)

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

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,

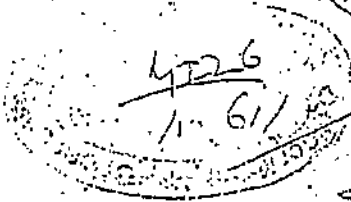
I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No. No.4(2)R-II/1996-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that 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.

(MASOOD KHAN)
Deputy Secretary (Reg-II)

Endst: of even No. & date.

Copy forwarded for information to:

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



(KHURSHID ALAM)
Section Officer (SR-I)

ATTENDED

Tel: 9265123-04
Fax: 9265127-25
E-mail: Info@pmdc.gov.pk



PAKISTAN MINERAL DEVELOPMENT CORPORATION

Head Office,
13-H-9,
Islamabad.44790

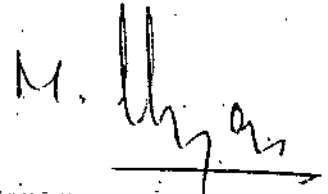
Ref. No. PMDC/PF

Dated: 18.12.2020

SERVICE CERTIFICATE

It is certified that Mr. Shaheen Khan, was appointed as Assistant Mining Engineer on 02.08.1984 in basic pay scale Rs.4050-244-7710 (BPS-17) in Pakistan Mineral Development Corporation (PMDC). He remained a regular employee of PMDC upto 17.01.1995 (before resignation).

2. It is further certificate that PMDC is an autonomous body under the Government Pakistan operating under the Administrative Control of Ministry of Energy (Petroleum Division Government of Pakistan).


M. Ilyas
General Manager (Admin)
PMDC Head Office, Islamabad
Ministry of Energy (Petroleum Division)
Government of Pakistan

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.

4
27.03.17

Mr. Muhammad Asif Yousfzai, Advocate. ... For appellant.
Mr. Muhammad Adeel Butt, Additional Advocate General ... For respondents.

MR. MUHAMMAD AAMIR NAZIR ... MEMBER (JUDICIAL)
MR. ASUFAQUE TAL ... MEMBER (JUDICIAL)

JUDGMENT

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

ATTESTED

MEMBER (JUDICIAL)
Khyber Pakhtunkhwa

2. Brief facts of the case giving rise to the instant appeal are that initially the appellant was employed as Lecturer (BPS-17) in NWFP University of Engineering and Technology Peshawar in the year 1986. Subsequently, the appellant applied through proper channel for the post of Inspector of Mines (BPS-17). That after qualifying the competitive exam, the appellant was relieved and he assumed the charge of the post of Inspector of Mines in the 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

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

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

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

Sd/- M. Amir, M.A.S., Member *IRY*

Sd/- Asif Mahmood Taj, Member

ANNOUNCED
07.03.2017

Certified to be true copy

[Signature]
Secretary
Peshawar

J (19)

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 Appointed
Supreme Court Pakistan
Islamabad

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GOVERNMENT OF PUNJAB
FINANCE DEPARTMENT
(REGULATION WING)

NO. FD 157-11-12-10754
Date: Peshawar, 04th June, 2011

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

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

Dear Sir,

I am directed to refer to the Government of Punjab, Finance Division, Islamabad, letter No. F.No. 4(2R)/1888-225/2010, dated 08-08-2010 and judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad. In appeal No. 1521(R) CS/2005 in respect of Mr. Sajid Raza and others on the subject noted above and to state that in pursuance of the above cited letter, the Government of Punjab 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 Servants 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 service, provided they have applied for the post through proper channel.

Yours faithfully,

MASOOD KHAN
Deputy Secretary (Reg-III)

Enclosed even No. & date:

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Punjab
2. Director, Local Fund Audit, Punjab
3. Director, Treasuries and Accounts, Punjab
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Punjab
5. Director, FMU, Finance Department
6. PS to Minister Finance, Punjab
7. PS to Secretary Finance,
8. PS to Chief Executive Officer,

2.

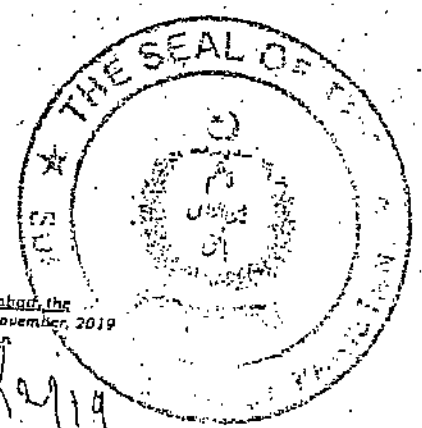
Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded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

Court Associate
Supreme Court of Pakistan
Islamabad

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

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



Islamabad, the
27th November, 2019
Rizwan
AWJ
21/11/19

Sd/-J
Sd/-J

Certified to be True Copy

W
Court Associate
Supreme Court of Pakistan
Islamabad



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

Dated Peshawar the 15.06.2020

NOTIFICATION

No.FD(SQSR-IV/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.

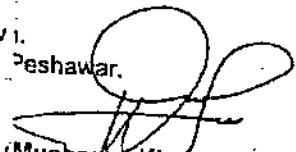
2- The earlier notification of even No. dated 07.12.2018 of this Department stands withdrawn.

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

To,

The Secretary Mines and Mineral,
Development Department,
Khyber Pakhtunkhwa Peshawar.

THROUGH PROPER CHANNEL

Subject: - **GRANT OF PAY PROTECTION / FIXATION BENEFIT SERVED,
PMDC IN BPS-17.**


Respectfully it is stated that , initially, I was appointed as Assistant Mining Engineer (BPS-17) in Pakistan Mineral Development Corporation on 02/08/1984 and served PMDC upto 17/01/1995 in the same scale. Meanwhile apply to Public Service Commission through proper channel and appointed as Inspector of Mines (BPS-17) in Mines and Mineral Department vide Notification Endst: No. SOI (IND) 6-1/90/387 dated 04/01/1995 and join duty on 18/01/1995. At the time of relieving from PMDC, I was drawing basic pay @Rs: 6246/- Per month while after joining the post of Inspector of Mines, The basic salary was fixed @Rs-3880/- per month.

It is to be mentioned here that, the counting of service benefit served in PMDC has already availed by me.

As the undersigned is entitled for fixation protection of pay, of appointment one post to another in light of notification of Finance Department dated 04/06/2011 and notification NO FD(SOSR-1)/12-4/2020 dated Peshawar.15/06/2020.

So it is requested that the last pay drawn in PMDC @Rs-(6246) per month is fixed in the pay scale (3880-290-7360) and obliged.

Encl: (18)


Engr: SHAHEEN KHAN 14/7/2020
Ex-Senior Inspector of Mines
Malakand Division



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

(22/11)

Finance Department, Chak, Ismailabad, Peshawar | <http://www.finance.gov.pk> | <https://www.facebook.com/financegovpk> | <https://www.instagram.com/financegovpk>

NO. FD(SR-1)12-4/2020/Mr.Shaheen Khan
Dated Peshawar the: 17-01-2023

To

**The Section Officer (Estt),
Minerals Development Department,
Peshawar.**

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

I am directed to refer to your letter's No. SOE/MDD/1-13/PF/Shahen/5213-15 dated 16.12.2022 on the subject noted above and to state that Finance Department's policy letter No.FD(SR-1)12-1/2011 dated 04.06.2011 is applicable from the date of its issuance while the officer concerned was appointed before applicability/issuance of the above mentioned policy, therefore, the case is regretted being not covered under the said policy, please

M/F
17/1/23
SECTION OFFICER (SR-1)

N 25

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

SERVICE APPEAL NO. 737/2021

Khyber Pakhtunkhwa
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
Registrar
6/9/2021

Submitted to-day
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 02.10.1983 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

ATTESTED


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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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

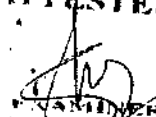
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

ATTESTED


 ATTESTING OFFICER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

28/142

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

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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-

Handwritten signature/initials.

APPEARED
 KHYBER PAKHTUNKHWA
 PUBLIC SERVICE COMMISSION
 PESHAWAR

(30/21/14)

D/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

ATTESTED

SECRETARY
KHYBER PAKHTUNKHWA
ISLAMABAD

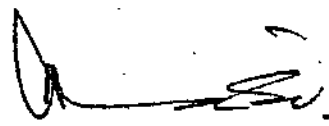
(31) 1/15


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)
Certified to be true copy.


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22/4/2022
Number of Words 2400
Copying Fee 26/-
Filing Fee 26/-
Total 26/-
Date of Completion of Copy 09/05/2022
Date of Delivery of Copy 09/05/2022

032

OFFICE OF ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 4123 / 100 Date: 5-1-2012
Address: High Court Building, Peshawar Exchange No: 9213813
Tel. No: 091-9211013 Fax No: 091-9210270

OPINION IN THE MATTER OF PAY PROTECTION

Subject: Please refer to your letter No SO(OP-1)UD/5-7/2012 Vol-IV dated 15-02-2012, on the subject cited above.

I have thoroughly examined the whole case file along with judgments of Learned Service Tribunal, Khyber Pakhtunkhwa and the Supreme Court of Pakistan in case of Mian Farooq Iqbal (annexed with file) regarding the matter in hand.

Mr. Mian Farooq Iqbal, Ex-DG (BS-20) Mines and Minerals, Khyber Pakhtunkhwa Development Corporation (KPMDC) as Apprentice Assistant Mining Engineer (BPS-17) was appointed in the post of Mines Engineer (PMS) in continuation of earlier appointment from 15-03-1979 till 02-10-1982. He was appointed as Mining Safety Engineer (BPS-18) in the Directorate of Labour Welfare, Khyber Pakhtunkhwa through PSC wide appointment order dated 25-09-1983. He assumed the charge of the post of Mining Safety Engineer (BPS-18) on 03-10-1983.

The case of Mian Farooq Iqbal is applicable to the case in hand. As similar relief should be granted to civil servants on the point of law relating to the terms and conditions of benefit or decision should be given to such civil servants.

BATTER COPY-30 32

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,

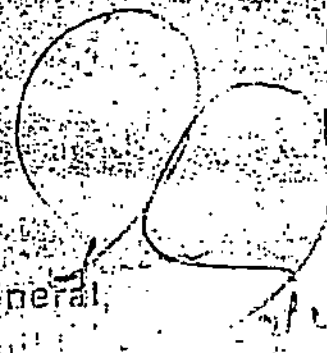
I have thoroughly examined the whole case file alongwith judgment of learned Service Tribunal, Khyber Pakhtunkhwa and the Supreme Court of Pakistan in case of Mian Farooq Iqbal, (annexed with file) regarding the matter in hand:-

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 Imran)
Assistant Advocate General
Khyber Pakhtunkhwa, Peshawar.


Advocate General

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

BATTER COPY-22 33

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

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

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

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 in vogue/ 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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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

Q (38)

**IN THE SUPREME COURT OF PAKISTAN
APPELLATE JURISDICTION**

PRESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE NAZ 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. Ahf 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

ATTESTE

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appeal but it was rejected vide order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KPK Service Tribunal, which has been allowed vide 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



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. This 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

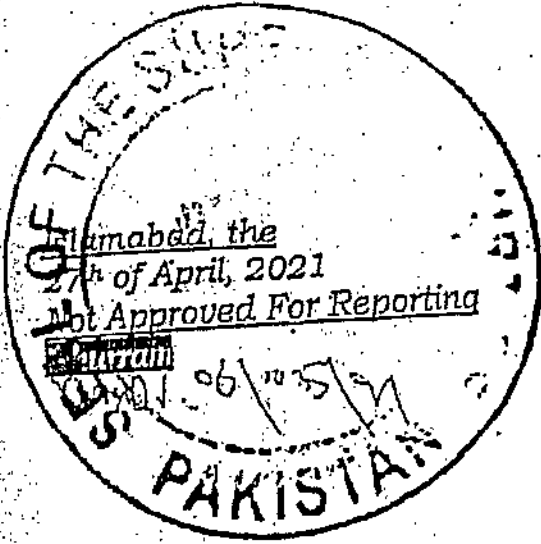
(41)

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: 5-00

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Court: 12-64

Date of: 7/5/21

Date of Dec: 17-5-21

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Shakeen Khan

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Chief Secretary & others

(Respondent)
(Defendant)

I/We, Shakeen Khan

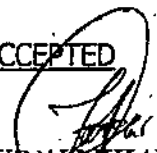
Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021


(CLIENT)

ACCEPTED


TAIMUR ALI KHAN
Advocate High Court

BC-10-4240

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