

05th May, 2023

1. The appellant is stated to be on Camp Court Swat. Learned Assistant Advocate General alongwith Mr. Arshad Kamal, Section Officer (Litigation) for the official respondents present.
2. A question was formulated by the Tribunal vide order sheet dated 08.06.2021. The order sheet of 08.06.2021 is reproduced below:-

“Appellant in person present.

Mr. Muhammad Riaz Khan Paindakhel, Asstt. A.G alongwith Naheed Gul, Assistant for official respondents present.

Mr. Numan Ali Bukhari Advocate for applicants present.

The appellant has annexed with Memorandum of Appeal the notification No. SE-V/E&AD/13-02/2018, dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department (Establishment Wing). The said notification reveals that it is meant to lay down the method of recruitment, qualification and other conditions applicable to different posts in the office of Service Tribunal Khyber Pakhtunkhwa. The Authority for issuance of the said notification has been derived from Sub-rule (2) of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Although the appellant by relief sought in the appeal, wants to accommodate the post of Private Secretary reflected as S.No. 5 of the Appendix to the said notification, for career progression in light of his prayer. However, a question is apt to arise whether an Executive Department of the Government is competent to exercise administrative control on officers and staff of the Khyber Pakhtunkhwa Service Tribunal which is a statutory body established under Provincial legislation in pursuance to command of the Constitution of Islamic Republic of Pakistan under Article 212?

In order to make the things conveniently understandable for answer to the said question, it may be expunded that the Khyber Pakhtunkhwa Service Tribunal is an entity shaped by an Act of Provincial Assembly and


set up to make judgments in area of its activity independent from administrative control of the government whose actions in the area of terms and conditions of Provincial services are subject to judicial review by Tribunal, so it would be amiss if the functionaries of the Tribunal making its integral part are left to control of an Executive Department of the government. Even otherwise, Section 11 of the Act *ibid* provides that the Government may, by notification in the official gazettee, make rules for carrying out the purposes of this Act. Needless to say that the functionaries of the Khyber Pakhtunkhwa Service Tribunal including officers and servants by nature of their duties contribute towards carrying out the purposes of Khyber Pakhtunkhwa Service Tribunal including officers and servants by nature of their duties contribute towards carrying out the purposes of Khyber Pakhtunkhwa Service Tribunal Act, 1974. Although the Government framed the rules namely "Khyber Pakhtunkhwa Service Tribunal Rules, 1974" and notified the same under Government of Khyber Pakhtunkhwa notification No. SOS-III(S&GAD)1-79/73, dated 02.08.1974; The said rules by virtue of Rule 25 provide that the administrative functions of the Tribunal including the appointments of staff shall be performed by the Chairman on behalf of the Tribunal. However, the proper Service Rules for the ministerial establishment of the Tribunal regarding their terms and conditions of service including the method of recruitment are amiss so far. Whether the notification dated 03.04.2018 of the Government of Khyber Pakhtunkhwa Establishment Department in terms of the formulated question herein above is valid to serve as proper substitute of the rules required to be framed under Section 11 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, let us have the comments of respondent No. 1 before determination of the formulated question in accordance with law.


The Registrar of this Tribunal is directed to send a copy of this order sheet to the P.S.O of Worthy Chief Secretary Khyber Pakhtunkhwa (respondent No. 1) for placing before the latter for valuable comments through appropriate department.

To come up for reply and arguments on

10.08.2021 before the D.B.”

3. The comments of the Chief Secretary were accordingly filed alongwith copy of the Rules of Business notified on 06.04.1985 as well as notification dated 04.02.2015 regarding some provisions of SSRC wherein the Administrative Secretary concerned has been notified as Chairman of the SSRC. We would like to direct the Secretary Establishment to assist the Tribunal on the question formulated, reply/comments filed, coupled with the delegation of powers Rules 2018 (copy of the same shall also be produced) wherein the Tribunal has been given a separate entity as Administrative Department with Chairman as its head. To come up on 30.05.2023 before the D.B. Parcha Peshi is given to the parties.


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman