

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

Service Appeal No. 2768/2021

Date of Institution ... 12.12.2021

Date of Decision... 06.10.2023

Bahrul Mulk S/O Noor Ul Huda, R/O Bayna, Post Office Choga, Tehsil
Puran, District Shangla. ... (Appellant)

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa at Central
Police Office (CPO) Peshawar and 02 others.

... (Respondents)

MR. MUHAMMAD JAVED KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD JAN,
District Attorney

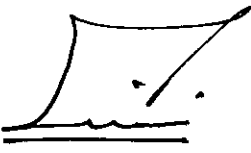
--- For respondents.

MR. SALAH-UD-DIN
MRS. RASHIDA BANO

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

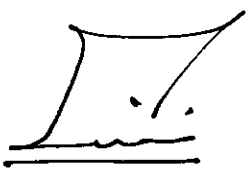
SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant had submitted an application on 18.11.2020, seeking voluntary retirement. The District Police Officer, Upper Dir issued order bearing OB No. 935 dated 19.11.2020, whereby pension of 365 days leave encashment in lieu of LPR was accorded and the appellant was permitted to proceed on retiring pension with effect from 31.12.2020. The appellant, however then submitted an application before the competent Authority on 09.12.2020, seeking withdrawal of his request for



retirement, however the same was declined vide order dated 07.01.2021, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.



4. We have heard the arguments of learned counsel for the parties and have perused the record.

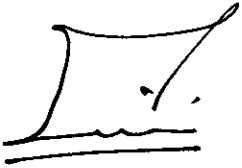
5. A perusal of the record would show that the appellant had submitted application for voluntary retirement on 18.11.2020, which was sanctioned on the following day vide OB No. 935 dated 19.11.2020, whereby the appellant was permitted to proceed on retiring pension with effect from 31.12.2020. However, in the meanwhile the appellant submitted an application on 09.12.2020 and sought withdrawal of his retirement. Admittedly, the afore-mentioned application was submitted by the appellant before the date of maturity of his retirement i.e 31.12.2020. For the purpose of dealing with similar

situation, Finance Division Government of Pakistan had issued OM No. F.1(1)R-4/2007-Vol-II (Pt) dated 06.10.2015, which is reproduced as below:-

Subject: CLARIFICATION OF WITHDRAWAL OF REQUEST OF LPR/RETIREMENT AFTER SANCTION/NOTIFICATION.

The undersigned is directed to refer to Finance Division's O.M. No.F.1(1)R-4/2007-(Vol.II) dated 17.11.2011 on the above subject and to state that it has been decided in consultation with Establishment Division that a Government Servant can withdraw option of voluntary retirement, during the period for which encashment has been applied/granted, subject to the following conditions:-

- i. He/She may withdraw his/her option of voluntary retirement before retirement matures:(emphasis provided).
- ii. *It is binding on a government servant to return any amount of leave pay received by him/her, in lieu of encashment of LPR for that period:*
- iii. *Later on, on attaining the age of superannuation, if he/she again opts for 365 days leave encashment in lieu of 365 days LPR, such option of an individual may be treated as a fresh case and he/she will be allowed encashment of LPR in toto.*



*(Myra Javaid Khan)
Section Officer (R-4)
Tel:9245872*

All Ministries/Divisions,

*Office of the Military Accountant General w.r.t their
Mr. Maqbool Hussain Raja, U.O.No.492/AT/PC/4890XVIII/Part
Accounts Officer, dated 20.11.2014.
Government of Pakistan,
Islamabad.*

*Copy to Web-master Mr. Faheem Anwar, Finance
Division.*

6. According to condition No. (i) of OM reproduced above, a government servant can withdraw option of voluntary retirement before retirement matures. The policy issued through above reproduced OM No. F.1(1)R-4/2007-Vol-II (Pt) dated 06.10.2015 of the Federal Government was approved/adopted by Government of

Khyber Pakhtunkhwa Finance Department vide letter No. FD(SOSR-11)/4-36/2018 dated 05.09.2018. Admittedly, the appellant had submitted application for withdrawal of request of his LPR/voluntary retirement before maturity of his retirement, therefore, in view of letter No. FD(SOSR-11)/4-36/2018 dated 05.09.2018 of the Government of Khyber Pakhtunkhwa Finance Department the competent Authority was required to have accepted his application. The respondents have relied on judgments dated 11.03.2018 and 07.04.2019 passed by this Tribunal in Service Appeal No. 421/2018 titled "*Abid Jamal Versus Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar and 03 others*" and Service Appeal No. 1111/2018 titled "*Muhammad Ayub Versus Government of Khyber Pakhtunkhwa through Secretary Home and others*" respectively, however the same are distinguished for the reason that the concerned policy issued by the Federal Government was adopted by Government of Khyber Pakhtunkhwa Finance Department vide letter No. FD(SOSR-11)/4-36/2018 dated 05.09.2018 and was not applicable to those cases.



7. Moreover, Section-13 of Khyber Pakhtunkhwa Civil Servants Act, 1973 was substituted vide KP Act No. XI of 2021 with effect from 31.07.2019 and sub-section (2) of the same is as below:-

“(2) A Civil Servant may opt to retire early from service, after completion of twenty five (25) years of qualifying service or attaining the age of fifty five (55) years, whichever is later.”(Emphasis supplied).

The appellant was appointed as Constable in Police Department in the year 1991 and his date of birth is 15.02.1973, therefore, in view

of sub-section 2 of Section 13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the competent Authority was not vested with any legal Authority to issue his retirement order for allowing him to proceed on retiring pension with effect from 31.12.2020.

8. Consequent upon the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant stands reinstated in service. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.10.2023



(RASHIDA BANO)
MEMBER (JUDICIAL)
CAMP COURT SWAT



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

ORDER
06.10.2023

Appellant alongwith his counsel present. Mr. Gul Zamin Khan, Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and the appellant stands reinstated in service. The intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
06.10.2023



(Rashida Bano)
Member (Judicial)
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat