

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 5700/2020

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Muhammad Akram Khan S/o Muhammad Ayub Khan R/o Liaqat Colony, Street No. 6-B, Mohirra Bariyan, GPO Khas Tehsil/District Rawalpindi (Permanent Address)..... (*Appellant*)

VERSUS

1. Accountant General Khyber Pakhtunkhwa
2. Deputy Commissioner Peshawar.
3. Account Officer of Deputy Commissioner Peshawar Office.
4. Section Officer (E-III) Establishment Department, Khyber Pakhtunkhwa Peshawar..... (*Respondents*)

Present:

MALIK SAJID MANZOOR
Advocate

--- For Appellant

FAZAL SHAH MOHMAND,
Additional Advocate General

--- For respondents

Date of Institution.....02.06.2023

Date of Hearing.....20.03.2023

Date of Decision.....20.03.2023

JUDGMENT


MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal the respondents may kindly be directed to pass an order for the recovery of last 01 year salaries of retirement as encashment.”

02. Brief facts of the case, as per memorandum of the service appeal are that, the appellant was initially appointed in the Agriculture Department on 13.01.1985. Being surplus employee the appellant was adjusted/posted by the Deputy Commissioner Peshawar against the post of Draftsman (BPS-11) on 15.05.2012. That the appellant applied for one month leave through proper channel to respondent No. 2 on 24.01.2018 but prior to expiry of the said leave, respondent No. 2 issued Show Cause Notice to the appellant on 22.02.2018 on the allegations of absence from duty w.e.f. 12.11.2015. That the appellant submitted reply to the Show Cause Notice on 01.03.2018 and denied the allegations leveled against him. The appellant also submitted an application to Deputy Commissioner Peshawar on 01.03.2018 & 01.09.2018 for his retirement alongwith all pensionary benefits; that the appellant has been retired from service as "Surplus Head Draftsman (BPS-12) w.e.f. 30.09.2018 vide order dated 10.10.2018 alongwith all pensionary benefits but after retirement and making pension and gratuity it came to the knowledge of the appellant that one year lump sum salary as leave encashment had not been added. Feeling aggrieved, the appellant filed departmental appeal on 20.02.2020 which was not responded within the statutory period of ninety days hence, the instant service appeal was filed on 02.06.2020.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant was initially appointed in Agriculture Department and was adjusted as surplus employee against Draftsman post in surplus pool. He next contended that the appellant performed his duties during the entire service career with zeal and honesty. That the respondent department issued show cause notice and charge sheet which was duly replied by the appellant and denied the allegations leveled against him. No regular inquiry has been conducted nor any statement of the appellant has been recorded. The appellant submitted an application for his retirement which was accepted and the appellant has been retired from service w.e.f 30.09.2018 vide order dated 10.10.2018, however his one year salary as leave encashment has not been added in the pensionary benefits by the respondents which is against the fundamental rights of the appellant.



06. Learned Additional Advocate General for the respondents controverted the assertions made in the service appeal as well as arguments of the learned counsel for appellant and contended that the appellant was serving as surplus pool employee and remained absent from lawful duty w.e.f 12.11.2015 (2 years and three months) without prior permission or leave from the competent authority. The appellant was issued charge sheet/statement of allegations but his reply to the charge sheet/statement of allegations as well as Show Cause Notice was found unsatisfactory. The appellant was retired from service and was granted all the pensionary benefits except leave encashment because it was allowed to those civil servant who perform duty and not avail LPR under the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981. Moreover, the appellant applied


for early retirement which was granted to him. The appellant was rightly proceeded under the rules and regulations, therefore, the appeal may kindly be dismissed with costs, he concluded.

06. Record reveal that the appellant rendered more than 33 years service. The disciplinary case initiated against his alleged absence remained inconclusive as no order has been passed till his retirement on 10.10.2018 and as such the proceedings stood abated. Under Rule 20 (2) of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981, a retiring civil servant is entitled to encashment of LPR not exceeding three hundred and sixty five days, if such leave is available at his credit in his leave account which, in case of the appellant, is maintained by the respondents No. 2 & 3.

07. We therefore, allow the instant appeal and direct the respondents No. 1 & 2 to process the matter as per Rule 20 (2) of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 and ensure payment to the appellant as per his entitlement. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 20th day of March, 2023.*


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)