

into the Government Treasury at his own. No evidence of any official order to this is available on record. CSR 465 (b) as under;

(1) A retiring pension is granted to an officer who exercise his right to retire from service any time after completing twenty-five years' qualifying service.

(2) A retiring pension is also granted to an officer is required by Government to retire after completing twenty-five years' qualifying service. This clause does not apply to a judge of the Supreme Court or High Court of the Comptroller and Auditor General of Pakistan or an officer who has attained the age of fifty-five years.

07. Since the appellant requested himself for early retirement which stand accepted and notified by the competent authority and actualized by the appellant and the appellant being a civil servant cannot be allowed to withdraw his request for early retirement after its acceptance. We are, therefore, constrained to consider the case has attained finality being a past and closed transaction. The respondents are, however, directed to revise the date of proceeding on retirement of the appellant as 21.08.2019 as indicated in his original application instead of 30.07.2019 thereby giving the legal benefits of this particular period (30.07.2019 to 21.08.2019).

08. The case in hand is disposed of in the above terms. Costs shall follow the event. Consign,

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 09th day of August, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

05. Learned Deputy District Attorney, on the other hand contended that the appellant was initially appointed on the post of Naib Qasid on 13.04.1993 and then appointed against the post of PST (BPS-14) dated 21.10.2004. After that the appellant was promoted to the post of SPST (BPS-14) in the year 2014. That the appellant filed application for premature retirement on 21.08.2019 and was retired from service on 30.07.2019 vide order dated 02.09.2019 on the request of the appellant. He further contended that the age of the appellant was less than 55 years that is why he was retired from service on 30.07.2019. He accepted all the terms and conditions of the retirement order without any agitation. Learned Deputy District Attorney argued that encashment of LPR is admissible on completion of 26 years of qualifying service but his qualifying service was 25 years, therefore, he was not paid encashment of LPR.

06. It is admitted fact that the appellant himself submitted application for early retirement indicating therein date for him proceeding on retirement i.e. 21.08.2019. It is also not disputed that the appellant was retired with effect from 30.07.2019 vide order dated 02.09.2019 i.e. 22 days earlier the indicated date by the appellant. During this period the appellant admittedly performed duty. The appellant opted by choice for premature retirement after rendering 25 years qualifying service, which is legally covered under Section 13 (2) Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3.5 (i) of West Pakistan Civil Servants Pension Rules 1963. Admittedly the appellant availed pensionary benefits after notification of his retirement. Although he has deposited back the commutation portion of his retirement

learned Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant had filed application for early retirement on 21.08.2019, while he was retired from service on 30.07.2019 vide order dated 02.09.2019 which shows that the retirement order passed with retrospective effect and such like orders have no effect and null and void-ab-initio. He further argued that on 13.09.2019 the appellant filed application for cancellation of his early retirement and on the basis of his application, respondent No. 3 told the appellant that his cancellation application for retirement will be accepted and directed the appellant to continue his duty and deposit commutation and pension which he has already withdrawn. That on the direction of respondent No. 3 the appellant deposited commutation & pension vide receipt/challan dated 11.05.2020 and also started teaching in the school till December 2019 which shows that the appellant has worked for about 05 months. Learned counsel for the appellant contended that the inquiry committee also commented in favour of the appellant but despite that respondent No. 3 rejected his application without observing comments of the committee. Learned counsel for the appellant further contended that benefits of leave encashment of (LPR) have not been given to the appellant which also shows the malafide of respondent department. In the last learned counsel for the appellant stated that the impugned orders dated 02.09.2019 and 11.06.2020 and not tacking action on the departmental appeal of the appellant are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.

31.12.2019 as he has performed duty with effect from 01.08.2019 till 31.12.201 on the direction of respondent No. 3. Any other remedy, which this august Tribunal deems fit and appropriate that, may also, be awarded in favour of appellant.”

02. Brief facts of the case are that the appellant was appointed as PST (then PTC) on 21.10.2004 and was promoted to the post of SPST (BPS-14) in the year 2014. That due to domestic problem the appellant filed an application for early retirement on 21.08.2019 and on the basis of his application he was retired from service vide order dated 02.09.2019 with effect from 30.07.2019 without availing the benefits of encashment of leave in lieu of (LPR) due to non completion of 26 years qualifying service. Thereafter the appellant filed application on 13.09.2019 for cancellation/withdrawal of his early retirement. On the basis of his application respondent No. 3 wrote a letter on 13.01.2020 to respondent No. 2 for guidance regarding withdrawal of retirement after sanction/starting of pension. Respondent No. 2 constituted inquiry committee to decide the issue of cancellation of application of the appellant. That after conclusion of the inquiry report respondent No. 3 rejected the withdrawal application vide Notification dated 11.06.2020. Feeling aggrieved, the appellant filed departmental appeal on 07.07.2020 which was not responded hence preferred the instant service appeal on 29.10.2020.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and

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

Service Appeal No. 14055/2020

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Kifayat Ullah, Retired SPST (BPS-14) GPS, Wali Baz Khan Korona
Bamkhel, Swabi.....(*Appellant*)

VERSUS

1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
 2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
 3. The District Education Officer (Male) Swabi.
 4. The District Account Officer, Swabi.
 5. The Secretary Finance, Khyber Pakhtunkhwa, Peshawar.
-(*Respondents*)

Present:-

SYED NOMAN ALI BUKHARI,
Advocate --- For Appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....29.10.2020
Date of Hearing.....31.07.2023
Date of Decision..... 09.08.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“That on acceptance of this appeal, the order dated 02.09.2019 and 11.06.2020 may kindly be set aside and the appellant may be reinstated into service with all back and consequential benefits. The respondents may further be directed to release salaries of the appellant with effect from 01.08.2019 till