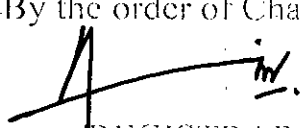


FORM OF ORDER SHEET

Court of _____

Appeal No. 1466/2023

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 13/07/2023 | <p>The appeal of Mr. Bakhtawar Shah presented today by Mr. Taimur Ali Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1466/2023

Bakhtawar Shah V/S LG & RD Department

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| 3 | Copies of appointment order dated 27.03.2015 and letter dated 20.02.2023 | A&B | 06-07 |
| 4 | Copies of order dated 18.11.2021 and order dated 14.12.2021 | C&D | 08-09 |
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APPELLANT

THROUGH:

(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

Cell# 0333-9390916

①

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

SERVICE APPEAL NO. 1466 /2023

Mr. Bakhtawar Shah, Village Secretary, (BPS-09),
Village Council, Tatara Sub Division, Jamrud Khyber.

(APPELLANT)

VERSUS

1. The Secretary Local Government & Rural Development Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director General, Local Government & Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Director, Local Government & Rural Development Department, District Khyber, Khyber House Peshawar.
4. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ACTION OF THE RESPONDENTS OF NOT COUNTING PREVIOUS SERVICE OF THE APPELLANT RENDERED AS LOWER DIVISION CLERK (BPS-07) AND UPPER DIVISION CLERK (BPS-9) IN PAKISTAN ORDINANCE FACTORY W.E.F 27.03.2015 TILL 14.12.2021 I.E THE DATE ON WHICH HE JOINED THE LOCAL GOVERNMENT & RURAL DEVELOPMENT DEPARTMENT AS VILLAGE/NEIGHBORHOOD SECRETARY FOR PAY PROTECTION ALONG WITH ARREARS AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY PLEASE BE DIRECTED TO GRANT PAY PROTECTION ALONG WITH ARREARS TO THE APPELLANT OF HIS PREVIOUS SERVICE RENDERED AS LOWER DIVISION CLERK (BPS-07) AND UPPER DIVISION CLERK (BPS-9) IN PAKISTAN ORDINANCE FACTORY W.E.F 27.03.2015 TILL 14.12.2021 I.E THE DATE ON WHICH HE JOINED THE LOCAL GOVERNMENT & RURAL DEVELOPMENT DEPARTMENT AS VILLAGE/ NEIGHBORHOOD SECRETARY AS ALREADY GRANTED BY THIS HONORABLE TRIBUNAL IN ITS NUMEROUS JUDGMENTS UNDER THE RULE OF CONSISTENCY. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was initially appointed Pakistan Ordinance Factory (POF) Wah Cantt, as Lower Division Clerk (UDC) (BPS-07) vide order dated 27.03.2015 and was then promoted to upper Division Clerk on 29.06.2018 as evident from letter dated 20.02.2023. (Copies of appointment order dated 27.03.2015 and letter dated 20.02.2023 are attached as Annexure-A&B)
2. That the post of Village/Neighborhood Secretary (BPS-09) was advertised in the year 2020 and the appellant being eligible applied for the said post and was appointed on the said post vide order dated 18.11.2021 and resigned from his job in POF on 13.12.2021 vide order dated 14.12.2021 and assumed the charge on the post of Village/neighborhood Secretary (BPS-09) in the office of Assistant Director LG&RDD Distt Khyber: Khyber House Peshawar vide charge assumption report 14.12.2021. (Copies of order dated 18.11.2021 and order dated 14.12.2021 are attached as Annexure-C&D)
3. That the appellant after appointment as Village/ Neighborhood Secretary is performing his duty with devotion and honesty, whatsoever assigned to him and no complaint has been filed regarding his performance.

4. That the Finance Department issued a notification dated 04.06.2011, wherein the benefits of pay protection has been granted to the employees of autonomous bodies who adopted scheme of basic scales in to-to on their appointment in government offices. (Copy of notification dated 04.06.2011 is attached as Annexure-E)
5. That as the appellant was initially appointed in POF as LDC (BPS-07) autonomous bodies which was later on promoted to UDC BPS-09) and then appointed as Village/ Neighborhood Secretary (BPS-09) in Local Government and Rural Development Department Khyber Pakhtunkhwa, therefore, the appellant is entitle for pay protection along with arrears as per notification dated 04.06.2011 and on analogy of the case of Main Farooq Iqbal of the same department who filed appeal No.476/2014 for his pay protection in this Honorable Service Tribunal which was accepted on dated 07.03.2017 and that judgment was also maintained by the Apex Court in C.A No.1308/2019 and on the basis of that judgment pay protection along with arrears was granted to him of his previous service by the department through notification dated 15.06.2020, but the department did not granted same benefits to the appellant being similarly placed person, therefore he filed department appeal on 20.03.2023 to respondent No.3 for pay protection, which was not respondent within the statutory period of ninety days. (Copies of Service Tribunal judgment dated 07.03.2017, Apex Court judgment dated 27.11.2019, notification dated 15.06.2020 and departmental appeal are attached as Annexure-F,G,H&I)
6. That the appellant has no remedy except to file the instant appeal in this Honorable Tribunal for redressal of his grievance on the following grounds amongst others.

GROUNDS:-

- A) That not granting pay protection along with arrears of the previous service to the appellant are against the judgment dated 07.03.2017 in appeal No.476/2014 of this Honorable Tribunal maintained by the Apex Court, law, facts, norms of justice and material on record, therefore not tenable and the appellant is entitle for pay protection along with arrears of his previous service rendered as LDC (BPS-07) & UDC (BPS-09) in POF w.e.f 27.03.2015 to 14.12.2021 i.e the date on which he joined the Local Government and Rural Development Department Khyber Pakhtunkhwa as Village/Neighborhood Secretary (BPS-09).

- (4)
- B) That similar nature appeal No.476/2014 title Main Farroq Iqbal V/S Chief secretary of KP & others has been accepted by this Honorable Tribunal on 07.03.2017, which was also upheld by the Apex Court in C.P No. 1307/2019 in its judgment dated 27.11.2019 and on the basis of the judgments, the pay of Main Farroq Iqbal was protected and also granted vide notification dated 15.06.2020 and the appellant being similarly placed person is also entitle the same relief under the rule of consistency.
- C) That other same nature appeal No. 980/2016 was also accepted on 27.12.2019 by this Honorable Tribunal, which was also maintained by the Apex Court in its judgment dated 27.04.2021 in Civil Appeal No.39/2021 and the appellant is also entitle to the same relief on the basis of reported judgment, 2009-SCMR-1. (Copies of judgment dated 27.12.2019 and judgment dated 27.04.2021 are attached as Annexure-J&K)
- D) That recently similar nature appeal No.7371/2021 title Mumtaz Khan V/S Govt of K.P was also allowed by this Honorable Tribunal on 21.04.2022 and the appellant has same grievance is also entitle for the same relief. (Copy of judgment dated 21.04.2022 is attached as Annexure-L)
- E) That the appellant has not been treated in accordance with rules and has been deprived from his legal right of pay protection along with arrears in arbitrary manner by the respondents.
- F) That the appellant seeks permission of this Honorable Tribunal 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

Bakhtawar Shah

THROUGH:


(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT

5

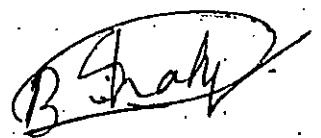
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. _____/2023

Bakhtawar Shah, V/S LG & RD Department

AFFIDAVIT

I, Bakhtawar Shah, Village Secretary, (BPS-09), Village Council, Tatara Sub Division, Jamrud Khyber, (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honorable Tribunal.


DEPONENT

Call # 9990/G.B/FATA

"REGISTERED"

4119-1835-OF-I/F(R)

Pakistan Ordnance Factories

HR-Department, Wah Cantt

Dt. 27.03.2015

BAKHTAWAR SHAH S/O ABDUL QADUS

MULA GHORI MURAD DAND P/O PENDI LALMA TEHSIL MULA GHORI

DISTRICT KHYBER AGENCY

Subject: OFFER OF APPOINTMENT IN POF.

You have been selected for the post of L.D.C (BPS-07) in POF. You are hereby directed to report at Raabita Hall, Gate # 1, near Aslam Market Stop, Wah Cantt on 06 APR 2015 at 0900 hrs for completion of procedural formalities i.e. Medical Fitness and Security Clearance by the concerned authorities.

2. You are required to complete the attached documents in all respect & also bring the following original documents alongwith four sets of attested photocopies of the same.

- i. National Identity Card
- ii. Educational Certificates
- iii. Domicile Certificate
- iv. 04 (1x1) size photographs

3. No TA/DA will be admissible.

4. You are hereby finally advised to report on 06 APR 2015 positively, otherwise **your selection as L.D.C will be treated as cancelled.**


Asstt. Manager R&T

7

SUBJECT: PAY FIXATION ON UP GRADATION OF MINISTERIAL OFFICERS IN JUDICIAL SERVICE
EX-UDC PS OFFICE PL. NO. 00110

Reference: Daily Order Part No. 107 dt. 21.8.2020
 Daily Order Part No. 351 dt. 25.7.2020 & No. 497 dt. 02.8.2021
 Daily Order Part No. 103 dt. 03.8.2021
 D.O. P.T. No. 1038 dated 14.12.2021

Pay fixation statement on up-gradation of the post of UDC from (BPS-09) to (BPS-11) as per date of promotion in respect of under mentioned official with daily order part no. quoted under reference are sent herewith for concurrence & early return for our record.

| Name, Rank, Section | Date of Promotion | Pay already drawn on 28-08-2018 | Pay fixed on promotion as UDC with effect from 30-08-2018 (BPS-11) | Annual Increment on 01-12-18 (BPS-09) | Annual Increment on 01-12-20 (BPS-11) | Remarks |
|--|-------------------|---------------------------------|--|---------------------------------------|---------------------------------------|--|
| Subordinate Staff UDC D.S. Office P.S. No. 541702 The Circle No. 1511 | 28-08-2018 | Rs. 16150/- | Rs. 17050/- | Rs. 10750/- | Rs. 10810/- | He resigned from service w.e.f. 13-12-2021 |

Ends: 1) Service Book # 01
 2) Fix. Statements # 03
 3) NTB Certificates # 01
 4) Application # 01

AO E. A. MISRA
 11/17
 21-02-2022
 Manager - Admin Services
 02-2023

File No. 10021837/E. A. MISRA



OFFICE OF ASSISTANT DIRECTOR LG & RDD
DISTT KHYBER: KHYBER HOUSE PESHAWAR

Ph # 0915606166

Email: adlgkhyber@gmail.com

No. 677-685 ADRD/Khyber

Date: 18 / 11 / 2021

OFFICE ORDER:

Consequent upon the recommendation of the Departmental Selection / Recruitment Committee, Mr. Bakhtawar Shah S/o Mr. Abdul Qudus Khan is hereby appointed as Village/Neighborhood secretary (BPS-9) against the vacant post of Village/Neighborhood Council Tutara Sub division Jamrud Khyber with all usual salary and allowances as admissible under the rules and existing policy of the Provincial Government, on the below mentioned terms & conditions. Furthermore, the candidate must submit acceptance within 15 days of publication of this order.

Terms & Conditions:

1. The appointment is made subject to the conditions that the candidate is having domicile of District Khyber.
2. Medical Certificate should be produced from Medical Superintendent District Headquarters Hospital before taking over charge.
3. Charge report should be submitted to all concerned in duplicate.
4. On his initial appointment, the official will be on probation period for one year and this period can be extended as per rules and policy.
5. His services will be purely on temporary basis and is liable to termination on one-month notice from either side. In case of resignation without notice, his one month allowances shall be forfeited to the government.
6. He should not be handed over charge if his age exceeds Thirty years or below eighteen years except if he is granted relaxation by the Establishment Department as well as by the appointing authority.
7. He should join his post within fifteen days of issuance of this order. In case of failure to join the post within stipulated period, his appointment will stand expired automatically and no subsequent appearance etc. shall be entertained.
8. He will be governed by such rules and regulations as may be issued from time to time by the government.
9. The appointment is made subject to verification of all the documents of the candidate.


Assistant Director,
LG & RDD, Khyber

Copy forwarded for information to:

1. The Director General LG & RDD Khyber Pakhtunkhwa, Peshawar.
2. The Director LG & RDD NMDs Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commissioner, Khyber.
4. The Section Officer Establishment LG & RDD Khyber Pakhtunkhwa, Peshawar.
5. The District Comptroller of Accounts, Khyber
6. The Tehsil Municipal Officer Jamrud
7. Official Concerned.
8. Office Order file.


Assistant Director,
LG & RDD, Khyber

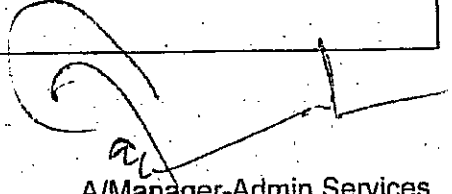
SERVICES GROUP
(Estt. Section)

D 9

DAILY ORDER PART-II NO. 1088 DATED 14-12-2021.

STRENGTH DECREASE – UDC

| | |
|---|--|
| <p>Mr. Bakhtawar Shah UDC-Services (PI.No.68130) BPS-09 Pay code (051/1) Per. Factory Pass No: 0413 Dated: 14-11-2018 D.O.B: 12-03-1992 D.O A: 13-04-2015 (LDC)</p> | <p>Resignation from service tendered by the marginally noted individual on domestic circumstances having been accepted by the competent authority. His name is struck off the strength of POFs (Services Group) w.e.f 13-12-2021 (AN).</p> <p>2. He is in occupation of Govt. accommodation i.e. 11/8,19Area Singlemen Barracks, POF Estate Wah Cantt.</p> |
|---|--|



A/Manager-Admin Services
for Director Services
14-12-2021

I/C Pub (Services)

No. 1800/68130/UDC/Estt. Services

Copy to:

1. CO-POF (Hospital)
2. CO-FIU (699)
3. Estate Officer
4. AO - (CMA) E&M
5. AO - (CMA) Fund Section
6. AO - (CMA) Rent Section
7. AO - (CMA) TA Section
8. AM - HRM (Staff)
9. AM - HR Planning
10. AM - Finance (Services)
11. AM - Welfare (Services)
12. AM - Career Management
13. AM - Comp & Benefits
14. AM - R & S
15. E.O-Director Services office
16. Mr. Bakhtawar Shah
UDC -Services
(PI.No.68130)

→ His permanent Fy Pass No. 0413, dated 14-11-2018 is enclosed herewith for cancellation.

→ There is nothing outstanding against the above named individual in the books of this office, except Factory Pass, Ration Card and POF Hospital Medical Attendance Card (Family / Parents).

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE

E (10)



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

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

10

- 1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
- 2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
- 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-III/1996-235/2010, dated 08-08-2010 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 (Finance)

End 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 Commissioners of Agriculture, Khyber Pakhtunkhwa Peshawar
- 5. Director General, Agriculture, Khyber Pakhtunkhwa Peshawar
- 6. Director, FMI, Finance Department
- 7. P.S. to Minister, Finance, Khyber Pakhtunkhwa
- 8. S.O. Secretary, Finance
- 9. S.O. Secy, Finance

(10)

TO BE SUBSTITUTED FOR THE SAME NUMBER AND DATE

GOVERNMENT OF KHYBER PAKHTUNKHWA

FINANCE DEPARTMENT

(REGULATION WING)

No. FD(SR-112-1/2011)

Dated Peshawar that: 4th June.2011

To

1. All administrative secretaries to Govt of Khyber Pakhtunkhwa.
2. The senior Member, Board of Revenue, Khyber Pakhtunkhwa.
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 Department in Khyber Pakhtunkhwa.
9. All district coordination officer in Khyber Pakhtunkhwa.
10. All political agents/ District & Session Judge in Khyber Pakhtunkhwa.
11. The Registrar, Peshawar High Court Peshawar.
12. The Chairman, Public Service Commission Khyber Pakhtunkhwa.
13. The Chairman, Service 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-11/1996-235/2010, dated 08-06-2010 and judgment dated 01-08-2009 of Federal Service Tribunal Islamabad in Appeal No. 1921 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 any 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 Officers in Khyber Pakhtunkhwa/ FATA.
5. Director FMUI Finance Department.
6. PS to Minister Finance Khyber Pakhtunkhwa.
7. P.S to secretary Finance.
8. PA to sp1 Secretary Finance.

(SHAUKAT ULLAH)

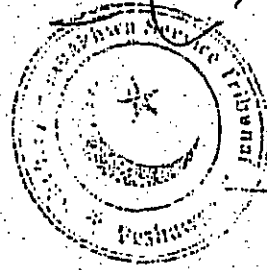
Section Officer (SR-I)

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-1112-4/2014 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.

4
07.03.17

Mr. Muhammad Asif Yousfzai, Advocate.

.. For appellant.

Mr. Muhammad Adeel Butt, Additional Advocate General

.. For respondents.

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. ASLIFAQUE TAJ

.. 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

REGISTRAR
Khyber Pakhtunkhwa

(11) (12)

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 the 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 illegal, hence the appeal of the appellant be accepted as prayed for.

ADMITTED

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

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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.

Self M. Amir, Member, JIR

Self M. H. S. Taj, Member

ANNOUNCED
07.03.2017

Certified to be true copy

[Signature]
Khan
Secretary
Peshawar

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

14

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, Addl 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

Court Appellate
Supreme Court Pakistan
Islamabad

2
15

TO THE HONOURABLE CHIEF JUSTICE OF THE SUPREME COURT OF PAKISTAN
GOVERNMENT OF PAKISTAN
FINANCE DEPARTMENT
REGULATION WING

HQ. FD (SR-1) 12-412411
Dated Peshawar (Bal) 4th June, 2011

- To:-
1. All Secretaries/Secretaries in Charge of Keyher Pakhshkhwars,
 2. The Secretaries, Board of Revenue, Keyher Pakhshkhwars,
 3. The Secretary to Government, Keyher Pakhshkhwars,
 4. The Secretary to Chief Minister, Keyher Pakhshkhwars,
 5. The Secretary, Provincial Assembly, Keyher Pakhshkhwars,
 6. The Secretary General of Keyher Pakhshkhwars, Peshawar,
 7. The Secretary General of Keyher Pakhshkhwars, Swatnow,
 8. All Heads of Attached Organizations in Keyher Pakhshkhwars,
 9. All District Coordination Officers in Keyher Pakhshkhwars,
 10. All District Appeals & District & Sessions Judges in Keyher Pakhshkhwars,
 11. The Registrar, Peshawar High Court, Peshawar,
 12. The Chairman, Public Service Commission, Keyher Pakhshkhwars,
 13. The Chairman, Service Tribunal, Keyher Pakhshkhwars,

Subject: SEVERITY / PROTECTION OF PAY ON APPOINTMENT FROM OUR
DEPT TO ANOTHER.

Dear Sir,

I am directed in refer to the Government of Pakistan, Finance Division, Islamabad letter No. F.No. (SR-1) 12-412411, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No. FSR/09/CS/2005 in respect of Mr. Sajid Rashid and others on the subject noted above and to state that in pursuance of the above noted letter, the Government of Keyher Pakhshkhwars has decided that henceforth the benefit of protection of pay in 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 Servants Act 1973. However, the benefit of pay protection will be admissible in employees of such autonomous organizations who have adopted scheme of basic pay scales in line on their appointment in government service, provided they have applied for the post through proper channel.

Yours Faithfully,

(MASCOD 44211)
Copy Secretary (Reg-11)

Original even No. & date,
Copy forwarded for information to:

1. All the Heads of Accounts / Self Autonomous Bodies of Keyher Pakhshkhwars.
2. Director, Local Fund Audit, Keyher Pakhshkhwars, Peshawar.
3. Director, Treasuries and Accounts, Keyher Pakhshkhwars, Peshawar.
4. All District Commissioners of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Keyher Pakhshkhwars / PATA.
5. Director, PMU, Finance Department.
6. PS to Minister, Finance, Keyher Pakhshkhwars.
7. PS to Secretary Finance.
8. PS to Chief Secretary.

2

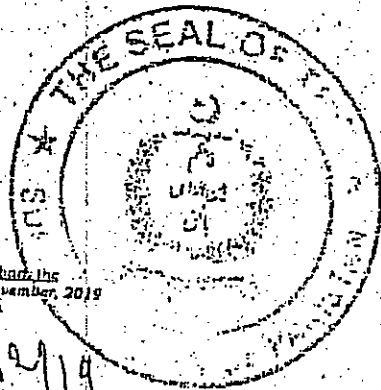
Learned Additional Advocate General has stated that the respondent was appointed as a Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. The respondent applied for being appointed as Inspector Mines through proper channel in the Mines Department and ultimately, succeeded 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

LA
Court Associate
Supreme Court of Pakistan
Islamabad

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.



Islamabad, the
27th November, 2019
Rizwan

21/11/19

Sd/-J

S/-J

Certified to be True Copy

Cour Associate
in Supreme Court of Paki
Islamabad

16



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

77
H 17

NOTIFICATION

Dated Peshawar the 15.06.2020

No.FD(SOSR-II/12-4/2020. In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgement in Service Appeal No.476/2014 announced on 07.03.2017 and Supreme Court of Pakistan Judgement in CP No.1308/2019 dated 27.11.2019, the Finance Department with the approval of the competent authority (Chief Minister Khyber Pakhtunkhwa) is pleased to accord sanction to continuation of service and protection of basic pay of Rs.3460/- (Three Thousand Four Hundred and Sixty Only) last drawn by Mian Farooq Iqbal as Lecturer (BPS-17), Department of Mining Engineering University of Engineering and Technology, Peshawar on his appointment as Inspector of Mines (BPS-17) in Inspectorate of Mines, in the pay scale of Rs.2065-155-3925 w.e.f 10.07.1989.

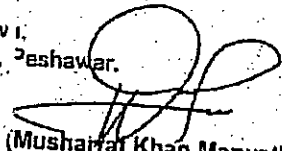
2- The earlier notification of even No. dated 07.12.2018 of this Department stands withdrawn.

SECRETARY TO GOVERNMENT
OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy for information and necessary action is forwarded to the:-

1. Registrar, Service Tribunal, Khyber Pakhtunkhwa.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.


(Musharraf Khan Marwat)
Addl: Secretary (Regulation)
FINANCE DEPARTMENT

ENDST: NO. & DATE EVEN.

Copy of the above is forwarded for information and necessary action to the:-

1. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
2. PS to Special Secretary, Finance Department, Khyber Pakhtunkhwa.
3. PS to Secretary, Minerals Development Department, Peshawar with reference to the letter No.SO Appeal(MDD)/1-1175/2020 dated 18-05-2020.
4. Section Officer (Lit-II) Finance Department, Peshawar via his file No.SO(Lit-II)/FD/2-1474/2014.
5. PA to DS (Reg-I), Finance Department, Peshawar.
6. Officer concerned.


SECTION OFFICER (SR-I)
FINANCE DEPARTMENT

ASSISTANT DIRECTOR LG & RDD
DISTT KHYBER

I (18)

Subject:- COUNTING OF PREVIOUS SERVICES

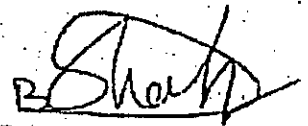
Respected Sir,

It is submitted that before joining the local government distt khyber as village secretary, I worked in the Pakistan Ordnance Factory Wah Cantt, as Upper Division Clerk in Services Group with PL No 681304 pay code 051/1. I worked in the POF with effect from 13-04-2015 and I resigned from my job on 13-12-2021 and submitted Joining Report in the Assistant Director LG & RDD Distt Khyber office on 14-12-2021.

It is therefore requested that I am join my new jobs without any break with previous services, so kindly according to the rules my pervious services my kindly be counted.

I shall be very thankful to you for this kindness.

Yours obediently



(BAKHTAWAR SHAH)
Village Secretary
Tatara village council

Dated: 20 - 03 - 2023

(2)
J 19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 980/2016

Date of Institution ... 07.09.2016

Date of Decision ... 27.12.2019

Muhammad Ismail, Principal, Government High School, Mashogagar, Tehsil and District Peshawar. ... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and four others. ... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney

--- For respondents

MR. AHMAD HASSAN

--- MEMBER (Executive)

MR. MUHAMMAD HAMID MUGHAL

--- MEMBER (Judicial)

JUDGMENT:

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he joined Cadet College Razmak, District North Waziristan as Lecturer/Master (DPS-17) in 2002. That on the recommendations of Khyber Pakhtunkhwa Public Service Commission, he was appointed as Subject Specialist (BPS-17) vide notification dated 19.09.2006. He was relieved by the Principal Cadet College Razmak on 25.08.2006. Needless to add, that he had applied for the above post through proper channel. The Finance Department through notification dated 04.06.2011 allowed pay protection to the

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employees of the autonomous bodies who had adopted pay scales of the Provincial Government. These instructions were issued on the strength of judgment of Federal Service Tribunal dated 01.08.2009. The appellant filed departmental appeal on 05.11.2015 for extension of benefits of pay protection but the same was rejected vide order dated 20.04.2016. His appeal was rejected through a non-speaking order in violation of Section-24-A of General Clauses Act 1897 and case law reported as 1991 SCMR 2323. Learned counsel for the appellant further argued that recently the Supreme Court of Pakistan vide order dated 27.11.2019 upheld the judgment passed by this Tribunal in service appeal no. 476/2014. The case of the appellant is similar to the one decided by the apex court and the principle of consistency demands equal treatment be given to the appellant.

03. Learned Deputy District Attorney argued that notification dated 04.06.2011 was not applicable in the case of the appellant being an employee of the autonomous body/organization. His departmental appeal was rejected on the ground that the appellant joined the Provincial Government prior to issuance of notification referred to above. Moreover, the present service appeal was also barred by time.

CONCLUSION:

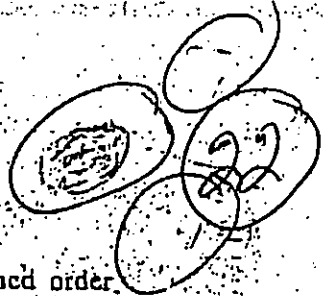
04. It is not disputed that the appellant joined Cadet College Razmak, District North Waziristan as Lecturer/Master (BPS-17) in 2002. This college was financed out of funds initially provided by the SAFRON and now by the Provincial Government. Later on, he applied for the post of Subject Specialist (Pakistan Study) advertised by the Khyber Pakhtunkhwa Public Service Commission through proper channel and got selected vide notification dated 19.09.2006. He was relieved by the

(Handwritten marks and signatures)

Principal vide letter dated 25.08.2006. His request for grant of pay protection was regretted through order dated 20.04.2016 and that too through a non-speaking order. The respondents regretted the plea of the appellant on the sole ground that he was appointed as Lecturer in Cadet College Razmak prior to the issuance of notification dated 04.06.2011, wherein employees of autonomous body who had adopted government pay scales were provided benefits of pay protection for the service rendered in autonomous bodies. The stance of the respondents appears to be illogical and irrational. It was quite unjust to deny benefits of pay protection, to a civil servant on the sole ground that no policy was invogue/ in field. He otherwise fulfilled all the ^{conditions} mentioned in letter dated 04.06.2011.

05. Now this point has been adequately elaborated/addressed by the august Supreme Court of Pakistan through order dated 27.11.2019 passed in civil appeal no. 1308/2019. The provincial government had challenged decision of Service Tribunal dated 07.03.2017 passed in service appeal no. 476/2014, wherein benefits of pay protection were allowed to Mian Farooq Iqbal, petitioner who had started his career in the University of Engineering and Technology Peshawar on 03.12.1986. Subsequently, he was appointed as Inspector of Mines in the Khyber Pakhtunkhwa Inspectorate of Mines vide notification dated 21.06.1989. In view of the above judgment the principle of consistency demands similar treatment be extended to the appellant in the service appeal in hand so as to meet the ends of justice. Being a financial matter limitation will not have any adverse implications on his claim.

(Handwritten signature)



As a sequel to the above, the instant appeal is accepted, impugned order dated 20.04.2016 is set aside and the respondents are directed to allow pay protection to the appellant as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
Member

(AHMAD HASSAN)
Member

ANNOUNCED
27.12.2019.

Pay protection

12

K23

**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

PRESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 39 OF 2021
(On appeal against the judgment dated 27.12.2019
passed by the Khyber Pakhtunkhwa Service Tribunal,
Peshawar in Service Appeal No. 280/2016)

Government of KPK through Chief Secretary, KPK and others
...Appellant(s)

VERSUS

Muhammad Ismail and another
...Respondent(s)

For the Appellant(s): Mr. Aif Ali Khan, Addl. A.G.

For the Respondent: Mr. Muhammad Asif Yousafzal, ASC

Date of Hearing: 27.04.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J. Through this appeal by leave of the Court under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have assailed the judgment dated 27.12.2019 passed by the Khyber Pakhtunkhwa Service Tribunal whereby the Service Appeal filed by the respondent No. 1 was accepted and he was allowed pay protection.

2. Succinctly stated the facts of the matter are that on 25.03.2002, the respondent No. 1 was appointed as Master in Pak Studies/Lecturer (BPS-17) in Cadet College Razmak, North Waziristan. Later on, pursuant to the advertisement issued by the Khyber Pakhtunkhwa Public Service Commission for the posts of Subject Specialist (BPS-17), he applied through proper channel for the said post. The appellant passed through the selection criterion as such he was selected vide notification dated 19.09.2006, hence, posted at Government Higher Secondary School, Shaikhan, Peshawar. On 04.06.2011, the Finance Department, Government of KPK, issued a notification whereby it allowed pay protection to the employees of the autonomous bodies who had adopted pay scales of the Provincial Government. To get the benefit, the respondent filed departmental

ATTEST:

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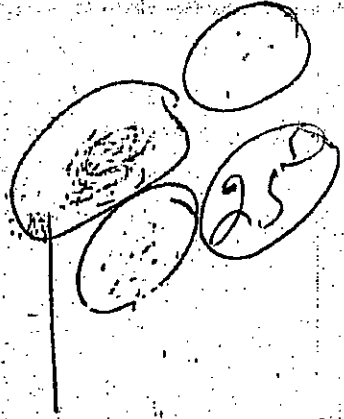
appeal but it was rejected. Vdo order dated 20.04.2016. Being aggrieved, he filed Service Appeal before the KMC Service Tribunal, which has been allowed vdo impugned judgment. Hence, this appeal by leave of the Court.

3. Learned Additional Advocate General, KPK, inter alia contended that the respondent was appointed as Subject Specialist (BPS-17) on 19.09.2006 whereas the notification on the basis of which the respondent claimed pay protection came on 04.06.2011 which was prospective in nature, therefore, the respondent was not entitled for the relief in question; that for the first time, the respondent claimed the relief of pay protection on 05.11.2015 through departmental appeal after more than four years of issuance of notification dated 04.06.2011 and the same was barred by laches; that the learned Tribunal did not take into consideration this aspect of the matter and passed the impugned judgment, which may be set aside.

4. On the other hand, learned counsel for the respondent No. 1 has supported the impugned judgment. He mainly contended that the respondent applied through proper channel after proper departmental permission, therefore, under the law and rules, he is legally entitled to pay protection because the Cadet College Razmak had also adopted the Basic Pay Scale and that if the respondent is deprived of the benefit in question, it would be against the principles of justice and fair play.

5. We have heard learned Law Officer as well as learned counsel for the respondent No. 1 and have perused the record.

6. On our specific query, learned Additional Advocate General conceded that the Cadet College Razmak where the respondent was earlier working as Master in Pak Studies/Lecturer (BPS-17) had adopted the Basic Pay Scales and the respondent had applied through proper channel after getting permission from the department for the post of Subject Specialist. The only point on which he emphasized is that the notification dated 04.06.2011 on the basis of which the respondent claimed pay protection is prospective in nature and it does not allow retrospective claims. However, we do not tend to agree with the learned Law Officer. While passing the impugned judgment, the learned Service Tribunal has relied upon a judgment of this Court dated 27.1.2019 passed in Civil Appeal No. 1308/2019. In that case the respondent was appointed as Lecturer in the University of Engineering and Technology, Peshawar on 03.12.1986. Later on he applied for the post of Inspector in



the Mines Department through proper channel and was not selected vide order dated 21.06.1989. On the basis of the notification dated 04.06.2011 referred above, he claimed pay protection which was ultimately granted by the Service Tribunal and appeal against the order of the Tribunal was dismissed by this Court. It would be advantageous to refer to the relevant portion of the order dated 27.11.2019 passed by this Court, which reads as under:-

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 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."

7. In the above referred case, almost in similar circumstances as in the present case, the benefit of pay protection was given retrospectively, therefore, the respondent being standing on the same pedestal also deserves the same treatment to be meted out in the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the issue of laches is concerned, this point was specifically taken by the appellants before the learned Service Tribunal and the same was rightly discarded by the Tribunal in paragraph No. 5 of the impugned judgment by holding that being a financial matter, limitation will not have any adverse implication on respondent's claim.

8. For what has been discussed above, we are of the candid view that the learned Service Tribunal has passed a well reasoned

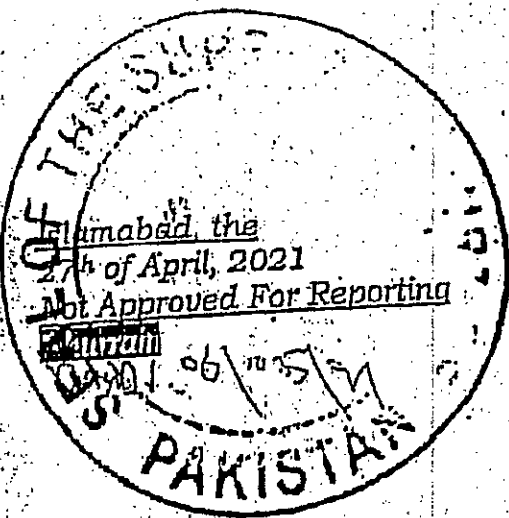
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judgment to which no exception can be taken. This appeal having no merit is accordingly dismissed.

Sd/CJ

Sd/J

Sd/J



Certified to be True Copy

Senior Counsel Associate
Supreme Court of Pakistan
Islamabad

CR No: 7790/21 Civil/Criminal

Date of Presentation: 27.04.21

No of Words: 1200

No of Pages: 12

Requisites: 5-06

Copy For: 7.44

Court: 12.64

Date of: 7/5/21

Date of Dec: 17.5.21

270

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

SERVICE APPEAL NO. 7371/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7522

Dated 01/09/2021

Mr. Mumtaz Khan, (Retd.) Special Secretary (BPS-20),
Industries Department, Peshawar.

(APPELLANT)



VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

Filed today
6/9/2021
Registrar

Submitted to-day
6/9/2021
Registrar

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 24.08.2021, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR PAY PROTECTION ALONG WITH ARREARS OF HIS PREVIOUS SERVICE AS ASSISTANT MINES ENGINEER (BPS-17) IN PMDC W.E.F 26.12.1979 TO 02.08.1983 FROM THE DATE OF HIS APPOINTMENT AS MINES SAFETY ENGINEER (BPS-18) IN DIRECTORATE OF LABOUR WELFARE KHYBER PAKHTUNKHWA HAS BEEN REJECTED WITHOUT GIVING ANY REASON.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 24.08.2021 MAY KINDLY BE SET ASIDE AND THE RESPONDENT MAY FURTHER BE DIRECTED TO GRANT PAY PROTECTION

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

28/4/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 7371/2021

BEFORE: KALIM ARSHAD KHAN --- CHAIRMAN
MIAN MUHAMMAD --- MEMBER(E)



Mr. Mumtaz Khan, (Rtd) Special Secretary (BS-20), Industries
Department, Peshawar.

.....(Appellant)

VERSUS

1. The Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Mineral Development Department Khyber Pakhtunkhwa Peshawar.
3. The Secretary Finance Department Khyber Pakhtunkhwa, Peshawar.

.....(Respondents)

Present:

TAIMUR ALI KHAN,
Advocate

--- For Appellant

M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

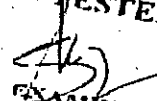
--- For respondents.

Date of Institution.....01.09.2021
Date of Hearing.....20.04.2022
Date of Decision.....21.04.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal in hand has been instituted under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 24.08.2021 whereby his departmental appeal for pay protection alongwith arrears of previous service as Assistant Mining Engineer (BS-17) in Pakistan Mineral Development Corporation (PMDC) w.e.f 26.12.1979 to 02.10.1983, was rejected.

02. Brief facts, as per memorandum of appeal, are that the appellant was initially appointed in Pakistan Mineral Development

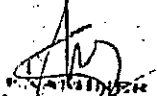
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Corporation (PMDC) as apprentice/ Assistant Mining Engineer (BS-17) on 08.03.1979 and then appointed Assistant Mining Engineer (PMDC) vide order dated 26.12.1979. The appellant applied through proper channel for the post of Mines Safety Engineer (BS-18) in Directorate of Labour Welfare, Khyber Pakhtunkhwa advertized by the Khyber Pakhtunkhwa Public Service Commission in 1982. On selection by the Public Service Commission, he was appointed as Mines Safety Engineer (BS-18) vide notification dated 24.09.1983 and was relieved by the PMDC on 02.10.1983 who assumed the charge of the post of Mines Safety Engineer (BS-18) on 03.10.1983. The appellant during his service in Directorate of Labour Welfare Mineral Development Department got elevation in cadre up to BS-20 as Director General and retired when posted as Special Secretary (BS-20) on attaining the age of superannuation on 07.05.2012. Taking a precedented case of Mian Farooq Iqbal of the same department, the appellant requested for pay protection of the previous service and claimed it under the Finance Department notification dated 04.06.2011. After inter-departmental correspondence between the administrative department, Finance and Law Department, the request of appellant was finally regretted vide impugned order dated 24.08.2021 where-after he approached the Service Tribunal for redressal of his grievances, on 01.09.2021.

03. Respondents were put on notice who submitted written replies/comments on contents of the appeal. We have heard learned counsel for the appellant as well Assistant Advocate General and

ATTESTED



Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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perused the case file with connected documents minutely and thoroughly.

04. Learned counsel for the appellant argued that the appellant had served PMDC as Assistant Mining Engineer (BS-17) from 26.12.1979 to 02.10.1983 who applied to the post of Mines Safety Engineer (BS-18) in Directorate of Labour Welfare Peshawar through proper channel. On selection through Khyber Pakhtunkhwa Public Service Commission, he was properly relieved by PMDC. Since then the appellant rendered regular service of more than 33 years till he stood retired as DG (BS-20) on attaining the age of superannuation on 07.05.2012. However, his previous service rendered in PMDC was not counted for the purpose of pay protection despite the fact that his case was covered under the Finance department circular No. FD (SR-1) 12-1/2011 dated 04.06.2011. He quoted the case of one Mian Farooq Iqbal of the same department having the same facts and circumstances whose previous service as Lecturer (BS-17) in University of Engineering and Technology Peshawar had been protected on the basis of Service Tribunal Judgement dated 07.03.2017 in service appeal No. 476/2014 duly maintained by the Apex Court vide its judgement dated 27.11.2019. He also referred to another judgement of this Service Tribunal dated 27.12.2019 delivered in service appeal No. 980/2016 of Muhammad Ismail where the same question of law was decided following the principle of consistency, laid down in service appeal No. 476/2014. Moreover, the recent judgement of this Service Tribunal dated 07.12.2021 delivered in service appeal No. 463/2017 titled Syed Shenshah, Accounts officer LG & RDD versus

ATTESTED


 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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Government of Khyber Pakhtunkhwa was relied on as precedent being a case of similarly placed official of the provincial government. He contested that how could a similarly placed person like the present appellant be denied the benefits of pay protection, availed by others duly granted by the respondents; particularly when a point of law relating to the terms of service of a civil servant, had been decided. He relied on 1996 SCMR 1185 and 2009 SCMR 1, while concluding his arguments.

05. Learned Assistant Advocate General while referring to para-5 of written defense of the respondents did not deny facts and circumstances of the service appeal. He also contended that the question of retrospectivity and prospectivity relating to Finance Department circular dated 04.06.2011 had been decided by the Apex Court in civil Appeal No: 1308/2019 dated 27.11.2019 of Mian Farooq Iqbal. He therefore did not press his arguments and conceded facts of the case to have been of similarly placed person.

07. Perusal of record revealed that the appellant had applied for the post of Mines Safety Engineer (BS-18) in 1982 through proper channel and on appointment he was properly relieved by PMDC on 02.10.1983. So, there was no gap or break between his previous service and new appointment through Khyber Pakhtunkhwa Public Service Commission. The question of law arising out of the Finance department circular dated 04.06.2011 with regard to its retrospectivity or prospectivity had been decided by the Apex Court in the Civil Appeal No. 1308/2019 of Mian Farooq Iqbal. Astonishingly, the respondents had implemented it vide notification No. FD (SOSR-

TESTED
 JUDGE
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL
 PAKISTAN

I)/12-4/2020 dated 15.06.2020 but in the case of present appellant unnecessary and protracted inter departmental correspondence were resorted to for unknown reasons, driven the appellant from pillar to post. The laid down principle of consistency enunciated in 1996 SCMR is relevant and quite apt to be reproduced:

If the Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may, not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum.

08. It is observed that despite the above clear verdict of Apex Court and the respondent-departments had precedented case of Mian Farooq Iqbal to whom benefits of pay protection of previous service were granted vide Notification dated 15.06.2020, the case of similarly placed appellant was treated as a shuttle cock. It is pathetic and deplorable to note that despite legal opinion of Advocate General office dated 05.04.2021 communicated to respondent No.3 through Law department, respondent No.3 shifted responsibility when advised respondent No.2 "to grant proper sanction for pay protection being administrative department of the present appellant" ignoring the fact that being a financial matter falling in its ambit of functions under the Rules of Business (1985) and it had already exercised that authority when issued Notification dated 15.06.2020 in respect of Mian Farooq Iqbal. It is therefore, imperative to advise the Chief Secretary, Khyber Pakhtunkhwa to issue elaborate instructions to all departments in

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Office of the Chief Secretary
Khyber Pakhtunkhwa
Peshawar

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general and regulatory departments in particular to adhere to the distribution of functions assigned to these departments under the Khyber Pakhtunkhwa Government Rules of Business (1985) framed under Article 139 of the Constitution; especially in litigation cases when there are clear directions and elaborate judgements in unequivocal terms by the hon'ble superior judiciary.

09. As a sequel to the preceding paras, we have arrived at the conclusion that the prayer of appellant for pay protection is covered under the existing scheme of things duly upheld by the Apex Court. He was therefore entitled for the benefits of pay protection of previous service rendered under PMDC w.e.f 26.12.1979 to 02.10.1983. The service appeal is therefore, allowed as prayed for and the impugned order dated 24.08.2021 is set aside. Copy of this judgement be also issued to respondent No.1 for compliance. Costs shall follow the event. Consign.

10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of April, 2022.



(Signature)
(KALIM ARSHAD KHAN)
CHAIRMAN

(Signature)
(MIAN MUHAMMAD)
MEMBER(E)
Certified to be true copy

(Signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22/4/2022
Number of Words 2400
Copying Fee 26/-
Argument 26/-
Total 26/-
Date of Completion of Copy 09/05/2022
Date of Delivery of Copy 09/05/2022

VAKALAT NAMA

NO. _____/2023

IN THE COURT OF KP Service Tribunal Peshawar

Bakhtawar Shah

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

L G & RD Department

(Respondent)
(Defendant)

I/We, _____

Do hereby appoint and constitute **TAIMUR ALI KHAN, ADVOCATE HIGH COURT**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings; if his any fee left unpaid or is outstanding against me/us.

Dated _____/2023

B. Shah

(CLIENT)

ACCEPTED

Taimur Ali Khan

TAIMUR ALI KHAN
Advocate High Court

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CNIC: 17101-7395544-5
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