

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1605/2019

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Shaida Muhammad son of Nisar Muhammad R/O village Sadiq Abad,
Ghari Baloch Post office Pakha Ghulam, Tehsil and District Peshawar.
..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary.
2. Government of Khyber Pakhtunkhwa Mines and Minerals Department through Secretary at Civil Secretariat, Peshawar.
3. Director of Mines and Minerals through Director General at Khyber Road, Peshawar.
4. Government of Khyber Pakhtunkhwa through Secretary Finance at Civil Secretariat Peshawar.
5. Ministry of Petroleum and Natural Resources through Secretary at Federal Secretariat, Islamabad. (Respondents)

Mr. Hafeezul Asad Shangla,
Advocate

... For appellant


Mr. Asad Ali Khan,
Assistant Advocate General

... For respondents

Date of Institution..... 29.11.2019
Date of Hearing..... 12.09.2023
Date of Decision..... 12.09.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the orders dated 07.11.2019 and 25.06.2019 whereby application filed by the appellant for considering his previous service i.e. FATA DC w.e.f. 7.7.1988 to 05.10.1991, Ministry of Petroleum and Natural Resources 12.10.1991 to 15.10.2001, Model Coal Mine Project 16.02.2017 to 06.03.2018



and 7.3.2018 to 24.10.2018 as regular, was filed/dismissed. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and consequently, service rendered by the appellant in different government departments/under Government Administrative Control Projects might be considered for the purpose of pension and other benefits available to regular government servant with all back benefits alongwith other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that after serving in private sector from 1985 to 1988 the appellant was appointed in FATA DC Peshawar as Mining Engineer (BPS-17) on 07.07.1988 and served there till 05.10.1991. Thereafter, he joined Saindak Metal, an enterprise of Ministry of Energy (Petroleum Division), as Senior Mining Engineer in SML, Grade IX Eqv (BPS-19), on 12.10.1991 and served there till 15.10.2001. Thereafter serving in private sector for some time, again the appellant was appointed in Government of Khyber Pakhtunkhwa Mineral Department as a Project Manager (BPS-18) in Model Coal Mine Project on 16.02.2017 and served there till 06.03.2018. Through notification dated 01.08.2018, appellant's service was declared to be regularized from 07.03.2018 in consequence of (Regularization of Service) Act 2018 (KPK Act No. X of 2018). After regular service of 07 months and 17 days, the appellant completed his 60 years of age and hence his regular period of service also ended on 24.08.2018 with retirement benefits. He filed an application for considering his non-regular service/service under Government Administrative

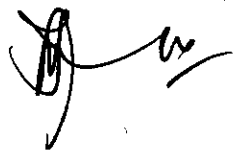


Project for the purpose of pension benefits, which was filed/turned down through the impugned order dated 07.11.2019, hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Assistant Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the appellant served for a considerable period of about 14 years in different projects under the administrative control of government and as evident from different verdicts of superior courts, Project/Ad hoc employees were held entitled for pension benefits. He requested that the appeal might be accepted as prayed for.

5. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was appointed in the Annual Development Programme scheme titled "Establishment of Model Coal Mines Project Shahkot District Nowshera" under provincial government project policy vide notification dated 16.02.2017. He informed that service of the appellant was regularized w.e.f. 07.03.2018 vide notification dated 01.08.2018 under the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018. Thereafter, on attaining the age of superannuation, he was retired from service with effect from 24.10.2018 and, therefore, he rendered 07 months and 17 days regular service only which had been dealt in accordance with rules. He further argued that Clause-xi of the terms and conditions under which appellant was appointed clearly state^d that the appointee should not be



entitled to any pension or gratuity for the services rendered by him. Moreover, under Rule 3(I)(a) of the Khyber Pakhtunkhwa Civil Servants Pension Rules 2021, the minimum qualifying service for pension was 10 years, the learned AAG stated. According to him, the appellant after his regularization on 07.03.2018, had rendered only seven months and seventeen days service against a regular post which was not countable towards pension under the said rules. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpires that the appellant was appointed as Mining Engineer (BS-17) in FATA DC Peshawar on 07.07.1988 and served there till 05.10.1991. After that he joined the Ministry of Energy as Senior Mining Engineer (BS-19) and served there from 12.10.1991 to 15.10.2001, after which he served in the private sector for some time. In February 2017, he was appointed in an ADP Scheme of the Government of Khyber Pakhtunkhwa on contract basis and later on in August 2018, his services were regularized. The appellant retired on 24.10.2018 on attaining the age of superannuation. The instant service appeal has been preferred before this Tribunal to consider the service rendered by him in different government departments and projects under administrative control of government as regular for the sake of allowing him pension benefits.

7. Record presented before us clearly shows that he never served in any government, be it federal or provincial, continuously in order to make him eligible for pension benefits. The Khyber Pakhtunkhwa Civil Servants Pension Rules 2021 clearly elaborate, in Chapter-II, the service qualifying for pension. Rule 3(1)(a) is reproduced below:-



“3. Conditions of qualification:


(1) The service of a civil servant does not qualify for pension unless it conforms to the following conditions:

(a) The service shall not be less than ten years;”

8. In the instant case, the regular service of the appellant is seven months and seventeen days which does not qualify him for pensionary benefits. The service appeal is, therefore, dismissed, having no grounds. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S


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12th Sept. 2023 01. Mr. Hafeezul Asad Shangla, Advocate for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the regular service of the appellant is seven months and seventeen days which does not qualify him for pensionary benefits. The service appeal in hand is, therefore, dismissed, having no grounds. Costs shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of September, 2023.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S