

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 699/2023

QUDRAT ULLAH

..... APPELLANT

VERSUS

GOVT: OF KHYBER PAKHTUNKHWA & OTHERS

.....RESPONDENTS

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGES
1.	Para-wise Comments	-	01 to 03
2.	Affidavit	-	04
3	Letter dated 22-12-2022 OF P&D Department	A	05
4	Letter dated: 20-09-2016 of Finance Division (regulation wing) Govt: of Pakistan.	B	06 & 07
5	Letter dated: 18-03-2021 of Finance Department	C	08 & 09
6	Letter dated: 09-01-2023 of Finance Department	D	10
7	Letter dated: 17-01-2020 of Finance Department	E	11 to 13

DEPONENT

Through


SECTION OFFICER (LIT-II)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL.NO. 699/2023

Qudrat ullah

..... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa & others

.....(Respondents)

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 6584
Dated 18/07/23

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.

GROUND:


- A. Incorrect. The aggrieved incumbents through Govt. of Khyber Pakhtunkhwa, P&D Department through Director General Sustainable Development Unit, P&D Department appealed for the grant of pay protection/pay fixation. The appeal was processed by the Administrative Department and was sent to Finance Department for consideration and award of pay protection via P&D Department Letter No. SO(B&A)/P&DD/1-4/SDU/2021-22/100 dated 22.12.2022 (**Annex-A**), in light of the Finance Division Office Memorandum No. 4(2)R-2/2014-241 dated 20.09.2016 (**Annex-B**) and Finance Department Govt. of Khyber Pakhtunkhwa circular letter No. FD(SOSR-I)12-2/2020(34323) dated 18.03.2021 (**Annex-C**). In response, the Finance Department Government of Khyber Pakhtunkhwa replied and returned the case of the said applicants via letter No. FD(SOSR-I)12-4/2022ERSTWHILE FATA dated 09.01.2023 (**Annex-D**) with the remarks that all project employees who were appointed on fixed pay basis and in receipt of 5% annual increment are not entitled to the pay protection (**Annex-E**).
- B. Incorrect and misconceived. The case was properly examined and found unjustified and untrue as explained above. Hence, articles 4 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973, have not been violated.
- C. Incorrect and misconceived. In the instant case, the respondent No. 1 & 3 i.e. Secretary P&D Department and Director General Sustainable Development Unit, P&DD respectively have considered the application 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 the date of initial appointment in projects. Hence, the respondents did not act in an arbitrary and male-fide manner as there is no provision for pay protection as explained in preceding paras.
- D. Incorrect. Finance Department's letter No. FD(SOSR-I)12-2-2020(34323) dated 18.03.2021 is a policy for grant of pay protection to gazette employees and the same is crystal clear admissibility of pay protection.
- E. Incorrect. As explained in preceding paras.
- F. Incorrect. As explained in preceding paras-fixed pay employees are not entitled to pay protection in light of Finance Department's policy letter dated 18.03.2021 (**Annex-E** *ibid*).
- G. Incorrect. Pension Rules as well as F.R-22 are related to those employees who have been appointed in BPS on regular basis and on standard terms and


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
Y (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)

9

BEFORE THE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 699/2023

QUDRAT ULLAH

..... APPELLANT

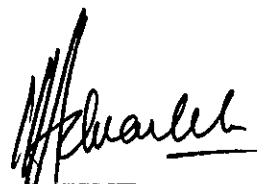
VERSUS

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.



DEPONENT

CNIC No. 17301-1452480-9

Cell # 0301 5546692

ATTESTED




18/7/2023

It is further stated that in this appeal, opposing respondents have been placed exparte in this before have been struck off/cost-

5

Annex - "A" 23

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

Submitted by: _____
 Date: 22-12-22
 Planning & Development Dept:
 P.D.A.

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.

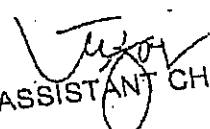
Yours Faithfully

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.


 ASSISTANT CHIEF (B&A)



6

Annex-B

Government of Pakistan
Finance Division
(Regulations Wing)

Islamabad, the 20th Sep., 2016

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

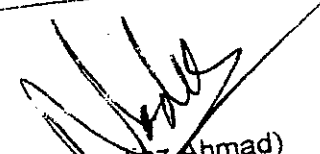
OFFICE MEMORANDUM

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

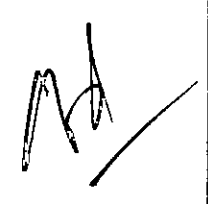
All Ministries/Divisions/Departments

7

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 & Central 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. Sectt. (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



(8)

Annex-C 24

29

**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

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[twitter.com/GoKPPD](https://www.twitter.com/GoKPPD)

**NO. FD (SOSR-1) 12-2/2020(34323)
Dated Peshawar the: 18th March, 2021**

To:

1. The Addl. Chief Secretary, P&D Department, Khyber Pakhtunkhwa.
2. The Addl. Chief Secretary, Merged Areas Sectt: Khyber Pakhtunkhwa.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt: of Khyber Pakhtunkhwa.
5. The Principle Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principle Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. The Registrar, Peshawar High Court, Peshawar.
10. All District & Sessions Judges in Khyber Pakhtunkhwa.
11. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
12. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.
13. All Deputy Commissioners, in Khyber Pakhtunkhwa.

Subject:

**PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR
BASIS.**

Dear Sir,

In pursuance to the Finance Division's Office Memorandum No.4(2)R-2/2014-237 dated 7th April, 2015, the Competent Authority (Provincial Cabinet) is pleased to allow the pay protection to gazetted contract employees on their regularization / appointment on regular basis subject to the following conditions:-

- i) That the contract appointment has been made in BPS on standard terms and conditions, circulated by this Provincial Government as amended from time to time.
 - ii) That the contract employee has applied through proper channel and has been properly relieved by the appointing authority. This condition shall not apply in case of regularization on the same post.
 - iii) That regularization / regular appointment has been made with the approval of competent authority.
 - iv) That there is no break / interruption between contract service and regular service.
- M

- vi) That in case of regular appointment in lower grade, pay shall not be protected.
- vii) That the pay protection / fixation of pay will be admissible with immediate effect with regard to old new cases which are fulfilling the pay protection criteria mentioned above.

2 In addition to the above, the Accountant General Khyber Pakhtunkhwa may make fixation of pay in terms of above guidelines and only those cases may please be referred to Finance Department where some clarification or advice is required.

Yours faithfully,
Sd/-
(Muhammad Salim Shah)
Deputy Secretary (Reg-I & II)

Endst: No & Date even.

A Copy for information & necessary action is forwarded to the:-

1. Secretaries to Government of Punjab, Sindh, Balochistan, Finance Departments
2. Accountant General, Khyber Pakhtunkhwa, Peshawar
3. All Heads of Autonomous / Semi-Autonomous Bodies in Khyber Pakhtunkhwa.
4. The Director, Treasuries & Accounts, Khyber Pakhtunkhwa.
5. All the District Comptroller of Accounts in Khyber Pakhtunkhwa.
6. The Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
7. The Director, FMIU, Finance Deptt: with the request to upload the same on FD's Website.
8. The Manager, Govt. Printing Press, Printing & Press Department, Peshawar.
9. All the District Accounts Officers in Khyber Pakhtunkhwa
10. The Section Officer (Cabinet) Estt: Deptt., Khyber Pakhtunkhwa with reference to his letter No.SOC(ESA)9-51/2021 dated 08-03-2021.
11. The Section Officer (Estab), C&W Deptt: with reference to his letter No SOE/C&WD/1-61/2010 dated 26-10-2020 In respect of Eng. Syed Nasir Johan, Asstt: Engineer / SDO (BS-17) of C&W Deptt. KP.
12. The Private Secretary to Chief Secretary, Khyber Pakhtunkhwa
13. The Private Secretary to Minister for Finance, Khyber Pakhtunkhwa
14. The Private Secretary to Secretary, Finance Deptt. Khyber Pakhtunkhwa,
15. PA to Special Secretary, Finance Department, Khyber Pakhtunkhwa,
16. PAs to Additional Secretaries / Deputy Secretaries in Finance Department, Peshawar.

Sd/-
(Rehmat Khan)
SECTION OFFICER. (SR-I)



(10)

Annex-D

**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

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twitter.com/GoKPPD

**NO. FD(SOSR-1)12-4/2022/ERSTWHILE FATA
Dated Peshawar the: 09-01-2023**

To

The Section Officer (B&A),
Planning & Development Department,
Peshawar.

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

I am directed to refer to your letter No.SO(B&A)/P&DD/1-4/SDU/2021-22/100 dated 22.12.2022 on the subject noted above and to advise that the case may be examined in light of Finance Department's circular letters No. FD(SR-I)12-7/2014 dated 06.02.2014, FD(SOSR-I)12/2020(34323) dated 18.03.2021 and minutes of the meeting held on 21.01.2020 (copies enclosed) which are crystal clear, please.

Encl:A.A

(Signature)
09/01/23
SECTION OFFICER (SR-

(Signature)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Annex-E

Finance Department Civil Secretariat Peshawar

<http://www.finance.gkp.pk>

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twitter.com/GoKFPD

NO. FD (SOSR-1) 12-4/2019(30969)
Dated Peshawar the: 17-01-2020

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

Attention: Section Officer (O&M)

Subject: - PROTECTION OF PAY OF CONTRACT EMPLOYEES ON
REGULARIZATION / APPOINTMENT ON REGULAR BASIS (NON-
GAZETTED FROM BPS-01 TO BPS-15)

Dear Sir,

I am directed to refer to this Department's letters of even number dated 08-01-2020 & dated 14-01-2020 on the subject noted above and to state that a meeting has been re-scheduled to be held on 21st January, 2020 at 02:00 P.M under the Chairmanship of Addl: Secretary (Reg) Finance Department in his office to discuss the terms & conditions of contract employees in light of project policy in order to settle the issue once for all.

2. It is, therefore, requested that a well conversant officer may kindly be deputed to attend the said meeting on due date, time & venue, please.

Your's faithfully,

SECTION OFFICER (SR-1)

Copy for information to the:-

- i. Section Officer (Admn) Finance Department, Peshawar.
- ii. PA to Addl: Secretary (Reg), Finance Department, Peshawar.

17/1/2020

17/1/2020

SECTION OFFICER (SR-1)

MINUTES OF THE MEETING HELD ON 21st JANUARY, 2020 REGARDING PROTECTION OF PAY OF CONTRACT EMPLOYEES ON REGULARIZATION / APPOINTMENT ON REGULAR BASIS (NON-GAZETTED FROM BPS-01 TO BPS-15)

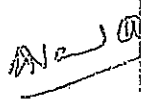
1. A meeting on the subject issue was held on 21-01-2020 at 02:00 P.M under the Chairmanship of Additional Secretary (Regulation) Finance Department.

2. On opening the discussion, the Chair welcomed the participants and briefly highlighted the difficulties arising out in the instant case. The standard terms & conditions were discussed and the Finance Department was of the view that these employees have not been appointed on the standard terms & conditions because they were project employees and also in the receipt of 5% increment. Hence, the said policy is applicable only on those employees who are appointed in Basic Pay Scales and are regularly in the receipt of annual increment as allowed to other civil servants of the Khyber Pakhtunkhwa.

3. ~~Ultimately it was unanimously decided that all the project employees who were appointed on fixed pay basis and in receipt of 5% increment are not entitled to the pay protection in light of Finance Department's letter No.FD (SOSR-1)12-7/2014 dated 06-02-2014.~~

4. List of participants is attached herewith.

Secretary of



131

Mr. Musharraf Khan Marwat
Addl: Secretary (Reg)
Finance Department

Mr. Shoaib,
Deputy Secretary (Policy),
Establishment Department

Mr. Niamat Khan,
Section Officer (SR-1). NAJW
Finance Department

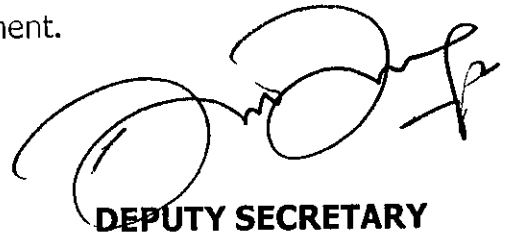
Mr. Nisar Ahmad,
Supdt: SR-1 Section
Finance Department

NA

(28)
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