

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR,
AT CAMP COURT SWAT

Service Appeal No. 9623/2020

Date of Institution ... 24.08.2020

Date of Decision... 07.07.2023

Farid Ullah Shah S/O Rahim Ullah, R/O Peran Tehsil Batkhela, Malakand.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Excise, Taxation and
Narcotic Control, Khyber Pakhtunkhwa Peshawar and 03 others.

... (Respondents)

SYED ABDUL HAQ,
Advocate

For appellant

MR. MUHAMMAD JAN,
District Attorney

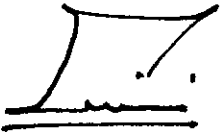
For respondents

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

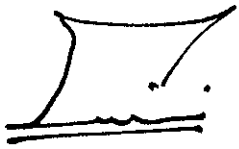
MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts giving rise to filing of the instant service appeal are that the appellant was appointed as Junior Clerk in the Department of Excise, Taxation and Narcotics Control, at Timergara vide order dated 16.01.1984; that he was promoted to the post of Senior Clerk in 1988 and was further promoted as Inspector (BPS-14) in 1997; that he, on the strength of his unblemished service record, was promoted to the post of Assistant (BPS-16) in his cadre in 2009; that due to some domestic problems, he submitted application dated 16.08.2016 for retirement but when he got stable, he immediately approached the concerned office and took back his application for retirement on




22.08.2016; that the appellant joined his duty but in the meanwhile a letter bearing No. 553-54/E&T dated 09.11.2016 was issued by the concerned office regarding alleged absence of the appellant with effect from 01.11.2016 to 09.11.2016; that the respondents without following any legal procedure, retired the appellant from service with effect from 01.03.2017 vide order bearing No. 2010/Estab/P.File dated 28.02.2017; that on the strength of retirement order, the respondents stopped the salary of the appellant with effect from 01.03.2017 vide order bearing No. 240/ET&NC dated 02.04.2017; that the appellant approached respondent No. 1 and pointed out the illegality committed by the subordinate officers through application dated 15.06.2017. On the application of appellant the respondent No. 2 submitted his alleged report to the respondent No. 1 on 04.07.2017; that there-after the respondents remained silent, therefore, the appellant filed another application/appeal and challenged the retirement order dated 28.02.2017; that respondent No. 1 sought detailed report, and in response of which the respondent No. 3 submitted a report bearing No. 732/D/MKD dated 01.04.2018; that the appellant then repeatedly visited the concerned office but they did not respond; that the appellant has no alternate remedy except to file the instant appeal for redressal of his grievance.



2. The appellant had called in question order of his retirement dated 28.02.2017 before the Hon'ble Peshawar High Court, Mingora Bench through Writ Petition No. 870-M/2018. Vide order 10.03.2020, the Writ Petition was converted into an appeal

and sent to this Tribunal for disposal according to law. On admission of the appeal to full hearing, the respondents were summoned who appeared through their representatives and contested the appeal by filing their respective written replies raising therein numerous legal and factual objections. The defence set-up was a total denial of the claim of the appellant.

3. Learned counsel for the appellant has argued that the appellant had though submitted an application for voluntary retirement, however the application was taken back by the appellant before its acceptance, therefore, the impugned order of retirement of the appellant is wrong and illegal. He next argued that the appellant had submitted application for retirement on 16.08.2016 and on one hand, explanation was called from him on 09.11.2016 regarding his alleged absence from duty with effect from 01.11.2016 to 09.11.2016 but on the other hand, he was wrongly and illegal retired through the impugned order dated 28.02.2017. He further argued that the impugned order of retirement of the appellant was not communicated to him and he kept on performing his duty, however on gaining knowledge regarding impugned order of his retirement, the appellant preferred departmental appeal, however the same was not responded. He next contended that it is an admitted fact that the appellant was handed over his original application for retirement on 22.08.2016, therefore, this fact made the impugned order wrong and illegal. In the last he requested that the impugned order may be set-aside and the appeal



may be allowed as prayed for. Reliance was placed on 2007 SCMR 792.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had himself submitted an application for voluntary retirement, which was allowed by the competent Authority and the appellant stood retired vide order dated 28.02.2017 with effect from 01.03.2017. He next argued that as the appellant had himself submitted application for voluntary retirement, therefore, he cannot be allowed to turn around and seek the setting-aside his retirement order. He further argued that after acceptance of his application for retirement, the retirement order of the appellant was issued on 28.02.2017, while he filed departmental appeal on 15.06.2017, which was badly time barred and the service appeal is thus liable to be dismissed being incompetent. Reliance was placed on 2008 SCMR 1078 and 2012 SCMR 745.



5. Arguments have already been heard and record perused.

6. The appellant has impugned the order dated 28.02.2017 passed by Director General, Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa Peshawar, whereby he was retired from service with effect from 01.03.2017. The appellant had admittedly submitted application for voluntary retirement, which was though processed vide letter No. 389/E&T dated Batkhela 16.08.2016. The retirement order of the appellant was issued on 28.02.2017 by the competent Authority, however it is the stance of the appellant that well before passing of the afore-mentioned order, he had changed his intention of voluntary retirement and upon his request, the original

application was handed over to him. Copy of letter No. 389/E&T dated 16.08.2016 is available on the record, which bears an endorsement supporting the stance of the appellant that his original application was received back by him on 22.08.2016. Similarly, the copy of letter No. 389/E&T dated 16.08.2016 as annexed by the respondents alongwith their comments filed by them in Writ Petition also bears an endorsement dated 22.08.2016 regarding return of original application to the appellant. Moreover, upon departmental appeal of the appellant, Director Excise, Taxation & Narcotics Control Malakand Region Swat submitted report to Director General Excise, Taxation and Narcotics Control Khyber Pakhtunkhwa Peshawar vide letter No. 732/D/Mkd dated 01.04.2018, wherein too this fact has been admitted that original application submitted by the appellant for his retirement was not available in the record. All this led us to the conclusion that the original application was taken back by the appellant on 22.08.2016, however copy of his application was processed and the impugned retirement order was passed on the basis of photocopy of application submitted by the appellant for his retirement. The course so adopted by the competent Authority thus could not be found as legal as he was required to have ensured the original application of the appellant for retirement before issuing the impugned order. The impugned order of retirement of the appellant is thus not sustainable in the eye of law and is liable to be set-aside.

7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned order and the appellant is reinstated

in service. The intervening period with effect from the date of his retirement till his reinstatement shall be treated as leave of kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.07.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT



(FAREEHHA PAUL)
MEMBER (EXECUTIVE)
CAMP COURT SWAT