

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1087/2019

Date of Institution ... 23.08.2019

Date of Decision... 03.03.2023

SCANNED  
KPST  
Peshawar

Ameer Ullah S/O Abdul Ajab Khan, Ex-Chowkidar Dar Revenue Academy,  
Tehsil & District Karak.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary/Senior Member  
Board of Revenue Civil Secretariat, Peshawar and 04 others.

... (Respondents)

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MR. HIDAYATULLAH KHATTAK,  
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,  
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN  
MS. FAREEHA PAUL

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant service appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 02.07.2019, whereby his departmental appeal against the order of his termination dated 19.06.2019 was rejected.

2. Precisely stated the averments as raised by the appellant in his appeal are that he was serving as Chowkidar in Revenue Academy since 2006; that in the year 2018, the Provincial government planned shifting of the Revenue Academy from Karak to Phase-III Chowk


Hayatabad Peshawar; that upon the application of the appellant, his services were transferred from Revenue Academy Karak to the office of Assistant Commissioner Karak vide order dated 10.10.2018; that the appellant was regularly performing his duty in the office of Assistant Commissioner Karak when he received copy of Notification dated 19.06.2019 issued by the Director Land Records, Khyber Pakhtunkhwa, whereby he was terminated from service; that the appellant challenged the order of his termination by way of filing of departmental appeal, however the same was also rejected, hence the instant service appeal.

3. Respondents were summoned, who appeared through their representative and contested the appeal by way of filing comments, wherein they raised certain legal as well as factual objections and mainly alleged that as the appellant is a contractual employee, therefore, this Tribunal has got no jurisdiction to entertain the instant appeal.

4. Arguments have already been heard and record perused.

5. According to the appointment order of the appellant so annexed with his appeal, he was appointed as Chowkidar (BPS-1) in relaxation of ban in light of amendment in the Contract Policy dated 10.08.2006. The appellant has been terminated from service vide Notification dated 19.06.2019 issued by the Director Land Records, Khyber Pakhtunkhwa, wherein too it has been mentioned that the appellant was a contract/temporary employee. During the course of arguments, learned Additional Advocate General has

contended that Khyber Pakhtunkhwa Regularization of Services of Employees of Settlement Operations and Revenue Academy Act, 2022 has been promulgated for regularization of services of employees of Revenue and Estate Department appointed on contract basis against the posts in Revenue Academy and Settlement Operations. He also produced copy of Notification dated 18.01.2023, whereby services of certain contract employees of Revenue Academy Peshawar have been regularized in light of the aforementioned regularization Act. The appellant had been terminated from service prior to coming in force of the Khyber Pakhtunkhwa Regularization of Services of Employees of Settlement Operations and Revenue Academy Act, 2022.

 6. According to Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, any civil servant aggrieved by any final order, whether original or appellate, made by a departmental Authority in respect of any of the terms and conditions of his service can invoke the jurisdiction of the Service Tribunal through filing of an appeal. Civil Servant has been defined in Section 2 (b) of Khyber Pakhtunkhwa Civil Servant Act, 1973, which is reproduced as below for ready reference:-

*“2 (b) —civil servant means a person who is member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-*

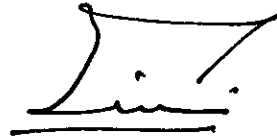
- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;*
- (ii) a person who is employed on contract, or on work charged basis or who is paid from contingences; or*

(iii) *a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923)."*

7. The appellant is not a civil servant as defined under section 2 (b) of Khyber Pakhtunkhwa Civil Servants Act, 1973, therefore, the appeal filed by the appellant is not competent before this Tribunal for the reason that this Tribunal lacks jurisdiction in the matter.

8. Consequently, it is held that this Tribunal lacks jurisdiction in the matter, therefore, the appeal in hand is returned to the appellant for seeking remedy from competent forum available under the law. Office is directed to return the original appeal alongwith it enclosures to the appellant by retaining its copies and placing the same on the file. Parties are left to bear their own costs. File be consigned to the room.

ANNOUNCED  
03.03.2023



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



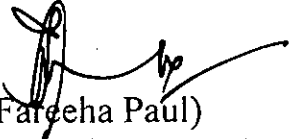
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

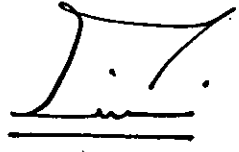
ORDER  
03.03.2023

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, it is held that this Tribunal lacks jurisdiction in the matter, therefore, the appeal in hand is returned to the appellant for seeking remedy from competent forum available under the law. Office is directed to return the original appeal alongwith it enclosures to the appellant by retaining its copies and placing the same on the file. Parties are left to bear their own costs. File be consigned to the room.

ANNOUNCED  
03.03.2023

  
(Farzeha Paul)  
Member (Executive)

  
(Salah-Ud-Din)  
Member (Judicial)