

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 5791/2021

Date of Institution ... 20.04.2021

Date of Decision... 15.05.2023

Mushtaq Ali Ex-Junior Clerk Office of the Deputy Commissioner, Mardan,
Now posted as Secretary Union Council Muhabbat Abad, District Mardan.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Senior Member Board of
Revenue Peshawar and 02 others.

... (Respondents)

MR. MUHAMMAD AMIN AYUB,
Advocate

For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Briefly stated the relevant
facts are that the appellant was appointed as Junior Clerk in the
office of Deputy Commissioner Mardan vide order dated 10.01.1993.

In wake of devolution plan in the year 2001, the appellant was
declared surplus and was adjusted as Secretary Union Council in
Katti Ghari, Mardan. The Local Government Ordinance was
abolished in the year 2012 and the Commissionerate System was
restored, where upon the appellant submitted an application to the
Deputy Commissioner Mardan for his repatriation to the parent
department i.e Office of Deputy Commissioner Mardan but the same

was turned down vide impugned order dated 03.12.2019. The appellant then preferred departmental appeal before the Commissioner Mardan Division Mardan, which was also turned down vide order dated 17.02.2020, hence the instant appeal.


2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing of reply, wherein they refuted the assertion raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.

5. The main contention of learned counsel for the appellant is that as similarly placed employees had already been granted similar relief in Service Appeal No. 999/2012 titled "*Zahoor Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary, Establishment and Administration Civil Secretariat Peshawar etc*" decided on 03.01.2013, Service Appeal No. 1192/2014 titled "*Haji Ahmad Jan Versus Government of Khyber Pakhtunkhwa Board of*

Revenue through its Senior Member, Peshawar etc” decided on 24.06.2015 as well as Service Appeal No.1211/2017 decided on 05.04.2018, therefore, the appellant is also entitled to the same relief. While deciding Service Appeal No. 999/2012 “*Zahoor Ahmad Versus Government of Khyber Pakhtunkhwa through Secretary, Establishment and Administration Civil Secretariat Peshawar etc*”, vide judgment dated 03.01.2013, this Tribunal had observed in Para-7 & 8 of the judgment as below:-



“7. *The Tribunal observes that after devolution plan in the year 2001, officials of various categories serving in the defunct commissioner and Deputy Commissioner offices became surplus. The appellant while serving as Senior Clerk in the office of Defunct Deputy Commissioner office Mardan has also been declared surplus. He was then adjusted as Secretary Union Council in his own pay and scale. On creation of DCO, DOR offices and restoration of Commissionerates, the official respondent started repatriation/adjustment of their ex-staff without framing, policy/instruction. They must frame a unified policy for adjustment of their old staff on the basis of experience and other facts, but no such policy framed hence adopted the practice of pick & chose. The appellant being adjusted against the wrong post as Secretary Union Council in his own pay and scale was more deserving for adjustment in the parent department but he has been denied for no plausible reason.*

8. *In view of the above discussion, the appeal is accepted and respondents No. 2 & 3 are directed to repatriate the appellant to his parent department and*

adjust him against the vacant post of Senior Clerk. It is further observed that Devolution plan of General Musharaf ® had played havoc upon and broken the back-bone of Administrative set-up. Since government is again restoring Commissionerate system, therefore, instead of fresh recruitments and repatriating the then experience staff at random, government should make amendment in "surplus staff adjustment policy" especially with respect to Ex-Commissioners and Deputy Commissioner offices staff only for re-adjustment to facilitate smooth running of the above referred offices."

6. While deciding Service Appeal No. 1192/2014 titled "*Haji Ahmad Jan Versus Government of Khyber Pakhtunkhwa Board of Revenue through its Senior Member, Peshawar etc*", this Tribunal in its judgment dated 24.06.2015 had observed in para-8 of the judgment as below:-




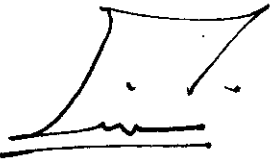
"In light of the stated position of the case, the Tribunal is of the considered view that having arguable case on the touch-stone of the grounds of discrimination and a previous decision of this Tribunal in another Service Appeal No. 999/2012 ibid, the instant case is remanded to the respondent No. 1 to look into the matter strictly in accordance with judgment in appeal No. 999/2012 and to re-decide the matter within a period of two months of the receipt of this judgment. Needless to mention that the impugned order stands set aside. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record."

7. The case of the appellant being identical to the case of Haji Ahmad Jan, who was appellant in Service Appeal

No. 1192/2014, therefore, the appeal in hand is disposed of in the terms of the judgment dated 24.06.2015 passed in the Service Appeal *ibid*. Disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
15.05.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)