

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**  
**CAMP COURT, D.I.KHAN**

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN... MEMBER (Executive)**

*Service Appeal No.2229/2021*

Date of presentation of Appeal.....01.02.2021  
Date of Hearing.....21.11.2023  
Date of Decision.....22.11.2023

**Masoom Khan**, son of Sultan Sikandar caste Kundi resident of Village Amakhel, Tehsil & District Tank. Retired Chowkidar RHC Amakhel, Health Department District Tank.....(*Appellant*)

Versus

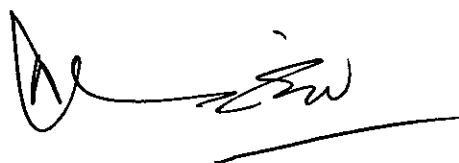
1. **The Government** of Khyber Pakhtunkhwa through Secretary Health Department, Peshawar.
  2. **The Director General Health Services** Khyber Pakhtunkhwa, Peshawar.
  3. **District Health Officer**, Tank.
  4. **District Accounts Officer Finance**, Department Tank
- .....(*Respondents*)

Present:

Sheikh Iftikhar Ul Haq, Advocate.....For the appellant  
Mr. Habib Anwar, Additional Advocate General .....For respondents

**PRAYER IN APPEAL:**

**ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL THE ILLEGAL ACTS OF DEDUCTION OF AMOUNT FROM THE PENSIONARY BENEFITS OF THE APPELLANT BY THE RESPONDENTS AND NOT TO RELEASE THE FULL PENSION AND ACCRUED ARREARS OF PENSIONARY BENEFITS AND INCREMENTS MAY KINDLY BE SET ASIDE AND DECLARED AS ILLEGAL, VOID AB INITIO BEING WITHOUT LAWFUL AUTHORITY AND THE RESPONDENTS BE RELEASED THE FULL PENSIONARY BENEFITS WITHOUT ANY DEDUCTION AND ALSO RELEASE THE REMAINING ARREARS INCLUDING INCREMENTS FOR WHICH THE APPELLANT IS ENTITLED AND ALSO AGAINST THE NON-ACTION OF THE APPELLATE AUTHORITY ON THE DEPARTMENTAL APPEAL MEANING**



**THEREBY REJECTION QUA THE DEPARTMENTAL APPEAL  
WITHIN STIPULATED PERIOD**

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**JUDGMENT**

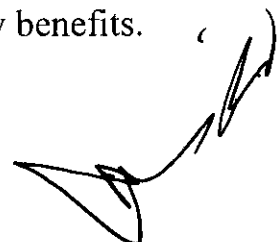
**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts of the case as detailed in the memo and grounds of appeal are that appellant was appointed as Chowkidar/Class-IV on 07.09.1981. That he had retired from service on 12.12.2018 but his retirement was given effect from 04.09.2017 and deduction was made from his pension while increment was also denied.

02. Feeling aggrieved, he filed departmental appeal which was not responded within statutory period of 90 days. Therefore, he filed the instant service appeal.

03. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

04. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

05. Learned counsel for the appellant argued that the impugned act i.e. deduction from pensionary benefits, non-releasing of pensionary benefits and arrears, including increments, were against law, facts and natural justice, hence, liable to be set aside. He submitted that the appellant had performed duties till 12.12.2018, therefore, he was entitled for salaries and other benefits till that date. Lastly, he concluded that the appellant served the department for 37 years, therefore, he was entitled for the whole pensionary benefits.



06. As against that learned Additional Advocate General submitted that the actual date of retirement of the appellant was 06.09.2017, calculated by the District Accounts Officer, Tank. Further submitted that 12.12.2018, was the date of issuance of the retirement order. Lastly, he concluded that in the Service Book at the time of appointment, the age of appellant was recorded as 24 years on 05.09.1981, while 36 years total qualifying service was at his credit, therefore, the actual date of retirement was 06.09.2017 and not 12.12.2018. He requested for dismissal of the instant service appeal.

07. Learned counsel for the appellant has relied on the judgment reported as 2017 PLC CS 331 titled "Abdul Qayyum Vs. Director General Anticorruption & others", wherein, reference was made to another judgment. The relevant portion of the said judgment, reported as 2009 PLC 1400 is reproduced below:

*"Recovery of amount from pensionary benefit. Civil servant who was to retire on attaining the age of superannuation remained working even after superannuation for about eleven months without objection from the Authority, but Authority on finalization of his pension case, recovered the amount of salaries drawn by him during the said period of eleven months from pensionary benefits of Civil Servant. Validity civil servant having worked during the period of eleven months without any objection from the Authority, there was no justification for Authority to effect recovery of amount from the pensionary benefits of Civil Servant. Nothing was on file to demonstrate that Civil Servant had a hand in the affair and that he had approached the High Court with unclean hands disentitling him to discretionary and equitable relief provided under Article 199 of the Constitution. Jurisdiction of High Court to entertain a constitutional petition at the instance of Civil Servant, was not ousted in respect of all matters, but ouster was limited to only those cases which could be taken up by Service Tribunal. Recovery in question had been effected without issuing notice to the Civil Servant Non-issuance of notice had certainly prejudiced the interest of Civil Servant. Order recovering amount from pensionary benefits of Civil Servant, was declared to be illegal and without lawful authority and no legal effect by the High Court, in exercise of its*



*Constitutional jurisdiction with direction to pay the recovered amount to Civil Servant."*

08. The case of the appellant is quite similar to the facts of the above case. In the instant case, the appellant was not retired rather allowed to continue his service after his attaining the age of superannuation and no fault appears to be on the part of the appellant. The department ought to have retired the appellant on attaining the age of superannuation but because they had not retired and had allowed him to continue, therefore, the claim of the appellant that the payment made to him after his attaining the age of 60 years, could not be recovered from him, is genuine and quite justified, especially when performance of duty after the date of superannuation has not been denied. Therefore, while allowing this appeal, we direct the respondents to take up the matter with the Finance Department for regularization of the pay drawn by the appellant beyond the age of superannuation, by treating the period spent on duty. Consign.

09. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 22<sup>nd</sup> day of November, 2023.*



**KALIM ARSHAD KHAN**  
Chairman




**MUHAMMAD AKBAR KHAN**  
Member (Executive)

21<sup>st</sup> Nov. 2023

1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.
2. Arguments heard. To come up for order, by tomorrow i.e. 22.11.2023 before D.B at Camp Court, D.I.Khan. P.P given to the parties.

\*Mutazem Shah\*

(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, D.I.Khan


S.A #. 2229/2021

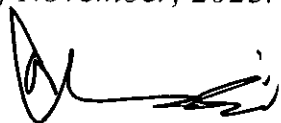
**ORDER**

22<sup>nd</sup> Nov. 2023

1. Learned counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.
2. Vide our detailed judgment of today placed on file, while allowing this appeal, we direct the respondents to take up the matter with the Finance Department for regularization of the pay drawn by the appellant beyond the age of superannuation, by treating the period spent on duty. Consign.
3. *Pronounced in open Court at D.I.Khan and given under our hands and the seal of the Tribunal on this 22<sup>nd</sup> day of November, 2023.*

\*Mutazem Shah\*

  
(Muhammad Akbar Khan)  
Member (E)

  
(Kalim Arshad Khan)  
Chairman  
Camp Court, D.I.Khan