



15.02.2023

Learned counsel for the appellant present. Mr. Muhammad Noman, Section Officer (Litigation) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 22.05.2023 before the D.B.

SCANNED  
KUST  
Peshawar

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

18.07.2022

Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

Former made a request for adjournment as he has not prepared the brief of the case. Adjourned. To come up for arguments on 14.09.2022 before D.B.

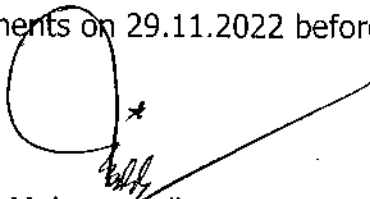
  
(Fareeha Paul)  
Member(E)


  
(Rozina Rehman)  
Member (J)

14.09.2022

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Irshad Khan, Section Officer for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments on 29.11.2022 before the D.B.

  
(Mian Muhammad)  
Member (E)

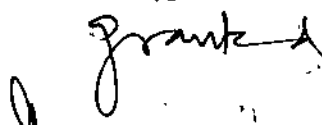
  
(Salah-Ud-Din)  
Member (J)


29<sup>th</sup> Nov. 2022

SCANNED  
BY  
PESHWAR

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Granted. To come up for arguments on 15.02.2023 before the D.B. *Last opportunity*

  
(Fareeha Paul)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman

12.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 01.09.2021 for the same as before.

  
Reader

13.01.2022

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Naheed Gul, Assistant for respondents present.

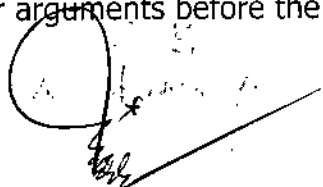
Due to non-availability of Mian Muhammad, Hon'able Member (Executive), the case could not be heard. Adjourned. To come up for arguments on 29.04.2022 before D.B.


  
(ROZINA REHMAN)  
MEMBER (J)

29.04.2022

Counsel for the appellant present. Syed Naseer Ud Din Shah, Assistant Advocate General alongwith Mr. Naheed Gul, Assistant for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 18.07.2022.

  
(Mian Muhammad)  
Member(E)

  
(Salah Ud Din)  
Member(J)

27.10.2020

Appellant present through representative.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Naheed Gul Assistant for respondents present.

Written reply on behalf of respondents was not submitted. Representative of respondents requests for adjournment in order to furnish reply/comments; granted. To come up for written reply/comments on 22.12.2020 before S.B.

  
(Rozina Rehman)  
Member (J)

22.12.2020

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Naheed Gul Assistant for respondents present.

Written reply was not submitted. Representative of respondents made a request for time to furnish reply/comments. Last opportunity is granted. To come up for written reply/comments on 04.02.2021 before S.B.

  
(Rozina Rehman)  
Member (J)

04.02.2021

Counsel for the appellant and Addl. AG alongwith Naheed Gul Assistant for the respondents present.

Respondents have furnished the reply/comments. Placed on record. The appeal is assigned to D.B for arguments on 12.05.2021. The appellant may furnish rejoinder, within one month, if so desires.

  
Chairman

15.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.



Reader

09.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Written reply on behalf of respondents is still awaited. Learned AAG seeks time for submission of written reply/comments; granted. To come up for written reply/comments on 10.09.2020 before S.B.



Member (J)

10.09.2020

Junior to counsel for the appellant present. Nemo on behalf of the respondents.

After admission of appeal notices have not been issued to the respondents alongwith copy of memorandum of appeal and other relevant documents. Notices be issued to the respondents. To come up for reply/comments on 27.10.2020 before S.B.



Chairman

02.03.2020

Counsel for the appellant Qaisar Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was appointed as Junior Clerk in PDA Department vide order dated 12.01.1982. It was further contended that some post of Stenographers were advertised/published in the newspaper by the respondent-department. The appellant applied for the same through proper channel and he was appointed as Junior Scale Stenographer vide order dated 05.01.1988. It was further contended that the respondent-department was bound to grant benefits of pay protection but the respondent-department is reluctant to pay benefits of pay protection, therefore, the appellant filed departmental appeal but the same was rejected vide order dated 18.11.2019 hence, the present service appeal. It was further contended that as per notification dated 04.06.2011, the respondent-department is bound to grant benefits of pay protection to the appellant as he has appointed in other department through proper channel.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 15.04.2020 before S.B.

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER




Appellant Deposited  
Security & Process Fee

12/3/20

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 274/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	<p>08/01/2020</p> <p>21.01.2020</p>	<p>The appeal of Mr. Qaiser Khan resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">                       REGISTRAR - 8/1/2020                 </p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/01/2020</u>.</p> <p style="text-align: right;">                       CHAIRMAN                 </p> <p>Junior to counsel for the appellant present.                      Requests for adjournment due to general strike of the Bar. Adjourned to 02.03.2020 before S.B.</p> <p style="text-align: right;">                       Chairman                 </p>

SCANNED  
 AT  
 Peshawar  
 2-

10/01/20

R-1


8/1/2020

The appeal of Mr. Qaisar Khan Personal Assistant (E&D) Department Peshawar received today i.e. on 12.12.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Copy of appointment order of the appellant as Stenographer mentioned in para-2 of the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Copy of notification dated 4.6.2011 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 6- Copy of rejection order of departmental appeal dated 18.11.2019 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 7- Annexures of the appeal are illegible which may be replaced by legible/better one.
- 8- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2183 /S.T,

Dt. 13-12- /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

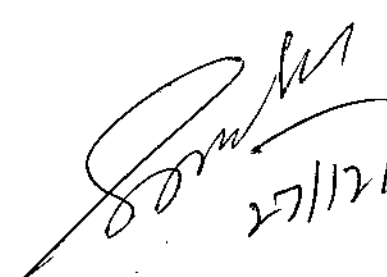
Mr. Taimur Ali Khan Adv. Pesh.

*Respected Sir,*

*Further time is required for removal of objection. Please granted further time.*

*27/12/2019*

*15 day over contact*

  
*27/12/19*



Respected Sir,

1- Removed

2- Removed

3- Removed

4- copy of appointment order is attached  
at page 5

5- copy of notification is attached at page 7.

6- copy of rejection order dated 18/11/2019 is  
attached at page-9.

7- Removed

8- Removed

Resubmitted after compliance

Shi

08/01/2020

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 979 /2020

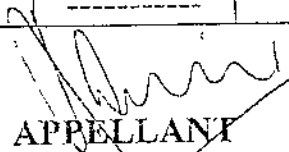
Mr. Qaisar Khan

V/S


Chief Secretary & others

**INDEX**

S. No.	Documents	Annexure	P. No.
01	Memo of appeal	-----	01-03
02	Copies of application, appointment order and LPC	A,B&C	04-06
03	Copy of Notification	D	07
04	Copies of Departmental Appeal and Rejection order	E&F	08-09
05	Copies of Tribunal judgment and Supreme court judgment	G&H	10-15
06	Vakalat Nama	-----	16

  
APPELLANT

THROUGH:

  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

Room No. FR 8, 4<sup>th</sup> Flour,  
Bilour plaza, Peshawar cantt:  
Cell# 0333-9390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

APPEAL NO. \_\_\_\_\_/2019

Khyber Pakhtunkhwa  
Service Tribunal

Case No. 1857

Dated 18-12-2019

Mr. Qaisar Khan, Personal Assistant (BPS-17)  
(E&A) Department, Peshawar.

(APPELLANT)

VERSUS

1. The Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment, Khyber Pakhtunkhwa Peshawar.
3. The Secretary Administration, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
5. The Director General, Peshawar Development Authority, Peshawar.

(RESPONDENTS)

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APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 FOR ALLOWING PAY PROTECTION TO THE APPELLANT ON APPOINTMENT FROM ONE POST TO ANOTHER POST IN BPS-12 BEING MADE WITH THROUGH PROPER CHANNEL AND AGAINST THE ORDER DATED 18.11.2019, WHEREBY THE APPELLANT HAS BEEN REFUSED PAY PROTECTION ON APPOINTMENT AGAINST BPS-12.

PRAYER:

Filed to-day

Registrar  
12/12/19

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 18.11.2019 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO ALLOW PAY PROTECTION TO THE APPELLANT ON APPOINTMENT FROM ONE POST TO ANOTHER POST IN BPS-12 BEING MADE WITH THROUGH PROPER CHANNEL WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. That the appellant was appointed as Junior Clerk in the PDA Department on 12.01.1982, however later on, he was appointed on the post of Stenographer (BPS-12) in the same department and performed his duty on the said post till 01.02.1988.
2. That the post of Stenographer (BPS-12) was advertised in the Establishment and Administration Department, the appellant being qualified applied for the said post through proper and was resultantly appointed on the said post and LPC was also issued to the appellant. **(Copies of application, appointment order and LPC are attached as annexure-A,B&C)**
3. That the Finance Department has issued a notification on 04.06.2011 in which the benefits of pay protection has been allowed to the employees of autonomous body provide it has adopted pay scale of the government in toto. **(Copy of Notification is attached as Annexure-D)**
4. That the appellant filed departmental appeal for pay protection from one post to another post in BPS-12, which has been rejected on 18.11.2019. **(Copies of Departmental Appeal and Rejection order are attached as Annexure-E&F)**

**GROUND:**

- A) That the notifications dated 18.11.2019 and not granting pay protection from one post to another post in BPS-12 to the appellant are against the law, facts, norms of justice, therefore, not tenable.
- B) That the appellant has not been treated in accordance with law and rules and the judgments of the Courts on the point that no reason has been mentioned in the rejection order and therefore the same is non speaking order which is the violation of Section-24 (A) of General Clause Act and the Supreme Court Judgment reported as **1991 SCMR 3230.**
- C) That the appellant has been discriminated because previously many other employees have been given pay protection, while the same have been refused to the appellant.
- D) That the appellant applied through proper channel after proper departmental permission, therefore under the law and rules the appellant is legally entitled to pay protection because also the

Peshawar Development Authority adopted the Government pay/Scale in toto.

- E) That the appellant has been deprived from the benefits of pay protection an arbitrary manner which is not tenable under the principles of justice and fair play.
- F) That recently similarly nature appeal No.476/2017 titled Main Farooq Iqbal was allowed by this august Service Tribunal, which was also upheld by the Apex court on 27.11.2019. (Copies of Tribunal judgment and Supreme court judgment are attached as Annexure-G&H)
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

  
APPELLANT  
Qaisar Khan

THROUGH:

  
(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT

(ASAD MAHMOOD)  
ADVOCATE HIGH COURT

BETTER COPY

(4)

The Secretary,  
Services & General Admn: Deptt  
Civil Secretariat,  
Peshawar.

SUBJECT: APPLICATION FOR THE POST OF STENOGRAPHER.

Through: PROPER CHANNEL

Sir,

Respectfully it is stated that I have come to know through your advertisement that there are some posts of Stenographers are lying vacant under your kind control. I offer my service for one of the same.

My bio-data is as under:-

- |                   |   |
|-------------------|---|
| 1. Name.          | QAISER KHAN.  |
| 2. Father's Name. | PIR BUKHSH  |
| 3. Qualification. | MATRIC.   |
| 4. Domicile.      | NWFP, Peshawar.   |
| 5. Experience:    | At present I am serving with PDA<br>from 12.1.1982 to 31-1.86 as a<br>Jr.Clerk and as Stenographer (12)<br>from 1.2.86 upto date. |

Under the above circumstances if a chance is given to me to serve under your kind control in the capacity of the above post, I will perform my duties upto the entire satisfaction of my superiors.

Thank you.

Yours obediently,

xxSdxx

(QAISER KHAN)

Stenographer,

PDA

OFFICE OF THE DIRECTOR GENERAL, PESHAWAR DEV: AUTHORITY.

Endst.No.1.13.167.73

dated Peshawar, the 7/04/1987.

Copy forwarded in original to the Secretary, S&GAD (Service Wing) Civil Secretariat, Peshawar for further consideration please.

XxSdxx

Secretary

Peshawar Development Authority

2- Arbab Road, Peshawar Cantt:

SUBJECT: APPLICATION FOR THE POST OF STENOGRAPHER  
THROUGH PROPER CHANNEL

I am writing to you to inform you that I am a stenographer and I know the work of a stenographer very well. I offer my service for the post of stenographer. My bio-data is as under:-

1. Name.
2. Address.
3. Qualification.
4. Details.
5. Experience.

above post, I will be very grateful for the consideration of my superiors. Thanking you.

OFFICE OF THE DIRECTOR GENERAL, IMMIGRATION, TORONTO.

Encl. No. 9. 13. 157/ *Be* [Signature]

Copy of the bio-data is being submitted to the Director General, Immigration, Toronto for his consideration.

For further details, please contact the Director General, Immigration, Toronto, 23- Adelaide Road, Toronto, Ontario.

B (5) 4

REGISTERED

GOVERNMENT OF N.W.F.P.  
SERVICES AND GENERAL ADMINISTRATION  
DEPARTMENT  
(SERVICES WING)

NO.SOS-IV(S&GAD)3(358)/87.

ORDER.

Mr. Geiser Khan is offered a post of Stenographer in the Revised Basic Pay Scale of Rs. 970-52-2010. (2-12) with usual allowances as admissible under the rules.

2- His employment in the Secretariat is purely temporary and his services are liable to be terminated without assigning any reason at 14 days' notice or on the payment of 14 days' salary in lieu of the notice period.

3- He has to join duty at his own expense.

4- In case he wishes to resign at any time, 14 days' notice will be necessary or in lieu thereof 14 days' pay may be forfeited.

5- He shall produce a medical certificate of fitness from Medical Superintendent, Civil Hospital, Peshawar before reporting himself for duty in the Secretariat, as required under the rules. In case he is already in Government Service and had produced the required certificate at the time of his first appointment, he is not required to produce it, provided he has applied for the job in the Secretariat through proper channel.

6- He will be governed by such rules and orders relating to leave, travelling allowance, medical attendance Pay etc., as may be issued by Government for the category of Government Servants to which he will belong.

7- If he accepts the post on these conditions, he should report for duty to the Section Officer(S-IV), S&GAD as soon as possible and produce original certificates in connection with his qualifications, domicile and age.

8- The offer will be cancelled if no reply is received by 21-1-1988 or if he fails to report for duty upto the date.

( FAIZULLAH KHAN )  
SECTION OFFICER(SERVICES-IV).

To

Mr. Geiser Khan S/O Mir Raskh  
Stenographer, Peshawar Development Authority, Peshawar Cantt.

Endst:NO.SOS-IV(S&GAD)3(358)/87 dated Peshawar, the 5-1-1988.

Copy forwarded for information and necessary action to the Secretary, Peshawar Development Authority with reference to his No. 1.13.167/73 dated 7-4-1987. It is requested that the official may please be relieved to enable him to report for duty in the NWFP Secretariat on or before 21-1-1988.

( FAIZULLAH KHAN )  
SECTION OFFICER(SERVICES-IV)

\* WAMIQ \*



date 28/11/2011

C 6

LAST PAY CERTIFICATE

Last Pay Certificate of Mr. Naizal Khan Specialist B-12 of the  
Peshawar Dev. Authority, Peshawar.  
Proceeding on through proper channel appointment to civil  
Service Peshawar.

2. He has been paid upto 19-1-1988  
At the following rates:

PARTICULARS.

- 1. Basic Pay — 1022-
- 2. S.R.A —
- 3. Convince Allowance — 76-
- 4. H.R.A — 409-
- 5. S.A.A —
- 6. Medical Allowance — 50-
- 7. Dearness Allowance
- 8. Adhoc 50% Allowance
- 9. S.A.R
- 10. A.R.20%
- 11. Deputation Allowance

Gross Pay 1557


DEDUCTION

- 1. G.P Fund
- 2. B.F
- 3. G. Insurance — 6.25
- 4. H.B.A
- 5. M.C.A
- 6. I. Tax Told D/O 6.25 NET: RS 1550.75

1. He made over charge of the Office of Dir Genl PDA  
2. on the After noon of 19-01-1988

RECOVERIES

S. No	Nature of Advance	Total Advances Amount	Total recovered Amount	Balance Advance
1	H.B.A			
2	M.C.A	/	/	/
3	C.P.F			
4				

  
 (AUG) Asstt. Director (Admin)  
 PESHAWAR DEVELOPMENT  
 AUTHORITY PESHAWAR.



**TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)**

NO. FD (SR-1) 12-1/2011

Dated Peshawar the: 4<sup>th</sup> June, 2011

TO:

1. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1996-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of Mr. Sajjad Rashid and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

Yours Faithfully,

(MASOOD KHAN)  
Deputy Secretary (Reg-II)

Endst:of even No. & date.

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

(SHAUKAT ULLAH)  
Section Officer (SR-I)

E ⑧

To

The Secretary to Govt of Khyber Pakhtunkhwa,  
Establishment Department,  
Peshawar.

Subject: Fixation/Pay Protection on Appointment from one Post to Another.

Respected Sir,

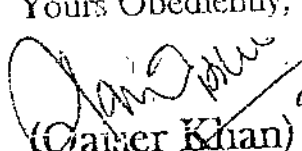
I have the honour to state that I am working as Personal Assistant (BPS-16) in E&A Department. I had served Peshawar Development Authority as Stenographer w.e.f. 12.1.1982 to 1.2.1988 (Flag-A).

Later on, I joined E&A Department through proper channel as Jr Scale Stenographer (BPS-12) vide No.SOS-IV(S&AD)3(358)/87, dated 5<sup>th</sup> Jan 1988 (Flag-B).

The Finance Department has issued a letter vide No.FD(SR-I)12-1/2011, dated 4<sup>th</sup> June 2011 (Flag-C) and has allowed pay protection to those employees who have rendered their services in any autonomous bodies/organization which have adopted scheme of basic pay scale in to to provided they have applied for the post through proper channel.

In view of FD letter mentioned above, It is humbly request that my pay may be re-fixed and arrears may also be allowed, please.

Yours Obediently,

  
(Qaiser Khan) 2/9/13

PA  
Advisor to Chief Minister  
E&A Department



F 9

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(Establishment Wing)**

No. SOE.IV (E&AD)11(214)/2014  
Dated Peshawar, the 18.11.2019

To

Mr. Qaiser Khan,  
Private Secretary,  
Administration Department

Subject: DEPARTMENTAL APPEAL FOR PAY FIXATION/ PAY PROTECTION.

I am directed to refer to your application on the subject noted above and to state that your application has processed and regretted being not covered under the rules/ policy.

  
(HAZRAT JAMAL)  
SECTION OFFICER (E-IV)

6  
10

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

SERVICE APPEAL NO. 476/2014

Date of Institution ..... 02.04.2014  
Date of Judgment .... 07.03.2017



Mian Farooq Iqbal, Officer on Special Duty,  
Establishment Department, government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.

(Appellant)

VERSUS

1. The Chief Secretary, Govt: of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Finance, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Mineral Development Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. The Director General, Directorate General Mines and Mineral, Khyber Pakhtunkhwa, Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE FINANCE DEPARTMENT GOVERNMENT OF KHYBER PAKHTUNKHWA LETTER NO. FD(SOSR-1)12-4/2014 DATED 10.02.2014 WHEREBY THE APPLICATION OF THE PETITIONER FOR PROTECTION OF PAY AND COUNTING OF SERVICE RENDERED IN AUTONOMOUS BODY IN TOTAL SERVICE PERFORMED IN PROVINCIAL GOVERNMENT DEPARTMENT AS CIVIL SERVANT WAS DECLARED NOT ADMISSIBLE.

Mr. Muhammad Asif Yousfzai, Advocate,  
Mr. Muhammad Adeel Butt, Additional Advocate General

For appellant.  
For respondents.

MR. MUHAMMAD AAMIR NAZIR  
MR. ASIIFAQUE TAJ

MEMBER (JUDICIAL)  
MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Mian Farooq Iqbal, Officer on Special

Duty Establishment Department, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, has impugned order dated 10.02.2014 vide which the application of the appellant for protection of pay and counting of service rendering by him in autonomous body was turned down by the respondents.

**ATTESTED**

MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

57.03.17

2. Brief facts of the case giving rise to the instant appeal are that initially the appellant was employed as Lecturer (BPS-17) in NWFP University of Engineering and Technology Peshawar in the year 1986. Subsequently, the appellant applied through proper channel for the post of Inspector of Mines (BPS-17). That after qualifying the competitive exam, the appellant was relieved and he assumed the charge of the post of Inspector of Mines in the Inspectorate of Mines Labour Welfare NWFP Peshawar on 10.07.1989. That the appellant was drawing basic salary @ Rs. 3460/- P.M while after joining the post of Inspector of Mines, the salary was fixed @ Rs. 2065/- Per month. That vide letter dated 04.06.2011, the Finance Department allowed the benefits of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service. The appellant filed an appeal before respondent No.1 for protection of pay and counting of service rendered as Lecturer University of Engineering and Technology in the light of Finance Department letter referred above. That appeal of the appellant was rejected by respondent No.2 vide letter dated 10.02.2014 without any justification, hence the instant appeal.

03.17.

3. Learned counsel for the appellant argued before the court that before joining Government Service, the appellant was serving as Lecturer in University of Engineering and Technology and after obtaining NOC, the appellant applied through proper channel for the post of Inspector Mines. That the appellant was appointed to the post of Inspector Mines (BPS-17) through proper channel, there-after he was relieved by the University to join his new assignment. That as per Finance Department notification dated 04.06.2011 the appellant was entitled for benefits of pay and protection even then his appeal was rejected which is illegal, hence the appeal of the appellant be accepted as prayed for.

4. In rebuttal, learned Additional Advocate General argued before the court that the appellant is not entitled for pay protection and his appeal to this respect was rightly turned down by the competent authority. Though the Finance Department vide letter dated 04.06.2011 has allowed the benefits of pay protection to the employees of autonomous bodies on their subsequent appointment in government service, but the pay protection to the appellant is not admissible on the ground that he has joined provincial government service prior to the issuance

ATTESTED

1000  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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of the above referred notification. That the appeal in hand is without any substance, hence be dismissed.

5. We have heard arguments of learned counsel for the appellant and learned Additional Advocate General for the respondents and have gone through the record available on file.

6. Perusal of the case file reveals that the appellant was initially appointed as Lecturer in BPS-17 in NWFP University of Engineering and Technology in the year 1986. Later on, the appellant applied for the post of Inspector of Mines (BPS-17) in the Inspectorate of Mines Labour Welfare NWFP Peshawar through proper channel. The appellant after qualifying the Public Service Commission exam was appointed as Inspector of Mine in BPS-17 vide order dated 21.06.1989. Afterwards, the Finance Department issued a notification dated 04.06.2011 in which benefits of pay protection was allowed to the employees of the autonomous body on their subsequent appointment in Government Service who have adopted scheme of basic pay scale in to-to, provided that they have applied for the post through proper channel. The above referred notification was based on the judgment of Federal Service Tribunal Islamabad in appeal No. 1921(R) CS/2005 in case titled Sajjad Rashid and others. It is evident that the appellant was employee of University of Engineering and Technology Peshawar which was an autonomous body and has adopted scheme of basic pay scale in to-to in their appointment. The appellant applied through proper channel and after qualifying Public Service Commission was appointed as Inspector of Mines (BPS-17), therefore he is entitled for fixation/protection of pay of appointment of one post to another in light of notification of the finance department dated 04.06.2011. The appeal in hand is accepted in the light of the above discussion. Parties are however left to bear their own costs. File be consigned to the record room.

Sd/- M. Amin Nazki, Member  
Sd/- Ashfaqul Taj, Member

ANNOUNCED  
07.03.2017

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(4)

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT

Mr. Justice Gulzar Ahmed  
Mr. Justice Maqbool Baqar

Civil Appeal No. 1308/2019

(Against the judgment dated  
07.03.2017 of the Khyber  
Pakhtunkhwa Service Tribunal,  
Peshawar passed in Appeal No.  
476/2014)

Chief Secretary Govt. of KP Civil Appellant(s)  
Secretariat, Peshawar & others

Versus

Mian Farooq Iqbal

Respondent(s)

For the Appellant(s) : Mr. Zahid Yousaf Qureshi, A.M. AG, KP

For the Respondent(s) : In person

Date of Hearing : 27.11.2019

ORDER

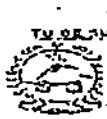
Gulzar Ahmed, J. We have heard the learned  
Additional Advocate General, KP. In support of his submission that  
the benefit of pay protection and counting of service was not  
available to the respondent, he has relied upon the letter dated  
04.06.2011 (available at page 21 of the paper book) issued by the  
Regulation Wing of the Finance Department, Government of  
Khyber Pakhtunkhwa. Such letter is scanned below:

ATTESTED

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad



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GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION FINANC)

NO. FD (SR) 11-17811  
Dated Peshawar: 04<sup>th</sup> June, 2011

TO  
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- All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
- The Secretary to Government, Khyber Pakhtunkhwa.
- The Secretary to Chief Minister, Khyber Pakhtunkhwa.
- The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
- The Secretary Planning, PATA, FATA, Swat, Peshawar.
- The Secretary General, Khyber Pakhtunkhwa, Peshawar.
- All Heads of Autonomous Departments in Khyber Pakhtunkhwa.
- All District Commissioners Officers in Khyber Pakhtunkhwa.
- All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
- All Judges, Peshawar High Court, Peshawar.
- The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
- The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FIN.4(704-41806-235/2010, dated 06-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1221(R) CS/2009 in respect of Mr. Sajid Aslam and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefits of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of such autonomous bodies are not civil servants within the meaning of Civil Service Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic principles in line with the appointments in government service, provided they have applied for the post through proper channel.

*Handwritten signature/initials*

Yours Faithfully,  
  
(MASOOD KHANJI)  
Deputy Secretary (Reg. II)

Encl: 01 copy No. 8 (2011)

- Copy forwarded for information to:
1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
  2. Division, Local Fund AGR, Khyber Pakhtunkhwa, Peshawar.
  3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
  4. All District Commissioners / Officers in Khyber Pakhtunkhwa / FATA.
  5. Director Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
  6. Director, FINANCIAL, Finance Department.
  7. PS to Secretary Finance, Khyber Pakhtunkhwa.
  8. PS to Secretary Finance.
  9. PA to Sec. Secretary Finance.

2. Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded in the same and was appointed as an Inspector Mines vide order dated 21.06.1989. Learned Addl. AG further contends that by virtue of the letter dated 04.06.2011, as reproduced above, the respondent was not entitled to pay protection. This letter has been considered by the Service Tribunal in its impugned judgment and even on our own reading, we are unable to agree with the learned Addl. AG that this has affected the case of the respondent, for that, the very letter used the word "henceforth" and provides to

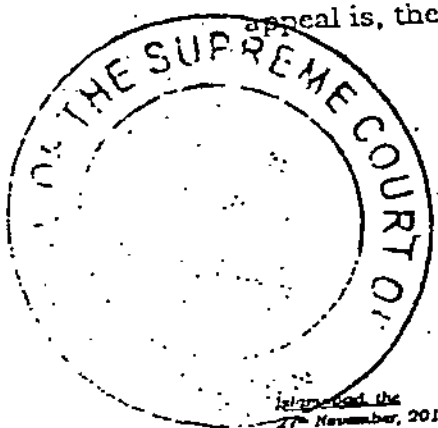
ATTESTED

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

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discontinue the benefit of pay protection of the employees of autonomous bodies. However in the last line it gives such benefit of pay protection to the employees of such autonomous organizations who have adopted the Scheme of Basic Pay Scale in toto on their appointment in Government Offices. In the first place, the very letter shows that it will apply from 04.06.2011 and will not affect the employees who have already been employed in Government service from the autonomous organizations and the case of the respondent being that of appointed on 21.06.1989, the same is not affected. Further, it is also an admitted fact that the University, in which the respondent was working, has adopted the Scheme of Basic Pay Scale in toto in the Government service. Besides, the respondent has applied for the post through proper channel, therefore, the condition of applying through proper channel has been satisfied.

3. After considering all aspects of the matter, we are of the firm view that no illegality has been committed in the impugned judgment of the Tribunal. The same is maintained. The appeal is, therefore, dismissed with no order as to costs.



Sd/-J  
Sd/-J

Certified to be True Copy

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

2/12/19

CR No: 818 P/19  
 Date of Presentation: 29/11/19  
 No of Pages: 9  
 No of Exhibits: 6  
 Remuneration: 600  
 Copy Fee: 50  
 Court Fee: 10  
 Total: 710

2/12/19  
4/12/19

صوبہ خاں 2 پنجاب اسلام آباد  
صوبہ خاں بنام حسیف علی گڑھی و غیرہ

موضوع

مقدمہ

دعویٰ

جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے  
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Attested  
&  
Accepted  
[Signature]

20

ماہ

المرقوم

العہدہ  
واہ  
مقام

کے لئے منظور ہے۔

[Signature]

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

Service Appeal No: 274/2020

Qaiser Khan, Private Secretary (BPS-17)..... **Appellant**

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary, KP..... **Respondents**

**INDEX**

<b>Sr. No:</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
1	Comments		2-3
2	Finance Department Notification regarding fixation / protection of pay on appointment from one post to another.	I	4

Dated: **25<sup>th</sup> January, 2021**



**Deponent**

CNIC No: 17301-6272682-3

Mobile: 0345-5285465

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

Service Appeal. No. 274/2020

Qaiser Khan, Private Secretary (BPS-17)

E&AD Department, Peshawar.

(Appellant)

VERSUS

- |  |            |
|--|------------|
| 1. Govt. of Khyber Pakhtunkhwa through Chief Secretary , Civil Secretariat | Respondent |
| 2. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.      | Respondent |
| 3. Secretary to Govt of Khyber Pakhtunkhwa, Administration Department.     | Respondent |
| 4. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department.            | Respondent |

Joint parawise comments / reply on behalf of respondents No. 1 to 4.

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action against the respondents.
2. The appellant is estopped by his own conduct to file the present appeal in the Court.
3. The appellant has not come to this Honorable Court with clean hands.
4. The appellant has concealed certain material facts from this Honourable Court.

**ON FACTS**

- 1 Pertains to record.
- 2 Pertains to record. Hence, need no comments.
- 3 Correct but Finance Department's policy dated 04.06.2011 is exclusively applicable from the date of its issuance with immediate effect whereas the appellant has sought relief from retrospective date.
- 4 Correct to the extent that the appellant had submitted an application with the request for pay fixation protection on appointment from one post to another in light of the Finance Department's letter No. FD.(SR-I)121/2011, dated 04-06-2011 which was processed and after a thorough examination was regretted being not covered under the rules/ policy (Annex-I).

**GROUNDS:**

- A Incorrect.** The appellant has been treated in accordance with law and the policy of the Provincial Government in vogue. His appeal was properly examined under the law/ rules by the Finance Department. The Finance Department clearly intimated the non-entitlement of the appellant under the prevalent policy because he joined the new service prior to the issuance of policy of the Department. Therefore, the said policy was not applicable on him as such.
- B Incorrect.** As explained in Ground-A.
- C Correct** to the extent that the Finance Department has given pay protection only to those employees who had joined the new service **on or after 04.06.2011**.
- D As explained** above in Ground-A.
- E As explained** above in Ground-A.
- F In response** to Ground-F, it is submitted that Mian Farooq Iqbal was also not entitled to the pay protection from the retrospective date on the ground that the policy was applicable from the date of its issuance i.e. 04.06.2011, however, it is clarified that the pay protection was granted to him on the basis of COC.
- G The respondents** seek permission to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that on acceptance of instant reply, the appeal of appellant may be dismissed with costs.



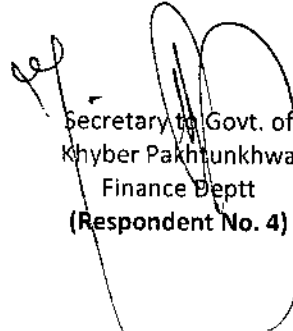
Chief Secretary  
Khyber Pakhtunkhwa  
(Respondent No. 1)



Secretary to Govt. of  
Khyber Pakhtunkhwa  
Establishment Deptt  
(Respondent No. 2)



Secretary to Govt. of  
Khyber Pakhtunkhwa  
Administration Deptt  
(Respondent No. 3)



Secretary to Govt. of  
Khyber Pakhtunkhwa  
Finance Deptt  
(Respondent No. 4)

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

NO. FD (SR-1) 12-1/2011  
Dated Peshawar the: 4<sup>th</sup> June, 2011

TO:

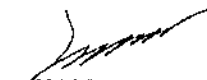
1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
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3. The Secretary to Governor, Khyber Pakhtunkhwa
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa
11. The Registrar, Peshawar High Court, Peshawar
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1998-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that henceforth the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.


Yours Faithfully,

  
(MASOOD KHAN)  
Deputy Secretary (Reg-II)

Ends: of even No. & date.

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spt: Secretary Finance.

  
(SHAUKAT ULLAH)  
Section Officer (SR-I)