

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.765/2017

Date of presentation of Appeal.....10.07.2017
Date of Hearing.....03.07.2023
Date of Decision.....04.07.2023

**Syed Rahmat Shah S/O Syed Ahmad Shah Municipal Inspector
TMA Town-III, Peshawar.....Appellant**

Versus

1. **The Government** of Khyber Pakhtunkhwa Peshawar through Secretary Local Government.
2. **Town Municipal Administration** Town III, through TMO Town III, Peshawar.
3. **District Nazim**, Peshawar.
4. **Nazim Town-III**, Peshawar.....(*Respondents*)

Present:

Mr. Saif Ullah Khalil, Advocate.....For the appellant

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

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**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORIGINAL ORDER DATED 22.03.2017
AND AGAINST THE APPELLATE ORDER DATED
20.06.2017 VIDE WHICH THE APPEAL OF THE
APPELLANT HAS BEEN DISMISSED.**

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Brief facts of the case are that appellant was appointed as Sanitation Inspector; that during service, the



appellant was involved in enmity with other persons, due to which a number of FIRs were registered against the appellant and others and as such due to family crises and enmity the appellant submitted an application for grant of leave but the same was not granted; that the appellant had no other option but to file application for premature retirement on 12.01.2016; that the said application was allowed vide order dated 22.03.2016 and the appellant went on LPR; that during this period the criminal cases were compromised, as such the appellant intended to continue his service and in this respect the appellant filed an application on 23.11.2016 for withdrawal of his LPR, which was dismissed vide order dated 22.03.2017; that the appellant preferred departmental appeal against the order dated 22.03.2017 which was also dismissed vide order dated 22.06.2017; that during this period, the respondents was also issued retirement order of the appellant on 22.03.2017, hence, the present service appeal.

02. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

03. We have heard learned counsel for the appellants and learned Deputy District Attorney for the respondents.

04. The Learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Deputy



District Attorney controverted the same by supporting the impugned order(s).

05. It is the case of the appellant that he had earlier submitted application for LPR due to enmity and family problems and on resolution of the same before maturity of LPR, the appellant submitted an application for withdrawal of the said LPR. He relied on 1984 PLC (CS) 1085. As against that the stance of the official respondents is that vide notification dated 01.10.1981 of the Finance Department, the request of the appellant could not have been considered. Relevant part of the notification is as under:-

"If a Government servant withdraw his application for premature retirement or modifies the date of retirement, before its acceptance by the competent authority, the application or the date of retirement shall be deemed to have been withdrawn or modified, as the case may be"

06. The appellant however further relies on a letter of the Government of Khyber Pakhtunkhwa Finance Department dated 05.09.2018 vide which the Government of Khyber Pakhtunkhwa adopted the Federal Government policy of withdrawal of request of LPR after sanction/notification subject to the following condition:-

- "i. He/she may withdraw his/her option of voluntary retirement before retirement mature.*
- ii. It is binding on a government servant to return any amount of leave pay recovered by him/her in lieu of encashment of LPR for that period.*




iii. Later on, on attaining the age of superannuation if he/she again opts for 365 days leave encashment in lieu of 365 days LPR such option of an individual may be treated as a fresh case and he/she will be allowed encashment of LPR in toto."

07. The adoption letter dated 05.09.2018 of Khyber Pakhtunkhwa Finance Department superseded the Finance Department's earlier letter dated 01.10.1981 and further stated that the cases already decided thereunder should not be reopened/reconsidered. The appellant had submitted application for withdrawal on 06.12.2016 i.e. much earlier than the adoption of policy of the Federal Government by the province of Khyber Pakhtunkhwa, therefore, the request of the appellant appears to have rightly been declined. We find no merit in this appeal and it is thus dismissed. Cost shall follow the event. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 04th day of July, 2023.*


KALIM ARSHAD KHAN
Chairman


RASHIDA BANO
Member (Judicial)