

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Mr. Anwar Ali
Service Appeal No. 1469/2022

Appellant

Secretary to Govt. of Khyber Pakhtunkhwa Finance Department and
others.

Respondents

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16-10-23
Peshawar

(1)

Before the Khyber Pakhtunkhwa, Service Tribunal,
Peshawar

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1469/2022

Diary No. 8310

Mr. Anwar Ali, Sub Accountant (BS-16), office of the District Accounts Officer, Orakzai.

Dated 16-10-23

(APPELLANT)

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

(RESPONDANTS)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1-3

Preliminary Objections

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appellant has not come to this honorable tribunal with clean hands therefore, the appeal is liable to be dismissed.
3. That the appeal is badly time barred.
4. That the appeal is bad in its present form, hence incompetent and is liable to be dismissed.
5. That the instant appeal is not maintainable in the eye of law.
6. That the appellant concealed the material facts and kept this honorable tribunal in dark.
7. That the appeal is bad for misjoinder and non-joinder of necessary parties.
8. That the appellant has not complied with mandatory provisions of relevant rules.

FACTS.

1. That the appellant, after merger of FATA in Khyber Pakhtunkhwa, has been adjusted against the post of Sub Accountant (BS-16) in the Treasuries & Accounts Establishment, Khyber Pakhtunkhwa on 04.05.2020 with the provision/condition to be placed at bottom of the seniority list of Sub Accountants in light of Surplus Pool Policy of the Provincial Government (**Annex-I**), having different nomenclature, job description & service structure etc.
2. No comments. Pertains to record.
3. Pertains to record however, no such orders of regularization in wake of the said judgment had been made in r/o the appellant upon which he can be considered as a regular employee.
4. No comments.
5. No comments.
6. Pertains to record.
7. As per para-1 above.

8. That Finance Department has no cadre of its own with nomenclature of Assistant Finance Officer (BPS-16) **while** the Planning Cadre was established in 2017 in Planning & Development Department i.e., before merger of FATA with the Province of Khyber Pakhtunkhwa hence, the Agency Planning Officers were adjusted in that cadre, having same nomenclature, job description & service structure etc. However, no such cadre, having the posts of Assistant Finance Officers exists, hence, the appellant was adjusted in Treasuries & Accounts Establishment, Khyber Pakhtunkhwa an attached formation of Finance Department. The nature of adjustment of Assistant Agency Finance Officer is different to that of Agency Planning Officers. The Agency Planning Officers were adjusted in the same cadre while the Assistant Agency Finance Officers were adjusted in a different cadre, having different nomenclature, job description & service structure as per rules/ policy and procedure in vogue. Hence, no discrimination is done to the appellant and is treated in accordance with prevailing rules/ policy of the Provincial Government.
9. As per para-8 above.
10. Incorrect. Neither the Treasuries & Accounts Establishment, Khyber Pakhtunkhwa has been merged/restructured in wake of the merger of FATA in Khyber Pakhtunkhwa nor any such decision has been taken by the government but the appellant, along-with others, have been adjusted in that cadre as per rules/policy by placing them at bottom of the seniority.
11. Incorrect. His appeal has never been received within the specified period of 30 days after issuance of his adjustment order in Treasuries & Accounts Establishment, Khyber Pakhtunkhwa as per Government Servants Appeal Rules, 1986.
12. Incorrect. Before filing of appeal before this hon'ble Tribunal, the appellant has not fulfilled the criteria of condonation of the delay in preferring/filing the appeal or the review petition for the delay which was for the reasons beyond the control of the appellant or that the earlier appeal or review petition was not addressed to the correct authority as per Government Servants Appeal Rules, 1986.
13. Incorrect. As explained in para-11 & 12 above, the appellant has not followed Government Servants Appeal Rules, 1986 before submission of this service appeal before this honorable tribunal.

GROUND

- A. Incorrect. The appellant has been treated in accordance with the prevailing rules/policy of the provincial government and no discrimination has been done to him.
- B. Incorrect. That the Finance Department has no cadre of its own with nomenclature of Assistant Finance Officer (BPS-16) and the appellant was adjusted in Treasuries & Accounts Establishment as Sub Accountant (BS-16), an attached formation of Finance Department, having different nomenclature, job description & service structure as per rules/ policy and procedure in vogue. Hence, no discrimination is done to the appellant and is treated in accordance with prevailing rules/ policy of the Provincial Government.

- C. As explained at A & B above. All the posts of Finance Officers in the districts are filled from amongst the officers of PMS/PAS cadres and there is no cadre of Assistant Finance Officers in Finance Department against which his adjustment was to be made, hence, the Appellant, along-with others, was adjusted in Treasuries & Accounts Establishment, having a different nomenclature, job description and service structure etc.
- D. As explained at A, B & C above. However, after his adjustment in a different cadre, the matter of seniority was examined in light of relevant rules/ policy in consultation with Establishment Department. The Establishment Department offered its advice which is reproduced below:

"Any backdated seniority cannot be granted to any absorbee and his inter-se-seniority, on absorbing in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority".
- E. Incorrect. No discrimination has been done to the appellant as explained above.
- F. Incorrect. As per paras above.
- G. Incorrect. As per para-10 of the **FACTS** above.
- H. Incorrect. The appellant has been treated in accordance with the relevant rules/policy of the Provincial Government.
- I. The respondents seek permission to raise additional grounds at the time of arguments.

In view of the above, it is humbly prayed for that the appeal, being devoid of merit & wastage of precious time of this court, may kindly be dismissed with cost.

M. Asif,
Chief Secretary
 Govt: of Khyber Pakhtunkhwa
 ✓ (Respondent No.01)

Zaidi
Secretary Establishment
 Govt: of Khyber Pakhtunkhwa
 (Respondent No.02)

[Signature]
Secretary Finance
 Govt: of Khyber Pakhtunkhwa
 ✓ (Respondent No.03)

(4)

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

**Mr. Anwar Ali
Service Appeal No. 1469/2022**


Versus

Secretary to Govt. of Khyber Pakhtunkhwa Finance Department and others.

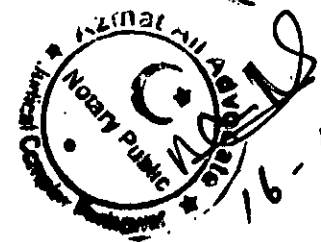
**Reply /Parawise Comments on Behalf of Secretary Finance Govt. of
Khyber Pakhtunkhwa Respondent No.03.**

AFFIDVAIT

I, Atiq-ur-rehman Assistant, Govt.of Khyber Pakhtunkhwa Finance Department do hereby solemnly affirm and declare on oath that the contents of Application in Service Appeal No.1469/2022 on behalf of Secretary to Govt. of Khyber Pakhtunkhwa Finance Department is true and correct to the best of my knowledge and belief and that nothing has been concealed from the Honourable Tribunal.The case is still subjudice in the court of law. It is further stated on oath that in this appeal the answering Responding Departments have neither been placed ex-parte nor their defence has been struck off.


Deponent

ATTESTE



Surplus Pool Policy

Policy for declaring government servants as surplus and their subsequent absorption/ adjustment.

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc.

POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS. The

Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

CREATION OF SURPLUS POOL

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

IMPLEMENTATION/MONITORING CELL

For the purpose of coordination and to ensure proper and expeditious adjustment/ absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

Additional Secretary(Establishment) E&AD.....Chairman.
Deputy Secretary LG&RD Department.....Member
Deputy Secretary Finance Department.....Member
Deputy Secretary(Establishment) E&AD.....Secretary


CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment.

PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

Before transferring an employee to the surplus pool, he should be given option by the concerned department.


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Finance Department
Govt. of Khyber Pakhtunkhwa

to proceed on retirement with normal retiring benefits under the existing rules;

OR

to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the surplus pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustments shall be on seniority-cum-fitness basis. For this purpose, the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-

In case of occurrence of vacancies in their corresponding posts in any Government Department/ Organization, the senior most employee in the surplus pool should be adjusted first.

In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.

If an employee possesses the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.

(a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.

84 In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

85 Surplus employees, who voluntarily opt, may be allowed adjustment in Autonomous/Semi-autonomous bodies with the concurrence of these bodies, where the job is pensionable. The Government will pay pension contribution for the period they rendered regular service under the Government.

Sub para c (v) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 15.2.2006.
Sub para c (vi) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 31.5.2006.

Amn
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Finance Department
Govt. of Khyber Pakhtunkhwa

If no suitable person is available in the surplus pool to be adjusted against the vacant/revised post, such a post would be filled up by initial recruitment manner after getting clearance from the E&AD.

⁸⁶ Surplus Staff in BPS-01 to 15 shall not be adjusted in the district other than their district of domicile.

To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of suitable surplus employee against the said post.

Unless the surplus employees in Class-IV are fully adjusted/ absorbed against their respective graded posts in various Government Departments/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs.2000/- per month for contractual appointed should be restricted to the above extent.

FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Departments will be determined according to the following principles:-

In case a surplus employee could be adjusted in the respective cadre of his parent Department he shall regain his original seniority in that cadre.

In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.

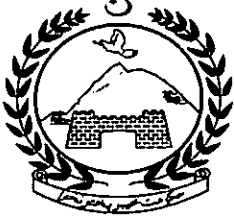
In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent Department or in any other department, he will be placed at the bottom of seniority list.

⁸⁷ In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

(3) Sub para (e) added to para 5 vide circular letter No.SORVI/E&AD/5-1/2005, dated 19.1.2007.

Sub para d added to para 6 vide circular letter No. SORVI(E&AD)5-1/2005, dated 15.2.2006

Section Officer (Lit-II)
Finance Department
Govt. of Khyber Pakhtunkhwa




**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT**

**MOST IMMEDIATE
COURT MATTER**

AUTHORITY LETTER.

Mr. Atiq-ur-Rehman Assistant (Litigation-II) Section, Finance Department is authorized to attend the Service Tribunal Khyber Pakhtunkhwa Peshawar, Service Appeal No.1469/2022 in case titled Anwar Ali versus Government of Khyber Pakhtunkhwa on behalf of Secretary Finance Government of Khyber Pakhtunkhwa.


Secretary to Government Khyber Pakhtunkhwa
✓ Finance Department