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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

E.P. No: 43/2023

IN REFERENCE APPEAL NO. 1038-P/2015

Khyber Pakhtunkhwa
Service Tribunal

Case No. 4808

Dated 11/4/23

Dr Muhammad Iqbal.....Appellant


Versus

Govt. of Khyber Pakhtunkhwa and others.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No. 01 to 04

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DEPONENT 13⁰³/₂₀₂₃

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO. 43/2023

IN SERVICE APPEAL NO. 1038-P/2015

Dr. Muhammad Iqbal.....(Appellant)

VERSUS

Govt. of Khyber Pakhtunkhwa and others.....(Respondents)

REPLY ON BEHALF OF RESPONDENTS NO. 01 to 04

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

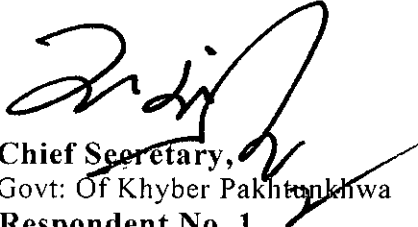
1. That the appellant has got no cause of action/locus standi to file the instant Appeal against the respondents.
2. That the instant Petition is against the prevailing Law & Rules.
3. That the Petition is not maintainable in its present form.
4. That the appellant has filed the instant Petition with mala-fide intention hence liable to be dismissed.
5. That the Petition is barred by law and limitation.
6. That the Hon'ble Tribunal has no jurisdiction to adjudicate upon the matter.

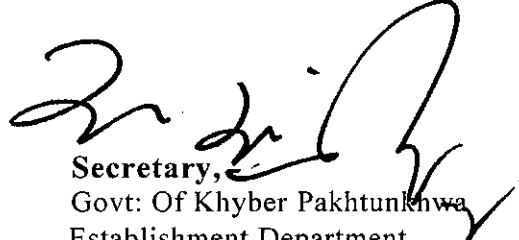
RESPECTFULLY SHEWETH:

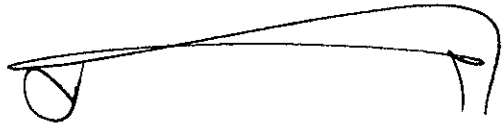
1. Pertains to record.
2. Correct to the extent of the judgment of the Hon'ble Service Tribunal (copy of Judgment is annexed as A: Page No. 01-05). Furthermore, his right for emoluments was considered by the Finance Department through a speaking order vide letter dated 01/12/2022 wherein the Finance Department directed that the petitioner is not entitled for the emoluments (copy of the order is annexed as B page No. 06-09).


3. Incorrect. The Finance Department has clearly rejected the appeal on the grounds that the appellant is not entitled for higher post benefits because the policy of higher scale benefits was enacted w.e.f 16-12-2009 and the period of posting (OPS) of the appellant was from 30-04-2009 to 28-07-2009. Hence not covered under the policy.
4. As per Para 2& 3 above.
5. Incorrect. The OPS period as mentioned in the Service Tribunal Judgment is from 30-04-2009 to 28-07-2009 and the same period does not come under the policy and rejected by the Finance Department through a Speaking Order (**Copy of the order is annexed as C page No. 10**).
6. The replying respondents also seek permission of the court to adduce other grounds during final hearing.

It is, therefore, requested that on acceptance of instant reply, E.P No. 43/2023 may kindly be filed being devoid of merits and policy.


Chief Secretary,
Govt: Of Khyber Pakhtunkhwa
Respondent No. 1

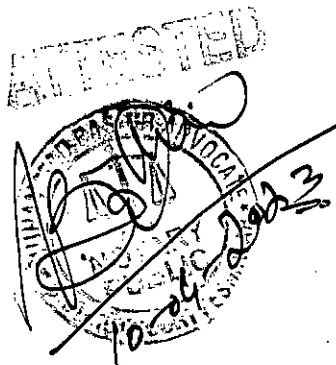

Secretary,
Govt: Of Khyber Pakhtunkhwa
Establishment Department
Respondent No. 2

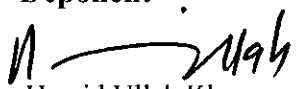
✓ 
Secretary,
Govt: Of Khyber Pakhtunkhwa
Livestock, Fisheries & Coop: Deptt:
Respondent No. 3


Director General (Research)
Livestock & Dairy Dev: Deptt:
Khyber Pakhtunkhwa Peshawar
Respondent No. 4

Affidavit:

It is hereby solemnly affirm and declare on oath that the contents of the instant reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.



Deponent

Dr. Hamid Ullah Khan
Departmental Representative

Ann x.A

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1038/2015

Date of Institution ... 21.09.2015

Date of Decision ... 14.01.2021



Dr. Muhammad Iqbal, Director Livestock Research & Development Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and six others. ... (Respondents)

Present.

Mr. Naqibullah Khattak,
Advocate.

Appellant.

Mr. Kabiriullah Khattak,
Addl. Advocate General

For official respondents.

Mr. Khalid Rahman,
Advocate

For respondents No. 5 to 7

MR. HAMID FAROOQ DURRANI,
MR. ATIQ-UR-REHMAN WAZIR,

CHAIRMAN
MEMBER(E)

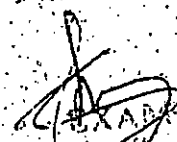
JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. On 26.02.2019, this Tribunal had burdened the appellant with costs of Rs. 10000/- (Rs. Ten thousand only), to be paid to private respondents, observing that the appellant had filed the present service appeal in the year 2016. He thereafter dragged the private respondents and it appeared that he was not interested in the decision of the same. A last opportunity was, therefore, granted to the appellant.

Today, learned counsel for respondents No. 5, 6 & 7, Mr. Khalid Rahman, Advocate was magnanimous enough to forego his right of receiving the costs.

ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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2. The present appeal has been preferred, questioning the seniority of private respondents over the appellant. It is useful to reproduce hereunder the prayer part, as contained in the memorandum of appeal:-

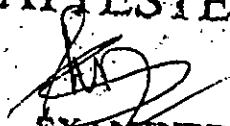
"On acceptance of the instant Service Appeal, the official respondents may graciously be ordered to issue revised seniority list of Principal Research Officer/Director (BPS-19) in the Directorate General (Research) Livestock & Dairy Development Department Khyber Pakhtunkhwa, Peshawar, declaring the Appellant as Senior to Private Respondents No. 5 to 7 and the Appellant be declared entitled for all back financial benefits."

The prayer extends the impression that the appellant was aggrieved of some seniority list of Principal Research Officers/Directors. It is important to note that learned counsel failed to lay hands on any such list nor the appellant could place on brief such document.

3. The facts, as laid in the memorandum of appeal, are to the effect that on 29.04.2009, the appellant was posted as Principal Research Officer/Director (Planning) BPS-19 in his own pay scale at Directorate of Livestock Research & Development Khyber Pakhtunkhwa Peshawar, against vacant post. Subsequently, he alongwith other officers, was promoted to the said post on 28.07.2009 on regular basis with immediate effect. He took charge as such on 15.10.2009. In essence, his grievance is that by virtue of his posting on 29.04.2009 on his own pay scale, rendered him senior to private respondents. The emoluments/back financial benefits for the period between 30.04.2009 and 28.07.2009 were also payable to him.

4. We have heard learned counsel for the appellant, private respondents No. 5 to 7 and learned Addl. AG on behalf of the official respondents. With their valuable assistance the available record has also been examined.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

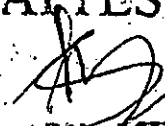
5. Learned counsel for the appellant attempted to argue that on the strength of order dated 30.04.2009, the appellant was burdened with higher responsibilities, therefore, he was entitled to the emoluments there-for at the higher rate. Alongside, the appellant became senior to his colleagues who all were promoted to BPS-19 through notification dated 28.07.2009, with immediate effect. Referring to the notification, it was contended that the order being made effective immediately it was not legally correct as far as the appellant was concerned. Learned counsel referred to judgment reported as 1986-SCMR-991, in support of his argument regarding entitlement of appellant receiving better emoluments for the period he performed duty against higher post/grade but in his own pay scale.

Learned counsel for private respondents No. 5 to 7 agitated objections regarding competence and maintainability of appeal in hand. In his view, the appellant had sought directions from this Tribunal, through the appeal, which was not within its jurisdiction. Further, there was no order, original or appellate, which was questioned by the appellant; therefore too, the appeal was not competent in view of provisions contained in Khyber Pakhtunkhwa Service Tribunals Act, 1974. The objection regarding delay in submission of departmental appeal was also pressed into service by the learned counsel. He relied on judgments reported as 2015 PLC(C.S) 151, 2010-SCMR-1301, 2006-SCMR-1630 and 2009-SCMR-1121.

Learned Addl. AG adopted the arguments advanced by learned counsel for private respondents.

6. As stated herein-before, the appellant had failed to question any particular seniority list nor there was any order by the competent authority operating adversely against him. In view of provisions of Section 4 of the Act *ibid*, the

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(4) (8)

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appeal in hand, therefore, appears to be incompetent. It is important to note here that the appeal in hand is with the prayer in the nature of a command to departmental authority. Guidance is sought from 2006-SCMR-1630.

7. It is a matter of record that the order of promotion of appellant and others to BPS-19 was issued on 28.07.2009, mentioning the name of appellant at S. No. 7, thereof. On the other hand, averments in the memo of appeal suggest that the appellant agitated his grievance in the year 2015, after lapse of more than five years. No seniority list, subsequent to the notification dated 28.07.2009, was ever pressed into service nor was claimed to have been issued by the respondents. The appellant was obligated to have preferred the departmental appeal within the prescribed time. It was, however, done with enormous delay; therefore too, the competence of appeal in hand is under the cloud. 2009 SCMR 1121 and 2006 SCMR 1630 are respectfully followed in the context.

Alongwith the appeal an application for condonation of delay has also been submitted. The application is cursory while the appellant remained at loss in setting forth cogent explanation for the delay.

8. It also requires to be noted that entire claim of appellant was on account of his transfer and posting as Principal Research Officer/Director Planning (BPS-19), on 29.04.2009 against his own pay scale. Such claim appears to be baseless as by now it is well settled to the contrary. It is repeatedly held by the Apex Court that acting charge appointment could neither construed to be an appointment on regular basis for any purpose including seniority, nor it conferred any vested right for regular appointment. Guidance is sought from 2015 PLC(C.S)

151.

ATTESTED

[Signature]
CHIEF CLERK
Service Tribunal

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9. For what has been discussed above, the appeal in hand is meritless and is accordingly dismissed. Before parting with this judgment we consider it appropriate to note that the right of appellant regarding the receipt of emoluments at a higher rate, if any, for the period he worked on a post in BPS-19 against own pay scale, shall not be affected by any of the contents of instant judgment.

Parties are, however, left to bear their respective costs. File be consigned to the record room.

Sdf
 (ATIQ-UR-REHMAN WAZIR)
 MEMBER(E)

Sdf
 (HAMID FAROOQ DURRANI)
 CHAIRMAN

ANNOUNCED
 14.01.2021

Sdf
 Certified to be true copy
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Date of Presentation of Application 14/01/2021
 Number of Words 2400
 Copying Fee 26/-
 Urgent _____
 Total 26/-
 Name of Copyist _____
 Date of Completion of Copy 20/01/2021
 Date of Delivery of Copy 20/01/2021

Annex-B

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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) 1-1/ 2022/Muhammad Iqbal
Dated Peshawar the: 01-12-2022 .

To

The Section Officer (LFC),
Agriculture, Livestock, Fisheries &
Cooperative Department,
Peshawar .

Subject:- SERVICE APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974 AND PAYMENT OF EMOLUMENTS/FINANCIAL
BENEFIT W.E.F 01.05.2009 TO 14.10.2009.

I am directed to refer to your letter No.SO(LFC)AD/DR/PF-
3/1990 dated 04.10.2022 on the subject noted above and to enclose herewith
a self-explanatory Speaking Order (duly signed by Secretary Finance) in
respect of Dr. Muhammad Iqbal, Divisional Level Director of Directorate
General Livestock (BPS-19), for information, please.

Encls-(As above)

[Signature]
21/12/22
SECTION OFFICER (SR-1)

Copy forwarded for information to PA to Deputy Secretary (Reg-I),
Finance Department, Peshawar.

[Signature]
SECTION OFFICER (SR-1)

[Signature]
7/12/22
SA - put up

[Signature]
Mansoor ul Rehman
Adress

(7)

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Annex-3 (10)



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

SPEAKING ORDER

No.FD/SOSR-I/1-1/2022: WHEREAS, Mr. Muhammad Iqbal, Senior Research Officer (BS-18), Center of Dairy Technology, Livestock Research & Development Station, Surezai Peshawar was posted as Principal Research Officer/Director Planning (BS-19) (Headquarter) at Directorate of Livestock Research & Development, Peshawar in his own pay and scale w.e.f 29.04.2009 to 27.07.2009 (Annex-I-II).

WHEREAS, on 28.07.2009 he was regularly promoted to the post of Principal Research Officer/Director (BS-19) w.e.f 28.07.2009 and he filed appeal to his Department for grant of higher post benefits for the period of OPS basis which was not entertained by his Administrative Department.

WHEREAS, he moved to the Khyber Pakhtunkhwa, Service Tribunal which partially decided the case in his favour and directed for grant of higher post benefits (if any) to the officer concerned for the period from 30.04.2009 to 28.07.2009 prior to the issuance/effectiveness of Finance Department's policy as the same was applicable w.e.f 16.12.2009 (Annex-III).

NOW THEREFORE, after thorough examination of the case in light of relevant policy, I Secretary, Finance Department, have come to the conclusion that the petitioner i.e. Muhammad Iqbal is not entitled to the higher post benefits because the policy of higher scale benefits was enacted w.e.f 16.12.2009 (Annexed). The case is, therefore, regretted being not covered under the existing policy.

Attested

Copy of order
Associate

(IKRAMULLAH KHAN)
Secretary Finance



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK, FISHERIES &
COOPERATIVE DEPARTMENT

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No. SO (LFC)/AD / DR / PF-03 /1990
Dated Peshawar the December 9, 2022

To

The Director General (Extension),
Livestock & Dairy Development Department,
Khyber Pakhtunkhwa

DIRECTOR GENERAL (EXTENSION)
NO. 8325
DATE: 02/12/22
12/22/22

Subject: SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AND PAYMENT OF EMOLUMENTS/FINANCIAL BENEFIT W.E.F 01-05-2009 TO 14-10-2009.

I am directed to refer to your letter No.14869 dated 06-09-2022 on the subject noted above and to enclose herewith a copy of letter No.FD/SOSR-I/1-1/2022/M. Iqbal dated 01-12-2022 received from Finance Department for information and further necessary action.

Encl: As Above.

Endst: No. & date even:

Copy forward to:

1. PS to Secretary Agriculture, Livestock, Fisheries & Cooperatives Department
2. Master File.

SECTION OFFICER (LFC)

[Handwritten signature]

SECTION OFFICER (LFC)

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Attested
[Large handwritten signature]
Advocate

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**DIRECTORATE GENERAL (EXTENSION),
LIVESTOCK & DAIRY DEVELOPMENT DEPARTMENT,**
Bacha Khan Chowk, Charsadda Road, Peshawar. 091-9210276, 9210249 FAX: 091-9210285

No. 21470

Dated Peshawar the 20 /12/2022

To

The Director,
Livestock Research & Development,
Khyber Pakhtunkhwa, Peshawar.

Subject:

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AND PAYMENT OF EMOLUMENTS/FINANCIAL BENEFIT W.E.F 01-05-2009 TO 14-10-2009

With reference to letter No. SO (LFC)/AD/DR/PF-03/1990, dated 9th December 2022, regarding the subject noted above.

Enclosed please find herewith the subject letter along with enclosures is here by submitted for information and further necessary action if any at your end.

DIRECTOR HEADQUARTERS

No. _____

Dated Peshawar the 1 /12/2022

Copy of the above is placed in the personal file of the officer concerned for record please.

DIRECTOR HEADQUARTERS

OS

21/12/2022

*Attested
Majid us Salam
21/12/2022*

~~Annexure~~ **Annex-C** (10)
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GOVERNMENT OF NWFP
AGRICULTURE, LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar the 28th July, 2009

NOTIFICATION

No. SO(L&DD)/AD-E-I(381)/2009/KC.

The Provincial Government, on the recommendation of the Provincial Selection Board, is pleased to promote the following Senior Research Officer (BS-18) of Livestock & Dairy Development Department (Research Wing) against the posts of Principal Research Officers/Directors (BS-19) on regular basis with immediate effect.

1. Dr. Muhammad Ajmal Khan
2. Dr. Ghufraan Ullah
3. Dr. Sajjad Ahmad
4. Dr. Ahmad Naveed
5. Dr. Mirza Ali Khan
6. Dr. Muhammad Ijaz Ali
7. Dr. Muhammad Iqbal Khattak
8. Dr. Ikhwan Khan

These officers will be on probation for a period of one year in terms of section 10 of the Civil Servants Act, 1973 read with Rule 15 (1) of NWFP Civil Servants (Appointment, Promotion & Transfer) Rules, 1981.

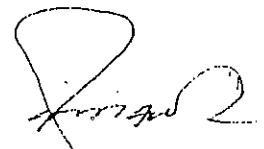
-Sd-

SECRETARY AGRICULTURE

No. & Date even.

Copy forwarded to the:

- Accountant General, NWFP Peshawar.
- Director Veterinary Research Institute, NWFP Peshawar w/r to his letter No. (VRI/Est/1(175)2009/712 dated 12-03-2009 with request to submit proposal for posting/adjustment of the newly promoted officers.
- Director Livestock Research & Development, NWFP Peshawar.
- Officers concerned.
- 2/S to Secretary Agriculture.
- Personal file of the officers concerned.
- Master file.



(DR. MIR AHMAD KHAN)
SECTION OFFICER (I & II)

05/07/09



DIRECTORATE GENERAL (RESEARCH)

LIVESTOCK & DAIRY DEVELOPMENT DEPARTMENT

KHYBER PAKHTUNKHWA, PESHAWAR

♣ Bacha Khan Chowk Khyber Pakhtunkhwa Peshawar

☎ 091-9210248, 091-9210218,
☎ 091-9210220

📘 Facebook.com/livestockresearchkp
🐦 Twitter.com/livestockreskp

@ dg.ldr@kp.gov.pk
🌐 Livestockres.kp.gov.pk



AUTHORITY LETTER

I, Dr. Muhammad Ijaz Ali, Director General (Research) Livestock and Dairy Development Department Khyber Pakhtunkhwa, Peshawar hereby authorized Dr. Hamid Ullah, Senior Research Officer, Veterinary Research Institute, Peshawar as Departmental Representative of undersigned in (Execution Petitioner No. 43/2023 in Appeal No. 1038-P/2015) titled Dr. Muhammad Iqbal Vs Government of Khyber Pakhtunkhwa and Others.

Director General (Research)

DG(Res)L&DD/Litigation/(95)/CC/2014/ 101

Dated Peshawar the 11/04/2023

Copy of the above is forwarded to:-

1. The Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
2. The Director, Veterinary Research Institute, Peshawar
3. Dr. Hamid Ullah Khan, Senior Research Officer, Veterinary Research Institute, Peshawar.

Director General (Research)

DIRECTOR GENERAL (RESEARCH)
Livestock & Dairy Development, Department
Khyber Pakhtunkhwa, Peshawar