

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

Service Appeal No. 869/2022

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)  
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Aizaz Khan son of Akhtar Qiaz Khan, Ex-Lab Attendant, O/O  
Chief Engineer C&W Department, Peshawar..... (*Appellant*)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary  
Communication & Works Department, Peshawar.
2. Chief Engineer, Central Design Office, C&W Department, Peshawar.  
..... (*Respondents*)

Syed Noman Ali Bukhari,  
Advocate ... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney, ... For respondents

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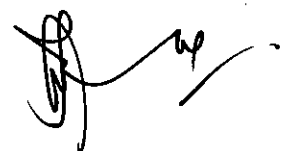
Date of Institution.....27.04.2022  
Date of Hearing.....12.04.2023  
Date of Decision..... 12.04.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.07.2015, whereby service of the appellant was dispensed with. It has been prayed that on acceptance of the appeal, the impugned order might be set aside and the appellant might be reinstated in service with all back benefits and any other remedy as deemed appropriate by the Tribunal.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Lab. Attendant (BPS-02) vide order dated 11.07.2014, after going through the proper procedure and upon recommendation of the Departmental Selection Committee. Since then he was performing duties at the office of Research Officer, RRMT Lab, C&W Department. Services of the appellant alongwith other colleagues were dispensed with vide impugned order dated 30.07.2015 without observing the codal requirements. Other colleagues of the appellant, including Mussarrat Nazir, filed service appeals before the Service Tribunal with the prayer as prayed by the appellant in the instant appeal. Those appeals were accepted vide judgment dated 18.08.2017 in Service Appeal No. 1171/2015 and they were appointed in the light of that judgment. Under the Rule of Consistency, the appellant, alongwith one namely Khuzaf Shah, filed applications for reinstatement. In response to those applications, the Administrative Officer/B&A Officer wrote a letter to the Chief Engineer (Centre) C&W Department Peshawar wherein request was made for early action in the matter. Thereafter another letter was written by the Section Officer-(Opinion-11) of Law Department to the Secretary to Government of Khyber Pakhtunkhwa, C&W Department, according to which the administrative department was advised to decide the case under good governance being an administrative issue. In compliance to those letters, the colleague of the appellant was reinstated in to service under the rule of consistency and law of good governance vide order dated 14.05.2018 but the appellant was discriminated which was a clear violation of Article 25 of the



Constitution of Islamic Republic of Pakistan. On 07.05.2018 the appellant again requested for reinstatement with reference to Khuzaiif Shah's case, in response of which Administrative Officer/B&A Officer through his letter dated 14.06.2018 addressed to Section Officer (Establishment), C&W Department, Peshawar informed that there was no vacant post of Lab. Attendance in that wing to accommodate the appellant. Thereafter, the appellant filed several applications and after filing application dated 26.02.2020, the Superintendent (PMBC) wrote letter to the Executive Engineer (PMBC) C&W Department, Peshawar with the directions to submit the admissibility regarding the adjustment of the appellant against any suitable post in (PMBC) C&W Department for further necessary action. The department again did not take any action on the application of the appellant. The appellant filed another departmental appeal on 31.12.2021 which was also not responded within the statutory period of 90 days,; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the impugned order dated 30.07.2015 was against the law and facts and was discriminatory, hence liable to be set aside. He further argued that the appellant was appointed in the service after completing the duc



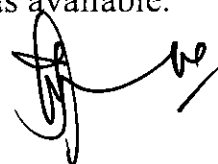
process. He stated that the respondents, before filling the subject post, got No Objection Certificate from the office of Deputy Commissioner Peshawar on 14.01.2015, hence the plea taken in the Inquiry Report of not observing codal formalities had been negated with the NOC of Deputy Commissioner. According to him, the appellant had been made victim of discrimination, partiality and favoritism offending his fundamental rights as provided in Article 25 of the Constitution of 1973. He quoted the example of another colleague of the appellant, Mussarrat Nazir, whose appeal was accepted by the Service Tribunal and argued that under the Rule of Consistency the appeal of the appellant might also be accepted as prayed for as being a similarly placed person, in the light of the principle enumerated in august Supreme Court's judgment cited as 1985-SCMR-1185. In similar circumstances the Service Tribunal accepted the appeal No. 213/2017 titled "Arif Shah Vs. Government of Khyber Pakhtunkhwa through Secretary C&W Department, Peshawar and others", vide judgment dated 06.08.2019, which was also upheld by the august Supreme Court of Pakistan. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant argued that an inquiry was conducted by then Chief Engineer (Central Design Office) into the matter of 07 number appointments of Class-IV during 2013 to 2015. It was noted that the appointments were made without observing codal formalities and procedures as given in ESTA Code. According to him, the Inquiry Report stated that neither proper procedure had been followed nor representatives of



Administrative Department i.e C&W Department participated in those appointments, hence the services of those employees were terminated under Rule 11(i) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule 15 of Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989. The learned DDA further stated that Khuzaiif Shah was reinstated based on the availability of sanctioned post in the department and the appellant was a Lab. Attendant and no vacancy was available to accommodate him. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpires that in the year 2013 to 2015 certain appointments of class-IV were made in the C&W Department, which were found to be made without adopting proper procedure, in an inquiry conducted in that matter in 2015, as a result of which services of those employees were dispensed with. Some of those employees knocked the door of this Tribunal in 2015 and 2016 and got the remedy of reinstatement in service vide order dated 18.08.2017 and 17.11.2017. The present appellant alongwith another colleague, Khuzaiif Shah, had not submitted appeals before the Service Tribunal at that time but when the judgment came in favour of their other similarly placed colleagues, they filed applications for reinstatement under the rule of consistency. All the seven cases whose services were dispensed with, were processed by the C&W Department and in the first instance five of those who were decided by this Tribunal were reinstated. Later on, Khuzaiif Shah was also reinstated, on his request, being a similarly placed affectee but the present appellant was left on the ground that no vacant post of Lab: Attendant was available.




7. As various judgments of the Apex Court are available which clearly mention that similar relief is to be extended to similarly placed affectees of an impugned order, in the present case, the present appellant had also to be treated in the similar way in which his other colleagues were treated as a result of judgments of this Tribunal. Availability of post cannot be made an excuse in this case. Letters dated 11.01.2018 and 14.06.2018 of Administrative Officer of the office of Chief Engineer (CDO) C&W, addressed to the Chief Engineer (Central) and Section Officer (Establishment) C&W Department respectively, mention that two Naib Qasids had been adjusted on two posts of Lab: Attendants for drawing their salary, which clearly indicates that post of Lab. Attendant was very much available for the present appellant for his appointment but two wrong adjustments had been made on those posts by the department.

8. In view of the above discussion, the appeal is allowed as prayed for and the respondent department is directed to reinstate the appellant from the date when his similarly placed colleagues were reinstated in service with all back benefits. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of April, 2023.*

  
(FAREEHA PAUL)  
Member (E)

  
(ROZINA REHMAN)  
Member (J)

\*Fazal Subhan PS\*