

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 1301/2019

Date of Institution ... 30.09.2019

Date of Decision... 03.05.2023

Hamid Ullah S/o Ahmad Jan, R/o Tapiyal Garhi Tehsil & District Karak.
... (Appellant)

VERSUS

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

MR. ABDUL NASIR KHATTAK,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order No. 5792/LR-1 dated 02.09.2019, whereby his departmental appeal against the impugned order dated 19.06.2019 was rejected.

2. Briefly stated the relevant facts of the case are that the appellant was serving as Driver (BPS-06) in Revenue School/Academy Peshawar. Vide letters dated 27.02.2018 and 16.04.2018, the appellant was directed to report for official duty at the Revenue School/Academy Peshawar but he failed to comply the same till 17.06.2019 without any information or prior permission. The

appellant was terminated vide Notification dated 19.06.2019, which was challenged by the appellant through filing of departmental appeal, however the same was declined vide order dated 02.09.2019. The appellant has now approached this Tribunal through filing of instant appeal for redressal of his grievance.

3. Notices were issued to the respondents to submit their reply/comments, however they failed to submit the same despite several opportunities being given to them, therefore, their right of submission of reply/comments was struck off vide order dated 23.06.2022.

4. We have heard the arguments of the learned counsel for the parties and have perused the record.

5. A perusal of the record would show that the appellant was appointed as Driver (BPS-04) on contract basis vide order dated 20.06.2006. He was 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 Assistant 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. Admittedly, the service of the appellant was terminated before his regularization. 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-

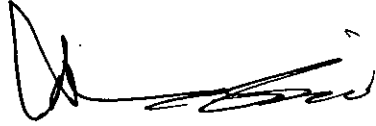
- (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;*
- (ii) a person who is employed on contract, or on work charged basis or who is paid from contingences; or*
- (iii) a person who is a “worker” or “workman” as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman’s Compensation Act, 1923 (Act VIII of 1923).”*

6. The appellant was 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.

7. In view of the above discussion, 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 its 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 record room.

ANNOUNCED
03.05.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)