

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.797/2022

Atta Ullah Shah --- Appellant

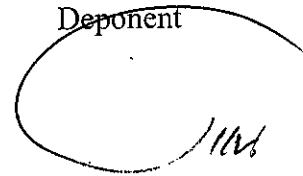
Versus

Allama Iqbal Open University
through its Registrar Islamabad & others --- Respondents

I N D E X

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Deponent



Zahid Ullah
Section Officer (Litigation)
C&W Department, Peshawar

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
SERVICE APPEAL NO. 797/2022

Attaullah Shah S/O Amanullah Shah
House No.65, Street No.I, Sector-G
Sheikh Maltoon Town, Mardan

--- Appellant

Khyber Pakhtunkhwa
Service Tribunal

8043

Date: 3/10/23

VERSUS

1. Allama Iqbal University, through its Registrar, Islamabad
2. Federation of Pakistan, Ministry of Education Islamabad
3. Govt of Khyber Pakhtunkhwa through Chief Secretary, Peshawar
4. Secretary to Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
5. Accountant General, Khyber Pakhtunkhwa Peshawar
6. Secretary to Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar

--- Respondents

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.3, 4 & 6

Respectfully Sheweth

Preliminary Objections

1. That the appellant has got no cause of action.
2. That the appeal is bad for non-joinder & mis-joinder of necessary parties.
3. That the Service appeal is not maintainable in its present form.
4. That the Appellant has not come to the court with clean hands and the service appeal is based on mis-representation of facts.
5. That the Appellant is estopped by his own conduct.
6. That the appeal is pre-mature.

FACTS

1. } Paras 1 & 2 pertain to record.
2. }
3. } Correct to the extent that on his selection as Executive Engineer (BS-18) in Allama Iqbal University Islamabad, the Appellant (Attaullah Shah) Assistant Engineer (BS-17) was relieved w.e.f. 13.09.1999 to join his new assignment. The lien of the Appellant was reserved in C&W Department initially for 02 years, extendable for further period of one year under the rules (**Annex-I**).
4. This para pertains to record. Hence no comments.
5. Correct to the extent that the appellant was appointed as Assistant Engineer (BS-17) through Public Service Commission on 05.08.1989, having 10 years service as Assistant Engineer (BS-17) in C&W Department. After fulfillment of all codal formalities, the appellant had

been relieved to join his new assignment as Executive Engineer (BS-18) in Allama Iqbal University Islamabad.

- 6. In-Correct. Finance Department clearly provides through letter No.SOSR-III/FD/4-112/80 dated 23.12.1984 (**Annex-II**) that the pension contribution is to be made at the rates prescribed as per Finance Department letter No.SOSR-III/(FD)/4-112/73 dated 12.04.1982 i.e. 33.33% of the mean of minimum and maximum of the pay scale of the grade held by the Govt. Servant concerned at the time of his proceedings on foreign service, plus other emoluments (Reckonable for pension) **Annex-III**. Moreover, the application of the appellant received, which was processed and referred to Finance Department. The Finance Department agreed to the payment of pension contribution amounting to Rs.190, 576/- in favour of appellant for the period from 05.08.1989 to 13.09.1999 (**Annex-IV**).
- 7. In case of a government servant who resign from the public service to take up an appointment in an Autonomous / Semi-Autonomous organization as its regular employee, service in which counts for pension under the rules of that organization, his resignation may not be treated as resignation of the public service in terms of Rules-2.11 of the West Pakistan Civil Service Pension Rules and the Autonomous Organization concerned may count Government Service of such an employee for the purpose of pension and accept the full pensionary liability; the Government Department concerned may, however, pay pension contribution to the organization concerned at the prescribe rate in respect of the Government Service rendered by the said employee.
- 8. Incorrect, as explained in Para-6 above.

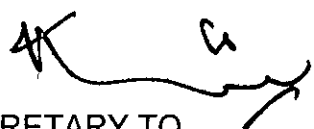
GROUNDS


- A. Incorrect. No discrimination to any individual, including appellant, was done nor any Rule or Principle of law infringed. The apprehension of the appellant is misconceived.
- B. Incorrect. No right of the appellant has been violated, as the pension contribution case of the appellant is under process and when the formalities completed, will be facilitated.
- C. Incorrect, there is no mala-fide intention of the respondents, no discrimination and no violation of rights of the appellant has been made as the pension contribution is strictly allowed in accordance with law/regulations and under the existing policy.
- D. Incorrect, as per para-6 of the fact.
- E. Incorrect, as explained in above paras.
- F. Incorrect. As per para-B of the grounds.
- G. Incorrect. As per para-A of the grounds.

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- H. Incorrect. As per para-B of the grounds.
- I. Contents. Parties are bound by their pleading and cannot take additional grounds while verbally explaining their cause during a hearing.

In view of the above, it is prayed that the instant service appeal may kindly be dismissed with costs having no substance.


SECRETARY TO
Govt of Khyber Pakhtunkhwa
C&W Department, Peshawar
(Respondent No.3&4)


SECRETARY TO
Govt of Khyber Pakhtunkhwa
Finance Department, Peshawar
✓ (Respondent No.6)

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.797/2022

Atta Ullah Shah --- Appellant

Versus

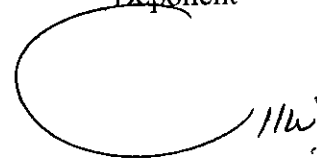
Allama Iqbal Open University
through its Registrar Islamabad & others --- Respondents

AFFIDAVIT

I, Zahid Ullah, Section Officer Litigation (BS-17) C&W Department, Peshawar hereby affirm and declare that all the contents of the Joint Parawise comments are correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

It is further stated on oath that in this appeal, the answering respondent neither has been placed ex-party nor their defence has been struck off.

Deponent



Zahid Ullah
Section Officer (Litigation)
C&W Department, Peshawar

CNIC # 14203-2044698-7

Mob No # 0340-5012750



3/10/2023




**GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT**

NO. SO (Lit.)C&W/3-475/2023
Dated Peshawar, the October 03, 2023

AUTHORITY LETTER

Mr. Zahid Ullah, Section Officer (Litigation), C&W Peshawar having CNIC 14203-2044698-7 is hereby authorized to file the Joint Parawise Comments in case titled "Service Appeal No.797/2022 Atta Ullah Shah Vs Government of Khyber Pakhtunkhwa" on behalf of Secretary C&W Department.


SECRETARY
to Govt of Khyber Pakhtunkhwa
C&W Peshawar.

Dated Peshawar, the September 13, 1999

Amended
(6)

NOTIFICATION

NO. SO(E)C&W/1-46/89. Consequent upon his selection as Executive Engineer (BPS-18) in Allama Iqbal Open University, Islamabad vide letter No. F.2-12/99-Addl.Reg/1263, dated 31-7-1999, Mr. Attaullah Shah, Assistant Engineer (BPS-17), C&W Department is hereby relieved from duty with immediate effect to enable him to join his new assignment.

The lien of the officer will be reserved in this department initially for 02 years, extendable for a further period of one year as admissible under the rules.

SECRETARY C&W DEPARTMENT
GOVERNMENT OF NWFP

Endst. No and date as above.

Copy to the :-

1. Accountant General, NWFP, Peshawar.
2. Additional Registrar, Allama Iqbal Open University, Islamabad w/r to above.
3. Chief Engineer (North), C&W Department.
4. Executive Engineer, Building Division, Manshara.
5. District Accounts Officer, Manshara.
6. Officer concerned.
7. Personal File/Office Order File.

(ABEUS SAMAD)
SECTION OFFICER (ESTABLISHMENT)

etc

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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

(REGULATION WING)

IRAA

Annex-II

7

Finance Department Civil Secretariat Peshawar

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

[facebook.com/GoKPFED](https://www.facebook.com/GoKPFED)

twitter.com/GoKPFED

Copy of letter bearing No.SOSR-III/FD/4-112/80 dated 23.12.1984 issued by Finance Department Government of Khyber Pakhtunkhwa addressed to all Administrative Secretaries & others.

Subject **PAYMENT OF PENSION CONTRIBUTION FOR SERVICE RENDERED TO THE GOVERNMENT BY THE EMPLOYEES OF AUTONOMOUS / SEMI AUTONOMOUS ORGANIZATIONS.**

Dear Sir,

I am directed to refer to the Finance Department's notification No.FD-SR.III/4-112/80 dated: 22-11-1980 and circular letter No.SOSR.III(FD)4-112/80 dated: 26.06.1984 and to say that in case of a civil servant, who, with the proper concurrence of the competent authority leaves service under the Government of Khyber Pakhtunkhwa and seeks absorption / employment under an Autonomous, Semi-Autonomous/ Local Body, where service is pensionable. The Government, if it is so requested, will be liable to share pensionary liability for the period of service rendered by such civil servant under the government in accordance with the government rules.

2. The questions have been raised as to whether (a) the proportionate pensionary liability would be borne by the Provincial Government in the cases which occurred/ occur on or after 22-11-1980 or the past cases would also be covered under the above mentioned decision and (b) the Provincial Government would make payment of pension contribution in the case of an employee of an Autonomous / Semi-Autonomous Organization who rendered service in a Government Department?

3. The position has been reviewed and it has been decided that such cases should be dealt in the following manner:-

a). In the case of an employee of an Autonomous/ Semi-Autonomous Organization, who renders service in a government department the concerned department may make payment of pension contribution to the Autonomous Organization concerned at the prescribed rates, subject to the following conditions:-

i) The appointment of the individual concerned in the Government Department was made with the consent of the head of the Autonomous Organization and with the approval of the competent authority in the government department concerned, in accordance with the normal procedure for making such appointments.

ii) The regular employees of the Autonomous Organization concerned are entitled, under specific rules of the organization for the purpose to the same benefits of pension as are admissible to the civil servants of the Provincial Government and the employee concerned had rendered qualifying service for pension in his parent organization before his appointment in the Government Department concerned.

iii) The Autonomous Organization concerned agrees to count the service of the individual concerned under Government for the purpose of pension.

b) In the case of a Government Servant who resigns from the public service to take up an appointment in an Autonomous / Semi-Autonomous Organization as its regular employee, service in which counts for pension under the rules of that organization, his resignation may not be treated as resignation of the public service in terms of Rules 2.11 of the West Pakistan Civil Service Pension Rules and the Autonomous Organization concerned may count Government Service of such an employee for the purpose of pension and accept the full pensionary liability; the Government Department concerned may, however, pay pension contributions to the organization concerned at the prescribed rates in respect of the Government Service rendered by the said employee. This will be subject to the following conditions:-

P.T.O.

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- i) The application for appointment to the relevant post in the autonomous organization concerned was made by the government servant concerned through proper channel, or it was with the consent of the competent authority in the government department concerned that the new appointment in the autonomous organization concerned was taken up.
 - ii) The Government Servant concerned had, while tendering resignation from the public service, stated clearly that he was doing so to take up another appointment in the autonomous organization concerned. This should be supported by his letter of resignation and its acceptance by the Competent Authority.
 - iii) The service rendered by the Government Servant concerned in the previous Government department was pensionable.
- c) Pension Contribution will be made at the rates prescribed in this departments letter No.SOSR/III (FD) 4-112/73, dated: 12-4-1982.

4. Those orders will be effective from the date of issue. They will also cover, subject to the conditions specified in Para-3 above, past cases of those employees of autonomous / semi-autonomous organization who had rendered service in a government department and have not proceeded on retirement before the date of issue of this letter.

Yours faithfully

--Sd--
(Iftikhar Ahmad)
(Deputy Secretary Regulation)



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

Endst: No.SOSR-III/FD/4-112/80

Dated: 04-11-2020

Copy of the above is forwarded for information Strict Compliance to the:-

1. All the Administrative Secretaries, Govt: of Khyber Pakhtunkhwa.
2. The Accountant General of Khyber Pakhtunkhwa.
3. The Director Treasury and Local Fund Audit, Khyber Pakhtunkhwa.
4. All the Autonomous / Semi-Autonomous Bodies of Khyber Pakhtunkhwa.
5. All the District Account Officers, Govt: of Khyber Pakhtunkhwa.

(Barkat Khan)
(SECTION OFFICER (SR.II))

F/B

9 Annex-III

No. SOSR-III (FD) 4-112/73
GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Dated Peshawar the 12th April 1982.

To

1. All Administrative Secretaries to Government of NWFP.
2. All Commissioners of Divisions in NWFP.
3. All Heads of Attached Departments in NWFP.
4. All Deputy Commissioners/Political Agents/District and Session Judges in NWFP.
5. The Registrar, Peshawar High Court, Peshawar.
6. The Secretary to Governor, NWFP.
7. The Secretary, Public Service Commission, NWFP.
8. The Chairman, Services Tribunal, NWFP.
9. The Secretary, Board of Revenue, NWFP.

SUBJECT: RECOVERY OF LEAVE SALARY AND PENSION CONTRIBUTION.

Sir,

I am directed to refer to FR-116 in accordance with which the rate of contribution payable on account of pension and leave salary shall be such as may be prescribed by the General orders. The existing rates are contained in appendix 11-A of Fundamental Rules and the Supplementary Rules Vol:II. The question regarding revision of rates and mode of recovery etc. of leave salary and pension contribution has been engaging the attention of the Government for some time past. It has now been decided to prescribe a uniform rate of recovery of pension contributions at 33-1/3 % of the mean of minimum and maximum of the pay scale of the grade held by the Government servant concerned at the time of his proceeding on foreign service, plus other emoluments (reckonable for pension) which would have been admissible to him had he not been deputed on foreign service. The above-prescribed rate of pension contributions shall apply to all the Provincial Government employees whether on deputation to foreign service within Pakistan or abroad.

2. In future, the pension contribution in all cases shall be payable by the foreign employees, however, in the case of Government servants presently on deputation to foreign service within Pakistan or abroad, pension contributions shall be paid by the foreign employer or the Government servants concerned, as the case may be according to the agreed terms of deputation.

(10)

3. As regards leave salary contribution, it has been decided that no leave salary contributions shall be recovered from the foreign employers but leave/leave salary shall be sanctioned/paid during the period of foreign service by the foreign employers. The Provincial Government employees sent on deputation to foreign service who, under the revised procedure, are granted leave and paid leave salary by the foreign employers, shall not count the period spent on foreign service for earning leave under the Government of NWFP.

4. These orders shall come into force with effect from 1.1.1982.

Your obedient servant.

(MUHAMMAD AMIN)
ADDITIONAL SECRETARY-I

No.SOSR-III(FD)4-112/73

Dated Peshawar, the 12th April 1982.

A copy is forwarded for information to:-

1. The Accountant General, NWFP, Peshawar.
2. All District and Agency Accounts Officers in NWFP.
3. The Treasury Officer, Peshawar.
4. All Autonomous and Semi-Autonomous Bodies in NWFP.
5. The Director, Local Fund Audit, NWFP.

(MUHAMMAD KHAN)
SECTION OFFICER (SR.III)

No.SOSR-III(FD)4-112/73

Dated Peshawar, the 12th April 1982.

A copy is forwarded for information to:-

1. PS to Secretary and P.A to Additional Secretary/Deputy Secretaries in Finance Department.
2. All Section Officers/Budget Officers in Finance Department.

(MUHAMMAD KHAN)
SECTION OFFICER (SR.III)

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To
The Secretary,
Govt: of Khyber Pakhtunkhwa,
Communication & Works Department,

Subject: - REVIEW PETITION NO. 98-P/2019 IN W.P NO. 1828-P/2018
TITLED ATTAULLAH SHAH VS GOVT: OF KHYBER PAKHTUNKHWA.

Sir,

I am directed to refer to the Communication & Works Department letter No. ACCTT/C&W/1-3/Establishment/2021-22 dated 05.08.2021 on the subject noted above and to state that in compliance with the order of Honorable Peshawar High Court, Peshawar dated 29.09.2020, Finance Department agrees to the payment of Pension contribution amounting to Rs: 190,576/- in respect of Mr. Attaullah Shah, Ex-Assistant Engineer, C&W Department (petitioner) for the service he rendered in C&W Department as Assistant Engineer W.e.f 05.08.1989 upto 13-09-1999 before joining Allama Iqbal Open University, Islamabad subject to the following conditions: -

- i. The officer had never been availed Extra Ordinary Leave in the said period.
- ii. The officer had never been promoted in the said period.

2. It is requested that complete Break-up of service and amount of pension contribution as per attached statement may be produced/filed in the court to comply with the directions contained in order sheet dated 29.09.2020.

SECTION OFFICER (Lit-I)

Copy forwarded for information to:

- 1. Deputy Secretary (Lit) Finance Department.

SECTION OFFICER (Lit-I)

M. Asad
15/9