

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 705/2023

ADNAN

..... **APPELLANT**

VERSUS

GOVT: OF KHYBER PAKHTUNKHWA & OTHERS

.....**RESPONDENTS**

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DEPONENT

Through


SECTION OFFICER (LIT-II)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL.NO. 705/2023

Adnan

..... (Appellant)

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 6573

Government of Khyber Pakhtunkhwa & others

Dated 18/07/23

.....(Respondents)

REPLY ON BEHALF OF RESPONDENTS NO. 01 to 03.

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

- 1- That the instant appeal is not maintainable in the present form.
- 2- That the Appellant is estopped by his own conduct to file the present appeal.
- 3- That the appellant has not come to this court with clean hands.
- 4- That the Appellant has got no cause of action to file the present appeal against the respondents.
- 5- That the appellant has concealed facts from this Court.

PARA-WISE REPLY:

- 1) Pertains to record, hence needs no comments.
- 2) Pertains to record, hence needs no comments.
- 3) Pertains to record, hence needs no comments.
- 4) Incorrect and misconceived. The respondents No. 1 & 3 i.e Secretary P&D Department and Director General Sustainable Development Unit, P&DD respectively have considered the applications and the same was forwarded to Finance Department for consideration and appropriate action vide letter No. SO(B&A)/P&DD/1-4/SDU/2021-22/100 dated 22.12.2022 for the grant of pay protection/pay fixation from date of their initial appointments.
- 5) Pertains to record, hence needs no comments.
- 6) The applicant has got no cause of action to file instant service appeal.

h

have been appointed in BPS on regular basis and on regular basis and
E. incorrect. Pension rules as well as E R-55 are related to those employees who
(Annex-E id)

pay protection in light of Finance Department's policy letter dated 18/03/2005
E. incorrect as explained in preceding para that pay employees are not entitled to
E. incorrect as explained in preceding para
same is stated in the administrative order of pay protection

18/03/2005 is a policy for grant of pay protection to deserving employees and the
D. incorrect. Finance Department's letter no. FD(2028-1)13-25050(3433) dated
is no provision for pay protection as explained in preceding para.
Hence, the respondents did not act in an arbitrary and mala-fide manner as there
protection pay fixation from the date of initial appointment in grade.

20(B&A)P&DDN-120012051-55100 dated 25/12/2005 for the grant of pay
to Finance Department for consideration and appropriate action with letter no.
P&DD respectively have considered the application and the result was forwarded
Secretary P&D Department and Director General Administrative Development Unit
C. incorrect and misconceived. In the instant case, the respondents no. 1 & 2 are
X. Constitution of the Islamic Republic of Pakistan, 1973, have not been violated.

violated and upheld as explained above. Hence, articles 4 & 52 of the
B. incorrect and misconceived. The case was properly examined and found
not entitled to the pay protection (Annex-E).

who were appointed on fixed pay basis and in receipt of 23% annual increment in
PAYA dated 02/01/2002 (Annex-D) with the remarks that all protected employees
the case of the said applicants viz letter no. FD(2028-1)13-25052E&D/WH/E
Finance Department Government of Khyber Pakhtunkhwa replied and returned
no. FD(2028-1)13-25050(3433) dated 18/03/2005 (Annex-C) in response, the
(Annex-B) and Finance Department Govt of Khyber Pakhtunkhwa's circular letter
the Finance Division Office Memorandum no. 4(S)/F-250514-241 dated 15/08/2004
20(B&A)P&DDN-120012051-55100 dated 25/12/2005 (Annex-A) in light of
for consideration and award of pay protection via P&D Department letter no.
processed by the Administrative Department and was sent to Finance Department
Department reported for the grant of pay protection pay fixation. The report was
Department through Director General Administrative Development Unit P&D
A. incorrect. The aggrieved incumbents through Govt of Khyber Pakhtunkhwa, P&D

2005/12/25

condition. Hence, these rules are not applicable to the fixed pay employees and as such to the appellant.

- H.** The respondents also seek permission to advance other grounds/proofs at the time of hearing.

Prayer:

In view of the above explanation, it is therefore, humbly prayed that on acceptance of these para-wise comments, this Honorable Service tribunal may very graciously be pleased to dismiss the present appeal with cost.



SECRETARY
Govt: of Khyber Pakhtunkhwa,
Finance Department
(Respondent No. 2).



DIRECTOR GENERAL (SDU)
P&D Department
Khyber Pakhtunkhwa.
(Respondent No. 3).



SECRETARY
Govt: of Khyber Pakhtunkhwa,
P&D Department
(Respondent No. 01)

(4)

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 705/2023

ADNAN

..... APPELLANT

VERSUS

GOVT: OF KHYBER PAKHTUNKHWA & OTHERS

.....RESPONDENTS

AFFIDAVIT

I, Adnan Khan, Section Officer (Lit-II), Planning & Development Department do hereby solemnly affirm and declare on oath that the contents of Comment are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal intentionally.

It is further stated on oath that in this appeal, the answering respondents have neither been placed - Ex-parte nor their defence has been struck off/cost.

[Handwritten Signature]

DEPONENT
CNIC No. 17301-1452480-9
Cell # 0301 5546692

ATTESTED
[Handwritten Signature]
6-7-2023
Notary Public
Azim Ali Khan
Notary Public
Azim Ali Khan
Notary Public
Azim Ali Khan
Notary Public

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Annex - "A" 23

GOVERNMENT OF PAKISTAN
PLANNING & DEVELOPMENT DEPARTMENT
 NO.SO (B&A)/P&DD/1-4/SDU/2021-22/100
 Dated Peshawar the 22nd December, 2022



Planning & Development Deptt.
 Peshawar
 Date: 22/12/22
 Planning & Development Deptt.
 Peshawar

To: The Secretary to Govt. of Khyber Pakhtunkhwa
 Finance Department,
 Peshawar.

Subject: - **PAY PROTECTION OF PAY OF PROJECT CONTRACT EMPLOYEES
 REGULARIZED UNDER THE "KHYBER PAKHTUNKHWA
 (REGULARIZATION OF SERVICES OF EMPLOYEES OF ERSTWHILE
 FATA) ACT 2021".**

Dear Sir,

I am directed to refer to the subject noted above and to say that project employees of the Directorate of Projects & PMU-World Food Program were regularized in wake of the "Khyber-Pakhtunkhwa (Regularization of Services of Employees of Erstwhile FATA) Act 2021" copy of the departmental Regularization Orders enclosed. The respective employees have lodged a joint appeal to the worthy Secretary, P&D for grant of pay protection claiming pay protection in the light of the Finance Division Office Memorandum dated 20.09.2016 and Finance Department Notification dated 18.03.2021 (copies enclosed).

Foregoing in view a copy of the said appeal along with all supporting documents, submitted for favour of grant of concurrence to Pay Protection in the light of the above-cited notifications, please.

Yours Faithfully

Encl: As above.

(JAWAD KHAN)
 ASSISTANT CHIEF (B&A)

Copy forwarded for information to:

1. The Secretary, P&D Department.
2. The Director General, SDU, P&D Department.
3. The Additional Secretary-II, P&D Department.
4. Deputy Secretary (Admn), P&D Department.

(Signature)
 ASSISTANT CHIEF (B&A)

(Signature)

Islamabad, the 20th Sep., 2016

F. No.4(2)R-2/2014-241

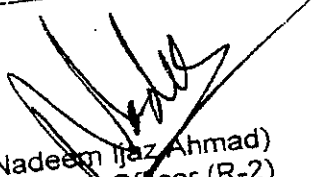
OFFICE MEMORANDUM

Subject: **CLARIFICATION ON PROTECTION OF PAY OF GAZETTED CONTRACT EMPLOYEES ON REGULARIZATION/ APPOINTMENT ON REGULAR BASIS**

The undersigned is directed to refer to this Division's OM of even number dated 07.04.2015 on the subject noted above

2. The clarifications to the queries raised by Ministries/Divisions/ Departments and AGPR, Islamabad are conveyed as under:

S.No	QUERIES RAISED	CLARIFICATION
1	Finance Division's OM dated 07.04.2015 does not contain effective date of implementation from which date will it take effect.	The said O.M will take effect from the date of its issuance i.e 07.04.2015.
2	Whether the officer regularized from contract service prior to issuance of the said OM i.e. 07.04.2015 will also be entitled for protection of pay or otherwise.	Yes. However, no arrears are admissible prior to 07.04.2015.
3	Whether the officer whose services were regularized from development side to non development side on regular basis (development post to regular post) are entitled to pay protection.	Pay is protectable for those employees only whose contract appointment on development side, was made in BPS on standard terms and conditions issued by Establishment Division.
4	Whether arrears/back benefits to those employees are admissible whose service were regularized prior to the issuance of the said OM on 07.04.2015	No arrears/back benefits are admissible prior to the issuance of the said OM on 07.04.2015
5	Whether the concurrence of FPSC is required for all the cases of contract appointment/re-appointment beyond 02 years against civil post in BS-16 to BS-22 made or continue after 25.03.2010.	Being an administrative nature of issue, relates to Establishment Division/ FPSC.


 (Nadeem Ijaz Ahmad)
 Section Officer (R-2)
 Ph. 9245846


All Ministries/Divisions/Departments



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Copy also forwarded to:-

1. President's Secretariat (Public), Islamabad.
2. President's Secretariat (Personal), Islamabad.
3. Prime Minister's Office (Internal), Islamabad.
4. Prime Minister's Office (Public), Islamabad.
5. National Assembly Secretariat, Islamabad.
6. Senate Secretariat, Islamabad.
7. Supreme Court of Pakistan, Islamabad.
8. Election Commission of Pakistan, Islamabad.
9. Federal Shariat Court, Islamabad.
10. Auditor General of Pakistan, Islamabad.
11. Controller General of Accounts, Islamabad.
12. AGPR, Islamabad/Lahore/Peshawar/Karachi/Quetta.
13. Military Accountant General, Rawalpindi.
14. All Financial Advisers/Deputy Financial Advisors attached to Ministries/Divisions and all officers of Finance Division.
15. Chief Accounts Officer, M/o Foreign Affairs, Islamabad.
16. Financial Adviser and Chief Accounts Officer, Pakistan Railways, Lahore.
17. All Chief Secretaries/Finance Secretaries of the Government of Punjab/Sindh/KPK/Balochistan/Azad State of Jammu & Kashmir and Gilgit-Baltistan.
18. Capital Development Authority, Islamabad.
19. Office of the Chief Commissioner, Islamabad.
20. Federal Public Service Commission, F-5/1, Agha Khan Road, Islamabad.
21. Secretary, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad.
22. Pakistan Atomic Energy Commission, Islamabad.
23. Central Directorate of National Savings, Islamabad.
24. National Accountability Bureau, Islamabad.
25. Member (Finance), KRL, P.O.Box No.1384, Islamabad.
26. Intelligence Bureau, Islamabad.
27. Pakistan Mint, Lahore.
28. DG Post Offices, Islamabad.
29. DG, Secretariat Training Institute, Islamabad.
30. Directorate General of Inspection & Training, Customs & Excise, 8th Floor, New Customs House, Karachi.
31. National Re-Construction Bureau, Prime Minister's Secretariat, Islamabad.
32. Earthquake Reconstruction & Rehabilitation Authority (ERRA), P.M. Sect. (Public), Islamabad.
33. Federal Tax Ombudsman's Secretariat, Islamabad.
34. Cost Accounts Organization, Islamabad.
35. Web Master, Finance Division, Islamabad.


(Nadeem Ijaz Ahmad)
Section Officer(R-2)
Tele: 9245846



Finance Department
Subd: SR-1 Section
Mr. Misat Ahmad

Finance Department
Section Officer (SR-1)
Mr. Misat Khan

Establishment Department
Deputy Secretary (Policy)
Mr. Ghosia

Finance Department
Asst. Secretary (Reg)
Mr. Misat Khan Misat

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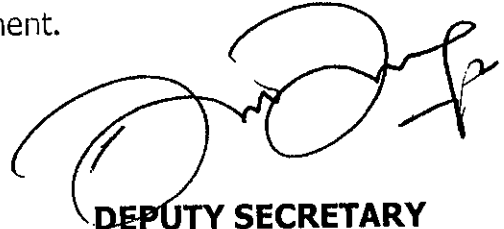
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P.

AUTHORITY LETTER

Mr. Adnan Khan, Section Officer (Litigation-II) of Planning & Development Department is hereby authorized to persue / defend court cases of Service Tribunal, Khyber Pakhtunkhwa and Civil / District Courts as well as submit Para-wise Comments / Replies in the cases duly sworn on affidavit in the courts on behalf of Additional Chief Secretary and Secretary P&D Department.



**DEPUTY SECRETARY
P&D Department**

Deputy Secretary (Estt)
P&D Department
Govt. of Khyber Pakhtunkhwa