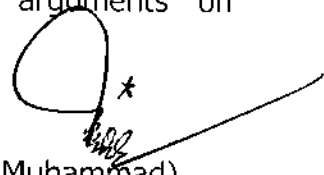


19.05.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG alongwith Mr. Ali Gohar Durrani, Legal Advisor for the respondents present.

Written reply/comments on behalf of respondents submitted which is placed on file. Copy of the same is handed over to the learned counsel for the appellant. To come up for rejoinder if any, and arguments on 18.07.2022 before D.B.


(Mian Muhammad)
Member (E)

18.07.2022

Due to non-availability of Bench, case is adjourned to 15.09.2022 for the same as before.



Reader


15.09.2022

Counsel for the appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

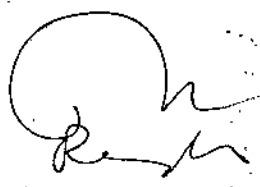
Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 28.11.2022 before D.B.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

R

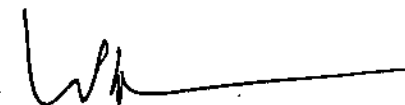
Deleted from the list to come up for the same on 08/02/23



26.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Reply/comments on behalf of respondents are still awaited. Record shows that notices been issued to respondents inadvertently on 07.02.2022, therefore, the case may be fixed for the said date. To come up for reply/comments before the S.B on 07.02.2022.



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

07.02.2022

Due to retirement of the Hon'able Chairman, the case is adjourned to 08.04.2022 before S.B for the same.



Reader

08.04.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mr. Shahab Khattak, Legal Advisor for respondents present.

Written reply/comments on behalf of respondents have not been submitted. Learned Addl. AG requested for time to submit written reply/comments. Last chance is given. To come up for written reply/comments before the S.B on 19.05.2022.



Chairman

10.12.2021

Learned counsel for the appellant contended that the appellant is aggrieved of the letter/correspondence dated 03.05.2021 communicated to the appellant on 16.09.2021 whereby his request for fixation/pay protection has been regretted. The regret letter is based on his departmental appeal dated 21.02.2020. The issue involved is that the appellant was initially appointed as Assistant Mining Engineer in Pakistan Mineral Development Corporation on 12.08.1982 and subsequently appointed as Principal in BS-18 on 03.03.1999. Since the appellant had applied to Public Service Commission through proper channel where-after he had been appointed as Principal (BS-18) therefore he is entitled for fixation/pay protection. In support of his arguments he relied on the Service Tribunal judgement dated 07.03.2017 delivered in Service Appeal No. 476/2014 titled Mian Farooq Iqbal Vs Government of Khyber Pakhtunkhwa which was also maintained by the august Supreme Court of Pakistan vide its order dated 27.11.2019. Similarly, in another Service Appeal No. 980/2016 titled Muhammad Ismail Principal Vs Government of Khyber Pakhtunkhwa, the Service Tribunal allowed the appeal vide its judgement dated 27.12.2019 which was also maintained by august Supreme Court of Pakistan vide its judgement dated 27.04.2021. Taking the plea that of discrimination as similar placed cases have already been allowed and fixation/pay protection granted therefore same treatment is required to be given to the appellant under 2009 SCMR 1.

The appeal is admitted for regular hearing subject to all just legal objections including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for submission of reply/comments. To come up for reply/comments on 07.02.2022 before the S.B.

Appellant Deposited
Security Process Fee >


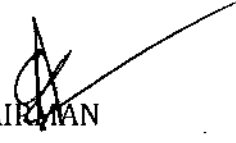
(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7555 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/10/2021	<p>The appeal of Mr. Abdul Tahir resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>10/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

The appeal of Mr. Abdul Tahir (Retd) Associate professor Technical Education received today i.e. on 28.09.2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- ② Appeal has not been flagged/marked with annexures marks.
- 3- Annexures of the appeal may be attested.
- 4- Dates mentioned in the memo of appeal are not matching with the dates of attached documents.
- 5- Annexures-E & N of the appeal are illegible which may be replaced by legible/better one.
- 6- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1936 /S.T,

Dt. 29/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv.Pesh.

Respected

1- *Removed*

2- *Removed*


3- *Removed*

4- *Dates all corrected*

5- *A better copy of Annexure E & N ~~are~~ have made*

6- *Removed*

Resubmitted after compliance


5/10/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 7555 /2021

Abdul Taher

V/S

Chief Secretary & others

INDEX

S.No.	Documents	Annexure	Page
1.	Memo of Appeal	-----	01-06
2.	Affidavit	-----	07
3.	Copy of appointment order dated 12.08.1982	A	08-09
4.	Copies of application dated 28.07.1991, letter dated 31.07.1991, notification dated 03.03.1992 and letter dated 10.05.1993	B,C,D&E	10-13
5.	Copy of notification dated 04.06.2011	F	14
6.	Copies of Service Tribunal judgment dated 07.03.2017, Apex Court judgment dt: 27.11.2019, notification dt: 15.06.2020 and departmental appeal	G,H,I&J	15-22
7.	Copies of letter dated 12.03.2021, letter dated 17.03.2021, letter dated 31.03.2021 opinion dt: 05.04.2021 and rejection order dated 03.05.2021	K,L,M,N&O	23-28
8.	Copies of judgment dated 27.12.2019 and 27.04.2021	P&Q	29-36
9.	Wakalat Nama	-----	37

APPELLANT

THROUGH:

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

Room No. FR 8, 4th Floor,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7646

Date 28/9/2021

Mr. Abdul Tahir, (Rtd.) Associate Professor (BPS-19)
Technical Education, Khyber Pakhtunkhwa, Peshawar.

(APPELLANT)

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Industries, Commerce & Technical Education Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.
4. The Managing Director, KP-TEVTA Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 03.05.2021 COMMUNICATED TO THE APPELLANT ON 16.09.2021, WHEREBY THE 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 26.08.1982 TO 09.03.1992 FROM THE DATE OF HIS APPOINTMENT AS PRINCIPAL (BPS-18) IN VOCATIONAL INSTITUTE OF TECHNICAL EDUCATION HAS BEEN REJECTED WITHOUT GIVING ANY REASON.

Filed today

[Handwritten signature]
28/9/21

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 03.05.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENT MAY FURTHER BE DIRECTED TO GRANT PAY PROTECTION ALONGWITH ARREARS OF HIS PREVIOUS SERVICE RENDERED AS ASSISTANT MINING ENGINEER (BPS-17) IN PMDC W.E.F 26.08.1982 TO 09.03.1992 FROM THE DATE OF HIS APPOINTMENT AS PRINCIPAL (BPS-18) IN VOCATIONAL INSTITUTE OF TECHNICAL EDUCATION AS ALREADY GRANTED BY THIS HONOURABLE TRIBUNAL IN SAME NATURE APPEAL NO. 376/2014 TITLE MAIN FAROOQ IQBAL VS CHIEF SECRETRAY OF KHYBER PAKHTUNKHWA & OTHERS UNDER THE RULE OF CONSISTENCY. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

SHEWTH:

FACTS:

1. That the appellant was initially appointed in Pakistan Mineral Development Corporation (PMDC) as Assistant Mining Engineer (BPS-17) vide order dated 12.08.1982 and joined the said post on 26.08.1982. (Copy of appointment order dated 12.08.1982 is attached as Annexure- A)
2. That the post of Principal (BPS-18) in the Vocational Institute in Technical Education was advertised through KP Public Service Commission and the appellant through proper channel applied for the said post through application dated 28.07.1991, which was further forwarded to KP Public Commission by Manger PMDC through letter dated 31.07.1992 and was appointed on the said post through a notification dated 03.03.1992 and was relived from his duties at the PMDC on 09.03.1992 and assumed the charge of the post of Principal (BPS-18) in the Vocational Institute in Technical Education on 10.03.1992, which is evident from letter dated 10.05.1993. (Copies of application dated 28.07.1991, letter dated 31.07.1992, notification dated 03.03.1992 and letter dated 10.05.1993 are attached as Annexure-B,C,D&E)

3. That the appellant after appointment as Principal (BPS-18) has performed his duty with great devotion and honesty, whatsoever, assigned to him and no complaint has been filed against him regarding his performance by his superiors and due to excellent performance he was promoted to (BPS-19) and was retired from service on 02.03.2013 as Associate Professor (BPS-19) on attaining the age of superannuation.
4. That the Finance department issued a notification dated 04.06.2011, wherein the benefits of protection of pay to the employees of autonomous bodies on their subsequent appointment in government service provided they have applied for the post through proper channel. **(Copy of notification dated 04.06.2011 is attached as Annexure-F)**
5. That as the appellant was initially appointed in PMDC as Assistant Mining Engineer and then applied through proper channel to the post of Principal in Vocational Institute in Technical Education and appointed on the said post, therefore, the appellant is entitled for pay protection along with arrears as per notification dated 04.06.2011 and on analogy of the case of Mian Farooq Iqbal, who filed appeal No.476/2014 for his pay protection in this Honourable Service Tribunal which was accepted on dated 07.03.2017 and that judgment was also maintained by the Apex Court in C.A No.1308/2019 in its judgment dated 27.11.2019 and basis of that that judgments pay protection along with arrears was granted to him of his previous service by the department through notification 15.06.2020, but such benefit of pay protection was not granted to the appellant being similarly placed person, therefore, he filed departmental appeal to respondent No.1 for pay protection on 10.02.2020. **(Copies of Service Tribunal judgment dated 07.03.2017, Apex Court judgment dated 27.11.2019, notification dated 15.06.2020 and departmental appeal are attached as Annexure-G,H,I&J)**
6. That the departmental appeal of the appellant was forwarded to Finance department on 12.03.2021 which was forwarded to Law, Parliamentary & Human Rights Department through letter dated 17.03.2021 by respondent No.3 on which Law Department through a letter dated 31.03.2021 responded that the Law Department has already opinion to your department in similar nature case in the light of judgment of Supreme Court of Pakistan delivered in civil appeal No. 1308/2019 titled Govt. of Khyber Pakhtunkhwa V/s Mian Farooq Iqbal decided on 27.11.2019. It is pertinent to mention here that similarly nature service appeal No. 7371/2021 title Mumtaz Khan V/S Govt. of KP is pending

before this Honourable Tribunal in which opinion was also sought from Law, Parliamentary & Human Rights Department by the Finance Department which was forwarded to the office of Advocate General, Khyber Pakhtunkhwa for opinion on which Assistant Advocate General gave opinion on 05.04.2021 that as the case of Mian Farooq Iqbal is applicable to the case in hand. As similar relief should be granted to civil servants on a point of law relating to the terms and conditions and benefits of decision should be given to such civil servants, which is reiterated in 2009 SCMR 1 subject to the condition, that he has applied through proper channel, but despite that the departmental appeal of the appellant was rejected on 03.05.2021 and the same was communicated to the appellant on 16.09.2021. **(Copies of letter dated 12.03.2021, letter dated 17.03.2021, letter dated 31.03.2021 and opinion dated 05.04.2021 and rejection order dated 03.05.2021 are attached as Annexure-K,L,M,N&O)**

7. That the appellant has no other remedy except to file the instant appeal in this august Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:

- A) That rejection order dated 03.05.2021 communicated to the appellant on 16.09.2021 and not granting pay protection along with arrears of previous service to the appellant are against the judgment dated 07.03.2017 in appeal No.476/2014 of this Honourable Tribunal maintained by the apex court, law, facts, norms of justice and material on record, therefore, not tenable and the order dated 03.05.2021 is liable to set aside and the appellant is entitled for pay protection along with arrears of his previous service rendered as Assistant Mining Engineer (BPS-17) in PMDC w.e.f 12.08.1982 to **09.03.1992** from the date of his appointment as Principal (BPS-18) in Vocational Institute in Technical Education.
- B) That the appellant has applied through proper channel from PMDC to Vocational Institute in Technical Education and is entitled for pay protection along with arrears on the basis of notification dated 06.04.2011 and numerous judgments of this Honourable Tribunal.
- C) That the Advocate General Office Khyber Pakhtunkhwa also gave opinion on 05.04.2021 in similar nature appeal No.7371/2021 title

Mumtaz Khan V/S Govt. of KP that as 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 benefits of decision should be given to such civil servants, which is reiterated in 2009 SCMR 1 subject to the condition, that he has applied through proper channel, but despite that the benefits of pay protection along with arrears has not been granted to the appellant.

- D) That the departmental appeal of the appellant was rejected on the ground the Finance Department policy dated 04.06.2011 is applicable from the date of its issuance, while the Principal (appellant) was appointed on 03.03.1992 i.e prior to the issuance/effectiveness of above mentioned policy but the Apex Court clarified this point in its judgment dated 27.11.2019 by dismissing the Civil Appeal No.1308/2019 of the department, which shows that the entitlement of the appellant for pay protection along arrears cannot be denied on this ground.
- E) That the similar nature appeal No.476/2014 title Main Farooq Iqbal V/S Chief Secretary of KP & Others has been accepted by this Honourable Tribunal on 07.03.2017, which was also upheld by the Apex Court in C.P No.1308/2019 in its judgment dated 27.11.2019 and on the basis of that judgments the pay of Mian Farooq Iqbal was protected and also granted arrears vide notification dated 15.06.2020 and the being similarly placed person the appellant is also entitled the same relief under the rule of consistency as the appellant also based his case in his departmental appeal on the case of Main Farooq Iqbal.
- F) That the other similar nature appeal No. 980/2016 was also accepted on 27.12.2019 by this august Tribunal, which was maintained by the Apex Court in its judgment dated 27.04.2021 in Civil Appeal No.39/2021 and the appellant is also entitled the same relief on the basis of reported judgment 2009-SCMR-1. **(Copies of judgment dated 27.12.2019 and 27.04.2021 are attached as Annexure-P&Q)**
- G) That the appellant has not been treated in accordance with law and rules and has deprived from legal right of pay protection alongwith arrears by the arbitrary manner of the respondents.
- H) That the appellant seeks permission 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

Abdul Tahir

THROUGH:



TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

CERTIFICATE:

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



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2021

Abdul Tahir

V/S

Chief Secretary & others

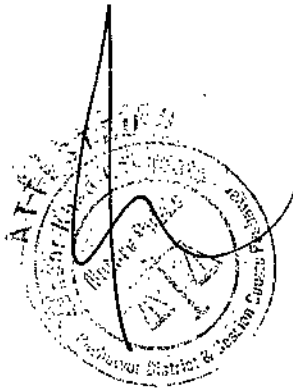
AFFIDAVIT

I, Abdul Tahir, (Rtd:) Associate Professor. (BPS-19), Technical Education, Khyber Pakhtunkhwa, Peshawar, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honourable Tribunal.



DEPONENT

Abdul Tahir
(APPELLANT)



A(6)

-11-

PAKISTAN MINERAL DEVELOPMENT CORPORATION

PIDC HOUSE, DR. ZIAUDDIN AHMED ROAD,
KARACHI

Reference No. PM DC/ADM-407

Dated August 12, 1982

Mr. Abdul Tahir,
Village & P.O. Panj Pir,
Tehsil Swabi,
Distt. Mardan (NWFP)

Regd.

Dear Sir,

— KWA

With reference to your application dated 23.4.1982 and subsequent interview with us, we have the pleasure to appoint/promote you as Assistant Mining Engineer at PMDC Oblieries, Mardan under the following terms and conditions:

Commencement of Appointment/Promotion :

1. Your appointment/promotion will commence from the date your 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.

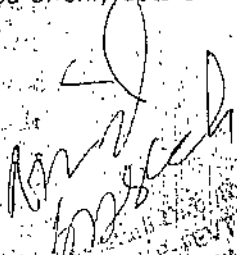
Salary :

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 1983 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.


Peshawar

Termination of Appointment :

9. During the period of probation, your appointment will be terminable :
- (i) by 30 days notice on either side without any reason being assigned ; or
 - (ii) by the Corporation or the Company only without any previous notice and without observing any formality if you should be guilty of any insubordination, intemperance or misconduct of which the Corporation or the Company will be the sole judge.
10. During your services on regular basis your appointment will be 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 notice on either side without assigning any reason or by payment of one year's salary in lieu thereof or proportionate payment for the unexpired period of notice.

Medical facilities :

11. You will be entitled to medical facilities for self, wife and your dependant 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 **Project Manager, PMDC Collieries, Makerval** as early as possible but not later than **5.9.1982**. 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

(**A.Q. MALUCH**)
(Secretary)

c. c.

- 1. Chief Accountant, PMDC, Karachi.
- 2. D. General Manager (Finance), PMDC, Karachi.
- 3. Manager (Audit) PMDC, Karachi.
- 4. General Manager, PMDC Branch Office, Quetta.
- 5. Project Manager, PMDC Collieries, Makerval.
- 6. Project Accountant, PMDC Collieries, Makerval.
- 5. File No. PMDC/App/1

Assistant Director
K.P. TENTA
Peshawar

B 10

FK

The General Manager(A&P)/Secretary,
Pakistan Mineral Development
Corporation,
Islamabad.

(Through Proper Channel)

Subject:- SUBMISSION OF APPLICATION FOR THE POST OF
"PRINCIPAL" FOR VOCATIONAL INSTITUTE IN THE
TECHNICAL EDUCATION DEPARTMENT

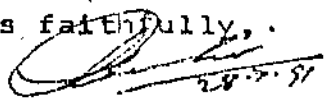
Dear Sir,

Enclosed please find application for the post
of Principal for Vocational Institute in the Technical
Education Department, Government of NWFP, through Public
Service Commission by the undersigned.

It is requested to kindly forward the same to
the Secretary, NWFP Public Service Commission, Peshawar
before 5.8.1991 being the last date.

Thanking you,

Yours faithfully,


(ABDUL TAHIR KHAN)
AME (Coal Div.)
PMDC, Islamabad.

Dt.28.7.1991.

Copy in advance to:-

The Secretary, NWFP Public Service Commission,
Peshawar.

9011

31.7.1991

PMDC/ADM-407/

The Secretary,
NWFP Public Service Commission,
PESHAWAR.

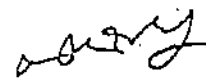
Subject:- APPLICATION FOR THE POST OF PRINCIPAL FOR
VOCATIONAL INSTITUTE IN THE TECHNICAL
EDUCATION DEPARTMENT

Dear Sir,

We forward herewith a application Form of Mr. Abdul Tahir Khan, Assistant Mining Engineer, PMDC, Islamabad for the above mentioned post for consideration. However, in case of his selection for the post applied for, he will have to resign from PMDC service, as per terms and conditions of his appointment letter.

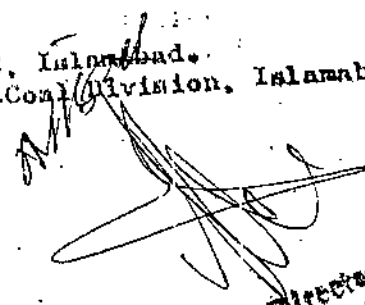
Thanking you,

Yours faithfully,
Pakistan Mineral Development Corporation


(R.D. Choudhry)
Manager (Admin)

c.c.

1. Acting General Manager (Coal) PMDC, Islamabad.
2. Mr. Abdul Tahir Khan, A.M.E. PMDC Coal Division, Islamabad.


Asst. Director
Employment Exchange
Peshawar.

412

19

GC
...
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ESH: THE 3-3-1992.

FA-1

NOTIFICATION

NO. SO(TE)2-16/85. Prin; Voc/Inst; -Consequent upon the recommendations of the N.W.F.P. Public Service Commission, the Governor, NWFP is pleased to appoint the following 3(three) candidates as Principals(BS-18) in the Government Vocational Institute NWFP with immediate effect in the colleges/Institutes given against their names and subject to the terms and condition given below:-

S.NO.	Name.	Posted as
1.	Mian Farooq Iqbal w/o Mian Sardar-ud-Din D-4/70, 5th Ghazali "A" Street Hayatabad, Peshawar.	Principal in BS-18 at Govt. Vocational Institute, Miranshah.
2.	Mr. Pervaiz Khan s/o Fazli Rahim r/o Moh: Sararzi Village Rajjar Tehsil and Distt: Charsadda.	Principal in BS-18 at Govt Vocational Institute Wana.
3.	Abdul Tahir Khan s/o Mehmood Khan r/o A.M.E.(Cool Division) P.M.D.C. Head Office 13-H/9 Shaizan Islamabad.	Principal in BS-18 at Govt. Vocational Institute Khar - Bajaur Agency.

Terms and conditions.

The appointment of the candidates is subject to the condition that they are domicile of NWFP.

The Inter-se-seniority will be fixed according to the order of merit assigned by the commission.

Their services will be liable to termination on one month's notice from either side. In case of resignation without notice one month salary and allowances if any, will be forfeited to Government.

No T.A. D.A. is allowed on their 1st appointment as officiating principals/Head of Department.

The candidates should join the post within one month immediately, thereafter Director Technical Education NWFP should furnish a certificate to the effect that the candidates have joined posts or otherwise.

Report in duplicate should be submitted to

Such rules and regulations.
for category of Govt.
to time.

Emp. Secy
Peshawar

E(13)

NO. DTE/Estt(T)2-144/

Dated 15/5/1993

To

The Section Officer (E-3),
Education Department,
Government of N.W.F.P.,
Peshawar.

Subject: FIXATION OF PAY OF MR. ABDUL TAHIR KHAN
R.P.S. NO. 18.

Enclosed, please find herewith an application dated 14-2-1993 alongwith other relevant documents in regard of Mr. Abdul Tahir Khan, Principal, Government Vocational Instt (Boys)Charsadda. He was selected by the Public Service Commission and appointed vide Notification No. 40(TZ)2-16/85 dated 3-3-81 who joined in the Technical Wing of Education Department as Principal, Government Vocational Institute(Boys)Khar (Bajaur Agency) on the forenoon of 10-3-1992.

Prior to this, he was working as Assistant Engineer in Pakistan Mineral Development Corporation in

He was drawing his Basic Pay in 1991-17 Rs. 3765/- P.M. (L.P.C. attached) on 9-3-1992. The Agency Accounts Officer Khar(Bajaur) has fixed his pay @ Rs. 3765/- P.M. in 1992-18 (Pay Slip attached).

It is further added that Mr. Abdul Tahir Khan, Principal, Government Vocational Institute, Charsadda is now against a regular post of EPS-18 which is neither a short vacancy nor a short term vacancy. He has applied to the Public Service Commission through proper channel.

It is, therefore, requested that sanction to the relaxation of FR-20(b) may be accorded to us to fix Basic Pay of the applicant in EPS-18 @ Rs. 4629/- P.M. instead of Rs. 3765/- P.M. as provided in Govt of West Pakistan, Finance Department let No. 2176/SEVI/63, dated 4-3-1969.

D. A. / as above.

DEPUTY DIRECTOR

Handwritten signature
Employment Exchange
Peshawar.

Ends: NO. DTE/Estt(T)2-144/7357/93 Dated 15/5/1993

Copy forwarded for information to the Principal, Vocational Institute(Boys)Charsadda with reference to his No. GVI/CA/22 dated 3-3-1993.

Handwritten signature
DEPUTY DIRECTOR

BETTER COPY-13

No.DTE/Estt (T)2-144

To

Dated ____/____/1993

The section Officer, (T-E)
Education department.
Government of N.W.F.P
Peshawar.

SUBJECT: FIXATION OF PAY OF MR. ABDUL TAHIR KHAN B.P.S NO.18

Enclosed, please find herewith an application dated 14.2.1993 alongwith other relevant documents in respect of OF Mr. Abdul Tahir Khan, principal, Government Vocational Institute (Boys) Charsadda. He was selected by the Public Service Commission and appointed vide Notification No. SO(TE) 2-16/85 dated 3.3.1992 who joined in the Technical wing of Education Department at Principal Government Vocational Institute (Boys) Khar (Bajaur Agency) on the forenoon of 10.3.1992.

Prior to this, he was working as Assistant Engineer in Pakistan Mineral Development Corporation.

He was drawing his basic pay in BPS-17 @Rs4629 P.M (LPC attached) 9.3.1992. The agency accounts officer Khar (Bajaur) has fixed his pay @ 3765/P.M in BPS-18 (Pay Slip Attached)

It is further added that Mr. Abdul Tahir Khan, Principal, Government Vocational Institute, Charsadda is work now against a regular post of BPS 18 which neither a lien vacancy nor a short term vacancy. He has applied to the Public Service Commission through proper Channel.

It is, therefore requested that sanction to the relaxation of PB-22(b) may be accorded so as to fix basic pay the applicant in BPS-18 @Rs.4629/- P.M instead of Rs.3765/-P.M as approved in Govt: of West Pakistan , Finance Department letter No.2176/SRVI/68 dated 4.3.1969

DEPUTY DIRECTOR

D.A/ As above

Endst: NoDTE/Estt (T)2-144/

Copy forwarded for information to eth principal, Govt: Vocational Institute (Boys) Charsadda with reference to his letter No.GVI/C4/ dated 3.3.1993.

DEPUTY DIRECTOR

BETTER COPY-13

No.DTE/Estt (T)2-144

To

Dated ____/____/1993

The section Officer, (T-E)
Education department.
Government of N.W.F.P
Peshawar.

SUBJECT: FIXATION OF PAY OF MR. ABDUL TAHIR KHAN B.P.S NO 18

Enclosed, please find herewith an application dated 14.2.1993 alongwith other relevant documents in respect of OF Mr. Abdul Tahir Khan, principal, Government Vocational Institute (Boys) Charsadda. He was selected by the Public Service Commission and appointed vide Notification No. SO(TE) 2-16/85 dated 3.3.1992 who joined in the Technical wing of Education Department at Principal Government Vocational Institute (Boys) Khar (Bajaur Agency) on the forenoon of 10.3.1192.

Prior to this, he was working as Assistant Engineer in Pakistan Mineral Development Corporation.

He was drawing his basic pay in BPS-17 @Rs4629 P.M (LPC attached) 9.3.1992. The agency accounts officer Khar (Bajaur) has fixed his pay @ 3765/P.M in BPS-18 (Pay Slip Attached)

It is further added that Mr. Abdul Tahir Khan, Principal, Government Vocational Institute, Charsadda is work now against a regular post of BPS 18 which neither a lien vacancy nor a short term vacancy. He has applied to the Public Service Commission through proper Channel.

It is, therefore requested that sanction to the relaxation of PB-22(b) may be accorded so as to fix basic pay the applicant in BPS-18 @Rs.4629/- P.M instead of Rs.3765/-P.M as approved in Govt: of West Pakistan , Finance Department letter No.2176/SRVI/68 dated 4.3.1969

DEPUTY DIRECTOR

D.A/ As above

Endst: NoDTE/Estt (T)2-144/

Copy forwarded for information to eth principal, Govt. Vocational Institute (Boys) Charsadda with reference to his letter No.GVI/C4/ dated 3.3.1993

DEPUTY DIRECTOR

F 14

Annex-11

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

NO. FD (SR-1) 12-1/2011

Dated Peshawar the: 4th June, 2011

TO:

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

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

Dear Sir,

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

Yours Faithfully,

(MASOOD KHAN)
Deputy Secretary (Reg-II)

W/Head
Asstt. Director
Employment Exchange
Peshawar.

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.

(SHAUKAT ULLAH)
Section Officer (SP II)

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.

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

For appellant.
For respondents.

MR. MUHAMMAD AAMIR NAZIR
MR. ASHFAQUE TAJ


MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Mian Farooq Iqbal, Officer on Special

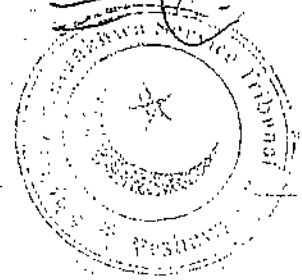
Duty Establishment Department, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, has impugned order dated 10.02.2014 vide which the application of the appellant for protection of pay and counting of service rendering by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

ATTESTED


EXAMINER
Khyber Pakhtunkhwa

5
07.03.17

9 (15)



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.

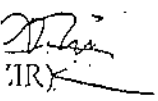
03.17 3. Learned counsel for the appellant argued before the court that before joining the Government Service, the appellant was serving as Lecturer in University of Engineering and Technology and after obtaining NOC, the appellant applied through proper channel for the post of Inspector Mines. That 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 is illegal, hence the appeal of the appellant be accepted as prayed for.

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

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

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

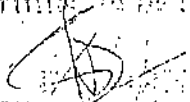
6. Perusal of the case file reveals that the appellant was initially appointed as Lecturer in BPS-17 in NWFP University of Engineering and Technology in the year 1986. Later on, the appellant applied for the post of Inspector of Mines (BPS-17) in the Inspectorate of Mines Labour Welfare NWFP Peshawar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

Sd/- M. Amir Nadeem, Member  JIR

Sd/- Ashfaque Taj, Member

ANNOUNCED
07.03.2017

Certified to be true copy


Khan, Peshawar
Service Tribunal,
Peshawar

H (18)

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
Secretariat, Peshawar & others

Appellant(s)

Versus

Mian Farooq Iqbal

Respondent(s)

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

For the Respondent(s) : In person

Date of Hearing : 27.11.2019

ORDER

Gulzar Ahmed, J. We have heard the learned
Additional Advocate General, KP. In support of his submission that
the benefit of pay protection and counting of service was not
available to the respondent, he has relied upon the letter dated
04.06.2011 (available at page 21 of the paper book) issued by the
Regulation Wing of the Finance Department, Government of
Khyber Pakhtunkhwa. Such letter is scanned below:

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

199
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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

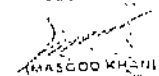
NO. FD ISR-11 12/1/2011
Dated Peshawar the 4th June, 2011

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 PATA, PATA Secretariat, Peshawar
7. The Assistant General, Khyber Pakhtunkhwa, Peshawar
8. All Heads of Attached Departments in Khyber Pakhtunkhwa
9. All District Coordination Officers in Khyber Pakhtunkhwa
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
11. The Registrar, Peshawar High Court, Peshawar
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa

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

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad, letter No. FNo. 4(2)RJI/1896-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No. 1931(F) CS/2005 in regard of Mr. Sajjad Rashid and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible on the employees of autonomous bodies who 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 force on their appointment in government service, provided they have applied for the post through proper channel.

Yours Faithfully,

 MASOOD KHAN
 Deputy Secretary (Reg-11)

Original even No. 6 1318

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa
2. Director, Local Fund ADB, Khyber Pakhtunkhwa, Peshawar
3. Director, Treasuries and Accounts, Senior District Accounts Officers and
4. All District Comptrollers of Accounts, Senior District Accounts Officers and
5. District Agency Accounts Officer in Khyber Pakhtunkhwa / PATA
6. Director, FMU, Finance Department
7. PS to Minister, Finance, Khyber Pakhtunkhwa
8. P. S. 1 Secretary, Finance
9. PA 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 21.05.1989. 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

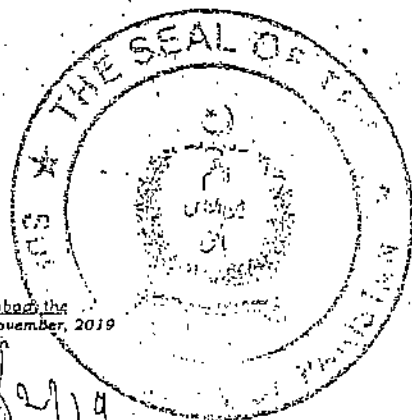
ATTESTED

19
 Court Associate
 Supreme Court of Pakistan
 Islamabad

20

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

28/11/19

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(SOSR-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.

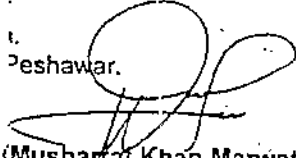
2- The earlier notification of even No. dated 07.12.2018 of this Department stands withdrawn.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

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

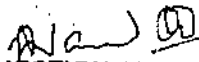
1. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.


(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 Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.

Am 20-02-20
CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
PESHAWAR

J (22)

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

Respected Sir,

Please refer to the above noted subject and to state that:-

1. I was serving as Assistant Mining Engineer (BPS-17) in Pakistan Mineral Development Corporation (PMDC) w.e.f. 26.08.1982 to 09.03.1992. (Annexure-A)
2. I was drawing Rs. 4629/-pm as basic salary, the last pay certificate (LPC) of PMDC is at Annexed-B).
3. The Technical Education Department, Khyber Pakhtunkhwa advertised the post of Principal (BPS-18) through Khyber Pakhtunkhwa Public Service Commission. I applied through proper channel for the said post (Annexure-C & D) & qualified vide Notification No. SO(TE)2-16/85 dated 03.03.1992 (Annexure-E).
4. I was appointed as Principal Government Vocational Institute (BPS-18) vide Notification No. SO(TE)2-16/85 dated 03.03.1992 and initial pay was fixed as Rs.3765/-pm (Annexure-G).
5. I left PMDC on 09.03.1992 and submit my arrival report in Technical Education on 10.03.1992 as Principal (BPS-18) Government Vocational Institute, Khar, Bajaur.
6. The Finance Department, Khyber Pakhtunkhwa issued a notification dated 04.06.2011, in which benefit 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 into-to provided that they have applied for the post through proper channel. (Annexure-H).
7. The Service Tribunal vide judgment in Service Appeal No.476/2014 dated 07.03.2017 allowed the protection of pay to Mian Farooq Iqbal from the date of appointment from the post of lecturer to the post of Inspector of Mines with effect from 10.07.1989 (Annexure-I).
8. The Apex Supreme Court of Pakistan, while hearing CMA No. 1308/2019 on 27.11.2019 dismiss the appeal filed by Government of KP and maintained the Service Tribunal Judgment dated 07.03.2017 (Annexure-J).

BSF
24-2-2020

Keeping in view the above facts, since I was an employee of PMDC (an autonomous body) which has adopted scheme of basic pay scale into-to in their appointment, and that I have also applied through proper channel, therefore I am entitled for fixation/protection of pay of appointment of one post to another in light of the aforementioned notification of Finance Department Khyber Pakhtunkhwa and apex Supreme Court of Pakistan Judgment dated 27.11.2019.

It is therefore humbly requested that the relevant Department be directed to fix Rs.4629/-pm on the basis of the pay last drawn as Assistant Mining Engineer (BPS-17) in PMDC instead of Rs.3765/-pm on my new appointment as Principal (BPS-18) in Technical Education Department retrospectively i.e from 10.03.1992. My pension may also be re-fixed accordingly please.

Thanking you.

SF

S.F.
D. NB. 3864

Yours faithfully

Engr. Abdul Tahir

Associate Professor (Retired)

Technical Education, Khyber Pakhtunkhwa.

NB. 1202 (WE) 21-2-2020

20-02-2020

Dated: 10.02.2020



**Government of Khyber Pakhtunkhwa
Industries, Commerce & Technical
Education Department**

No.SOIII(IND)4-27/2021/
12th March, 2021

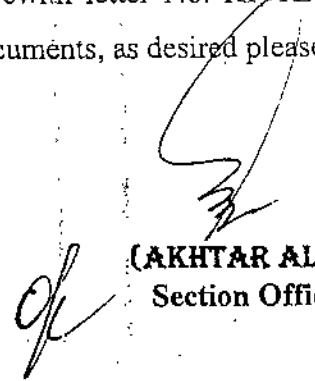
To,

The Section Officer (SR-I),
Finance Department
Khyber Pakhtunkhwa

**SUBJECT: - FIXATION / PAY PROTECTION ON APPOINTMENT FROM ONE POST
TO ANOTHER**

Kindly refer to your letter No. FD(SOSR-1)12-2/2020(Eng. Abdul Tahir) dated 01.03.2021 on the subject noted above and to forward herewith letter No. KP-TEVTA/F&A/1917 dated 10.03.2021 along-with requisite information / documents, as desired please

Encl: As Above


**(AKHTAR ALI SHAH)
Section Officer-III**



GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

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

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

twitter.com/GoKPFD

NO. FD (SOSR-1) 12-2/2020(Abdul Tahir)
Dated Peshawar the: 17-03-2021

To:

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

Subject: -

PAY PROTECTION.

Dear Sir,

I am directed to refer to the subject noted above and to state that one Mr. Abdul Tahir, was serving as Asstt. Mining Engineer (BS-17) in Pakistan Mineral Development Corporation (PMDC) w.e.f 26-08-1982 to 09-03-1992. Later on, he was appointed (through proper channel) as Principal Govt. Vocational Institute (BS-18), Technical Education Deptt. Khyber Pakhtunkhwa and accordingly he assumed the charge on 10-03-1992, but his previous pay was not protected in his new service due to non-availability of pay protection policy at that time.

2. Now, his case was examined under pay protection policy issued by this Department on 04-06-2011 (**Annex-I**) and in light of the same he is not entitled to the pay protection as the said policy is applicable w.e.f 04-06-2011, while the officer concerned had joined his new service prior to issuance / effectiveness of this Department's policy.

3. According to the officer concerned, the Service Tribunal, Khyber Pakhtunkhwa vide judgement (**Annex-II**) had decided pay protection case in favour of one Mian Farooq Iqbal, Deputy Chief Inspector of Mines (BS-19) who was working as Lecturer (BS-17) in the University of Engineering and Technology Peshawar. The Administrative Department had gone to the august Court against the said judgment. However, the Supreme Court of Pakistan dismissed the CPLA of the Administrative Department and accordingly Finance Department implemented the said judgement by issuance of pay protection notification in light of this Department's policy dated 04-06-2011 in respect of the said officer vide **Annex-III**.

4. Now, Mr. Abdul Tahir has also requested this Department for grant of pay protection of his previous service rendered in PMDC w.e.f 26-08-1982 to 09-03-1992 (i.e. an Autonomous body of Federal Govt.) on the analogy of Mian Farooq Iqbal, Deputy Chief Inspector of Mines.

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

6. An early response will highly be appreciated.

Your's faithfully,

Sd/-
(REHMAT KHAN)
SECTION OFFICER (SR-1)

M. 25

to be enclosed
in document

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

3827-29

No. SO(OP-II)/LD/5-7/2012-VOL-IV
DATED: PESHAWAR THE 31st MARCH, 2021

To

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


Attention: Section Officer (SR-I)

Subject: PAY PROTECTION.

Dear Sir,

I am directed to refer to your Department's letters No. FD/(SOSR-I)/12-2/2020(Abdul Tahir) dated 17.03.2021, on the subject noted above and to state that Law Department has already tendered opinion to your Department in a similar case in the light of judgment of Supreme Court of Pakistan delivered in civil appeal No. 1308/2019 titled Govt. of Khyber Pakhtunkhwa v/s Mian Farooq Iqbal decided on 27-11-2019. (copy enclosed)

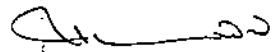
Yours Faithfully,


Section Officer (Opinion-II)

Endst: of even No. & date.

A copy is forwarded to the:-

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


Section Officer (Opinion-II)

OK

N 26

OFFICE OF ADVOCATE GENERAL KHYBER PAKHTUNKHWA PESHAWAR

No. 4123/AC-1 Dated: 15-02-2012
Address: High Court Building, Peshawar Exchange No. 923813
Tel. No. 091-9211013 Fax No. 091-9210271

OPINION IN THE MATTER OF PAY PROTECTION

Subject:

Please refer to your letter No. SO(OP)1100/57/2012 Vol. IV

dated 15-02-2012 on the subject cited above.

I have thoroughly examined the whole case (file along with the 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, Khan Khail, F.C. DC (BS-20) Mines and Minerals, Khyber Pakhtunkhwa, was appointed by the Pakistan Industrial Development Corporation (PIDC) as Apprentice Assistant Mining Engineer (BPS-17) and later as Assistant Mining 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 15-09-1983. 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 a matter of law, relief should be granted to civil servants on the point of law relating to the terms and conditions and benefit of decision should be given to such civil servants.

BATTER COPY-26

OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 4383/AG

Dated: 5/01/2021

Address: High Court Building, Peshawar

Exchange

No.9213833

Tel:No.091-9211013

Fax No.091-9210270

Subject:

OPINION IN THE MATTER OF PAY PROTECTION

Sir,

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

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

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

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

which is reiterated in 2009. SCMR is 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

BATTER COPY-27

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 .



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

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

NO. FD (SOSR-1) 12-2/2020(Eng. Abdul Tahir)
Dated Peshawar the: 03-05-2021

To: The Section Officer-III,
Industries, Commerce & Technical Education Department,
Peshawar.

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

I am directed to refer to your letter No. SOIII(IND)4-27/2021/1705 dated 24-02-2021 on the subject noted above and to state that Finance Department regrets its ability to accede to the request on the ground that this Department's policy dated 04-06-2011 is applicable from the date of its issuance while the Principal concerned was appointed on 03-03-1992 i.e. prior to the issuance / effectiveness of above mentioned policy.

(REHMAT KHAN)
SECTION OFFICER (SR-1)

	<p>KHYBER PAKHTUNKHWA TECHNICAL EDUCATION & VOCATIONAL TRAINING AUTHORITY (KP-TEVTA) House No. 5-771 Old Bara Road University Town Peshawar</p>	
--	---	--

Endst: No. KP-TEVTA/F&A/ 6112 (U-3)
Copy for information to: -

Dated 16/9/2021

Engr. Abdul Tahir, Associate Professor (Rtd), Technical Education, Khyber Pakhtunkhwa, Peshawar.

ASSISTANT DIRECTOR (F&A)

29

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 2522. 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 Razmiak prior to the issuance of notification dated 04.06.2011, wherein employees of autonomous body who had adopted government pay scales were provided benefits of pay protection for the service rendered in autonomous bodies. The stance of the respondents appears to be illogical and irrational. It was quite unjust to deny benefits of pay protection, to a civil servant on the sole ground that no policy was invogue/ infield. He otherwise fulfilled all the ^{conditions} mentioned in letter dated 04.06.2011.

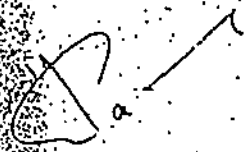
05. Now this point has been adequately elaborated/addressed by the august Supreme Court of Pakistan through order dated 27.11.2019 passed in civil appeal no. 1308/2019. The provincial government had challenged decision of Service Tribunal dated 07.03.2017 passed in service appeal no. 476/2014, wherein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

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06. As set forth 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 to be consigned to the record room.



(AHMAD HASSAN)
Member



(MUHAMMAD HAMID MUGHAL)
Member

ANNOUNCED:
27/12/2019

Pay protection

2 (33)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

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

CIVIL APPEAL NO. 39 OF 2021

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

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

VERSUS

Muhammad Ismail and another
...Respondent(s)

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

For the Respondent: Mr. Muhammad Asif Yousafzai, ASC

Date of Hearing: 27.04.2021

JUDGMENT

SAYYED MAZHAR 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. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied."

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

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

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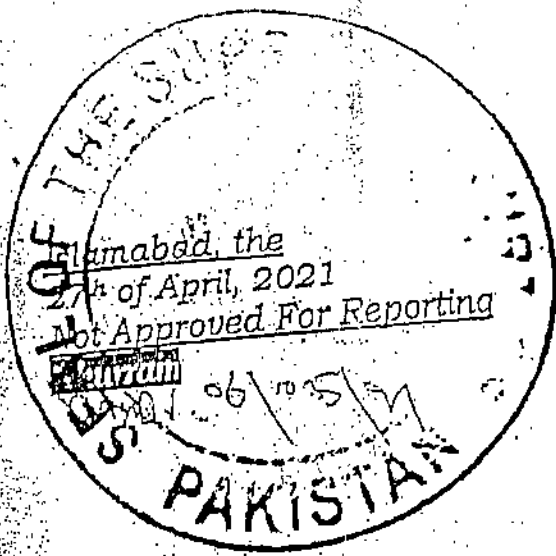
Civil Appeal No. 39/2021

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

Copy Fee: 7544

Court Fee: 12000

Date of: 7/5/21

Date of Del: 17-5-21

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Abdul Tahir

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Chief Secretary KP & others

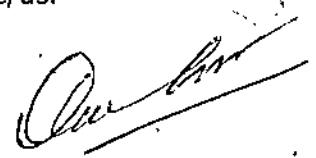
(Respondent)
(Defendant)

I/We, Abdul Tahir

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

CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

Appeal No. 7555 of 20 21

Abdul Tahir Appellant/Petitioner

Versus

The Chief Secy. KPK Peshawar Respondent

Respondent No. 4

Notice to: —

The Managing Director KP TRVTA
Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 7/2/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 27th

Day of Dec 20 21

(for Reply)



Registrar,
 > Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

Appeal No. 7555 of 20 21

Abdul Tahir Appellant/Petitioner

Versus
The Chief Secy. KPK Peshawar. Respondent

Respondent No. 1

Notice to:

The Chief Secretary KPK Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 7/2/22 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 27/12

Day of Dec 20 21

(for Reply)

ISSUE BRANCH
CHIEF SECRETARY
Govt of Khyber Pakhtunkhwa
Peshawar

[Signature]
Registrar,

Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. *S.B*

No.

Appeal No. *7555* of 20 *21*

Abdul Tahir Appellant/Petitioner

Versus

The Chief Secy. KPK Peshawar Respondent

Respondent No. *3*

Notice to:

*The Secretary Finance Deptt:
KPK Peshawar.*

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on *7/2/22* at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No. dated.....

Given under my hand and the seal of this Court, at Peshawar this *27th*

Day of *Dec* 20 *21*

(For Reply)

[Signature]

Secy. *[Signature]* Registrar,
Daily *[Signature]* Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B
PESHAWAR.

No.

Appeal No. 7555 of 20 21

Abdul Tahir Appellant/Petitioner

Versus

The Chief Secy. KPK Peshawar Respondent

Respondent No. 2

Notice to: —

The Secretary Industries Commerce & Technical Education Deptt. Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 7/2/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 27.12

Day of Dec 2021

(for Reply)



Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

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**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKTUNKHWA, PESHAWAR**

Service Appeal No. 7555/2022

Abdur Tahir(Retd) Associate Professor BS-19, Technical Education, Khyber
Paktunkhwa, Peshawar..... **APPELLANT**

V E R S U S

1. The Chief Secretary, Khyber Paktunkhwa, Peshawar.
2. The Secretary, Industries and Technical Education, Khyber Paktunkhwa, Peshawar.
3. The Secretary Finance, Khyber Paktunkhwa, Peshawar.
4. The Managing Director, Technical & Vocational Training Authority Khyber
Pakhtunkhwa Peshawar **RESPONDENTS**

I N D E X

S.No	Description of documents	Annex	Page No
1.	Comments Reply	--	1-2
2.	Affidavit	--	3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 7555/2022

Abdul Tahir, (Retd) Associate Professor (BPS-19), Technical Education, Khyber Paktunkhwa, Peshawar.....Appellant.

VERSUS

1. The Chief Secretary, Khyber Paktunkhwa, Peshawar.
2. The Secretary Industries, Commerce and Technical Education, Khyber Paktunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Paktunkhwa, Peshawar.
4. The Managing Director, KP-TEVTA, Khyber Paktunkhwa, Peshawar.

.....Respondents.

PRELIMINARY OBJECTIONS:

- A- That this tribunal has no jurisdiction in the matter.
- B- That the Appeal is badly time barred.
- C- That the Appellant has no cause of action.
- D- That the Appellant has got no locus standi.
- E- That the Appellant has not come to this honorable Tribunal with clean hands.
- F- That the Appellant has been estopped by his own conduct to file the present appeal.

Reply on behalf of the Respondents 2, 3 and 4 :

Respectfully Sheweth:

1. Pertains to the record.
2. It is correct.
3. Pertains to the record.
4. It is correct with further clarification that the said policy of the Finance department is applicable from the date of its issuance i.e. 04-06-2011 as no notification can act retrospectively..
5. Mostly Pertains to the record. However each case has its own merit. As far arrears of pay in the instant matter is concerned, the same are not permissible under the provision of financial rules.
6. Pertains to the record.
7. No comments.

GROUND:

- A. It is incorrect in view of aforementioned reply.
- B. It is incorrect as explained in the preceding paras.
- C. Pertains to the record.
- D. It is incorrect. No notification can act retrospectively.
- E. It is incorrect in view of the comprehensive reply submitted in the preceding paras.

- F. It is incorrect in view of the comprehensive reply submitted in the preceding paras.
- G. It is incorrect. The appellant has been treated according to law on the subject.
- H. No comments.

In view of the above, it is prayed that the appeal of the appellant for having no force of law and facts, may be dismissed forthwith.

Respondent No. 3)
Secretary Department
Khyber Pakhtunkhwa.

Finance Dept

Respondent 2) _____
Secretary Industries, Commerce & Technical
Education Government of Khyber Pakhtunkhwa.

Respondent 4) _____
Managing Director Khyber Pakhtunkhwa Technical
Education & Vocational Training Authority.

MANAGING DIRECTOR
TECHNICAL EDUCATION & VOCATIONAL
TRAINING AUTHORITY
KHYBER PAKHTUNKHWA

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKUNKHWA, PESHAWAR**

Service Appeal No. 7555/2022

Abdur Tahir(Reid) Associate Professor BS-19, Technical Education, Khyber
Paktunkhwa, Peshawar..... **APPELLANT**

V E R S U S

1. The Chief Secretary, Khyber Paktunkhwa, Peshawar.
 2. The Secretary, Industries and Technical Education, Khyber Paktunkhwa, Peshawar.
 3. The Secretary Finance, Khyber Paktunkhwa, Peshawar.
 4. The Managing Director, Technical & Vocational Training Authority Khyber
Paktunkhwa Peshawar
- RESPONDENTS**

AFFIDAVIT

I Shahabuddin Khattak, Legal Consultant / Counsel , KP-TEVTA
do hereby solemnly affirm and declare that contents of the
accompanying reply are correct and true to the best of my knowledge
and belief and that nothing has been concealed from this august
tribunal.

ATTESTED



17301-6527091-5
0334 9199058

Deponent
[Signature]



Khyber Pakhtunkhwa
Technical Education & Vocational Training
Authority KP TEVTA
Old Bara Road, University Town
Peshawar

TEVTA
KHYBER PAKHTUNKHWA

AUTHORITY LETTER

Due to My/our business in administrative responsibilities and smooth running of departmental activities of Technical & Vocational Training Authority (TEVTA), in order to facilitate the court proceedings, I/ we hereby authorized:-

Mr. Shahab-ud-Din Khattak S/O Lal Jan Khattak CNIC No. 17301-6527091-5 legal consultant of this department to perform the acts of (i) signing of affidavits on behalf of Tevta, Record Statements, Represent the department on my/our behalf before the Honorable Peshawar High Court Peshawar, in the case titled:

Service Tribunal

Abdul Tahid

Vs

Govt of KP & others

[Signature]
Deputy Director (Litigation)
KP-TEVTA
Deputy Director (Litigation)
KP-TEVTA Head Office Peshawar

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKTUNKHWA, PESHAWAR**

Service Appeal No. 7555/2022

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I N D E X

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 7555/2022

Abdul Tahir,(Retd) Associate Professor (BPS-19), Technical Education, Khyber Paktunkhwa, Peshawar.....Appellant.

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1. The Chief Secretary, Khyber Paktunkhwa, Peshawar.
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Respondent 2) _____
Secretary Industries, Commerce & Technical
Education Government of Khyber Pakhtunkhwa.

Respondent 4) _____
Managing Director Khyber Pakhtunkhwa Technical
Education & Vocational Training Authority.

Zahid

MANAGING DIRECTOR
TECHNICAL EDUCATION & VOCATIONAL
TRAINING AUTHORITY
KHYBER PAKHTUNKHWA

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKTUNKHWA, PESHAWAR**

Service Appeal No. 7555/2022

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Paktunkhwa, Peshawar..... **APPELLANT**

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3. The Secretary Finance, Khyber Paktunkhwa, Peshawar.
4. The Managing Director, Technical & Vocational Training Authority Khyber
Pakhtunkhwa Peshawar**RESPONDENTS**

A F F I D A V I T

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Deponent

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